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CHAPTER 427

An act to add Section 115061 to the Health and Safety Code, relating to radiation technology.

[Approved by Governor September 30, 2005. Filed with
Secretary of State September 30, 2005.]

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

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

(1) (A) More than 300,000,000 medical and dental imaging examinations and radiation therapy treatments are administered annually in the United States. Proper use of ionizing radiation is an extremely important life-saving therapy for many cancer patients. Seven out of every 10 Americans undergo a medical or dental imaging examination or radiation therapy treatment every year in the United States.

(B) These procedures are useful in the diagnosis of medical conditions. However, the administration of medical and dental imaging examinations and the effect of these procedures on individuals have a substantial and direct effect upon public health and safety.

(C) It is in the interest of public health and safety to minimize unnecessary or inappropriate exposure to radiation from medical and dental radiological procedures.

(2) In 2005, about 135,000 Californians will be diagnosed with cancer and about 54,000 will die of the disease. Cancer incidence is rising throughout the United States. In the United States, one in three women and one in two men will face cancer during their lifetime. Exposure to radiation such as through X-rays, CT scans, fluoroscopy, and other medical and dental radiological procedures is contributing to the high rates in the United States.

(3) In January 2005, the National Toxicology Program classified x-radiation and gamma radiation as known human carcinogens. The report stated that "exposure to these kinds of radiation cause many types of cancer including leukemia and cancers of the thyroid, breast and lung . . . Exposure to x-radiation and gamma radiation has also been shown to cause cancer of the salivary glands, stomach, colon, bladder, ovaries, central nervous system and skin." Diagnostic radiation is valuable in the practice of medicine and dentistry today. However, patients have a right to know that procedures involving exposure to radiation entail risks as well as benefits.

(4) According to a leading scientist with the National Cancer Institute, “More is known about the relationship between radiation dose and cancer risk than any other human carcinogen, and female breast cancer is the best quantified radiation-related cancer.” Breast cancer is the most commonly diagnosed cancer among women in California and in the United States. Each year in California approximately 21,000 women will be diagnosed with the disease and 4,000 will die from it.

(5) To reduce the risk of radiation-related cancer, physicians, dentists, other health care providers, technologists, equipment manufacturers, and the government share the responsibility to minimize radiation exposure of patients. Exposures should be as low as reasonably achievable without sacrificing image quality. Studies have shown that often patients are not provided with sufficient information on the merits and potential adverse effects of diagnostic imaging procedures. In addition, the popularity of self-referred whole body CT scans has increased concern among radiologists and cancer specialists. The United States Food and Drug Administration has never approved CT scans for screening any part of the body for any specific disease, let alone for screening the whole body when there are no specific symptoms of a disease. The American College of Radiology states that “there is no evidence that total body CT screening is cost efficient or effective in prolonging life.” Scientists at Columbia University found that a single full-body CT scan exposes a person to a radiation dose nearly 100 times that of a typical mammogram. Improving patient awareness and protection during radiologic imaging is a critical step toward reducing a preventable cause of cancer.

(6) According to the National Cancer Institute, children are uniquely vulnerable to harm from radiation exposure because they are more sensitive to radiation than adults. Children have a longer life expectancy after exposure, creating a larger window of opportunity for expressing radiation damage. For example, CT scans deliver a much higher radiation dose than conventional X-rays. Approximately 2 to 3 million CT scan examinations are performed annually on children in the United States. The use of CT scans has increased seven-fold in the past 10 years.

(7) In 2001, the State of New Jersey developed and implemented a “Quality Assurance Program” that has led to a reduction in ionizing radiation exposure.

(b) It is the intent of the Legislature in enacting this act to promote best practices as a proven means to reduce the exposure to ionizing radiation, and increase and maintain diagnostic image quality.

SEC. 2. Section 115061 is added to the Health and Safety Code, to read:

115061. (a) In order to better protect the public and radiation workers from unnecessary exposure to radiation and to reduce the occurrence of misdiagnosis, the Radiologic Health Branch within the State Department of Health Services shall adopt regulations that require personnel and facilities using radiation-producing equipment for medical and dental purposes to maintain and implement medical and dental quality assurance standards that protect the public health and safety by reducing unnecessary exposure to ionizing radiation while ensuring that images are of diagnostic quality. The standards shall require quality assurance tests to be performed on all radiation-producing equipment used for medical and dental purposes.

(b) The Radiological Health Branch shall adopt the regulations described in subdivision (a) and provide the regulations to the health committees of the Assembly and the Senate on or before January 1, 2008.

(c) For purposes of this section “medical and dental quality assurance” means the detection of a change in X-ray and ancillary equipment that adversely affects the quality of films or images and the radiation dose to the patients, and the correction of this change.

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 428

An act to amend Section 11751.71 of the Insurance Code, and to add Section 19529 to the Revenue and Taxation Code, relating to criminal investigations.

[Approved by Governor September 30, 2005. Filed with
Secretary of State September 30, 2005.]

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

SECTION 1. Section 11751.7 of the Insurance Code is amended to read:

11751.7. (a) The rating organization designated the statistical agent pursuant to Section 11751.5 shall provide to the Director of Industrial Relations, upon request, any information in the possession of, or reasonably attainable by the rating organization, that would assist the Director of Industrial Relations to identify employers who fail to secure adequate insurance in violation of Section 3700 of the Labor Code. The information requested pursuant to this section shall be provided by the rating organization in a form and manner prescribed by the Director of Industrial Relations.

(b) The rating organization designated the statistical agent pursuant to Section 11751.5 shall provide to the Registrar of Contractors of the Contractor's State License Board, upon request, any information in the possession of, or reasonably attainable by, the rating organization that would assist in identifying licensed contractors who fail to secure adequate insurance in violation of Section 3700 of the Labor Code. The information requested pursuant to this section shall be provided by the rating organization in a form and manner prescribed by the Registrar of Contractors.

SEC. 2. Section 19529 is added to the Revenue and Taxation Code, to read:

19529. The Franchise Tax Board shall notify the Registrar of Contractors of the Contractors State License Board, the Director of Employment Development, the Economic and Employment Enforcement Coalition, and the Joint Enforcement Strike Force on the Underground Economy upon the arraignment of or the filing of criminal charges against any individual for a violation of Chapter 9 (commencing with Section 19701) of this Part if that individual engages in the business or acts in the capacity of a contractor within this state pursuant to a license issued by the Contractors State License Board or if that individual unlawfully engages in the business or acts in the capacity of a contractor within this state without having a license therefor.

CHAPTER 429

An act to amend Section 53088.2 of the Government Code, relating to video providers.

[Approved by Governor September 30, 2005. Filed with
Secretary of State September 30, 2005.]

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

SECTION 1. Section 53088.2 of the Government Code is amended to read:

53088.2. (a) Every video provider shall render reasonably efficient service, make repairs promptly, and interrupt service only as necessary.

(b) All video provider personnel contacting subscribers or potential subscribers outside the office of the provider shall be clearly identified as associated with the video provider.

(c) At the time of installation, and annually thereafter, all video providers shall provide to all customers a written notice of the programming offered, the prices for that programming, the provider's installation and customer service policies, and the name, address, and telephone number of the local franchising authority.

(d) All video providers shall have knowledgeable, qualified company representatives available to respond to customer telephone inquiries Monday to Friday, inclusive, excluding holidays, during normal business hours.

(e) All video providers shall provide to customers a toll-free or local telephone number for installation, and service, and complaint calls. These calls shall be answered promptly by the video providers. The city, county, or city and county may establish standards for what constitutes promptness.

(f) All video providers shall render bills that are accurate and understandable.

(g) All video providers shall respond to a complete outage in a customer's service promptly. The response shall occur within 24 hours of the reporting of the outage to the provider, except in those situations beyond the reasonable control of the video provider. A video provider shall be deemed to respond to a complete outage when a company representative arrives at the outage location within 24 hours and begins to resolve the problem.

(h) All video providers shall provide a minimum of 30 days' written notice before increasing rates or deleting channels. All video providers shall make every reasonable effort to submit the notice to the city, county, or city and county in advance of the distribution to customers. The 30-day notice is waived if the increases in rates or deletion of channels were outside the control of the video provider. In those cases the video provider shall make reasonable efforts to provide customers with as much notice as possible.

(i) Every video provider shall allow every residential customer who pays his or her bill directly to the video provider at least 15 days from the date the bill for services is mailed to the customer, to pay the listed

charges unless otherwise agreed to pursuant to a residential rental agreement establishing tenancy. Customer payments shall be posted promptly. No video provider may terminate residential service for nonpayment of a delinquent account unless the video provider furnishes notice of the delinquency and impending termination at least 15 days prior to the proposed termination. The notice shall be mailed, postage prepaid, to the customer to whom the service is billed. Notice shall not be mailed until the 16th day after the date the bill for services was mailed to the customer. The notice of delinquency and impending termination may be part of a billing statement. No video provider may assess a late fee any earlier than the 22nd day after the bill for service has been mailed.

(j) Every notice of termination of service pursuant to subdivision (i) shall include all of the following information:

(1) The name and address of the customer whose account is delinquent.

(2) The amount of the delinquency.

(3) The date by which payment is required in order to avoid termination of service.

(4) The telephone number of a representative of the video provider who can provide additional information and handle complaints or initiate an investigation concerning the service and charges in question.

Service may only be terminated on days in which the customer can reach a representative of the video provider either in person or by telephone.

(k) Any service terminated without good cause shall be restored without charge for the service restoration. Good cause includes, but is not limited to, failure to pay, payment by check for which there are insufficient funds, theft of service, abuse of equipment or system personnel, or other similar subscriber actions.

(l) A video provider shall cease charging a customer for services within seven business days of receiving a request to terminate service. If the customer requests that service be terminated and provides seven or more business day's notice before the date for termination of service, the video provider shall cease charging the customer for additional services as of midnight of the last day of service. Nothing in this subdivision shall prohibit a video provider from billing for charges incurred by the customer prior to the date for termination of service.

(m) All video providers shall issue requested refund checks promptly, but no later than 45 days following the resolution of any dispute, and following the return of the equipment supplied by the video provider, if service is terminated.

(n) All video providers shall issue security or customer deposit refund checks promptly, but no later than 45 days following the termination of service, less any deductions permitted by law.

(o) Video providers shall not disclose the name and address of a subscriber for commercial gain to be used in mailing lists or for other commercial purposes not reasonably related to the conduct of the businesses of the video providers or their affiliates, unless the video providers have provided to the subscriber a notice, separate or included in any other customer notice, that clearly and conspicuously describes the subscriber's ability to prohibit the disclosure. Video providers shall provide an address and telephone number for a local subscriber to use without toll charge to prevent disclosure of the subscriber's name and address.

(p) Disputes concerning the provisions of this article shall be resolved by the city, county, or city and county in which the customer resides. For video providers under Section 53066, the franchising authority shall resolve disputes. All other video providers shall register with the city in which they provide service or, where the customers reside in an unincorporated area, in the county in which they provide service. The registration shall include the name of the company, its address, its officers, telephone numbers, and customer service and complaint procedures. Counties and cities may charge these other video providers operating in the state a fee to cover the reasonable cost of administering this division.

(q) Nothing in this division limits any power of a city, county, or city and county or video provider to adopt and enforce service standards and consumer protection standards that exceed those established in this division.

(r) The legislative body of the city, county, or city and county, may, by ordinance, provide a schedule of penalties for the material breach by a video provider of subdivisions (a) to (p), inclusive. No monetary penalties shall be assessed for a material breach if the breach is out of the reasonable control of the video provider. Further, no monetary penalties may be imposed prior to the effective date of this section. Any schedule of monetary penalties adopted pursuant to this section shall in no event exceed two hundred dollars (\$200) for each day of each material breach, not to exceed six hundred dollars (\$600) for each occurrence of material breach. However, if a material breach of any of subdivisions (a) to (p), inclusive, has occurred and the city, county, or city and county has provided notice and a fine or penalty has been assessed, in a subsequent material breach of the same nature occurring within 12 months, the penalties may be increased by the city, county, or city and county to a maximum of four hundred dollars (\$400) for each day of

each material breach, not to exceed one thousand two hundred dollars (\$1,200) for each occurrence of the material breach. If a third or further material breach of the same nature occurs within those same 12 months, and the city, county, or city and county has provided notice and a fine or penalty has been assessed, the penalties may be increased to a maximum of one thousand dollars (\$1,000) for each day of each material breach, not to exceed three thousand dollars (\$3,000) for each occurrence of the material breach. With respect to video providers subject to a franchise or license, any monetary penalties assessed under this section shall be reduced dollar for dollar to the extent any liquidated damage or penalty provision of a current cable television ordinance, franchise contract, or license agreement imposes a monetary obligation upon a video provider for the same customer service failures, and no other monetary damages may be assessed. However, this section shall in no way affect the right of franchising authorities concerning assessment or renewal of a cable television franchise under the provisions of the Cable Communications Policy Act of 1984 (47 U.S.C. Sec. 521 et seq.).

(s) If the legislative body of a city, county, or city and county adopts a schedule of monetary penalties pursuant to subdivision (q), the following procedures shall be followed:

(1) The city, county, or city and county shall give the video provider written notice of any alleged material breaches of the consumer service standards of this division and allow the video provider at least 30 days from receipt of the notice to remedy the specified breach.

(2) A material breach for the purposes of assessing penalties shall be deemed to have occurred for each day, following the expiration of the period specified in paragraph (1), that any material breach has not been remedied by the video provider, irrespective of the number of customers affected.

(t) Notwithstanding subdivision (o), or any other provision of law, this section shall not preclude a party affected by this section from utilizing any judicial remedy available to that party without regard to this section. Actions taken by a local legislative body, including a franchising authority, pursuant to this section shall not be binding upon a court of law. For this purpose, a court of law may conduct de novo review of any issues presented.

CHAPTER 430

An act to amend Sections 102425, 102426, 102430, 102440, 103025, 103526, and 103526.5 of the Health and Safety Code, relating to vital records.

[Approved by Governor September 30, 2005. Filed with
Secretary of State September 30, 2005.]

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

SECTION 1. Section 102425 of the Health and Safety Code is amended to read:

102425. (a) The certificate of live birth for any live birth occurring on or after January 1, 1980, shall contain those items necessary to establish the fact of the birth and shall contain only the following information:

- (1) Full name and sex of the child.
- (2) Date of birth, including month, day, hour, and year.
- (3) Place of birth.
- (4) Full name of the father, birthplace, and date of birth of the father including month, day, and year. If the parents are not married to each other, the father's name shall not be listed on the birth certificate unless the father and the mother sign a voluntary declaration of paternity at the hospital before the birth certificate is prepared. The birth certificate may be amended to add the father's name at a later date only if paternity for the child has been established by a judgment of a court of competent jurisdiction or by the filing of a voluntary declaration of paternity.
- (5) Full birth name of the mother, birthplace, and date of birth of the mother including month, day, and year.
- (6) Multiple births and birth order of multiple births.
- (7) Signature, and relationship to the child, of a parent or other informant, and date signed.
- (8) Name, title, and mailing address of the attending physician and surgeon or principal attendant, signature, and certification of live birth by the attending physician and surgeon or principal attendant or certifier, date signed, and name and title of the certifier if other than the attending physician and surgeon or principal attendant.
- (9) Date accepted for registration and signature of local registrar.
- (10) A state birth certificate number and local registration district and number.
- (11) A blank space for entry of the date of death with a caption reading "Date of Death."

(b) In addition to the items listed in subdivision (a), the certificate of live birth shall contain the following medical and social information, provided that the information is kept confidential pursuant to Sections 102430 and 102447 and is clearly labeled "Confidential Information for Public Health Use Only":

- (1) Birth weight.

- (2) Pregnancy history.
 - (3) Race and ethnicity of the mother and father.
 - (4) Residence address of the mother.
 - (5) A blank space for entry of census tract for the mother's address.
 - (6) Date of first prenatal care visit, the number of prenatal care visits, and commencing January 1, 2007, the date of last prenatal care visit.
 - (7) Date of last normal menses and, commencing January 1, 2007, an obstetric estimate of completed weeks of gestation at delivery.
 - (8) Description of complications and procedures of pregnancy and concurrent illnesses, congenital malformation, and any complication or procedure of labor and delivery, including surgery, provided that this information is essential medical information and appears in total on the face of the certificate.
 - (9) Commencing January 1, 2007, hearing screen results.
 - (10) Mother's and father's occupations and kind of business or industry.
 - (11) Education level of the mother and father.
 - (12) Principal source of payment for prenatal care, which shall include the following: Medi-Cal, private insurance, self-pay, other sources, and any other categories as may be determined by the State Department of Health Services.
 - (13) Expected principal source of payment for delivery, which shall include the following: Medi-Cal, private insurance, self-pay, other sources, and any other categories as may be determined by the State Department of Health Services.
 - (14) An indication of whether or not the child's parent desires the automatic issuance of a social security number to the child.
 - (15) On and after January 1, 1995, the social security numbers of the mother and father, unless subdivision (b) of Section 102150 applies.
- (c) Paragraph (8) of subdivision (b) shall be completed by the attending physician and surgeon or the attending physician and surgeon's designated representative. The names and addresses of children born with congenital malformations who require followup treatment, as determined by the child's physician and surgeon, shall be furnished by the physician and surgeon to the local health officer, if permission is granted by either parent of the child.
- (d) The parent shall only be asked to sign the form after both the public portion and the confidential medical and social information items have been entered upon the certificate of live birth.
- (e) The State Registrar shall instruct all local registrars to collect the information specified in this section with respect to certificates of live birth. The information shall be transcribed on the certificate of live birth

in use at the time and shall be limited to the information specified in this section.

Information relating to concurrent illnesses, complications and procedures of pregnancy and delivery, and congenital malformations shall be completed by the physician and surgeon, or the physician and surgeon's designee, who shall insert in the space provided on the confidential portion of the certificate the appropriate number or numbers listed on the VS-10A supplemental worksheet. The VS-10A supplemental form shall be used as a worksheet only and shall not in any manner be linked with the identity of the child or the mother, nor submitted with the certificate to the State Registrar. All information transferred from the worksheet to the certificate shall be fully explained to the parent or other informant prior to the signing of the certificate. No questions relating to drug or alcohol abuse may be asked.

(f) (1) The Vital Statistics Advisory Committee, in accordance with Section 102465, shall conduct a review of the contents of the certificate of live birth to coincide with decennial revisions by the National Center for Health Statistics to the United States Standard Certificate of Live Birth. The Vital Statistics Advisory Committee shall make recommendations to the State Registrar regarding the adoption of modifications to the state certificate of live birth that are similar to those made to the federal certificate.

(2) Notwithstanding Section 102470, the State Registrar shall review the Vital Statistics Advisory Committee recommendations and, at the State Registrar's discretion, shall submit to the Legislature, for approval, additions or deletions to the certificate of live birth.

SEC. 2. Section 102426 of the Health and Safety Code is amended to read:

102426. (a) (1) In addition to the items of information collected pursuant to Section 102425, the State Registrar shall instruct all local registrars that have automated birth registration to electronically capture the information specified in paragraph (2) in an electronic file. The information shall not be transcribed onto the actual hard copy of the certificate of live birth.

(2) The information required pursuant to paragraph (1) shall consist of the following:

(A) The mother's marital status.

(B) The mother's mailing address. The mother may designate an alternate address at her discretion.

(C) Information about whether the birth mother received food for herself during the pregnancy pursuant to the Women, Infants, and Children (WIC) program.

(D) The Activity, Pulse, Grimace, Appearance, and Respiration (Apgar) scores of 5 and 10 minutes.

(E) The birth mother's prepregnancy weight, weight at delivery, and height.

(F) Information about smoking before and during pregnancy, including the average number of cigarettes or packs of cigarettes smoked during the three months before pregnancy and the average number of cigarettes or packs of cigarettes smoked during each trimester of pregnancy.

(3) Subparagraphs (B) to (F), inclusive, of paragraph (2) shall become operative on January 1, 2007.

(b) Notwithstanding any provisions of law to the contrary, information collected pursuant to subparagraph (A) of paragraph (2) of subdivision (a) shall not under any circumstances be disclosed or available to anyone except to the department for demographic and statistical analysis, and to the federal government, without any personal identifying information, for demographic and statistical analysis.

SEC. 3. Section 102430 of the Health and Safety Code is amended to read:

102430. (a) The second section of the certificate of live birth as specified in subdivision (b) of Section 102425, the electronic file of birth information collected pursuant to subparagraphs (B) to (F), inclusive, of paragraph (2) of subdivision (a) of Section 102426, and the second section of the certificate of fetal death as specified in Section 103025, shall be confidential. Access to the confidential portion of any certificate of live birth or fetal death, and the electronic file of birth information collected pursuant to subparagraphs (B) to (F), inclusive, of paragraph (2) of subdivision (a) of Section 102426, shall be limited to the following:

(1) Department staff.

(2) Local registrar's staff and local health department staff when approved by the local registrar or local health officer, respectively.

(3) The county coroner.

(4) Persons with a valid scientific interest as determined by the State Registrar, who are engaged in demographic, epidemiological or other similar studies related to health, and who agree to maintain confidentiality as prescribed by this part and by regulation of the State Registrar.

(5) The parent who signed the certificate or, if no parent signed the certificate, the mother.

(6) The person named on the certificate.

(7) Any person who has petitioned to adopt the person named on the certificate of live birth, subject to Section 102705 of the Health and Safety Code and Sections 9200 and 9203 of the Family Code.

(b) The department shall maintain an accurate record of all persons who are given access to the confidential portion of the certificates. The

record shall include: the name of the person authorizing access; name, title, and organizational affiliation of persons given access; dates of access; and specific purpose for which information is to be used. The record of access shall be open to public inspection during normal operating hours of the department.

(c) All research proposed to be conducted using the confidential medical and social information on the birth certificate or fetal death certificate shall first be reviewed by the appropriate committee constituted for the protection of human subjects that is approved by the federal Department of Health and Human Services and has a general assurance pursuant to Part 46 of Title 45 of the Code of Federal Regulations. No information shall be released until the request for information has been reviewed by the Vital Statistics Advisory Committee and the committee has recommended to the State Registrar that the information shall be released.

SEC. 4. Section 102440 of the Health and Safety Code is amended to read:

102440. Notwithstanding Sections 102425 and 102430, the department may transmit to the Social Security Administration the information necessary to issue a social security number to a child in a case where the child's parent has requested the issuance pursuant to paragraph (14) of subdivision (b) of Section 102425.

SEC. 5. Section 103025 of the Health and Safety Code is amended to read:

103025. The certificate of fetal death shall contain items as may be designated by the State Registrar and shall be divided into two sections. The first section shall contain those items necessary to establish the fact of the fetal death. The second section shall contain those items relating to medical and health data and shall be clearly labeled "Confidential Information for Public Health Use Only." The information included in the second section shall be kept confidential pursuant to Section 102430.

SEC. 6. 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 July 1, 2007.

(g) This section shall become operative on July 1, 2003.

SEC. 7. Section 103526.5 of the Health and Safety Code is amended to read:

103526.5. (a) Each certified copy of a birth or death record issued pursuant to Section 103525 shall include the date issued, the name of the issuing officer, the signature of the issuing officer, whether that is the State Registrar, local registrar, county recorder, or county clerk, or an authorized facsimile thereof, and the seal of the issuing office.

(b) (1) All certified copies of birth and death records issued pursuant to Section 103525 shall be printed on chemically sensitized security paper that measures 8 ½ by 11 inches and that has the following features:

- (A) Intaglio print.
- (B) Latent image.
- (C) Fluorescent, consecutive numbering with matching barcode.
- (D) Microprint line.
- (E) Prismatic printing.
- (F) Watermark.
- (G) Void pantograph.
- (H) Fluorescent security threads.
- (I) Fluorescent fibers.
- (J) Any other security features deemed necessary by the State Registrar.

(2) In addition to the security features required by paragraph (1), commencing July 1, 2007, the security paper used for informational certified copies of birth and death records pursuant to subdivision (b) of Section 103526 shall also contain a statement in perforated type that states "INFORMATIONAL, NOT A VALID DOCUMENT TO ESTABLISH IDENTITY."

(c) The State Registrar, local registrars, county recorders, and county clerks shall take precautions to ensure that uniform and consistent standards are used statewide to safeguard the security paper described in subdivision (b), including, but not limited to, the following measures:

(1) Security paper shall be maintained under secure conditions so as not to be accessible to the public.

(2) A log shall be kept of all visitors allowed in the area where security paper is stored.

(3) All spoilage shall be accounted for and subsequently destroyed by shredding on the premises.

(d) This section shall become operative on July 1, 2003.

SEC. 8. 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.

CHAPTER 431

An act to add Section 104113 to the Health and Safety Code, relating to public health.

[Approved by Governor September 30, 2005. Filed with
Secretary of State September 30, 2005.]

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

SECTION 1. Section 104113 is added to the Health and Safety Code, to read:

104113. (a) (1) Commencing July 1, 2007, every health studio, as defined in subdivision (g) shall acquire an automatic external defibrillator. The requirement to acquire an automatic external defibrillator pursuant to this subdivision shall terminate on July 1, 2012.

(2) Commencing July 1, 2007, and until July 1, 2012, every health studio, as defined in subdivision (g), shall maintain, and train personnel

in the use of, any automatic external defibrillator acquired pursuant to paragraph (1).

(3) On or after July 1, 2012, a health studio that elects to continue the installation of an automatic external defibrillator that was acquired pursuant to paragraph (1) shall maintain and train personnel in the use of an automatic external defibrillator pursuant to this section, and shall not be liable for civil damages resulting from the use, attempted use, or nonuse of an automatic external defibrillator as provided by this section.

(b) An employee of a health studio who renders emergency care or treatment is not liable for civil damages resulting from the use, attempted use, or nonuse of an automatic external defibrillator, except as provided in subdivision (f).

(c) When an employee uses, does not use, or attempts to use, an automatic external defibrillator consistent with the requirements of this section to render emergency care or treatment, the members of the board of directors of the facility shall not be liable for civil damages resulting from any act or omission in rendering the emergency care or treatment, including the use or nonuse of an automatic external defibrillator, except as provided in subdivision (f).

(d) Except as provided in subdivision (f), when an employee of a health studio renders emergency care or treatment using an automatic external defibrillator, the owners, managers, employees, or otherwise responsible authorities of the facility shall not be liable for civil damages resulting from any act or omission in the course of rendering that emergency care or treatment, provided that the facility fully complies with subdivision (e).

(e) Notwithstanding Section 1797.196, in order to ensure public safety, a health studio shall do all of the following:

(1) Comply with all regulations governing the placement of an automatic external defibrillator.

(2) Ensure all of the following:

(A) The automatic external defibrillator is maintained and regularly tested according to the operation and maintenance guidelines set forth by the manufacturer, the American Heart Association, or the American Red Cross, and according to any applicable rules and regulations set forth by the governmental authority under the federal Food and Drug Administration and any other applicable state and federal authority.

(B) The automatic external defibrillator is checked for readiness after each use and at least once every 30 days if the automatic external defibrillator has not been used in the preceding 30 days. Records of these checks shall be maintained.

(C) Any person who renders emergency care or treatment on a person in cardiac arrest by using an automatic external defibrillator activates

the emergency medical services system as soon as possible, and reports any use of the automatic external defibrillator to the licensed physician and to the local EMS agency.

(D) For every automatic external defibrillator unit acquired, up to five units, no less than one employee per automatic external defibrillator unit shall complete a training course in cardiopulmonary resuscitation and automatic external defibrillator use that complies with the regulations adopted by the Emergency Medical Services Authority and the standards of the American Heart Association or the American Red Cross. After the first five automatic external defibrillator units are acquired, for each additional five automatic external defibrillator units acquired, a minimum of one employee shall be trained beginning with the first additional automatic external defibrillator unit acquired. Acquirers of automatic external defibrillator units shall have trained employees who should be available to respond to an emergency that may involve the use of an automatic external defibrillator unit during normal operating hours. Acquirers of automatic external defibrillator units may need to train additional employees to assure that a trained employee is available at all times.

(E) There is a written plan that exists that describes the procedures to be followed in the event of an emergency that may involve the use of an automatic external defibrillator, to ensure compliance with the requirements of this section. The written plan shall include, but not be limited to, immediate notification of 911 and trained office personnel at the start of automatic external defibrillator procedures.

(f) Subdivisions (b), (c), and (d) do not apply in the case of personal injury or wrongful death that results from gross negligence or willful or wanton misconduct on the part of the person who uses, attempts to use, or maliciously fails to use an automatic external defibrillator to render emergency care or treatment.

(g) For purposes of this section, "health studio" means any facility permitting the use of its facilities and equipment or access to its facilities and equipment, to individuals or groups for physical exercise, body building, reducing, figure development, fitness training, or any other similar purpose, on a membership basis. "Health studio" does not include any hotel or similar business that offers fitness facilities to its registered guests for a fee or as part of the hotel charges.

CHAPTER 432

An act to amend Section 530.5 of the Penal Code, relating to crime.

[Approved by Governor September 30, 2005. Filed with
Secretary of State September 30, 2005.]

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

SECTION 1. Section 530.5 of the Penal Code is amended to read:

530.5. (a) Every person who willfully obtains personal identifying information, as defined in subdivision (b), of another person, and uses that information for any unlawful purpose, including to obtain, or attempt to obtain, credit, goods, services, or medical information in the name of the other person without the consent of that person, is guilty of a public offense, and upon conviction therefor, shall be punished either by imprisonment in a county jail not to exceed one year, a fine not to exceed one thousand dollars (\$1,000), or both that imprisonment and fine, or by imprisonment in the state prison, a fine not to exceed ten thousand dollars (\$10,000), or both that imprisonment and fine.

(b) "Personal identifying information," as used in this section, means the name, address, telephone number, health insurance identification number, taxpayer identification number, school identification number, state or federal driver's license number, or identification number, social security number, place of employment, employee identification number, mother's maiden name, demand deposit account number, savings account number, checking account number, PIN (personal identification number) or password, alien registration number, government passport number, date of birth, unique biometric data including fingerprint, facial scan identifiers, voice print, retina or iris image, or other unique physical representation, unique electronic data including identification number, address, or routing code, telecommunication identifying information or access device, information contained in a birth or death certificate, or credit card number of an individual person.

(c) In any case in which a person willfully obtains personal identifying information of another person, uses that information to commit a crime in addition to a violation of subdivision (a), and is convicted of that crime, the court records shall reflect that the person whose identity was falsely used to commit the crime did not commit the crime.

(d) Every person who, with the intent to defraud, acquires, transfers, or retains possession of the personal identifying information, as defined in subdivision (b), of another person is guilty of a public offense, and upon conviction therefor, shall be punished by imprisonment in a county jail not to exceed one year, or a fine not to exceed one thousand dollars (\$1,000), or by both that imprisonment and fine.

(e) Every person who, with the intent to defraud, acquires, transfers, or retains possession of the personal identifying information, as defined

in subdivision (b), of another person who is deployed to a location outside of the state is guilty of a public offense, and upon conviction therefor, shall be punished by imprisonment in a county jail not to exceed one year, or a fine not to exceed one thousand five hundred dollars (\$1,500), or by both that imprisonment and fine.

(f) For purposes of this section, “deployed” means that the person has been ordered to serve temporary military duty during a period when a presidential executive order specifies that the United States is engaged in combat or homeland defense and he or she is either a member of the armed forces, or is a member of the armed forces reserve or the National Guard, who has been called to active duty or active service. It does not include temporary duty for the sole purpose of training or processing or a permanent change of station.

SEC. 1.5. Section 530.5 of the Penal Code is amended to read:

530.5. (a) Every person who willfully obtains personal identifying information, as defined in subdivision (b), of another person, and uses that information for any unlawful purpose, including to obtain, or attempt to obtain, credit, goods, services, or medical information in the name of the other person without the consent of that person, is guilty of a public offense, and upon conviction therefor, shall be punished either by imprisonment in a county jail not to exceed one year, a fine not to exceed one thousand dollars (\$1,000), or both that imprisonment and fine, or by imprisonment in the state prison, a fine not to exceed ten thousand dollars (\$10,000), or both that imprisonment and fine.

(b) “Personal identifying information,” as used in this section, means the name, address, telephone number, health insurance identification number, taxpayer identification number, school identification number, state or federal driver’s license number, or identification number, social security number, place of employment, employee identification number, mother’s maiden name, demand deposit account number, savings account number, checking account number, PIN (personal identification number) or password, alien registration number, government passport number, date of birth, unique biometric data including fingerprint, facial scan identifiers, voice print, retina or iris image, or other unique physical representation, unique electronic data including identification number, address, or routing code, telecommunication identifying information or access device, information contained in a birth or death certificate, credit card number of a person, or an equivalent form of identification.

(c) In any case in which a person willfully obtains personal identifying information of another person, uses that information to commit a crime in addition to a violation of subdivision (a), and is convicted of that crime, the court records shall reflect that the person whose identity was falsely used to commit the crime did not commit the crime.

(d) Every person who, with the intent to defraud, acquires, transfers, or retains possession of the personal identifying information, as defined in subdivision (b), of another person is guilty of a public offense, and upon conviction therefor, shall be punished by imprisonment in a county jail not to exceed one year, or a fine not to exceed one thousand dollars (\$1,000), or by both that imprisonment and fine.

(e) Every person who, with the intent to defraud, acquires, transfers, or retains possession of the personal identifying information, as defined in subdivision (b), of another person who is deployed to a location outside of the state is guilty of a public offense, and upon conviction therefor, shall be punished by imprisonment in a county jail not to exceed one year, or a fine not to exceed one thousand five hundred dollars (\$1,500), or by both that imprisonment and fine.

(f) For purposes of this section, “deployed” means that the person has been ordered to serve temporary military duty during a period when a presidential executive order specifies that the United States is engaged in combat or homeland defense and he or she is either a member of the armed forces, or is a member of the armed forces reserve or the National Guard, who has been called to active duty or active service. It does not include temporary duty for the sole purpose of training or processing or a permanent change of station.

(g) For purposes of this section, “person” means a natural person, firm, association, organization, partnership, business trust, company, corporation, limited liability company, or public entity.

SEC. 2. Section 1.5 of this bill incorporates amendments to Section 530.5 of the Penal Code proposed by both this bill and Assembly Bill 424. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2006, (2) each bill amends Section 530.5 of the Penal Code, and (3) this bill is enacted after Assembly Bill 424, in which case Section 1 of this bill shall not become operative.

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

CHAPTER 433

An act to amend Section 10103.5 of, and to add Section 791.28 to, the Insurance Code, relating to insurance claims information.

[Approved by Governor September 30, 2005. Filed with
Secretary of State September 30, 2005.]

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

SECTION 1. Section 791.28 is added to the Insurance Code, to read:
791.28. (a) An insurer under a personal lines residential property insurance policy, if it reports the claims history or loss experience of insureds under those policies to an insurance-support organization, shall provide the insured with the following additional disclosure at the time that it provides the disclosure required pursuant to paragraph (1) of subdivision (b) of Section 790.034:

“This insurer reports claim information to one or more claims information databases. The claim information is used to furnish loss history reports to insurers. If you are interested in obtaining a report from a claims information database, you may do so by contacting:

(Insert the name, toll-free telephone number, and, if applicable, Internet Web site address of each claims information database to which the insurer reports the information covered by this section)”

(b) This section shall become operative on July 1, 2006.

SEC. 2. Section 10103.5 of the Insurance Code is amended to read:
10103.5. (a) Every California Residential Property Insurance Disclosure shall be accompanied by a California Residential Property Insurance Bill of Rights. If the insurer provides the insured with an electronic copy of a policy, the bill of rights may also be transmitted electronically.

(b) The California Residential Property Insurance Bill of Rights shall be plainly printed in no less than 10-point type. The bill of rights shall contain the following:

“California Residential Property Insurance Bill of Rights

The largest single investment most consumers make is their home and related property. In order to best protect these assets, it is wise for consumers to understand the homeowner’s insurance market. Consumers should consider the following:

Read your policy carefully and understand the coverage and limits provided. Homeowner’s insurance policies contain sublimits for

various coverages such as personal property, debris removal, additional living expense, detached fences, garages, etc.

Keep accurate records of renovations and improvements to the structure of your home, as it could affect your need to increase your coverage.

Maintaining a list of all personal property, pictures, and video equipment may help in the case of a loss. The list should be stored away from your home.

Comparison shop for insurance, as not all policies are the same and coverage and prices vary.

Take time to determine the cost to rebuild or replace your property in today's market. You can seek an independent evaluation of this cost.

You may select a licensed contractor or vendor to repair, replace, or rebuild damaged property covered by the insurance policy.

An agent or insurance company may help you establish policy limits that are adequate to rebuild your home.

Once the policy is in force, contact your agent or insurance company immediately if you believe your policy limits may be inadequate.

A consumer is entitled to receive information regarding homeowner's insurance. The following is a limited overview of information that your insurance company can provide:

- The California Residential Property Insurance Disclosure.

- An explanation of how your policy limits were established.

- The insurance company's customer service telephone number for underwriting, rating, and claims inquiries.

- An explanation for any cancellation or nonrenewal of your policy.

- A copy of your policy.

- The toll-free telephone number and Internet address for reporting complaints and concerns about homeowner's insurance issues to the department's consumer services unit.

- In the event of a claim, an itemized, written scope of loss report prepared by the insurer or its adjuster within a reasonable time period.

- In the event of a claim, notification of a consumer's rights with respect to the appraisal process for resolving claims disputes.

- In the event of a claim, a copy of the Unfair Practices Act and a copy of the Fair Claims Practices Regulations.

The information provided herein is not all inclusive and does not negate or preempt existing California law. If you have any concerns or questions, the officers at our Consumer Hotline are there to help you. Please call them at 1-800-927-HELP (4357) or contact us at www.insurance.ca.gov."

(c) (1) The bill of rights shall be distributed by all insurers licensed to sell residential property insurance in this state.

(2) (A) If the insurer under a personal lines residential property insurance policy reports claims history or loss experience of insureds under those policies to an insurance-support organization, the insurer shall include the following disclosure in the California Residential Property Insurance Bill of Rights:

“This insurer reports claim information to one or more claims information databases. The claim information is used to furnish loss history reports to insurers. If you are interested in obtaining a report from a claims information database, you may do so by contacting:

(Insert the name, toll-free telephone number, and, if applicable, Internet Web site address of each claims information database to which the insurer reports the information covered by this section)”

(B) This paragraph shall become operative on July 1, 2006.

CHAPTER 434

An act to add Section 4806 to the Probate Code, relating to death.

[Approved by Governor September 30, 2005. Filed with
Secretary of State September 30, 2005.]

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

SECTION 1. This act shall be known, and may be cited, as the Advance Directives and Terminal Illness Decisions Program.

SEC. 2. The Legislature finds and declares the following:

(a) The purpose of this act is to increase communication of end of life issues between individuals, families, and health care providers.

(b) Palliative care, including treatment options for pain, are important alternatives for patients and the health care system.

SEC. 3. Section 4806 is added to the Probate Code, to read:

4806. (a) The Secretary of State shall work with the State Department of Health Services and the office of the Attorney General to develop information about end of life care, advance health care directives, and registration of the advance health care directives at the registry established pursuant to subdivision (a) of Section 4800. This information shall be developed utilizing existing information developed by the office of the Attorney General.

(b) Links to the information specified in subdivision (a) and to the registry shall be available on the Web sites of the Secretary of State, the

State Department of Health Services, the office of the Attorney General, the Department of Managed Health Care, the Department of Insurance, the Board of Registered Nursing, and the Medical Board of California.

CHAPTER 435

An act to amend Sections 11629.7, 11629.71, 11629.72, 11629.73, 11629.731, 11629.74, 11629.75, 11629.76, 11629.77, 11629.78, 11629.79, 11629.8, 11629.81, 11629.84, and 11629.85 of, to amend the heading of Article 5.5 (commencing with Section 11629.7) of, and to repeal Article 5.6 (commencing with Section 11629.9) of Chapter 1 of Part 3 of Division 2 of, the Insurance Code, and to amend Sections 4000.37, 4000.38, 16020.1, 16020.2, and 16056.1 of the Vehicle Code, relating to auto insurance.

[Approved by Governor September 30, 2005. Filed with
Secretary of State September 30, 2005.]

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

SECTION 1. The heading of Article 5.5 (commencing with Section 11629.7) of Chapter 1 of Part 3 of Division 2 of the Insurance Code is amended to read:

Article 5.5. California Low-Cost Automobile Insurance Program

SEC. 2. Section 11629.7 of the Insurance Code is amended to read:
11629.7. (a) There is established, within the California Automobile Assigned Risk Plan established under Section 11620, a low-cost automobile insurance program for all counties in California.

(b) For the purpose of making the low-cost automobile insurance program operational in all counties of California, pursuant to subdivision (a), a low-cost automobile insurance program shall commence operations in the Counties of Alameda, Fresno, Orange, Riverside, San Bernardino, and San Diego, effective April 1, 2006, and shall be made operational in all other counties of California based upon a determination of need made by the commissioner. Program outreach shall focus primarily on those counties which have the highest number of uninsured drivers or the highest percentage of uninsured drivers or the highest percentage of low-income individuals. In making the determination of need for each county, the commissioner shall consider each of the following:

(1) The number or percentage of motorists within the county who are uninsured.

(2) The number or percentage of residents within the county who are low income.

(3) The availability of affordable automobile insurance options for the county's low-income residents within the private automobile insurance marketplace.

(c) (1) After making the initial determination of need, the commissioner shall, as soon as is practicable, hold a public meeting in that county.

(2) The public meeting required by paragraph (1) shall be held not for the consideration of rates, but for the public discussion of the need and desirability of the program for the consumers of the county. Within 30 days after the public meeting, the commissioner shall make public his or her final determination of whether a need for the program exists within the county. A separate hearing shall be held for the consideration of rates pursuant to Section 11629.72.

(d) The commissioner, after a public hearing, shall approve or issue a reasonable plan for the equitable apportionment, among insurers required to participate in the California Automobile Assigned Risk Plan established under Section 11620, of persons residing in the counties or cities and counties set forth in subdivisions (a) and (b) who are eligible to purchase through the program established in each county or city and county a low-cost automobile insurance policy, as described in Section 11629.71. The program shall be conducted in conjunction with the California Automobile Assigned Risk Plan established under Section 11620.

SEC. 3. Section 11629.71 of the Insurance Code is amended to read:

11629.71. A low-cost automobile insurance policy for purposes of the program established under this article shall have all of the following attributes:

(a) The policy shall offer coverage in the amount of ten thousand dollars (\$10,000) for bodily injury to, or death of, each person as a result of any one accident and, subject to that limit as to one person, the amount of twenty thousand dollars (\$20,000) for bodily injury to, or death of all persons as a result of any one accident, and the amount of three thousand dollars (\$3,000) for damage to property of others as a result of any one accident.

(b) The coverage required by Section 11580.2 shall be made available to the consumer. However, an insurer may charge a premium for that coverage in addition to the premium set forth in Section 11629.72. Notwithstanding the coverage amounts required by Section 11580.2 and Section 16056 of the Vehicle Code, uninsured motorist coverage issued

in conjunction with a low-cost automobile policy under the program, with coverage limits at least equal to the limits of liability in the underlying low-cost automobile policy, shall satisfy the requirements of Section 11580.2 and the financial responsibility requirements of Sections 4000.37, 16021, and 16431 of the Vehicle Code.

(c) Medical payments coverage shall be made available to the consumer. However, an insurer may charge a premium for that coverage in addition to the premium set forth in Section 11629.72.

(d) The policy shall have an initial term of one year, renewable on an annual basis thereafter.

(e) The policy shall cover the person named in the policy, and to the same extent that insurance is provided to the named insured, any other person using the automobile, provided the use is with his or her permission, express or implied, and within the scope of that permission, except that the policy shall not cover members of the named insured's household who do not satisfy the requirements of subdivisions (b) to (e), inclusive, of Section 11629.73.

(f) The policy shall provide coverage for an automobile with a value, at the time of purchase by the insured, of twenty thousand dollars (\$20,000) or less, as evidenced by the value given to the automobile by the Department of Motor Vehicles in assessing vehicle license fees.

SEC. 4. Section 11629.72 of the Insurance Code is amended to read:

11629.72. (a) Effective March 1, 2003, the annual rate offered under the program for the low-cost automobile policy, unless and until the time that the rate is adjusted, shall be three hundred forty-seven dollars (\$347) per covered vehicle for the County of Los Angeles and three hundred fourteen dollars (\$314) per covered vehicle for the City and County of San Francisco, unless the commissioner establishes that rate or a different rate prior to that time. The annual rate offered initially under the program for each of the Counties of Alameda, Fresno, Orange, Riverside, San Bernardino, and San Diego shall be established by the commissioner no later than April 1, 2006. The annual rate offered initially under the program for each of the other counties in California shall be established at a date according to the discretion of the commissioner. A surcharge, as a percentage of the base rate, shall be added to the base rate and that percentage shall be set at the discretion of the commissioner, if the named insured is an unmarried male between the ages of 19 and 24, inclusive, or if an unmarried male between the ages of 19 and 24, inclusive, resides in the household of the named insured and will be a driver of the automobile covered under the low-cost policy.

(b) In addition to existing premium installment options offered by the California Automobile Assigned Risk Plan under Article 4 (commencing with Section 11620), the plan shall also make available

to an insured under the program a premium installment option pursuant to which an insured is required to pay not more than 15 percent of the total policy cost upon issuance of the low-cost policy, followed thereafter by six other payments. No other premium financing arrangement shall be permitted.

(c) Rates for policies issued under the program in each county or city and county shall be reviewed and revised as follows:

(1) Rates shall be sufficient to cover (A) losses incurred under policies issued under the program, and (B) expenses, including, but not limited to, all reasonable and necessary expenses such as the costs of administration, underwriting, taxes, commissions, and claims adjusting, that are incurred due to participation in the program. For purposes of this paragraph, "losses incurred" means claims paid, claims incurred and reported, and claims incurred but not yet reported. In assessing loss reserves, the commissioner shall only allow loss reserves that are estimated from actual losses in the program or comparable data by a licensed statistical agent, as adjusted to reflect coverage provided under the program.

(2) Rates shall be set so as to result in no projected subsidy of the program by those policyholders of insurers issuing policies under the program who are not participants in the program.

(3) Rates shall be set with respect to the program so as to result in no projected subsidy by policyholders in one county of policyholders in any of the other counties.

(4) Commencing on January 1, 2001, and annually thereafter, the California Automobile Assigned Risk Plan shall submit the loss and expense data, together with a proposed rate and the surcharge authorized by subdivision (a) for the low-cost automobile policy for the program, to the commissioner for approval in accordance with this chapter. The commissioner shall act on the recommendation within 90 days.

SEC. 5. Section 11629.73 of the Insurance Code is amended to read:

11629.73. A low-cost automobile insurance policy under the program shall only be available for purchase by persons who satisfy the following eligibility requirements:

(a) The person shall be in a household with a gross annual household income that does not exceed 250 percent of the federal poverty level, as defined in Part 6.2 (commencing with Section 12693) or as defined in an equivalent manner that is approved by the commissioner.

(b) The person shall be no less than 19 years of age and have been continuously licensed to drive an automobile for the previous three years.

(c) The person shall have not more than one of either, but not both, of the following within the previous three years:

(1) A property damage only accident in which the driver was principally at fault.

(2) A point for a moving violation.

(d) The person shall not have on record within the previous three years, an at-fault accident involving bodily injury or death.

(e) The person shall not have a felony or misdemeanor conviction for a violation of the Vehicle Code on his or her motor vehicle record.

(f) The person shall not be a college student claimed as a dependent of another person for federal or state income tax purposes.

SEC. 6. Section 11629.731 of the Insurance Code is amended to read:

11629.731. A person who meets the requirements of subdivision (a) of Section 11629.73, and who claims that he or she meets the requirements of subdivisions (b) to (e), inclusive, of Section 11629.73 based entirely or partially on a driver's license and driving experience obtained other than in the United States or Canada, shall be entitled to a rebuttable presumption that he or she is qualified to purchase a low-cost automobile insurance policy under the program if he or she has been licensed to drive pursuant to a license obtained in the United States or Canada for at least the previous 18 months and meets the criteria of subdivisions (b) to (e), inclusive, for that period.

SEC. 7. Section 11629.74 of the Insurance Code is amended to read:

11629.74. (a) Application may be made through any producer certified by the plan. The applicant, in order to demonstrate financial eligibility to purchase a low-cost automobile insurance policy under the program, shall present at the time of applying for the policy, a copy of the applicant's federal or state income tax return for the previous year or other reliable evidence from a governmental agency or governmental means-tested program of the applicant's gross annual household income, pursuant to regulations issued under subdivision (b) of Section 11629.79.

(b) The applicant shall certify that the representations made in the documents submitted as proof of financial eligibility and in the application for the policy are true, correct, and contain no material misrepresentations or omissions of fact to the best knowledge and belief of the applicant.

(c) The certified producer shall forward the application, supporting documents, and the applicant's certification to the California Automobile Assigned Risk Plan.

SEC. 8. Section 11629.75 of the Insurance Code is amended to read:

11629.75. (a) A certified producer shall provide to an applicant for a low-cost automobile insurance policy under this article a notice relating to coverage under the policy. The notice shall be provided in a separate

document at the time of application, and include the following statement in 14-point boldface type:

“NOTICE

INSURANCE COVERAGE PROVIDED IN THE POLICY YOU ARE BUYING CONTAINS REDUCED LIABILITY COVERAGE FOR PERSONAL INJURIES OR PROPERTY DAMAGE RESULTING FROM THE OPERATION OF THE INSURED VEHICLE. IF LOSSES FROM AN AUTOMOBILE ACCIDENT EXCEED THE COVERAGE PROVIDED BY THIS POLICY, YOU CAN BE HELD PERSONALLY LIABLE AND RESPONSIBLE FOR THOSE LOSSES.

THIS POLICY PROVIDES LIABILITY COVERAGE FOR INJURIES OR DEATH CAUSED TO OTHER PERSONS IN THE TOTAL AMOUNT OF TEN THOUSAND DOLLARS (\$10,000) PER PERSON IN ANY ONE ACCIDENT, AND UP TO A TOTAL AMOUNT OF TWENTY THOUSAND DOLLARS (\$20,000) FOR ALL PERSONS IN ANY ONE ACCIDENT. THE POLICY ALSO PROVIDES UP TO A TOTAL AMOUNT OF THREE THOUSAND DOLLARS (\$3,000) IN LIABILITY COVERAGE FOR PROPERTY DAMAGE IN ANY ONE ACCIDENT. IF YOU WANT MORE INSURANCE COVERAGE, YOU MUST REQUEST A DIFFERENT POLICY.

THIS POLICY ALSO DOES NOT COVER DAMAGE TO YOUR OWN VEHICLE, LOSSES RESULTING FROM YOUR BODILY INJURY OR DEATH, OR COVERAGE FOR LOSSES CAUSED BY AN UNINSURED OR UNDERINSURED DRIVER. HOWEVER, THESE OTHER COVERAGES MAY BE AVAILABLE AT EXTRA COST THROUGH OTHER INSURERS.

THIS POLICY MAY ALSO CONTAIN UNINSURED MOTORIST BODILY INJURY COVERAGE IN THE TOTAL AMOUNT OF TEN THOUSAND DOLLARS (\$10,000) PER PERSON IN ANY ONE ACCIDENT AND UP TO A TOTAL AMOUNT OF TWENTY THOUSAND DOLLARS (\$20,000) FOR ALL PERSONS IN ANY ONE ACCIDENT, IF YOU SO CHOOSE. IN ADDITION, THIS POLICY MAY ALSO CONTAIN MEDICAL PAYMENTS COVERAGE IN THE AMOUNT OF ONE THOUSAND DOLLARS (\$1,000) PER PERSON IN ANY ONE ACCIDENT, IF YOU SO CHOOSE.

THIS POLICY DOES NOT COVER ANY OTHER DRIVER IN YOUR HOUSEHOLD WHO:

- (a) IS UNDER 19 YEARS OF AGE; OR
- (b) HAS LESS THAN 3 YEARS OF CONTINUOUSLY LICENSED DRIVING EXPERIENCE; OR
- (c) HAS MORE THAN ONE OF EITHER, OR BOTH, OF THE FOLLOWING:
 - A PROPERTY DAMAGE ONLY ACCIDENT IN WHICH THE DRIVER WAS PRINCIPALLY AT FAULT.
 - A POINT FOR A MOVING VIOLATION; OR
- (d) HAS IN THE PREVIOUS 3 YEARS AN AT-FAULT ACCIDENT INVOLVING BODILY INJURY OR DEATH; OR
- (e) HAS A FELONY OR MISDEMEANOR CONVICTION FROM A VIOLATION OF THE VEHICLE CODE ON HIS OR HER MOTOR VEHICLE RECORD.”

(b) When the certified producer establishes delivery of the disclosure form specified in subdivision (a) by obtaining the signature of the applicant or insured, there shall be a conclusive presumption that the certified producer has complied with the disclosure requirements of this section.

SEC. 9. Section 11629.76 of the Insurance Code is amended to read:

11629.76. (a) For a low-cost automobile insurance policy issued pursuant to the program, certified producers shall be entitled to the same commission rate as is paid by the California Automobile Assigned Risk Plan for private passenger, nonfleet risks under Article 4 (commencing with Section 11620).

(b) Notwithstanding subdivision (a), the commissioner may at any time establish a commission for a low-cost automobile insurance policy issued pursuant to the program and may make the commission effective on any policy originated within an entire year, or any portion of a year, as is needed to provide an incentive to certified producers to sell low-cost automobile insurance to eligible applicants. The commissioner shall not establish a commission pursuant to this subdivision if the commissioner determines that setting the commission rate will result in a lower commission percentage than would exist pursuant to subdivision (a).

(c) No other fees of any kind may be charged or collected pursuant to this section and the sale of a low-cost policy under this article shall not be conditioned on the purchase of any other product or service.

SEC. 10. Section 11629.77 of the Insurance Code is amended to read:

11629.77. (a) A low-cost automobile insurance policy issued pursuant to the program shall be canceled only for the following reasons:

(1) Nonpayment of premium.
(2) Fraud or material misrepresentation affecting the policy or the insured.

(3) The purchase of additional automobile liability insurance coverage in violation of subdivision (a) of Section 11629.78.

(4) The purchase or maintenance of automobile liability insurance coverage other than a low-cost policy for any additional vehicles in the insured's household, in violation of subdivision (b) of Section 11629.78.

(b) A policy shall be nonrenewed only for the following reasons:

(1) A substantial increase in the hazard insured against.
(2) The insured no longer meets the applicable eligibility requirements. In this regard, the eligibility of an insured shall be recertified by the California Automobile Assigned Risk Plan after the first year of eligibility, and annually thereafter by the insurer that issued the policy.

SEC. 11. Section 11629.78 of the Insurance Code is amended to read:

11629.78. (a) An insured under the program shall not purchase automobile liability insurance coverage that is in addition to the liability coverage provided by the low-cost policy. However, the insured may purchase any other additional type of automobile insurance coverage, such as uninsured motorist coverage or collision coverage outside the plan.

(b) An insured under the program shall not purchase or maintain any automobile liability insurance coverage other than a low-cost policy for any additional vehicles in the insured's household.

(c) No more than two low-cost policies per person are permitted.

SEC. 12. Section 11629.79 of the Insurance Code is amended to read:

11629.79. (a) The program for the County of Los Angeles and the City and County of San Francisco is authorized to commence operations on January 1, 2000, but shall be fully operational no later than July 1, 2000.

(b) To this end, the commissioner, in consultation with the California Automobile Assigned Risk Plan, shall adopt regulations to implement the provisions of this article within 60 days of its effective date. The regulations shall be adopted as emergency regulations in accordance

with Chapter 3.5 (commencing with Section 11340) of the Government Code, and for purposes of that chapter, 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.

(c) The program for the Counties of Alameda, Fresno, Orange, Riverside, San Bernardino, and San Diego shall commence operations on April 1, 2006, and shall be made operational in all other counties of California according to the discretion of the commissioner. The commissioner, in consultation with the California Automobile Assigned Risk Plan, shall adopt regulations to implement the expansion of the program to these counties. The regulations shall be adopted as emergency regulations in accordance with Chapter 3.5 (commencing with Section 11340) of the Government Code, and for purposes of that chapter, 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.

SEC. 13. Section 11629.8 of the Insurance Code is amended to read:

11629.8. Notwithstanding the coverage amounts required by Section 16056 of the Vehicle Code, a low-cost automobile policy issued under the program shall satisfy the financial responsibility requirements of Sections 4000.37, 16021, and 16431 of the Vehicle Code.

SEC. 14. Section 11629.81 of the Insurance Code is amended to read:

11629.81. The California Automobile Assigned Risk Plan shall report to the Legislature on an annual basis, commencing January 1, 2001, and at those additional times as it deems prudent, on the status of the program.

SEC. 15. Section 11629.84 of the Insurance Code is amended to read:

11629.84. This article 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. 16. Section 11629.85 of the Insurance Code is amended to read:

11629.85. (a) On or before February 1 of each year, the commissioner shall prepare and propose a plan to the Senate and Assembly Committees on Insurance setting forth the methods the commissioner intends to implement to inform households eligible for the program about the availability of low-cost automobile insurance. To be eligible for funding through the budget process, the plan shall be reviewed by the Senate and Assembly Committees on Insurance. The information required under subdivision (c) shall also be provided to the Senate and Assembly Committees on Transportation.

(b) The plan shall include, at a minimum, a brief description of methods proposed to be used, anticipated costs, sources of revenue, goals, targets, objectives, and a justification of the proposed methods. The plan shall also explain how the department proposes to work in cooperation with the California Automobile Assigned Risk Plan, the social service departments of the Counties of Los Angeles and San Francisco, the Department of Motor Vehicles, and community-based organizations in order to inform eligible households of the existence of the program.

(c) The plan shall also include all of the following:

(1) The commissioner's determination regarding whether the program has been successful, based on the criteria specified in subdivision (d), and an explanation regarding that success or lack thereof.

(2) Structural characteristics of the program that may require statutory revision in order for the program to succeed or to improve upon existing success.

(3) Impediments to success of the program that can reasonably be overcome by revision to the strategies adopted by the department.

(4) Administrative costs incurred by the low-cost automobile insurance program and participants in the program.

(d) The program is successful if the following occur:

(1) The program generated sufficient premiums to cover losses incurred under policies issued under the program, and expenses incurred by the program.

(2) The program served the public purpose of offering access to automobile insurance to otherwise underserved communities in the program areas.

(3) The program offered access to automobile insurance to previously uninsured motorists seeking affordable coverage in the program areas.

(e) Any written or oral advertisements, including, but not limited to, paid or unpaid commercial or noncommercial advertising, by the department with reference to the low-cost automobile insurance program shall reference the department and shall not reference the commissioner by name or office, or include the commissioner's voice, image, or likeness. The department shall not participate with any nongovernmental entity that produces or intends to produce advertisements or educational material that include the name of the commissioner or his or her voice, image or likeness, and that are intended to make eligible households aware of the existence of low-cost automobile insurance.

SEC. 17. Article 5.6 (commencing with Section 11629.9) of Chapter 1 of Part 3 of Division 2 of the Insurance Code is repealed.

SEC. 18. Section 4000.37 of the Vehicle Code is amended to read:

4000.37. (a) Upon application for renewal of registration of a motor vehicle, the department shall require that the applicant submit either a form approved by the department, but issued by the insurer, as specified in paragraph (1), (2), or (3), or any of the items specified in paragraph (4), as evidence that the applicant is in compliance with the financial responsibility laws of this state.

(1) For vehicles covered by private passenger automobile liability policies and having coverage as described in subdivisions (a) and (b) of Section 660 of the Insurance Code, or policies and coverages for private passenger automobile policies as described in subdivisions (a) and (b) of that section and issued by an automobile assigned risk plan, the form shall include all of the following:

(A) The primary name of the insured covered by the policy or the vehicle owner, or both.

(B) The year, make, and vehicle identification number of the vehicle.

(C) The name, the National Association of Insurance Commissioners (NAIC) number, and the address of the insurance company or surety company providing a policy or bond for the vehicle.

(D) The policy or bond number, and the effective date and expiration date of that policy or bond.

(E) A statement from the insurance company or surety company that the policy or bond meets the requirements of Section 16056 or 16500.5. For the purposes of this section, policies described in Section 11629.71 of the Insurance Code are deemed to meet the requirements of Section 16056.

(2) For vehicles covered by commercial or fleet policies, and not private passenger automobile liability policies, as described in paragraph (1), the form shall include all of the following:

(A) The name and address of the vehicle owner or fleet operator.

(B) The name, the NAIC number, and the address of the insurance company or surety company providing a policy or bond for the vehicle.

(C) The policy or bond number, and the effective date and expiration date of the policy or bond.

(D) A statement from the insurance company or surety company that the policy or bond meets the requirements of Section 16056 or 16500.5 and is a commercial or fleet policy. For vehicles registered pursuant to Article 9.5 (commencing with Section 5301) or Article 4 (commencing with Section 8050) of Chapter 4, one form may be submitted per fleet as specified by the department.

(3) (A) The director may authorize an insurer to issue a form that does not conform to paragraph (1) or (2) if the director does all of the following:

(i) Determines that the entity issuing the alternate form is or will begin reporting the insurance information required under paragraph (1) or (2) to the department through electronic transmission.

(ii) Determines that use of the alternate form furthers the interests of the state by enhancing the enforcement of the state's financial responsibility laws.

(iii) Approves the contents of the alternate form as providing an adequate means for persons to prove compliance with the financial responsibility laws.

(B) The director may authorize the use of the alternate form in lieu of the forms otherwise required under paragraph (1) or (2) for a period of four years or less and may renew that authority for additional periods of four years or less.

(4) In lieu of evidence of insurance as described in paragraphs (1), (2), and (3), one of the following documents as evidence of coverage under an alternative form of financial responsibility may be provided by the applicant:

(A) An evidence form, as specified by the department, that indicates either a certificate of self-insurance or an assignment of deposit letter has been issued by the department pursuant to Sections 16053 or 16054.2.

(B) An insurance covering note or binder pursuant to Section 382 or 382.5 of the Insurance Code.

(C) An evidence form that indicates coverage is provided by a charitable risk pool operating under Section 5005.1 of the Corporations Code, if the registered owner of the vehicle is a nonprofit organization that is exempt from taxation under paragraph (3) of subsection (c) of Section 501 of the United States Internal Revenue Code. The evidence form shall include:

(i) The name and address of the vehicle owner or fleet operator.

(ii) The name and address of the charitable risk pool providing the policy for the vehicle.

(iii) The policy number, and the effective date and expiration date of the policy.

(iv) A statement from the charitable risk pool that the policy meets the requirements of subdivision (b) of Section 16054.2.

(b) This section does not apply to any of the following:

(1) A vehicle for which a certification has been filed pursuant to Section 4604, until the vehicle is registered for operation upon the highway.

(2) A vehicle that is owned or leased by, or under the direction of, the United States or any public entity that is included in Section 811.2 of the Government Code.

(3) A vehicle registration renewal application where there is a change of registered owner.

(4) A vehicle for which evidence of liability insurance information has been electronically filed with the department.

SEC. 19. Section 4000.38 of the Vehicle Code, as added by Section 3 of Chapter 920 of the Statutes of 2004, is amended to read:

4000.38. (a) The department shall suspend, cancel, or revoke the registration of a vehicle when it determines that any of the following circumstances has occurred:

(1) The registration was obtained by providing false evidence of financial responsibility to the department.

(2) Upon notification by an insurance company that the required coverage has been canceled and a sufficient period of time has elapsed since the cancellation notification, as determined by the department, for replacement coverage to be processed and received by the department.

(3) Evidence of financial responsibility has not been submitted to the department within 30 days of the issuance of a registration certificate for the original registration or transfer of registration of a vehicle.

(b) (1) Prior to suspending, canceling, or revoking the registration of a vehicle, the department shall notify the vehicle owner of its intent to suspend, cancel, or revoke the registration, and shall provide the vehicle owner a reasonable time, not less than 45 days in cases under paragraph (2) of subdivision (a), to provide evidence of financial responsibility or to establish that the vehicle is not being operated.

(2) For the low-cost automobile insurance program established under Section 11629.7 of the Insurance Code, the department shall provide residents with information on the notification document, in plain, bold type not less than 12 point in size, and in both English and Spanish, stating the following:

“A program offering affordable automobile insurance to low-income households has been established. To determine if you are eligible for this insurance, call (insert toll-free phone number for the California Automobile Assigned Risk Plan or its successor). This call is free to you and may be made during normal business hours, Monday through Friday, except holidays.”

(c) Notwithstanding any other provision of this code, before a registration is reinstated after suspension, cancellation, or revocation, there shall be paid to the department, in addition to any other fees required by this code, a fee sufficient to pay the cost of the reissuance as determined by the department.

(d) This section shall become operative on January 1, 2006.

SEC. 20. Section 16020.1 of the Vehicle Code is amended to read:

16020.1. (a) On and after January 1, 2011, Section 4000.37 does not apply to vehicle owners with a residence address in the County of Los Angeles at the time of registration renewal.

(b) On and after January 1, 2011, subdivisions (a) and (b) of Section 16028 do not apply to a person who drives a motor vehicle upon a highway in the County of Los Angeles.

SEC. 21. Section 16020.2 of the Vehicle Code is amended to read:

16020.2. (a) On and after January 1, 2011, Section 4000.37 does not apply to vehicle owners with a residence address in the City and County of San Francisco at the time of registration renewal.

(b) On and after January 1, 2011, subdivisions (a) and (b) of Section 16028 do not apply to a person who drives a motor vehicle upon a highway in the City and County of San Francisco.

SEC. 22. Section 16056.1 of the Vehicle Code is amended to read:

16056.1. Notwithstanding the coverage limits specified in Section 16056, an automobile insurance policy described in Section 11629.71 of the Insurance Code shall be effective under Section 16054 when issued by an insurance company admitted to do business in this state by the Insurance Commissioner and the policy is subject, if the accident has resulted in bodily injury or death, to a limit, exclusive of interest and costs, of not less than ten thousand dollars (\$10,000) because of bodily injury to or death of one person in any one accident and, subject to that limit for one person, to a limit of not less than twenty thousand dollars (\$20,000) because of bodily injury to or death of two or more persons in any one accident, and if the accident has resulted in injury to, or destruction of property, to a limit of not less than three thousand dollars (\$3,000) because of injury to or destruction of property of others in any one accident.

CHAPTER 436

An act to amend Section 791.10 of the Insurance Code, relating to insurance underwriting.

[Approved by Governor September 30, 2005. Filed with
Secretary of State September 30, 2005.]

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

SECTION 1. Section 791.10 of the Insurance Code is amended to read:

791.10. (a) In the event of an adverse underwriting decision the insurance institution or agent responsible for the decision shall:

(1) Either provide the applicant, policyholder, or individual proposed for coverage with the specific reason or reasons for the adverse underwriting decision in writing or, except as provided in subdivision (e), advise the person that upon written request he or she may receive the specific reason or reasons in writing.

(2) Provide the applicant, policyholder or individual proposed for coverage with a summary of the rights established under subdivision (b) and Sections 791.08 and 791.09.

(b) Upon receipt of a written request within 90 business days from the date of the mailing of notice or other communication of an adverse underwriting decision to an applicant, policyholder or individual proposed for coverage, the insurance institution or agent shall furnish to such person within 21 business days from the date of receipt of such written request:

(1) The specific reason or reasons for the adverse underwriting decision, in writing, if such information was not initially furnished in writing pursuant to paragraph (1) of subdivision (a).

(2) The specific items of personal and privileged information that support those reasons; provided, however:

(A) The insurance institution or agent shall not be required to furnish specific items of privileged information if it has a reasonable suspicion, based upon specific information available for review by the commissioner, that the applicant, policyholder or individual proposed for coverage has engaged in criminal activity, fraud, material misrepresentation or material nondisclosure.

(B) Specific items of medical record information supplied by a medical care institution or medical professional shall be disclosed either directly to the individual about whom the information relates or to a medical professional designated by the individual and licensed to provide medical care with respect to the condition to which the information relates, whichever the individual prefers.

Mental health record information shall be supplied directly to the individual, pursuant to this subdivision, only with the approval of the qualified professional person with treatment responsibility for the condition to which the information relates.

(3) The names and addresses of the institutional sources that supplied the specific items of information given pursuant to paragraph (2) of subdivision (b); provided, however, that the identity of any medical professional or medical care institution shall be disclosed either directly to the individual or to the designated medical professional, whichever the individual prefers.

(c) The obligations imposed by this section upon an insurance institution or agent may be satisfied by another insurance institution or agent authorized to act on its behalf.

(d) When an adverse underwriting decision results solely from an oral request or inquiry, the explanation of reasons and summary of rights required by subdivision (a) or (e) may be given orally to the extent that such information is available.

(e) Except as provided in subdivision (d), with respect to a declination, cancellation, or nonrenewal of a property insurance policy covered by Section 675 or an automobile insurance policy covered by Section 660, or an individual life, health, or disability insurance policy, the insurance institution or agent responsible for the decision shall provide the specific reason or reasons in writing at the time of the decision. The communication of medical record information for a life or health insurance policy shall be subject to the disclosure requirements of subparagraph (B) of paragraph (2) of subdivision (a). This subdivision shall become operative on July 1, 2006.

CHAPTER 437

An act to add Chapter 33 (commencing with Section 22948) to Division 8 of the Business and Professions Code, relating to the Internet.

[Approved by Governor September 30, 2005. Filed with
Secretary of State September 30, 2005.]

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

SECTION 1. Chapter 33 (commencing with Section 22948) is added to Division 8 of the Business and Professions Code, to read:

CHAPTER 33. ANTI-PHISHING ACT OF 2005

22948. This chapter shall be known and may be cited as the Anti-Phishing Act of 2005.

22948.1. For the purposes of this chapter, the following terms have the following meanings:

(a) "Electronic mail message" means a message sent to a unique destination, commonly expressed as a string of characters, consisting of a unique user name or mailbox (commonly referred to as the "local part") and a reference to an Internet domain (commonly referred to as the

“domain part”), whether or not displayed, to which an electronic message can be sent or delivered.

(b) “Identifying information” means, with respect to an individual, any of the following:

- (1) Social security number.
- (2) Driver’s license number.
- (3) Bank account number.
- (4) Credit card or debit card number.
- (5) Personal identification number (PIN).
- (6) Automated or electronic signature.
- (7) Unique biometric data.
- (8) Account password.
- (9) Any other piece of information that can be used to access an individual’s financial accounts or to obtain goods or services.

(c) “Internet” shall have the meaning as defined in paragraph (6) of subdivision (f) of Section 17538.

(d) “Web page” means a location that has a single uniform resource locator or other single location with respect to the Internet.

22948.2. It shall be unlawful for any person, by means of a Web page, electronic mail message, or otherwise through use of the Internet, to solicit, request, or take any action to induce another person to provide identifying information by representing itself to be a business without the authority or approval of the business.

22948.3. (a) The following persons may bring an action against a person who violates or is in violation of Section 22948.2:

- (1) A person who (A) is engaged in the business of providing Internet access service to the public, owns a Web page, or owns a trademark, and (B) is adversely affected by a violation of Section 22948.2.

An action brought under this paragraph may seek to recover the greater of actual damages or five hundred thousand dollars (\$500,000).

- (2) An individual who is adversely affected by a violation of Section 22948.2 may bring an action, but only against a person who has directly violated Section 22948.2.

An action brought under this paragraph may seek to enjoin further violations of Section 22948.2 and to recover the greater of three times the amount of actual damages or five thousand dollars (\$5,000) per violation.

- (b) The Attorney General or a district attorney may bring an action against a person who violates or is in violation of Section 22948.2 to enjoin further violations of Section 22948.2 and to recover a civil penalty of up to two thousand five hundred dollars (\$2,500) per violation.

- (c) In an action pursuant to this section, a court may, in addition, do either or both of the following:

(1) Increase the recoverable damages to an amount up to three times the damages otherwise recoverable under subdivision (a) in cases in which the defendant has engaged in a pattern and practice of violating Section 22948.2.

(2) Award costs of suit and reasonable attorney's fees to a prevailing plaintiff.

(d) The remedies provided in this section do not preclude the seeking of remedies, including criminal remedies, under any other applicable provision of law.

(e) For purposes of paragraph (1) of subdivision (a), multiple violations of Section 22948.2 resulting from any single action or conduct shall constitute one violation.

CHAPTER 438

An act to add Section 11604.5 to the Probate Code, relating to probate assignments.

[Approved by Governor September 30, 2005. Filed with
Secretary of State September 30, 2005.]

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

SECTION 1. Section 11604.5 is added to the Probate Code, to read: 11604.5. (a) This section applies when distribution from a decedent's estate is made to a transferee for value who acquires any interest of a beneficiary in exchange for cash or other consideration.

(b) For purposes of this section, a transferee for value is a person who satisfies both of the following criteria:

(1) He or she purchases the interest from a beneficiary for consideration pursuant to a written agreement.

(2) He or she, directly or indirectly, regularly engages in the purchase of beneficial interests in estates for consideration.

(c) This section does not apply to any of the following:

(1) A transferee who is a beneficiary of the estate or a person who has a claim to distribution from the estate under another instrument or by intestate succession.

(2) A transferee who is either the registered domestic partner of the beneficiary, or is related by blood, marriage, or adoption to the beneficiary or the decedent.

(3) A transaction made in conformity with the California Finance Lenders Law (Division 9 (commencing with Section 22000) of the

Financial Code) and subject to regulation by the Department of Corporations.

(4) A transferee who is engaged in the business of locating missing or unknown heirs and who acquires an interest from a beneficiary solely in exchange for providing information or services associated with locating the heir or beneficiary.

(d) A written agreement is effective only if all of the following conditions are met:

(1) The executed written agreement is filed with the court not later than 30 days following the date of its execution or, if administration of the decedent's estate has not commenced, then within 30 days of issuance of the letters of administration or letters testamentary, but in no event later than 15 days prior to the hearing on the petition for final distribution. Prior to filing or serving that written agreement, the transferee for value shall redact any personally identifying information about the beneficiary, other than the name and address of the beneficiary, and any financial information provided by the beneficiary to the transferee for value on the application for cash or other consideration, from the agreement.

(2) If the negotiation or discussion between the beneficiary and the transferee for value leading to the execution of the written agreement by the beneficiary was conducted in a language other than English, the beneficiary shall receive the written agreement in English, together with a copy of the agreement translated into the language in which it was negotiated or discussed. The written agreement and the translated copy, if any, shall be provided to the beneficiary.

(3) The documents signed by, or provided to, the beneficiary are printed in at least 10-point type.

(4) The transferee for value executes a declaration or affidavit attesting that the requirements of this section have been satisfied, and the declaration or affidavit is filed with the court within 30 days of execution of the written agreement or, if administration of the decedent's estate has not commenced, then within 30 days of issuance of the letters of administration or letters testamentary, but in no event later than 15 days prior to the hearing on the petition for final distribution.

(5) Notice of the assignment is served on the personal representative or the attorney of record for the personal representative within 30 days of execution of the written agreement or, if general or special letters of administration or letters testamentary have not been issued, then within 30 days of issuance of the letters of administration or letters testamentary, but in no event later than 15 days prior to the hearing on the petition for final distribution.

(e) The written agreement shall include the following terms, in addition to any other terms:

- (1) The amount of consideration paid to the beneficiary.
- (2) A description of the transferred interest.
- (3) If the written agreement so provides, the amount by which the transferee for value would have its distribution reduced if the beneficial interest assigned is distributed prior to a specified date.

(4) A statement of the total of all costs or fees charged to the beneficiary resulting from the transfer for value, including, but not limited to, transaction or processing fees, credit report costs, title search costs, due diligence fees, filing fees, bank or electronic transfer costs, or any other fees or costs. If all the costs and fees are paid by the transferee for value and are included in the amount of the transferred interest, then the statement of costs need not itemize any costs or fees. This subdivision shall not apply to costs, fees, or damages arising out of a material breach of the agreement or fraud by or on the part of the beneficiary.

(f) A written agreement shall not contain any of the following provisions and, if any such provision is included, that provision shall be null and void:

(1) A provision holding harmless the transferee for value, other than for liability arising out of fraud by the beneficiary.

(2) A provision granting to the transferee for value agency powers to represent the beneficiary's interest in the decedent's estate beyond the interest transferred.

(3) A provision requiring payment by the beneficiary to the transferee for value for services not related to the written agreement or services other than the transfer of interest under the written agreement.

(4) A provision permitting the transferee for value to have recourse against the beneficiary if the distribution from the estate in satisfaction of the beneficial interest is less than the beneficial interest assigned to the transferee for value, other than recourse for any expense or damage arising out of the material breach of the agreement or fraud by the beneficiary.

(g) The court on its own motion, or on the motion of the personal representative or other interested person, may inquire into the circumstances surrounding the execution of, and the consideration for, the written agreement to determine that the requirements of this section have been satisfied.

(h) The court may refuse to order distribution under the written agreement, or may order distribution on any terms that the court considers equitable, if the court finds that the transferee for value did not substantially comply with the requirements of this section, or if the court finds that any of the following conditions existed at the time of transfer:

(1) The fees, charges, or consideration paid or agreed to be paid by the beneficiary were grossly unreasonable.

(2) The transfer of the beneficial interest was obtained by duress, fraud, or undue influence.

(i) In addition to any remedy specified in this section, for any willful violation of the requirements of this section found to be committed in bad faith, the court may require the transferee for value to pay to the beneficiary up to twice the value paid for the assignment.

(j) Notice of the hearing on any motion brought under this section shall be served on the beneficiary and on the transferee for value at least 15 days before the hearing in the manner provided in Section 415.10 or 415.30 of the Code of Civil Procedure.

(k) If the decedent's estate is not subject to a pending court proceeding under the Probate Code in California, but is the subject of a probate proceeding in another state, the transferee for value shall not be required to submit to the court a copy of the written agreement as required under paragraph (1) of subdivision (d). If the written agreement is entered into in California or if the beneficiary is domiciled in California, that written agreement shall otherwise conform to the provisions of subdivisions (d), (e), and (f) in order to be effective.

CHAPTER 439

An act to amend Sections 1812.80, 1812.84, 1812.85, and 1812.86 of, and to add Sections 1812.96 and 1812.97 to, the Civil Code, relating to health studios.

[Approved by Governor September 30, 2005. Filed with
Secretary of State September 30, 2005.]

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

SECTION 1. Section 1812.80 of the Civil Code is amended to read:

1812.80. (a) The Legislature finds that the health studio industry has a significant impact upon the economy and well-being of this state and its local communities; and that the provisions of this title relating to contracts for health studio services are necessary for the public welfare.

(b) The Legislature declares that the purpose of this title is to safeguard the public against fraud, deceit, imposition and financial hardship, and to foster and encourage competition, fair dealing, and prosperity in the field of health studio services by prohibiting or restricting false or misleading advertising, onerous contract terms, harmful financial practices, and other unfair, dishonest, deceptive, destructive, unscrupulous, fraudulent, and discriminatory practices by which the

public has been injured in connection with contracts for health studio services.

SEC. 2. Section 1812.84 of the Civil Code is amended to read:

1812.84. (a) A contract for health studio services may not require payments or financing by the buyer to exceed the term of the contract, nor may the term of the contract exceed three years. This subdivision does not apply to a member's obligation to pay valid, outstanding moneys due under the contract, including moneys to be paid pursuant to a termination notice period in the contract in which the termination notice period does not exceed 30 days.

(b) A contract for health studio services shall include a statement printed in a size at least 14-point type that discloses the length of the term of the contract. This statement shall be placed above the space reserved for the signature of the buyer.

SEC. 3. Section 1812.85 of the Civil Code is amended to read:

1812.85. (a) Every contract for health studio services shall provide that performance of the agreed upon services will begin within six months after the date the contract is entered into. The consumer may cancel the contract and receive a pro rata refund if the health studio fails to provide the specific facilities advertised or offered in writing by the time indicated. If no time is indicated in the contract, the consumer may cancel the contract within six months after the execution of the contract and shall receive a pro rata refund. If a health studio fails to meet a timeline set forth in this section, the consumer may cancel the contract at any time after the expiration of the timeline, provided that if, following the expiration of the timeline, the health studio does provide the advertised or agreed upon services, the consumer may cancel the contract up to 10 days after those services are provided.

(b) (1) Every contract for health studio services shall, in addition, contain on its face, and in close proximity to the space reserved for the signature of the buyer, a conspicuous statement in a size equal to at least 10-point boldface type, as follows:

“You, the buyer, may cancel this agreement at any time prior to midnight of the fifth business day of the health studio after the date of this agreement, excluding Sundays and holidays. To cancel this agreement, mail or deliver a signed and dated notice, or send a telegram which states that you, the buyer, are canceling this agreement, or words of similar effect. The notice shall be sent to,

(Name of health studio operator)

at _____

(Address of health studio operator).”

(2) The contract for health studio services shall contain on the first page, in a type size no smaller than that generally used in the body of the document, the following: (A) the name and address of the health studio operator to which the notice of cancellation is to be mailed, and (B) the date the buyer signed the contract.

(3) The contract shall provide a description of the services, facilities, and hours of access to which the consumer is entitled. Any services, facilities, and hours of access that are not described in the contract shall be considered optional services, and these optional services shall be considered as separate contracts for the purposes of this title and Section 1812.83.

(4) Until the health studio operator has complied with this section, the buyer may cancel the contract for health studio services.

(5) All moneys paid pursuant to a contract for health studio services shall be refunded within 10 days after receipt of the notice of cancellation, except that payment shall be made for any health studio services received prior to cancellation.

(c) If at any time during the term of the contract, including a transfer of the contractual obligation, the health studio eliminates or substantially reduces the scope of the facilities, such as swimming pools or tennis courts, that were described in the contract, in an advertisement relating to the specific location, or in a written offer, and available to the consumer upon execution of the contract, the consumer may cancel the contract and receive a pro rata refund. The consumer may not cancel the contract pursuant to this subdivision if the health studio, after giving reasonable notice to its members, temporarily takes facilities out of operation for reasonable repairs, modifications, substitutions, or improvements. This subdivision shall not be interpreted to give the consumer the right to cancel a contract because of changes to the type or quantity of classes or equipment offered, provided the consumer is informed in the contract that the health studio reserves the right to make changes to the type or quantity of classes or equipment offered and the changes to the type or quantity of classes or equipment offered is reasonable under the circumstances.

(d) (1) If a contract for health studio services requires payment of one thousand five hundred dollars (\$1,500) to two thousand dollars (\$2,000), inclusive, including initiation fees or initial membership fees, by the person receiving the services or the use of the facility, the person shall have the right to cancel the contract within 20 days after the contract is executed.

(2) If a contract for health studio services requires payment of two thousand one dollars (\$2,001) to two thousand five hundred dollars (\$2,500), inclusive, including initiation fees or initial membership fees, by the person receiving the services or the use of the facility, the person shall have the right to cancel the contract within 30 days after the contract is executed.

(3) If a contract for health studio services requires payment of two thousand five hundred and one dollars (\$2501) or more, including initiation fees or initial membership fees, by the person receiving the services or the use of the facility, the person shall have the right to cancel the contract within 45 days after the contract is executed.

(4) The right of cancellation provided in this subdivision shall be set out in the membership contract.

(5) The rights and remedies under this paragraph are cumulative to any rights and remedies under other law.

(6) A health studio entering into a contract for health studio services that does not require payment in excess of one thousand dollars (\$1000), including initiation or initial membership fees and exclusive of interest or finance charges, by the person receiving the services or the use of the facilities, is not required to comply with the provisions of this subdivision that are added by the act adding this paragraph.

(e) Upon cancellation, the consumer shall be liable only for that portion of the total contract payment, including initiation fees and other charges however denominated, that has been available for use by the consumer, based upon a pro rata calculation over the term of the contract. The remaining portion of the contract payment shall be returned to the consumer by the health studio.

SEC. 4. Section 1812.86 of the Civil Code is amended to read:

1812.86. (a) No contract for health studio services shall require payment by the person receiving the services or the use of the facilities of a total amount in excess of the amount specified in subdivision (b) or (c).

(b) The limit specified in subdivision (a) shall, on and after January 1, 2006, be three thousand dollars (\$3,000), inclusive of initiation or initial membership fees and exclusive of interest or finance charges.

(c) The limit in subdivision (a) shall, on and after January 1, 2010, be four thousand four hundred dollars (\$4,400), inclusive of initiation or initial membership fees and exclusive of interest or finance charges.

SEC. 5. Section 1812.96 is added to the Civil Code, to read:

1812.96. (a) Except as provided in subdivision (c) or (d), all money received by the seller of health studio services from a consumer for a health studio facility that has not yet opened for business shall be held in trust and shall be deposited in a trust account established in a state or

federally chartered bank or savings association. The seller shall not draw, transfer, or encumber any of the money held in trust until five business days after the health studio facility has opened and the seller has fully paid refunds to consumers who canceled their contracts as provided in subdivision (b) or in Section 1812.85.

(b) In addition to any other cancellation rights, a consumer who pays any money under a contract for health studio services for a health studio facility that has not yet opened for business has the right to cancel the contract and receive a full refund at any time prior to midnight of the fifth business day after the date the health studio opens for business. The cancellation right shall be set forth in the contract. The refund shall be paid within 10 days of receipt of notice of cancellation.

(c) Notwithstanding subdivision (a), a seller of health studio services may draw on money held in trust to pay refunds or may draw, transfer, or encumber funds to the extent that the amount is offset by a bond of equal or greater amount that satisfies this subdivision. The bond shall be issued by a surety insurer admitted to do business in this state and shall be filed with the Secretary of State. The bond shall be in favor of the State of California for the benefit of consumers harmed by a violation of this title.

(d) Subdivision (a) does not apply to a seller of health studio services that is, at the time money is received from the consumer, operating at least five health studio facilities in this state that have been in operation for a period of at least five years, and that has an excess of current assets over current liabilities of at least one million dollars (\$1,000,000).

SEC. 6. Section 1812.97 is added to the Civil Code, to read:

1812.97. Nothing in this title is intended to prohibit month-to-month contracts. This section is declaratory of existing law.

CHAPTER 440

An act to amend Sections 309.5 and 321 of, and to repeal Section 321.5 of, the Public Utilities Code, relating to the Public Utilities Commission.

[Approved by Governor September 30, 2005. Filed with
Secretary of State September 30, 2005.]

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

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

(a) It is the intent of the Legislature to ensure the protection and advancement of ratepayer interests with respect to public utility matters.

(b) The Office of Ratepayer Advocates is an independent division of the Public Utilities Commission that advocates solely on behalf of public utility ratepayers.

(c) The goal of the Office of Ratepayer Advocates is to advocate on behalf of ratepayers to obtain the lowest possible rates for public utility service consistent with safe and reliable service levels, and to ensure that utility customers have access to the best possible information about their options and choices.

(d) In order to support this goal, it is necessary to clarify the role of the Office of Ratepayer Advocates and to provide it with the necessary tools to accomplish its goal.

SEC. 2. Section 309.5 of the Public Utilities Code is amended to read:

309.5. (a) There is within the commission a Division of Ratepayer Advocates to represent and advocate on behalf of the interests of public utility customers and subscribers within the jurisdiction of the commission. The goal of the division shall be to obtain the lowest possible rate for service consistent with reliable and safe service levels. For revenue allocation and rate design matters, the division shall primarily consider the interests of residential and small commercial customers.

(b) The director of the division shall be appointed by, and serve at the pleasure of, the Governor, subject to confirmation by the Senate.

The director shall annually appear before the appropriate policy committees of the Assembly and the Senate to report on the activities of the division.

(c) The director shall develop a budget for the division which shall be subject to final approval of the commission. In accordance with the approved budget, the commission shall, by rule or order, provide for the assignment of personnel to, and the functioning of, the division. The division may employ experts necessary to carry out its functions. Personnel and resources, including attorneys and other legal support, shall be provided by the commission to the division at a level sufficient to ensure that customer and subscriber interests are effectively represented in all significant proceedings. The director may appoint a lead attorney who shall represent the division, and shall report to and serve at the pleasure of the director. All attorneys assigned by the commission to perform services for the division shall report to and be directed by the lead attorney appointed by the director.

(d) The commission shall develop appropriate procedures to ensure that the existence of the division does not create a conflict of roles for

any employee. The procedures shall include, but shall not be limited to, the development of a code of conduct and procedures for ensuring that advocates and their representatives on a particular case or proceeding are not advising decisionmakers on the same case or proceeding.

(e) The division may compel the production or disclosure of any information it deems necessary to perform its duties from any entity regulated by the commission, provided that any objections to any request for information shall be decided in writing by the assigned commissioner or by the president of the commission, if there is no assigned commissioner.

(f) There is hereby created the Public Utilities Commission Ratepayer Advocate Account in the General Fund. Moneys from the Public Utilities Commission Utilities Reimbursement Account in the General Fund shall be transferred in the annual Budget Act to the Public Utilities Commission Ratepayer Advocate Account. The funds in the Public Utilities Commission Ratepayer Advocate Account shall be utilized exclusively by the division in the performance of its duties as determined by the director. The director shall annually submit a staffing report containing a comparison of the staffing levels for each five-year period.

(g) On or before January 10 of each year, the commission shall provide to the chairperson of the fiscal committee of each house of the Legislature and to the Joint Legislative Budget Committee all of the following information:

(1) The number of personnel years assigned to the Division of Ratepayer Advocates.

(2) The total dollars expended by the Division of Ratepayer Advocates in the prior year, the estimated total dollars expended in the current year, and the total dollars proposed for appropriation in the following budget year.

(3) Workload standards and measures for the Division of Ratepayer Advocates.

(h) The division shall meet and confer in an informal setting with a regulated entity prior to issuing a report or pleading to the commission regarding alleged misconduct, or a violation of a law or a commission rule or order, raised by the division in a complaint. The meet and confer process shall be utilized in good faith to reach agreement on issues raised by the division regarding any regulated entity in the complaint proceeding.

SEC. 3. Section 321 of the Public Utilities Code is amended to read:

321. (a) The commission shall establish an office of the public advisor and shall appoint a public advisor, including a separate office in the Los Angeles office of the commission. The commission may employ staff as necessary to carry out the duties of the office of the

public advisor. The office of the public advisor shall assist members of the public and ratepayers who desire to testify before or present information to the commission in any hearing or proceeding of the commission. The public advisor shall advise the commission on procedural matters relating to public participation in proceedings of the commission.

(b) The public advisor and executive director shall publicize the commission's programs for encouraging and supporting participation in the commission's proceedings.

SEC. 4. Section 321.5 of the Public Utilities Code is repealed.

SEC. 5. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

CHAPTER 441

An act to add Section 511.4 to the Business and Professions Code, and to amend Section 10123.12 of, and to add Section 10133.66 to, the Insurance Code, relating to health insurance.

[Approved by Governor September 30, 2005. Filed with
Secretary of State September 30, 2005.]

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

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

(a) The billing by providers and the handling of claims by insurers are essential components of the health care delivery process.

(b) Health maintenance organizations and preferred provider organizations regulated by the Department of Managed Health Care are subject to regulations to prevent unfair payment practices against health care providers. Preferred provider organizations and other entities regulated by the Department of Insurance are not subject to many of these regulations, leaving providers and their patients without similar protections.

(c) To ensure the appropriate payment of claims and consistent regulation of overpayment of health care services by third-party payors,

this act extends many of the current protections afforded by the Legislature to providers who deliver care to health care service plan enrollees to those who deliver care to insureds.

SEC. 2. Section 511.4 is added to the Business and Professions Code, to read:

511.4. (a) A contracting agent, as defined in paragraph (2) of subdivision (d) of Section 511.1, shall beginning July 1, 2006, prior to contracting, annually thereafter on or before the contract anniversary date, and, in addition, upon the contracted provider's written request, disclose to contracting providers all of the following information in an electronic format:

(1) The amount of payment for each service to be provided under the contract, including any fee schedules or other factors or units used in determining the fees for each service. To the extent that reimbursement is made pursuant to a specified fee schedule, the contract shall incorporate that fee schedule by reference, including the year of the schedule. For any proprietary fee schedule, the contract shall include sufficient detail that payment amounts related to that fee schedule can be accurately predicted.

(2) The detailed payment policies and rules and nonstandard coding methodologies used to adjudicate claims, which shall, unless otherwise prohibited by state law, do all of the following:

(A) When available, be consistent with Current Procedural Terminology (CPT), and standards accepted by nationally recognized medical societies and organizations, federal regulatory bodies, and major credentialing organizations.

(B) Clearly and accurately state what is covered by any global payment provisions for both professional and institutional services, any global payment provisions for all services necessary as part of a course of treatment in an institutional setting, and any other global arrangements, such as per diem hospital payments.

(C) At a minimum, clearly and accurately state the policies regarding all of the following:

(i) Consolidation of multiple services or charges and payment adjustments due to coding changes.

(ii) Reimbursement for multiple procedures.

(iii) Reimbursement for assistant surgeons.

(iv) Reimbursement for the administration of immunizations and injectable medications.

(v) Recognition of CPT modifiers.

(b) The information disclosures required by this section shall be in sufficient detail and in an understandable format that does not disclose proprietary trade secret information or violate copyright law or patented

processes, so that a reasonable person with sufficient training, experience, and competence in claims processing can determine the payment to be made according to the terms of the contract.

(c) A contracting agent may disclose the fee schedules mandated by this section through the use of a Web site, so long as it provides written notice to the contracted provider at least 45 days prior to implementing a Web site transmission format or posting any changes to the information on the Web site.

SEC. 3. Section 10123.12 of the Insurance Code is amended to read:

10123.12. Every health insurer, including those insurers that contract for alternative rates of payment pursuant to Section 10133, and every self-insured employee welfare benefit plan that will affect the choice of physician, hospital, or other health care providers shall include within its disclosure form and within its evidence or certificate of coverage a statement clearly describing how participation in the policy or plan may affect the choice of physician, hospital, or other health care providers, and describing the nature and extent of the financial liability that is, or that may be, incurred by the insured, enrollee, or covered dependents if care is furnished by a provider that does not have a contract with the insurer or plan to provide service at alternative rates of payment pursuant to Section 10133. The form shall clearly inform prospective insureds or plan enrollees that participation in the policy or plan will affect the person's choice in this regard by placing the following statement in a conspicuous place on all material required to be given to prospective insureds or plan enrollees including promotional and descriptive material, disclosure forms, and certificates and evidences of coverage:

**PLEASE READ THE FOLLOWING INFORMATION SO YOU
WILL KNOW FROM WHOM OR WHAT GROUP OF PROVIDERS
HEALTH CARE MAY BE OBTAINED**

It is not the intent of this section to require that the names of individual health care providers be enumerated to prospective insureds or enrollees.

If a health insurer providing coverage for hospital, medical, or surgical expenses provides a list of facilities to patients or contracting providers, the insurer shall include within the provider listing a notification that insureds or enrollees may contact the insurer in order to obtain a list of the facilities with which the health insurer is contracting for subacute care and/or transitional inpatient care.

SEC. 4. Section 10133.66 is added to the Insurance Code, to read:

10133.66. A health insurer shall comply with all the following:

(a) Deadlines shall not be imposed for the receipt of a claim from a professional provider who submits a claim on behalf of an insured or pursuant to a professional provider's contract with a health insurer that is less than 90 days for contracted providers and 180 days for

noncontracted providers after the date of service, except as required by any state or federal law or regulation. If a health insurer is not the primary payor under coordination of benefits, the insurer shall not impose a deadline for submitting supplemental or coordination of benefits claims to any secondary payor that is less than 90 days from the date of payment or date of contest, denial, or notice from the primary payor. A health insurer that denies a claim because it was filed beyond the claim filing deadline shall, upon provider's demonstration of good cause for the delay, accept and adjudicate the claim according to Section 10123.13 or 10123.147, whichever is applicable. This subdivision shall not alter or affect any rights providers may have under any applicable statute of limitations or ant forfeiture provisions available under the laws of the State of California.

(b) Reimbursement requests for the overpayment of a claim shall not be made, including requests made pursuant to Section 10123.145, unless a written request for reimbursement is sent to the provider within 365 days of the date of payment on the overpaid claim. The written notice shall clearly identify the claim, the name of the patient, and the date of service, and shall include a clear explanation of the basis upon which it is believed the amount paid on the claim was in excess of the amount due, including interest and penalties on the claim. The 365-day time limit shall not apply if the overpayment was caused in whole or in part by fraud or misrepresentation on the part of the provider.

(c) The receipt of each claim shall be identified and acknowledged, whether or not complete, and the recorded date of receipt shall be disclosed in the same manner as the claim was submitted or provided through an electronic means, by telephone, Web site, or another mutually agreeable accessible method of notification, by which the provider may readily confirm the insurer's receipt of the claim and the recorded date of receipt within 15 working days of the date of receipt of the claim by the office designated to receive the claim.

If a claimant submits a claim to a health insurer using a claims clearinghouse, its identification and acknowledgment to the clearinghouse within the timeframes set forth above shall constitute compliance with this section.

(d) Beginning July 1, 2006, prior to contracting, annually thereafter on or before the contract anniversary date, and in addition, upon the contracted provider's written request, the health insurer shall disclose to contracting providers all of the following information in an electronic format:

(1) The amount of payment for each service to be provided under the contract, including any fee schedules or other factors or units used in determining the fees for each service. To the extent that reimbursement

is made pursuant to a specified fee schedule, the contract shall incorporate that fee schedule by reference, including the year of the schedule. For any proprietary fee schedule, the contract shall include sufficient detail that payment amounts related to that fee schedule can be accurately predicted.

(2) The detailed payment policies and rules and nonstandard coding methodologies used to adjudicate claims, that shall, unless otherwise prohibited by state law do all of the following:

(A) When available, be consistent with Current Procedural Terminology (CPT), and standards accepted by nationally recognized medical societies and organizations, federal regulatory bodies, and major credentialing organizations.

(B) Clearly and accurately state what is covered by any global payment provisions for both professional and institutional services, any global payment provisions for all services necessary as part of a course of treatment in an institutional setting, and any other global arrangements such as per diem hospital payments.

(C) At a minimum, clearly and accurately state the policies regarding all of the following:

(i) Consolidation of multiple services or charges, and payment adjustments due to coding changes.

(ii) Reimbursement for multiple procedures.

(iii) Reimbursement for assistant surgeons.

(iv) Reimbursement for the administration of immunizations and injectable medications.

(v) Recognition of CPT modifiers.

The information disclosures required by this section shall be in sufficient detail and in an understandable format that does not disclose proprietary trade secret information or violate copyright law or patented processes, so that a reasonable person with sufficient training, experience, and competence in claims processing can determine the payment to be made according to the terms of the contract.

A health insurer may disclose the fee schedules mandated by this section through the use of a Web site so long as it provides written notice to the contracted provider at least 45 days prior to implementing a Web site transmission format or posting any changes to the information on the Web site.

CHAPTER 442

An act to amend Section 104322 of the Health and Safety Code, relating to prostate cancer, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 30, 2005. Filed with
Secretary of State September 30, 2005.]

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

SECTION 1. Section 104322 of the Health and Safety Code is amended to read:

104322. (a) (1) The State Department of Health Services shall develop and implement a program to provide quality prostate cancer treatment for low-income and uninsured men.

(2) The department shall award one or more contracts to provide prostate cancer treatment through private or public nonprofit organizations, including, but not limited to, community-based organizations, local health care providers, the University of California medical centers, and the Charles R. Drew University of Medicine and Science, an affiliate of the David Geffen School of Medicine at the University of California at Los Angeles. Contracts awarded, subsequent to the effective date of the amendments to this section made during the 2005 portion of the 2005-06 Regular Session, pursuant to this paragraph shall be consistent with both of the following:

(A) Eighty-seven percent of the total contract funding shall be used for direct patient care.

(B) No less than 70 percent of the total contract funding shall be expended on direct patient care treatment costs, which shall be defined as funding to fee-for-service providers for Medi-Cal eligible services.

(3) The contracts described in paragraph (2) shall not be subject to Part 2 (commencing with Section 10100) of Division 2 of the Public Contract Code. Commencing July 1, 2006, those contracts shall be entered into on a competitive bid basis.

(4) It is the intent of the Legislature to support the prostate cancer treatment program provided for pursuant to this section, and that the program be cost-effective and maximize the number of men served for the amount of funds appropriated. It is further the intent of the Legislature to ensure that the program has an adequate health care provider network to facilitate reasonable access to treatment.

(b) Treatment provided under this chapter shall be provided to uninsured and underinsured men with incomes at or below 200 percent

of the federal poverty level. Covered services shall be limited to prostate cancer treatment and prostate cancer-related services. Eligible men shall be enrolled in a 12-month treatment regimen.

(c) The department shall contract for prostate cancer treatment services only at the level of funding budgeted from state and other sources during a fiscal year in which the Legislature has appropriated funds to the department for this purpose.

(d) Notwithstanding subdivision (a) of Section 2.00 of the Budget Act of 2003 and any other provision of law, commencing with the 2003-04 fiscal year and for each fiscal year thereafter, any amount appropriated to the department for the prostate cancer treatment program implemented pursuant to this chapter shall be made available, for purposes of that program, for encumbrance for one fiscal year beyond the year of appropriation and for expenditure for two fiscal years beyond the year of encumbrance.

SEC. 2. (a) The State Department of Health Services shall report to the Joint Legislative Budget Committee and the Legislature's fiscal and policy committees by July 1, 2006, its evaluation of the Improving Access, Counseling, and Treatment for Californians with Prostate Cancer (IMPACT) Program funded by the department in the 2004-05 and preceding fiscal years. This report shall include an overall evaluation of the program and service delivery model. The report shall include, but not be limited to, the following:

- (1) The number of patients receiving treatment through the program.
- (2) Demographic information about the patients in the program, including race/ethnicity, income, and age.
- (3) The cost per patient receiving treatment through the program.
- (4) The types of treatment services and other services that patients received.

(5) The number of employees and contractors within the department funded through the program.

(6) The number of employees and contractors that are employed by or contracting with the University of California that are funded through the program, including the amount of funding allocated for direct patient care, indirect patient care, and administrative functions.

(b) Subdivision (a) shall be contingent upon the timely submission by the program contractors of the needed data as outlined in the 2004-05 IMPACT Program contract.

SEC. 3. The sum of two million four hundred four thousand dollars (\$2,404,000) is hereby appropriated from the General Fund to the State Department of Health Services, for the 2005-06 fiscal year, for purposes of prostate cancer treatment services pursuant to Section 104322 of the Health and Safety 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 for men diagnosed with prostate cancer currently on the IMPACT program waiting list for prostate cancer treatment services to receive these services, it is necessary that this act go into immediate effect.

CHAPTER 443

An act to amend Section 1250 of the Health and Safety Code, relating to health facilities.

[Approved by Governor September 30, 2005. Filed with
Secretary of State September 30, 2005.]

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

SECTION 1. Section 1250 of the Health and Safety Code is amended to read:

1250. As used in this chapter, “health facility” means any facility, place, or building that is organized, maintained, and operated for the diagnosis, care, prevention, and treatment of human illness, physical or mental, including convalescence and rehabilitation and including care during and after pregnancy, or for any one or more of these purposes, for one or more persons, to which the persons are admitted for a 24-hour stay or longer, and includes the following types:

(a) “General acute care hospital” means a health facility having a duly constituted governing body with overall administrative and professional responsibility and an organized medical staff that provides 24-hour inpatient care, including the following basic services: medical, nursing, surgical, anesthesia, laboratory, radiology, pharmacy, and dietary services. A general acute care hospital may include more than one physical plant maintained and operated on separate premises as provided in Section 1250.8. A general acute care hospital that exclusively provides acute medical rehabilitation center services, including at least physical therapy, occupational therapy, and speech therapy, may provide for the required surgical and anesthesia services through a contract with another acute care hospital. In addition, a general acute care hospital that, on July 1, 1983, provided required surgical and anesthesia services through a contract or agreement with another acute care hospital may continue

to provide these surgical and anesthesia services through a contract or agreement with an acute care hospital.

A “general acute care hospital” includes a “rural general acute care hospital.” However, a “rural general acute care hospital” shall not be required by the department to provide surgery and anesthesia services. A “rural general acute care hospital” shall meet either of the following conditions:

(1) The hospital meets criteria for designation within peer group six or eight, as defined in the report entitled Hospital Peer Grouping for Efficiency Comparison, dated December 20, 1982.

(2) The hospital meets the criteria for designation within peer group five or seven, as defined in the report entitled Hospital Peer Grouping for Efficiency Comparison, dated December 20, 1982, and has no more than 76 acute care beds and is located in a census dwelling place of 15,000 or less population according to the 1980 federal census.

(b) “Acute psychiatric hospital” means a health facility having a duly constituted governing body with overall administrative and professional responsibility and an organized medical staff that provides 24-hour inpatient care for mentally disordered, incompetent, or other patients referred to in Division 5 (commencing with Section 5000) or Division 6 (commencing with Section 6000) of the Welfare and Institutions Code, including the following basic services: medical, nursing, rehabilitative, pharmacy, and dietary services.

(c) “Skilled nursing facility” means a health facility that provides skilled nursing care and supportive care to patients whose primary need is for availability of skilled nursing care on an extended basis.

(d) “Intermediate care facility” means a health facility that provides inpatient care to ambulatory or nonambulatory patients who have recurring need for skilled nursing supervision and need supportive care, but who do not require availability of continuous skilled nursing care.

(e) “Intermediate care facility/developmentally disabled habilitative” means a facility with a capacity of 4 to 15 beds that provides 24-hour personal care, habilitation, developmental, and supportive health services to 15 or fewer developmentally disabled persons who have intermittent recurring needs for nursing services, but have been certified by a physician and surgeon as not requiring availability of continuous skilled nursing care.

(f) “Special hospital” means a health facility having a duly constituted governing body with overall administrative and professional responsibility and an organized medical or dental staff that provides inpatient or outpatient care in dentistry or maternity.

(g) “Intermediate care facility/developmentally disabled” means a facility that provides 24-hour personal care, habilitation, developmental,

and supportive health services to developmentally disabled clients whose primary need is for developmental services and who have a recurring but intermittent need for skilled nursing services.

(h) “Intermediate care facility/developmentally disabled—nursing” means a facility with a capacity of 4 to 15 beds that provides 24-hour personal care, developmental services, and nursing supervision for developmentally disabled persons who have intermittent recurring needs for skilled nursing care but have been certified by a physician and surgeon as not requiring continuous skilled nursing care. The facility shall serve medically fragile persons who have developmental disabilities or demonstrate significant developmental delay that may lead to a developmental disability if not treated.

(i) (1) “Congregate living health facility” means a residential home with a capacity, except as provided in paragraph (4), of no more than 12 beds, that provides inpatient care, including the following basic services: medical supervision, 24-hour skilled nursing and supportive care, pharmacy, dietary, social, recreational, and at least one type of service specified in paragraph (2). The primary need of congregate living health facility residents shall be for availability of skilled nursing care on a recurring, intermittent, extended, or continuous basis. This care is generally less intense than that provided in general acute care hospitals but more intense than that provided in skilled nursing facilities.

(2) Congregate living health facilities shall provide one of the following services:

(A) Services for persons who are mentally alert, physically disabled persons, who may be ventilator dependent.

(B) Services for persons who have a diagnosis of terminal illness, a diagnosis of a life-threatening illness, or both. Terminal illness means the individual has a life expectancy of six months or less as stated in writing by his or her attending physician and surgeon. A “life-threatening illness” means the individual has an illness that can lead to a possibility of a termination of life within five years or less as stated in writing by his or her attending physician and surgeon.

(C) Services for persons who are catastrophically and severely disabled. A catastrophically and severely disabled person means a person whose origin of disability was acquired through trauma or nondegenerative neurologic illness, for whom it has been determined that active rehabilitation would be beneficial and to whom these services are being provided. Services offered by a congregate living health facility to a catastrophically disabled person shall include, but not be limited to, speech, physical, and occupational therapy.

(3) A congregate living health facility license shall specify which of the types of persons described in paragraph (2) to whom a facility is licensed to provide services.

(4) (A) A facility operated by a city and county for the purposes of delivering services under this section may have a capacity of 59 beds.

(B) A congregate living health facility not operated by a city and county servicing persons who are terminally ill, persons who have been diagnosed with a life-threatening illness, or both, that is located in a county with a population of 500,000 or more persons may have not more than 25 beds for the purpose of serving terminally ill persons.

(C) A congregate living health facility not operated by a city and county serving persons who are catastrophically and severely disabled, as defined in subparagraph (C) of paragraph (2) that is located in a county of 500,000 or more persons may have not more than 12 beds for the purpose of serving catastrophically and severely disabled persons.

(5) A congregate living health facility shall have a noninstitutional, homelike environment.

(j) (1) "Correctional treatment center" means a health facility operated by the Department of Corrections, the Department of the Youth Authority, or a county, city, or city and county law enforcement agency that, as determined by the state department, provides inpatient health services to that portion of the inmate population who do not require a general acute care level of basic services. This definition shall not apply to those areas of a law enforcement facility that houses inmates or wards that may be receiving outpatient services and are housed separately for reasons of improved access to health care, security, and protection. The health services provided by a correctional treatment center shall include, but are not limited to, all of the following basic services: physician and surgeon, psychiatrist, psychologist, nursing, pharmacy, and dietary. A correctional treatment center may provide the following services: laboratory, radiology, perinatal, and any other services approved by the state department.

(2) Outpatient surgical care with anesthesia may be provided, if the correctional treatment center meets the same requirements as a surgical clinic licensed pursuant to Section 1204, with the exception of the requirement that patients remain less than 24 hours.

(3) Correctional treatment centers shall maintain written service agreements with general acute care hospitals to provide for those inmate physical health needs that cannot be met by the correctional treatment center.

(4) Physician and surgeon services shall be readily available in a correctional treatment center on a 24-hour basis.

(5) It is not the intent of the Legislature to have a correctional treatment center supplant the general acute care hospitals at the California Medical Facility, the California Men's Colony, and the California Institution for Men. This subdivision shall not be construed to prohibit the California Department of Corrections from obtaining a correctional treatment center license at these sites.

(k) "Nursing facility" means a health facility licensed pursuant to this chapter that is certified to participate as a provider of care either as a skilled nursing facility in the federal Medicare program under Title XVIII of the federal Social Security Act or as a nursing facility in the federal medicaid program under Title XIX of the federal Social Security Act, or as both.

(l) Regulations defining a correctional treatment center described in subdivision (j) that is operated by a county, city, or city and county, the Department of Corrections, or the Department of the Youth Authority, shall not become effective prior to, or if effective, shall be inoperative until January 1, 1996, and until that time these correctional facilities are exempt from any licensing requirements.

SEC. 2. Section 1250 of the Health and Safety Code is amended to read:

1250. As used in this chapter, "health facility" means any facility, place, or building that is organized, maintained, and operated for the diagnosis, care, prevention, and treatment of human illness, physical or mental, including convalescence and rehabilitation and including care during and after pregnancy, or for any one or more of these purposes, for one or more persons, to which the persons are admitted for a 24-hour stay or longer, and includes the following types:

(a) "General acute care hospital" means a health facility having a duly constituted governing body with overall administrative and professional responsibility and an organized medical staff that provides 24-hour inpatient care, including the following basic services: medical, nursing, surgical, anesthesia, laboratory, radiology, pharmacy, and dietary services. A general acute care hospital may include more than one physical plant maintained and operated on separate premises as provided in Section 1250.8. A general acute care hospital that exclusively provides acute medical rehabilitation center services, including at least physical therapy, occupational therapy, and speech therapy, may provide for the required surgical and anesthesia services through a contract with another acute care hospital. In addition, a general acute care hospital that, on July 1, 1983, provided required surgical and anesthesia services through a contract or agreement with another acute care hospital may continue to provide these surgical and anesthesia services through a contract or agreement with an acute care hospital. The general acute care hospital

operated by the State Department of Developmental Services at Agnews Developmental Center may, until June 30, 2007, provide surgery and anesthesia services through a contract or agreement with another acute care hospital. Notwithstanding the requirements of this subdivision, a general acute care hospital operated by the Department of Corrections and Rehabilitation or the Department of Veterans Affairs may provide surgery and anesthesia services during normal weekday working hours, and not provide these services during other hours of the weekday or on weekends or holidays, if the general acute care hospital otherwise meets the requirements of this section

A “general acute care hospital” includes a “rural general acute care hospital.” However, a “rural general acute care hospital” shall not be required by the department to provide surgery and anesthesia services. A “rural general acute care hospital” shall meet either of the following conditions:

(1) The hospital meets criteria for designation within peer group six or eight, as defined in the report entitled Hospital Peer Grouping for Efficiency Comparison, dated December 20, 1982.

(2) The hospital meets the criteria for designation within peer group five or seven, as defined in the report entitled Hospital Peer Grouping for Efficiency Comparison, dated December 20, 1982, and has no more than 76 acute care beds and is located in a census dwelling place of 15,000 or less population according to the 1980 federal census.

(b) “Acute psychiatric hospital” means a health facility having a duly constituted governing body with overall administrative and professional responsibility and an organized medical staff that provides 24-hour inpatient care for mentally disordered, incompetent, or other patients referred to in Division 5 (commencing with Section 5000) or Division 6 (commencing with Section 6000) of the Welfare and Institutions Code, including the following basic services: medical, nursing, rehabilitative, pharmacy, and dietary services.

(c) “Skilled nursing facility” means a health facility that provides skilled nursing care and supportive care to patients whose primary need is for availability of skilled nursing care on an extended basis.

(d) “Intermediate care facility” means a health facility that provides inpatient care to ambulatory or nonambulatory patients who have recurring need for skilled nursing supervision and need supportive care, but who do not require availability of continuous skilled nursing care.

(e) “Intermediate care facility/developmentally disabled habilitative” means a facility with a capacity of 4 to 15 beds that provides 24-hour personal care, habilitation, developmental, and supportive health services to 15 or fewer developmentally disabled persons who have intermittent recurring needs for nursing services, but have been certified by a

physician and surgeon as not requiring availability of continuous skilled nursing care.

(f) “Special hospital” means a health facility having a duly constituted governing body with overall administrative and professional responsibility and an organized medical or dental staff that provides inpatient or outpatient care in dentistry or maternity.

(g) “Intermediate care facility/developmentally disabled” means a facility that provides 24-hour personal care, habilitation, developmental, and supportive health services to developmentally disabled clients whose primary need is for developmental services and who have a recurring but intermittent need for skilled nursing services.

(h) “Intermediate care facility/developmentally disabled—nursing” means a facility with a capacity of 4 to 15 beds that provides 24-hour personal care, developmental services, and nursing supervision for developmentally disabled persons who have intermittent recurring needs for skilled nursing care but have been certified by a physician and surgeon as not requiring continuous skilled nursing care. The facility shall serve medically fragile persons who have developmental disabilities or demonstrate significant developmental delay that may lead to a developmental disability if not treated.

(i) (1) “Congregate living health facility” means a residential home with a capacity, except as provided in paragraph (4), of no more than 12 beds, that provides inpatient care, including the following basic services: medical supervision, 24-hour skilled nursing and supportive care, pharmacy, dietary, social, recreational, and at least one type of service specified in paragraph (2). The primary need of congregate living health facility residents shall be for availability of skilled nursing care on a recurring, intermittent, extended, or continuous basis. This care is generally less intense than that provided in general acute care hospitals but more intense than that provided in skilled nursing facilities.

(2) Congregate living health facilities shall provide one of the following services:

(A) Services for persons who are mentally alert, physically disabled persons, who may be ventilator dependent.

(B) Services for persons who have a diagnosis of terminal illness, a diagnosis of a life-threatening illness, or both. Terminal illness means the individual has a life expectancy of six months or less as stated in writing by his or her attending physician and surgeon. A “life-threatening illness” means the individual has an illness that can lead to a possibility of a termination of life within five years or less as stated in writing by his or her attending physician and surgeon.

(C) Services for persons who are catastrophically and severely disabled. A catastrophically and severely disabled person means a person

whose origin of disability was acquired through trauma or nondegenerative neurologic illness, for whom it has been determined that active rehabilitation would be beneficial and to whom these services are being provided. Services offered by a congregate living health facility to a catastrophically disabled person shall include, but not be limited to, speech, physical, and occupational therapy.

(3) A congregate living health facility license shall specify which of the types of persons described in paragraph (2) to whom a facility is licensed to provide services.

(4) (A) A facility operated by a city and county for the purposes of delivering services under this section may have a capacity of 59 beds.

(B) A congregate living health facility not operated by a city and county servicing persons who are terminally ill, persons who have been diagnosed with a life-threatening illness, or both, that is located in a county with a population of 500,000 or more persons may have not more than 25 beds for the purpose of serving terminally ill persons.

(C) A congregate living health facility not operated by a city and county serving persons who are catastrophically and severely disabled, as defined in subparagraph (C) of paragraph (2) that is located in a county of 500,000 or more persons may have not more than 12 beds for the purpose of serving catastrophically and severely disabled persons.

(5) A congregate living health facility shall have a noninstitutional, homelike environment.

(j) (1) "Correctional treatment center" means a health facility operated by the Department of Corrections, the Department of the Youth Authority, or a county, city, or city and county law enforcement agency that, as determined by the state department, provides inpatient health services to that portion of the inmate population who do not require a general acute care level of basic services. This definition shall not apply to those areas of a law enforcement facility that houses inmates or wards that may be receiving outpatient services and are housed separately for reasons of improved access to health care, security, and protection. The health services provided by a correctional treatment center shall include, but are not limited to, all of the following basic services: physician and surgeon, psychiatrist, psychologist, nursing, pharmacy, and dietary. A correctional treatment center may provide the following services: laboratory, radiology, perinatal, and any other services approved by the state department.

(2) Outpatient surgical care with anesthesia may be provided, if the correctional treatment center meets the same requirements as a surgical clinic licensed pursuant to Section 1204, with the exception of the requirement that patients remain less than 24 hours.

(3) Correctional treatment centers shall maintain written service agreements with general acute care hospitals to provide for those inmate physical health needs that cannot be met by the correctional treatment center.

(4) Physician and surgeon services shall be readily available in a correctional treatment center on a 24-hour basis.

(5) It is not the intent of the Legislature to have a correctional treatment center supplant the general acute care hospitals at the California Medical Facility, the California Men's Colony, and the California Institution for Men. This subdivision shall not be construed to prohibit the Department of Corrections from obtaining a correctional treatment center license at these sites.

(k) "Nursing facility" means a health facility licensed pursuant to this chapter that is certified to participate as a provider of care either as a skilled nursing facility in the federal Medicare Program under Title XVIII of the federal Social Security Act or as a nursing facility in the federal Medicaid Program under Title XIX of the federal Social Security Act, or as both.

(l) Regulations defining a correctional treatment center described in subdivision (j) that is operated by a county, city, or city and county, the Department of Corrections, or the Department of the Youth Authority, shall not become effective prior to, or if effective, shall be inoperative until January 1, 1996, and until that time these correctional facilities are exempt from any licensing requirements.

SEC. 3. Section 2 of this bill incorporates amendments to Section 1250 of the Health and Safety Code proposed by both this bill and AB 1346. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2006, (2) each bill amends Section 1250 of the Health and Safety Code, and (3) this bill is enacted after AB 1346, in which case Section 1 of this bill shall not become operative.

CHAPTER 444

An act to add Division 116 (commencing with Section 150200) to the Health and Safety Code, relating to pharmaceuticals.

[Approved by Governor September 30, 2005. Filed with
Secretary of State September 30, 2005.]

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

SECTION 1. Division 116 (commencing with Section 150200) is added to the Health and Safety Code, to read:

DIVISION 116. SURPLUS MEDICATION COLLECTION AND
DISTRIBUTION

150200. It is the intent of the Legislature in enacting this division to authorize the establishment of a voluntary drug repository and distribution program for the purpose of distributing surplus medications to persons in need of financial assistance to ensure access to necessary pharmaceutical therapies.

150201. For purposes of this division, “medication” or “medications” means a dangerous drug, as defined in Section 4022 of the Business and Professions Code.

150202. Notwithstanding any other provision of law, a licensed skilled nursing facility, as defined in Section 1250, including a skilled nursing facility designated as an institution for mental disease, may donate unused medications under a program established pursuant to this division.

150203. Notwithstanding any other provision of law, a wholesaler licensed pursuant to Article 11 (commencing with Section 4160) of Chapter 9 of Division 2 of the Business and Professions Code and a drug manufacturer that is legally authorized under federal law to manufacture and sell pharmaceutical drugs may donate unused medications under the voluntary drug repository and distribution program established by a county pursuant to this division.

150204. (a) A county may establish, by ordinance, a repository and distribution program for purposes of this division. Only pharmacies that are county-owned or that contract with the county pursuant to this division may participate in this program to dispense medication donated to the drug repository and distribution program.

(b) A county that elects to establish a repository and distribution program pursuant to this division shall establish procedures for, at a minimum, all of the following:

- (1) Establishing eligibility for medically indigent patients who may participate in the program.
- (2) Ensuring that patients eligible for the program shall not be charged for any medications provided under the program.
- (3) Developing a formulary of medications appropriate for the repository and distribution program.

(4) Ensuring proper safety and management of any medications collected by and maintained under the authority of a county-owned or county-contracted, licensed pharmacy.

(5) Ensuring the privacy of individuals for whom the medication was originally prescribed.

(c) Any medication donated to the repository and distribution program shall comply with the requirements specified in this division. Medication donated to the repository and distribution program shall meet all of the following criteria:

(1) The medication shall not be a controlled substance.

(2) The medication shall not have been adulterated, misbranded, or stored under conditions contrary to standards set by the United States Pharmacopoeia (USP) or the product manufacturer.

(3) The medication shall not have been in the possession of a patient or any individual member of the public, and in the case of medications donated by a skilled nursing facility, shall have been under the control of staff of the skilled nursing facility.

(d) Only medication that is donated in unopened, tamper-evident packaging or modified unit dose containers that meet USP standards is eligible for donation to the repository and distribution program, provided lot numbers and expiration dates are affixed. Medication donated in opened containers shall not be dispensed by the repository and distribution program.

(e) A pharmacist shall use his or her professional judgment in determining whether donated medication meets the standards of this division before accepting or dispensing any medication under the repository and distribution program.

(f) A pharmacist shall adhere to standard pharmacy practices, as required by state and federal law, when dispensing all medications.

(g) Medication that is donated to the repository and distribution program shall be handled in any of the following ways:

(1) Dispensed to an eligible patient.

(2) Destroyed.

(3) Returned to a reverse distributor.

(h) Medication that is donated to the repository and distribution program that does not meet the requirements of this division shall not be distributed under this program and shall be either destroyed or returned to a reverse distributor. This medication shall not be sold, dispensed, or otherwise transferred to any other entity.

(i) Medication donated to the repository and distribution program shall be maintained in the donated packaging units until dispensed to an eligible patient under this program, who presents a valid prescription. When dispensed to an eligible patient under this program, the medication

shall be in a new and properly labeled container, specific to the eligible patient and ensuring the privacy of the individuals for whom the medication was initially dispensed. Expired medication shall not be dispensed.

(j) Medication donated to the repository and distribution program shall be segregated from the pharmacy's other drug stock by physical means, for purposes including, but not limited to, inventory, accounting, and inspection.

(k) The pharmacy shall keep complete records of the acquisition and disposition of medication donated to and dispensed under the repository and distribution program. These records shall be kept separate from the pharmacy's other acquisition and disposition records and shall conform to the Pharmacy Law (Chapter 9 (commencing with Section 4000), of Division 2 of the Business and Professions Code), including being readily retrievable.

(l) Local and county protocols established pursuant to this act shall conform to the Pharmacy Law regarding packaging, transporting, storing, and dispensing all medications.

(m) County protocols established for packaging, transporting, storing, and dispensing medications that require refrigeration, including, but not limited to, any biological product as defined in Section 351 of the Public Health and Service Act (42 U.S.C. Sec. 262), an intravenously injected drug, or an infused drug, include specific procedures to ensure that these medications are packaged, transported, stored, and dispensed at their appropriate temperatures and in accordance with USP standards and the Pharmacy Law.

(n) Notwithstanding any other provision of law, a participating county-owned or county-contracted pharmacy shall follow the same procedural drug pedigree requirements for donated drugs as it would follow for drugs purchased from a wholesaler or directly from a drug manufacturer.

150205. The following persons and entities shall not be subject to criminal or civil liability for injury caused when donating, accepting, or dispensing prescription drugs in compliance with this division:

(a) A prescription drug manufacturer, wholesaler, governmental entity, county-owned or county-contracted licensed pharmacy, or skilled nursing facility.

(b) A pharmacist or health care professional who accepts or dispenses prescription drugs.

150206. The immunities provided in Section 150205 shall not apply in cases of noncompliance with this division, bad faith, or gross negligence.

150207. Nothing in this division shall affect disciplinary actions taken by licensing and regulatory agencies.

CHAPTER 445

An act to amend Section 1747.09 of the Civil Code, relating to debit cards.

[Approved by Governor September 30, 2005. Filed with
Secretary of State September 30, 2005.]

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

SECTION 1. Section 1747.09 of the Civil Code is amended to read:
1747.09. (a) Except as provided in this section, no person, firm, partnership, association, corporation, or limited liability company that accepts credit or debit cards for the transaction of business shall print more than the last five digits of the credit or debit card account number or the expiration date upon any receipt provided to the cardholder.

(b) This section shall apply only to receipts that are electronically printed and shall not apply to transactions in which the sole means of recording the person's credit or debit card number is by handwriting or by an imprint or copy of the credit or debit card.

CHAPTER 446

An act to add Section 10111.7 to the Insurance Code, relating to life insurance.

[Approved by Governor September 30, 2005. Filed with
Secretary of State September 30, 2005.]

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

SECTION 1. Section 10111.7 is added to the Insurance Code, to read:

10111.7. (a) An insurer shall not deny or refuse to accept an application for life insurance, or refuse to insure, refuse to renew, cancel, restrict, or otherwise terminate a policy of life insurance, or charge a different rate for the same life insurance coverage, based solely upon the applicant's or insured's past or future lawful travel destinations.

(b) Nothing in this section shall prohibit an insurer from excluding or limiting coverage under a life insurance policy, or refusing to offer life insurance, based upon lawful travel, or from charging a different rate for that coverage, when that action is based upon sound actuarial principles or is related to actual and reasonably expected experience.

CHAPTER 447

An act to amend Sections 2051.5, 10089.70, 10089.79, 10089.80, and 10089.82 of, and to add Sections 124.5, 1749.85, and 2060 to, and to repeal Section 10089.84 of, the Insurance Code, relating to homeowners' insurance.

[Approved by Governor September 30, 2005. Filed with
Secretary of State September 30, 2005.]

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

SECTION 1. Section 124.5 is added to the Insurance Code, to read:
124.5. "Homeowners' insurance" means insurance covering the risks described in subdivision (a) of Section 675.

SEC. 2. Section 1749.85 is added to the Insurance Code, to read:

1749.85. (a) The curriculum committee shall, in 2006, make recommendations to the commissioner to instruct fire and casualty broker-agents and personal lines broker-agents and applicants for fire and casualty broker-agent and personal lines broker-agent licenses in proper methods of estimating the replacement value of structures, and of explaining various levels of coverage under a homeowners' insurance policy. Each provider of courses based upon this curriculum shall submit its course content to the commissioner for approval.

(b) A person who is not an insurer underwriter or actuary or other person identified by the insurer, or a licensed fire and casualty broker-agent, personal lines broker-agent, contractor, or architect shall not estimate the replacement value of a structure, or explain various levels of coverage under a homeowners' insurance policy.

SEC. 3. Section 2051.5 of the Insurance Code is amended to read:

2051.5. (a) Under an open policy that requires payment of the replacement cost for a loss, the measure of indemnity is the amount that it would cost the insured to repair, rebuild, or replace the thing lost or injured, without a deduction for physical depreciation, or the policy limit, whichever is less.

If the policy requires the insured to repair, rebuild, or replace the damaged property in order to collect the full replacement cost, the insurer shall pay the actual cash value of the damaged property, as defined in Section 2051, until the damaged property is repaired, rebuilt, or replaced. Once the property is repaired, rebuilt, or replaced, the insurer shall pay the difference between the actual cash value payment made and the full replacement cost reasonably paid to replace the damaged property, up to the limits stated in the policy.

(b) (1) No time limit of less than 12 months from the date that the first payment toward the actual cash value is made shall be placed upon an insured in order to collect the full replacement cost of the loss, subject to the policy limit. Additional extensions of six months shall be provided to policyholders for good cause. In the event of a covered loss relating to a “state of emergency,” as defined in Section 8558 of the Government Code, no time limit of less than 24 months from the date that the first payment toward the actual cash value is made shall be placed upon the insured in order to collect the full replacement cost of the loss, subject to the policy limit. Nothing in this section shall prohibit the insurer from allowing the insured additional time to collect the full replacement cost.

(2) In the event of a covered loss relating to a “state of emergency,” as defined in Section 8558 of the Government Code, coverage for additional living expenses shall be for a period of 24 months, but shall be subject to other policy provisions, provided that any extension of time required by this paragraph beyond the period provided in the policy shall not act to increase the additional living expense policy limit in force at the time of the loss. This paragraph shall become operative on January 1, 2007.

(c) In the event of a total loss of the insured structure, no policy issued or delivered in this state may contain a provision that limits or denies payment of the replacement cost in the event the insured decides to rebuild or replace the property at a location other than the insured premises. However, the measure of indemnity shall be based upon the replacement cost of the insured property and shall not be based upon the cost to repair, rebuild, or replace at a location other than the insured premises.

(d) Nothing in this section shall prohibit an insurer from restricting payment in cases of suspected fraud.

(e) The changes made to this section by the act that added this subdivision shall be implemented by an insurer on and after the effective date of that act, except that an insurer shall not be required to modify policy forms to be consistent with those changes until July 1, 2005. On and after July 1, 2005, all policy forms used by an insurer shall reflect those changes.

SEC. 4. Section 2060 is added to the Insurance Code, to read:

2060. In the event of a loss under a homeowners' insurance policy for which the insured has made a claim for additional living expenses, the insurer shall provide the insured with a list of items that the insurer believes may be covered under the policy as additional living expenses. The list may include a statement that the list is not intended to include all items covered under the policy, but only those that are commonly claimed, if this is the case. If the department develops a list for use by insurers, the insurer may use that list.

SEC. 5. Section 10089.70 of the Insurance Code is amended to read:

10089.70. (a) The department shall establish a program for the mediation of the disputes between insured complainants and insurers arising pursuant to any of the following:

(1) A claim that arises under a homeowners' insurance policy and that involves loss due to a fire for which the Governor has declared a state of emergency pursuant to Section 8558 of the Government Code. The department may refer to mediation any dispute covered by this paragraph in which the parties to the contract wish to discuss possible payments beyond policy limits.

(2) A claim that arises under a policy covering earthquake damage and that involves loss due to an earthquake for which the Governor has declared a state of emergency pursuant to Section 8558 of the Government Code. With respect to disputes arising under this paragraph, the program shall apply only to personal lines of insurance related to residential coverage.

(3) A claim that arises under automobile collision coverage or automobile physical damage coverage, in a policy as defined in Section 660.

(b) The goal of the program shall be to favorably resolve a statistically significant number of disputes sent to mediation under the program. This section shall not apply to any dispute that turns on a question of major insurance coverage or a purely legal interpretation, or any dispute involving the actions of an agent or broker in which the insurer is not alleged to have been responsible for the conduct, or any complaint the commissioner finds to be frivolous, or any dispute in which a party is alleged to have committed fraud.

SEC. 6. Section 10089.79 of the Insurance Code is amended to read:

10089.79. (a) The costs of mediation shall be reasonable, and shall be borne by the insurer, except as provided in Section 10089.81. The commissioner may set a fee not to exceed one thousand five hundred dollars (\$1,500) for each homeowners' or earthquake coverage dispute mediated pursuant to this chapter, and seven hundred dollars (\$700) for each automobile coverage dispute mediated pursuant to this chapter.

(b) The administrative expenses for the mediation program shall be paid from existing resources available to the department. If additional resources are required by the department, those resources shall be made available by an annual appropriation in the Budget Act.

SEC. 7. Section 10089.80 of the Insurance Code is amended to read:

10089.80. (a) The representatives of the insurer shall know the facts of the case and be familiar with the allegations of the complainant. The insurer or the insurer's representative shall produce at the settlement conference a copy of the policy and all documents from the claims file relevant to the degree of loss, value of the claim, and the fact or extent of damage. For disputes mediated pursuant to paragraph (1) of subdivision (a) of Section 10089.70, the department shall refer to mediation issues related to the settlement of the claim. The insured and insurer shall produce, to the extent available, documents relevant to the successful mediation of the claim, including documents related to the degree of loss, the value of the claim, and the fact or extent of damage.

The mediator may also order production of other documents that the mediator determines to be relevant to the issues under mediation. If a party declines to comply with that order, the mediator may appeal to the commissioner for a determination of whether the documents requested should be produced. The commissioner shall make a determination within 21 days. However, the party ordered to produce the documents shall not be required to produce while the issue is before the commissioner in this 21-day period. If the ruling is in favor of production, any insurer that is subject to an order to participate in mediation issued under subdivision (a) of Section 10089.75 shall comply with the order to produce. Insureds, and those insurers that are not subject to an order to participate in mediation, shall produce the documents or decline to participate further in the mediation after a ruling by the commissioner requiring the production of those other documents. Declination of mediation by the insurer under this section may be considered by the commissioner in exercising authority under subdivision (a) of Section 10089.75.

The mediator shall have the authority to protect from disclosure information that the mediator determines to be privileged, including, but not limited to, information protected by the attorney-client or work-product privileges, or to be otherwise confidential.

(b) The mediator shall determine prior to the mediation conference whether the insured will be represented by counsel at the mediation. The mediator shall inform the insurer whether the insured will be represented by counsel at the mediation conference. If the insured is represented by counsel at the mediation conference, the insurer's counsel may be present. If the insured is not represented by counsel at the mediation conference, then no counsel may be present.

(c) Section 703.5 and Chapter 2 (commencing with Section 1115) of Division 9 of the Evidence Code apply to a mediation conducted under this chapter.

(d) The statements made by the parties, negotiations between the parties, and documents produced at the mediation are confidential. However, this confidentiality shall not restrict the access of the department to documents or other information the department seeks in order to evaluate the mediation program or to comply with reporting requirements. This subdivision does not affect the discoverability or admissibility of documents that are otherwise discoverable or admissible.

SEC. 8. Section 10089.82 of the Insurance Code is amended to read:

10089.82. (a) An insured may not be required to use the department's mediation process. An insurer may not be required to use the department's mediation process, except as provided in Section 10089.75.

(b) Neither the insurer nor the insured is required to accept an agreement proposed during the mediation.

(c) If the parties agree to a settlement agreement, the insured will have three business days to rescind the agreement. Notwithstanding Chapter 2 (commencing with Section 1115) of Division 9 of the Evidence Code, if the insured rescinds the agreement, it may not be admitted in evidence or disclosed unless the insured and all other parties to the agreement expressly agree to its disclosure. If the agreement is not rescinded by the insured, it is binding on the insured and the insurer, and acts as a release of all specific claims for damages known at the time of the mediation presented and agreed upon in the mediation conference. If counsel for the insured is present at the mediation conference and a settlement is agreed upon that is signed by the insured's counsel, the agreement is immediately binding on the insured and may not be rescinded.

(d) This section does not affect rights under existing law for claims for damage that were undetected at the time of the settlement conference.

(e) All settlements reached as a result of department-referred mediation shall address only those issues raised for the purpose of resolution. Settlements and any accompanying releases are not effective to settle or resolve any claim or dispute not addressed by the mediator for the purpose of resolution, nor any claim that the insured may have related to the insurer's conduct in handling the claim. However, for mediations conducted pursuant to paragraph (1) of subdivision (a) of Section 10089.70, the insurer and insured may agree to a complete settlement and release of all disputes related to the claim, including any claim the insured may have related to the insurer's conduct in handling the claim, provided the legal effect of the release is disclosed and fully explained to the claimant by the mediator.

Referral to mediation or the pendency of a mediation under this article is not a basis to prevent or stay the filing of civil litigation arising in whole or in part out of the same facts. Any applicable statute of limitations is tolled for the number of days beginning from the notification date to the insurer pursuant to Section 10089.72, until the date on which the mediation is either completed or declined, or the date on which the insured fails to appear for a scheduled mediation for the second time, or, in the event that a settlement is completed, the expiration of any applicable three business day cooling off period.

SEC. 8.5. Section 10089.82 of the Insurance Code is amended to read:

10089.82. (a) An insured may not be required to use the department's mediation process. An insurer may not be required to use the department's mediation process, except as provided in Section 10089.75.

(b) Neither the insurer nor the insured is required to accept an agreement proposed during the mediation.

(c) If the parties agree to a settlement agreement, the insured will have three business days to rescind the agreement. Notwithstanding Chapter 2 (commencing with Section 1115) of Division 9 of the Evidence Code, if the insured rescinds the agreement, it may not be admitted in evidence or disclosed unless the insured and all other parties to the agreement expressly agree to its disclosure. If the agreement is not rescinded by the insured, it is binding on the insured and the insurer, and acts as a release of all specific claims for damages known at the time of the mediation presented and agreed upon in the mediation conference. If counsel for the insured is present at the mediation conference and a settlement is agreed upon that is signed by the insured's counsel, the agreement is immediately binding on the insured and may not be rescinded.

(d) This section does not affect rights under existing law for claims for damage that were undetected at the time of the settlement conference.

(e) All settlements reached as a result of department-referred mediation shall address only those issues raised for the purpose of resolution. Settlements and any accompanying releases are not effective to settle or resolve any claim or dispute not addressed by the mediator for the purpose of resolution, nor any claim that the insured may have related to the insurer's conduct in handling the claim. However, for mediations conducted pursuant to paragraph (1) of subdivision (a) of Section 10089.70, the insurer and insured may agree to a complete settlement and release of all disputes related to the claim, including any claim the insured may have related to the insurer's conduct in handling the claim, provided the legal effect of the release is disclosed and fully explained to the claimant by the mediator.

Referral to mediation or the pendency of a mediation under this article is not a basis to prevent or stay the filing of civil litigation arising in whole or in part out of the same facts. Any applicable statute of limitations or limitation on the insured's right to sue as set forth in Section 2071 is tolled for the number of days beginning from the notification date to the insurer pursuant to Section 10089.72, until the date on which the mediation is either completed or declined, or the date on which the insured fails to appear for a scheduled mediation for the second time, or, in the event that a settlement is completed, the expiration of any applicable three business day cooling off period.

SEC. 9. Section 10089.84 of the Insurance Code is repealed.

SEC. 10. Section 8.5 of this bill incorporates amendments to Section 10089.82 of the Insurance Code proposed by both this bill and SB 518. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2006, (2) each bill amends Section 10089.82 of the Insurance Code, and (3) this bill is enacted after SB 518, in which case Section 8 of this bill shall not become operative.

CHAPTER 448

An act to amend Sections 2051.5, 10089.82, 10106, 14028, 14029, 14035, 14062, 15011, 15027, 15027.1, 15033, 15036, 15040, 15056, and 15059 of, and to add Sections 395, 14028.5, 14061.5, 15018.5, 15027.5, 15028.7, and 15039.5 to, and to repeal Section 15014 of, the Insurance Code, relating to homeowners' insurance.

[Approved by Governor September 30, 2005. Filed with
Secretary of State September 30, 2005.]

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

SECTION 1. Section 395 is added to the Insurance Code, to read:

395. After a covered loss, an insurer shall provide, free of charge, a complete copy of the insured's current insurance policy or certificate within 30 calendar days of receipt of a request from the insured. The time period for providing the insurance policy or certificate may be extended by the commissioner. An insured who does not experience a covered loss shall, upon request, be entitled to one free copy of his or her current insurance policy or certificate annually. The insurance policy or certificate provided to the insured shall include, where applicable, the policy declarations page. This section shall not apply to commercial

policies issued pursuant to Sections 675.5 and 675.6, and policies of workers' compensation insurance, as defined in Section 109.

SEC. 2. Section 2051.5 of the Insurance Code is amended to read:

2051.5. (a) Under an open policy that requires payment of the replacement cost for a loss, the measure of indemnity is the amount that it would cost the insured to repair, rebuild, or replace the thing lost or injured, without a deduction for physical depreciation, or the policy limit, whichever is less.

If the policy requires the insured to repair, rebuild, or replace the damaged property in order to collect the full replacement cost, the insurer shall pay the actual cash value of the damaged property, as defined in Section 2051, until the damaged property is repaired, rebuilt, or replaced. Once the property is repaired, rebuilt, or replaced, the insurer shall pay the difference between the actual cash value payment made and the full replacement cost reasonably paid to replace the damaged property, up to the limits stated in the policy.

(b) (1) Except as provided in paragraph (2), no time limit of less than 12 months from the date that the first payment toward the actual cash value is made shall be placed upon an insured in order to collect the full replacement cost of the loss, subject to the policy limit. Additional extensions of six months shall be provided to policyholders for good cause. In the event of a loss relating to a "state of emergency," as defined in Section 8558 of the Government Code, no time limit of less than 24 months from the date that the first payment toward the actual cash value is made shall be placed upon the insured in order to collect the full replacement cost of the loss, subject to the policy limit. Nothing in this section shall prohibit the insurer from allowing the insured additional time to collect the full replacement cost.

(2) In the event of a covered loss relating to a state of emergency, as defined in Section 8558 of the Government Code, coverage for additional living expenses shall be for a period of 24 months, but shall be subject to other policy provisions, provided that any extension of time required by this paragraph beyond the period provided in the policy shall not act to increase the additional living expense policy limit in force at the time of the loss. This paragraph shall become operative on January 1, 2007.

(c) In the event of a total loss of the insured structure, no policy issued or delivered in this state may contain a provision that limits or denies payment of the replacement cost in the event the insured decides to rebuild or replace the property at a location other than the insured premises. However, the measure of indemnity shall be based upon the replacement cost of the insured property and shall not be based upon the cost to repair, rebuild, or replace at a location other than the insured premises.

(d) Nothing in this section shall prohibit an insurer from restricting payment in cases of suspected fraud.

(e) The changes made to this section by the act that added this subdivision shall be implemented by an insurer on and after the effective date of that act, except that an insurer shall not be required to modify policy forms to be consistent with those changes until July 1, 2005. On and after July 1, 2005, all policy forms used by an insurer shall reflect those changes.

SEC. 3. Section 10089.82 of the Insurance Code is amended to read:

10089.82. (a) An insured may not be required to use the department's mediation process. An insurer may not be required to use the department's mediation process, except as provided in Section 10089.75.

(b) Neither the insurer nor the insured is required to accept an agreement proposed during the mediation.

(c) If the parties agree to a settlement agreement, the insured will have three business days to rescind the agreement. Notwithstanding Chapter 2 (commencing with Section 1115) of Division 9 of the Evidence Code, if the insured rescinds the agreement, it may not be admitted in evidence or disclosed unless the insured and all other parties to the agreement expressly agree to its disclosure. If the agreement is not rescinded by the insured, it is binding on the insured and the insurer, and acts as a release of all specific claims for damages known at the time of the mediation presented and agreed upon in the mediation conference. If counsel for the insured is present at the mediation conference and a settlement is agreed upon that is signed by the insured's counsel, the agreement is immediately binding on the insured and may not be rescinded.

(d) This section does not affect rights under existing law for claims for damage that were undetected at the time of the settlement conference.

(e) All settlements reached as a result of department-referred mediation shall address only those issues raised for the purpose of resolution. Settlements and any accompanying releases are not effective to settle or resolve any claim or dispute not addressed by the mediator for the purpose of resolution, nor any claim that the insured may have related to the insurer's conduct in handling the claim. However, for mediations conducted pursuant to subdivision (b) of Section 10089.70, the insurer and insured may agree to a complete settlement and release of all disputes related to the claim, including any claim the insured may have related to the insurer's conduct in handling the claim, provided the legal effect of the release is disclosed and fully explained to the claimant by the mediator.

Referral to mediation or the pendency of a mediation under this article is not a basis to prevent or stay the filing of civil litigation arising in

whole or in part out of the same facts. Any applicable statute of limitations or limitation on the insured's right to sue as set forth in Section 2071 is tolled for the number of days beginning from the notification date to the insurer pursuant to Section 10089.72, until the date on which the mediation is either completed or declined, or the date on which the insured fails to appear for a scheduled mediation for the second time, or, in the event that a settlement is completed, the expiration of any applicable three-business-day cooling off period.

SEC. 3.5. Section 10089.82 of the Insurance Code is amended to read:

10089.82. (a) An insured may not be required to use the department's mediation process. An insurer may not be required to use the department's mediation process, except as provided in Section 10089.75.

(b) Neither the insurer nor the insured is required to accept an agreement proposed during the mediation.

(c) If the parties agree to a settlement agreement, the insured will have three business days to rescind the agreement. Notwithstanding Chapter 2 (commencing with Section 1115) of Division 9 of the Evidence Code, if the insured rescinds the agreement, it may not be admitted in evidence or disclosed unless the insured and all other parties to the agreement expressly agree to its disclosure. If the agreement is not rescinded by the insured, it is binding on the insured and the insurer, and acts as a release of all specific claims for damages known at the time of the mediation presented and agreed upon in the mediation conference. If counsel for the insured is present at the mediation conference and a settlement is agreed upon that is signed by the insured's counsel, the agreement is immediately binding on the insured and may not be rescinded.

(d) This section does not affect rights under existing law for claims for damage that were undetected at the time of the settlement conference.

(e) All settlements reached as a result of department-referred mediation shall address only those issues raised for the purpose of resolution. Settlements and any accompanying releases are not effective to settle or resolve any claim or dispute not addressed by the mediator for the purpose of resolution, nor any claim that the insured may have related to the insurer's conduct in handling the claim. However, for mediations conducted pursuant to paragraph (1) of subdivision (a) of Section 10089.70, the insurer and insured may agree to a complete settlement and release of all disputes related to the claim, including any claim the insured may have related to the insurer's conduct in handling the claim, provided the legal effect of the release is disclosed and fully explained to the claimant by the mediator.

Referral to mediation or the pendency of a mediation under this article is not a basis to prevent or stay the filing of civil litigation arising in whole or in part out of the same facts. Any applicable statute of limitations or limitation on the insured's right to sue as set forth in Section 2071 is tolled for the number of days beginning from the notification date to the insurer pursuant to Section 10089.72, until the date on which the mediation is either completed or declined, or the date on which the insured fails to appear for a scheduled mediation for the second time, or, in the event that a settlement is completed, the expiration of any applicable three-business-day cooling off period.

SEC. 4. Section 10106 of the Insurance Code is amended to read:

10106. The Insurance Commissioner may modify a disclosure statement as contained in Section 10102, 10103, or 10103.5 only upon request of an insurer. The modification shall only be for the purpose of adding new or clarifying existing language describing any form of dwelling coverage offered by an insurer. The commissioner's authority to modify the disclosure statement shall be limited solely to determining the clarity and accuracy of the information provided in the disclosure to ensure that the disclosure accurately reflects a new or existing product. It is the intent of the Legislature that the disclosure form be kept as brief as clarity and accuracy permit. Any modification to the disclosure statement shall be approved in writing by the commissioner.

SEC. 5. Section 14028 of the Insurance Code is amended to read:

14028. After a hearing the commissioner may deny a license unless the application makes a showing satisfactory to the commissioner that the applicant, if an individual, has not, or if the applicant is a person other than an individual, that its manager and each of its officers and partners have not:

(a) Committed any acts or crimes constituting grounds for denial of licensure under Section 480 of the Business and Professions Code.

(b) Been refused a license under this chapter or had a license revoked.

(c) Been an officer, partner, or manager of any person who has been refused a license under this chapter or whose license has been revoked.

(d) While unlicensed committed, or aided and abetted the commission of, any act for which a license is required by this chapter.

(e) Committed any act or crime constituting grounds for denial of license under Section 1668.

SEC. 6. Section 14028.5 is added to the Insurance Code, to read:

14028.5. The commissioner may, without hearing, deny a license if the applicant has committed any act or crime constituting grounds for denial of license under Section 1669.

SEC. 7. Section 14029 of the Insurance Code is amended to read:

14029. (a) The business of each licensee shall be operated under the active direction, control, charge, or management, in this state, of the licensee, if the licensee is qualified, or the person who has qualified to act as the licensee's manager, if the licensee is not qualified.

(b) No person shall act as a manager of a licensee until he or she has complied with each of the following:

(1) Demonstrated his or her qualifications by a written or oral examination, or a combination of both, if required by the commissioner.

(2) Made a satisfactory showing to the commissioner that he or she has the qualifications prescribed by Section 14025 and that none of the facts stated in Section 14028 or 14028.5 exist as to him or her.

(c) If the manager, who has qualified as provided in this section, ceases for any reason whatsoever to be connected with the licensee to whom the license is issued, the licensee shall notify the commissioner in writing 30 days from the cessation. If notice is given, the license shall remain in force for a reasonable length of time to be determined by the rules of the commissioner pending the qualifications, as provided in this chapter, of another manager. If the licensee fails to notify the commissioner within the 30-day period, his or her license shall be subject to suspension or revocation and may be reinstated only upon the filing of an application for reinstatement, payment of the reinstatement fee, if any is due, and the qualification of a manager as provided herein.

(d) Every manager shall renew his or her authority by satisfying the requirements of Article 8 (commencing with Section 14090).

SEC. 8. Section 14035 of the Insurance Code is amended to read:

14035. A licensee shall, within 30 days after such change, notify the department of any change of his or her address and of any change in the officers or partners of such licensee. The principal place of business may be at a home or at a business address, but it shall be the place at which the licensee maintains a permanent office.

Applications, on forms prescribed by the commissioner, shall be submitted by all new officers or partners. The commissioner may suspend or revoke a license issued under this chapter if he or she determines that at the time the person became an officer or partner of a licensee, any of the facts stated in Section 14028 or 14028.5 existed as to such person.

SEC. 9. Section 14061.5 is added to the Insurance Code, to read:

14061.5. The commissioner may, without hearing, suspend or revoke a license issued under this chapter, or may issue a restricted license, if he or she determines that the licensee has committed any act or crime constituting grounds for denial of license under Section 14028.5.

SEC. 10. Section 14062 of the Insurance Code is amended to read:

14062. The record of conviction, or a certified copy thereof, shall be conclusive evidence of the conviction, as that term is used in this article or in Section 14028 or 14028.5.

A plea or verdict of guilty or a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning of this article or of Section 14028 or 14028.5. The commissioner may order the license suspended or revoked, or may decline to issue a license, when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code allowing such person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or indictment.

SEC. 11. Section 15011 of the Insurance Code is amended to read:

15011. Before an application for a license is granted, the applicant shall meet all of the following:

- (a) Be at least 18 years of age.
- (b) Be a bona fide resident of the State of California.
- (c) Must be of good character and shall not have committed acts or crimes constituting grounds for denial of licensure under Section 1668 or 1669.
- (d) Shall have had sufficient experience, or special education or training, or both, in the handling of loss claims under insurance contracts as determined by regulations adopted by the commissioner, and is competent to transact business and discharge the responsibilities of a public insurance adjuster in such a manner as to safeguard the interests of the public.
- (e) Must maintain an office in the State of California with public access during regular business hours.
- (f) Pass an exam given by the commissioner in regard to property loss adjusting.
- (g) Post a surety bond executed by a surety company authorized to do business in this state in the sum of twenty thousand dollars (\$20,000).
- (h) Comply with any other qualifications as required by the commissioner.

SEC. 12. Section 15014 of the Insurance Code is repealed.

SEC. 13. Section 15018.5 is added to the Insurance Code, to read:

15018.5. The commissioner may, without hearing, deny an application if the applicant has committed any act or been convicted of a crime constituting grounds for denial of license under Section 1669.

SEC. 14. Section 15027 of the Insurance Code is amended to read:

15027. (a) No licensee shall, directly or indirectly, act within this state as a public insurance adjuster without having first entered into a contract, in writing, on a form approved by the insurance commissioner and executed in duplicate by the public adjuster and the insured or a duly authorized representative. One original contract shall be kept on file by the licensee, available at all times for inspection, without notice, by the commissioner or his or her duly authorized representative, and one original contract shall be given to the insured.

(b) The written contract between the licensee and the insured shall contain each of the following:

- (1) Title of "Public Adjuster Contract."
- (2) The name, business name, license number, telephone number, and address of the licensee.
- (3) The name and address of the insured.
- (4) A description of the loss and its location, if applicable.
- (5) The name of the insurer and the policy number, if known.
- (6) The full salary, fee, commission, or other consideration the licensee is to receive for services under the contract.
- (7) A description of the services to be provided to the insured.
- (8) Signatures of the licensee and the insured.
- (9) The date the contract was signed by the licensee and the date the contract was signed by the insured.
- (10) The following statement: "As a public adjuster, I am required by the California Insurance Code to post a surety bond in the sum of \$20,000 to cover certain kinds of claims made by you, the insured. If you have any questions concerning the surety bond, you may contact the California Department of Insurance Producer Licensing Call Center at 1-800-967-9331 or www.insurance.ca.gov."

(11) A statement of the compensation to the licensee, including the percentage and base to which the percentage applies.

(12) A statement that the insured has the right to rescind the contract within three business days of signing it.

(c) A contract covered by this section shall not contain a contract term that does any of the following:

- (1) Allows the licensee's fee to be collected when money is due from an insurer, but not paid, or allows a licensee to collect the entire fee from the first payment issued by an insurer, rather than as a percentage of each payment issued by an insurer.
- (2) Requires the insured to authorize an insurer to issue a payment only in the name of the licensee.
- (3) Imposes late fees or collection costs on the insured.
- (d) No licensee shall solicit or attempt to solicit a client for employment during the progress of a loss-producing occurrence.

(e) No licensee or any other person or entity offering, for a fee, service regulated by this chapter shall solicit a client for employment or initiate any contact with a policyholder between the hours of 6 p.m. and 8 a.m.

(f) No licensee shall use any form of contract other than that approved by the commissioner and which contains each of the following:

(1) A provision allowing the client to rescind the contract by written notice sent or delivered by certified mail, return receipt requested, or other form of mailing which provides proof of mailing, to the licensee by midnight of the third business day after the day on which the client signs a contract which complies with this section. Each copy of the contract shall contain a completed form, captioned "Notice of Cancellation," which shall be placed at the end of the contract and be separated from the remainder of the contract by a printed line. Nothing shall be printed on the reverse side of the notice form. The notice form shall be completed by the licensee, and shall contain in type of at least 10-point the following statement written in the same language, e.g., Spanish, as used in the contract:

Notice of Cancellation

(Date of Contract)

You may cancel this contract within three business days from the above date without any penalty or obligation to pay your public adjuster, other than for reimbursement of moneys paid by your public adjuster for out-of-pocket emergency expenses for you or on your behalf. If your public adjuster seeks reimbursement from you for out-of-pocket emergency expenses, your public adjuster shall provide you with an itemized statement of those emergency expenses advanced to you or on your behalf if the cancellation is made within the first three business days after the contract was initiated. Nothing in this contract permits your public adjuster to recover any costs, except for out-of-pocket emergency expenses advanced to you.

If you cancel, any money or other consideration paid by you will be returned within five business days following the receipt of your cancellation notice, and any security interest arising out of the transaction will be canceled.

To cancel this contract, mail or deliver by certified mail, return receipt requested, or other form of mailing which provides proof of mailing, a signed and dated copy of this cancellation notice, or any other written notice, or send a telegram to:

(name of public adjuster)
at

(address of public adjuster's place of business)
not later than midnight of _____
(Date)
I hereby cancel this contract _____
(Date)

(Client's signature)

(2) The statement "WE REPRESENT THE INSURED ONLY" prominently displayed in at least 10-point type.

(3) A provision disclosing the percentage of the insured's claim, or other fee, that the licensee will charge for his or her services. The licensee shall obtain the initials of the insured next to this provision.

(4) A conspicuous statement in at least 10-point type in immediate proximity to the space reserved for the client's signature, as follows: "You may cancel this contract at any time before midnight of the third business day after the date of this contract. See the notice of cancellation form at the end of this contract for an explanation of this right."

(g) No licensee shall knowingly make any false report to his or her employer or divulge to any other person, except as he or she may be required by law to do so, any information acquired by him or her except at the direction of the employer or a client for whom the information is obtained.

(h) No licensee shall use a badge in connection with the official activities of the licensee's business.

(i) No licensee shall permit an employee or agent in his or her own name to advertise, engage clients, furnish reports, or present bills to clients, or in any manner whatever to conduct business for which a license is required under this chapter.

(j) Pursuant to subdivisions (a) and (c) of Section 15006, the commissioner shall have the authority to enforce the provisions of this chapter and prosecute violations thereunder committed by unlicensed persons or entities that hold themselves out or act as public insurance adjusters.

(k) For purposes of this section, "business day" shall have the same meaning given to that term in subdivision (e) of Section 1689.5 of the Civil Code, as in effect on the operative date of this statute.

(l) The contract and the notice of cancellation set forth in paragraph (1) of subdivision (f) shall be written in the same language, e.g., Spanish, as principally used in the negotiation of the contract.

(m) Within five business days after a contract has been canceled, the licensee shall tender to the client any payments made by the client and any note or other evidence of indebtedness, including an itemized statement of all amounts tendered to the client.

(n) The licensee is not entitled to compensation for services performed prior to cancellation, other than for reimbursement of moneys paid by the licensee for out-of-pocket emergency expenses for the client or on behalf of the client. If the licensee seeks reimbursement from the client for out-of-pocket emergency expenses, and if the cancellation is made within the first three business days after the contract was initiated, the licensee shall provide the client with an itemized statement of those emergency expenses advanced to the client or on behalf of the client by the licensee. Nothing in this subdivision shall permit the licensee to recover any costs, except for out-of-pocket emergency expenses advanced to the client. Any security interest shall be canceled upon cancellation of the contract.

(o) Notice of cancellation given by the client need not take the particular form specified in paragraph (1) of subdivision (f). Notice of cancellation, however expressed, is effective if it indicates the intention of the client not to be bound by the contract.

(p) Cancellation occurs when the client gives written notice of cancellation by certified mail, return receipt requested, or other form of mailing which provides proof of mailing, to the licensee at the address specified in the contract.

(q) Notice of cancellation, if given by mail, is effective when sent by certified mail, return receipt requested, or other form of mailing which provides proof of mailing, properly addressed with postage prepaid.

(r) Until the licensee has complied with this section, the client may cancel the contract.

(s) The contracts shall be executed in duplicate. The licensee shall retain one original contract, and shall provide the insured with an original contract.

(t) The licensee shall provide the client with an original contract and notice of cancellation at the time the client signs the contract.

(u) Any confession of judgment or waiver of the provisions of this chapter shall be deemed contrary to public policy and shall be void and unenforceable.

(v) Prior to the signing of the contract, the licensee shall provide the insured with a separate printed disclosure document in the following form that bears the name and license number of the licensee:

“DISCLOSURE

There are three types of insurance adjusters that could be involved in the processing of your insurance claim. The definitions of the three types are as follows:

(1) Public adjusters means the insurance adjusters who do not work for your insurance company. They work for you, the insured, to assist in the preparation, presentation, and settlement of your claim. You hire them by signing a contract and agreeing to pay them a fee or commission based on a percentage of the settlement, or other method of compensation. Public adjusters are required to be licensed, bonded, and tested by the State of California to represent your interest only.

(2) Company adjusters means the insurance adjusters who are employees of your insurance company. They represent your insurance company and are paid by your insurance company. They will not charge you a fee and are not individually licensed or tested by the State of California.

(3) Independent adjusters means the insurance adjusters who are hired on a contract basis by your insurance company to represent the company in the settlement of the claim. They are paid by your insurance company. They will not charge you a fee.

You have the right, but are not required, to use the services of a public adjuster in the preparation and handling of your insurance claim.

Public adjusters cannot solicit your business while the loss is underway, or between the hours of 6 p.m. and 8 a.m.

Your “Public Adjuster Contract,” with a public adjuster representing you, should clearly indicate the amount of the fee you will be paying to your public adjuster. Your contract, with this fee percentage, should be acknowledged by your initials on the “Public Adjuster Contract.” The salary, fee, commission, or other consideration is to be paid by you (the insured), not the insurance company (insurer).

You have the right to cancel the contract with your public adjuster, without any penalty or obligation, within three business days from the date the contract is signed.

If you cancel the contract with your public adjuster, any money or other consideration paid by you will be returned within five business days following the receipt of your cancellation notice, and any security interest arising out of the transaction will be canceled.

To cancel the contract with your public adjuster, mail or deliver by certified mail, return receipt requested, or other form of mailing which provides proof of mailing, a signed and dated copy of the cancellation

notice, or any other written notice, or send a telegram to the public adjuster at the address in the contract.

You have the right to, and may, communicate with your insurance company at any time if you feel the need during the claims process.

If you have any concerns or questions, the officers at the California Department of Insurance Consumer Hotline are there to help you. Please call them at 1-800-927-HELP (4357), or www.insurance.ca.gov.”

(w) No later than three business days after the cancellation has expired, the public adjuster shall notify the insurer, its adjuster, or its attorney, that he or she has entered into a written contract with the insured.

(x) If the licensee misrepresents or conceals a material fact from the insured prior to execution of the contract, the insured is entitled to rescind the contract without time limit.

SEC. 15. Section 15027.1 of the Insurance Code is amended to read:

15027.1. (a) Notwithstanding subdivision (e) of Section 15027, a licensee shall not solicit a contract of engagement for residential properties under this chapter until seven calendar days have elapsed after the occurrence of a disaster.

(b) Subdivision (a) shall not apply if the licensee is contacted directly by the insured or the insured’s representative.

(c) For the purposes of this section, “disaster” means a loss-producing event that damages or destroys more than 25 dwellings, or a “disaster” as that term is defined in subdivision (b) of Section 1689.14 of the Civil Code.

SEC. 16. Section 15027.5 is added to the Insurance Code, to read:

15027.5. Any person acting as a public adjuster who has executed a contract as described in Section 15027 is the agent of the insured. While acting under the authority of such a contract, a public adjuster may not receive any fees or other consideration, monetary or otherwise, from either the insured or any other source, in excess of the amount or percentage provided in the contract. Any compensation received by the public adjuster from any party or any other source connected to the claim adjustment, including any contractor, insurer, or vendor, shall be disclosed by the public adjuster to the insured. The insured may rescind the contract if the adjuster fails to make the required disclosure or if the public adjuster’s receipt of any compensation from a third party conflicts with the interests of the insured.

SEC. 17. Section 15028.7 is added to the Insurance Code, to read:

15028.7. (a) A public adjuster who receives, accepts, or holds any funds on behalf of an insured towards the settlement of a claim for loss or damage shall deposit the funds in a non-interest-bearing escrow or trust account in a financial institution that is insured by an agency of the

federal government in the adjuster's home state or the state where the loss occurred.

(b) All funds held in an escrow or trust account shall be the property of the insured and shall be held pursuant to a written contract signed by the insured and the public adjuster.

(c) A public adjuster who receives any fiduciary funds shall, within 15 business days of receipt, deposit the funds in the escrow account and provide a written statement to the insured showing the amount of funds received and deposited in escrow.

(d) A public adjuster who, after reasonable diligence, is unable to obtain the endorsements of all payees designated on any bank draft representing fiduciary funds, or who receives a written statement from the insured indicating that he or she does not wish to establish an escrow or trust account, shall be exempt from the requirements of subdivisions (a) to (c), inclusive.

(e) The endorsement by a payee designated on any bank draft representing fiduciary funds shall not be construed as a waiver of any potential right of the payee to dispute the public adjuster's entitlement to those funds or any portion thereof.

SEC. 18. Section 15033 of the Insurance Code is amended to read:

15033. No license shall be issued under this chapter unless the applicant files with the commissioner a surety bond executed by a surety company authorized to do business in the state in the sum of twenty thousand dollars (\$20,000) conditioned for the faithful and honest conduct of business by the applicant. The bond, as to its form, execution, and sufficiency of the surety shall be approved by the commissioner.

SEC. 19. Section 15036 of the Insurance Code is amended to read:

15036. In lieu of the surety bond required by this chapter there may be deposited with the State of California the sum of twenty thousand dollars (\$20,000) in cash, or evidence of deposit of the sum of twenty thousand dollars (\$20,000) in banks authorized to do business in this state and insured by the Federal Deposit Insurance Corporation, or investment certificates or share accounts in the amount of twenty thousand dollars (\$20,000) issued by a savings association doing business in this state and insured by the Federal Deposit Insurance Corporation, or evidence of a certificate of funds or share account of the sum of twenty thousand dollars (\$20,000) in a credit union as defined in Section 14000 of the Financial Code whose share deposits are guaranteed by the National Credit Union Administration or guaranteed by any other agency approved by the Department of Financial Institutions.

SEC. 20. Section 15039.5 is added to the Insurance Code, to read:

15039.5. The commissioner may, without hearing, suspend or revoke a license issued under this chapter if he or she determines that the licensee

has committed any act or crime constituting grounds for denial of license under Section 15018.5.

SEC. 21. Section 15040 of the Insurance Code is amended to read:

15040. The record or conviction, or a certified copy thereof, shall be conclusive evidence of the conviction as that term is used in this article or in Section 15018 or 15018.5.

A plea or verdict of guilty or a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning of this article or of Section 15018 or 15018.5. The commissioner may order the license suspended or revoked, or may decline to issue a license, when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code allowing that person to withdraw his or her plea of guilty and enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or indictment.

SEC. 22. Section 15056 of the Insurance Code is amended to read:

15056. Except as otherwise provided in this article, an expired license or branch office certificate may be renewed at any time within one year after its expiration on the filing of an application for renewal on a form prescribed by the commissioner, and the payment of a renewal fee in effect on the last preceding regular renewal date. If the license or certificate is renewed more than 30 days after its expiration, the licensee, as a condition precedent to renewal, shall also pay the delinquency fee prescribed by this chapter. Renewal under this section shall be effective on the date on which the application is filed, on the date on which the renewal fee is paid, or on the date on which the delinquency fee, if any, is paid, whichever last occurs. If so renewed, the license or certificate shall continue in effect through the date provided in Section 15044 which next occurs after the effective date of the renewal, when it shall expire if it is not again renewed.

Renewal of a license or certificate shall not prohibit the bringing of disciplinary proceedings for an act committed before the effective date of the renewal.

SEC. 23. Section 15059 of the Insurance Code is amended to read:

15059. A license or branch office certificate which is not renewed within one year after its expiration may not be renewed, restored, reinstated, or reissued thereafter.

The holder of the license or certificate may obtain a new license or certificate only on compliance with all of the provisions of this chapter relating to the issuance of an original license or certificate.

SEC. 24. Section 3.5 of this bill incorporates amendments to Section 10089.82 of the Insurance Code proposed by both this bill and SB 2. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2006, (2) each bill amends Section 10089.82 of the Insurance Code, and (3) this bill is enacted after SB 2, in which case Section 3 of this bill shall not become operative.

CHAPTER 449

An act to add and repeal Section 14132.725 of the Welfare and Institutions Code, relating to Medi-Cal.

[Approved by Governor September 30, 2005. Filed with
Secretary of State September 30, 2005.]

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

SECTION 1. Section 14132.725 is added to the Welfare and Institutions Code, to read:

14132.725. (a) Commencing July 1, 2006, to the extent that federal financial participation is available, face-to-face contact between a health care provider and a patient shall not be required under the Medi-Cal program for teleophthalmology and teledermatology by store and forward. Services appropriately provided through this store and forward process are subject to billing and reimbursement policies developed by the department.

(b) For purposes of this section, “teleophthalmology and teledermatology by store and forward” means an asynchronous transmission of medical information to be reviewed at a later time by a physician at a distant site who is trained in ophthalmology or dermatology, where the physician at the distant site reviews the medical information without the patient being present in real time. A patient receiving teleophthalmology or teledermatology by store and forward shall be notified of the right to receive interactive communication with the distant specialist physician, and shall receive an interactive communication with the distant specialist physician, upon request. If requested, communication with the distant specialist physician may occur either at the time of the consultation, or within 30 days of the patient’s notification of the results of the consultation.

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

may implement, interpret, and make specific this section by means of all county letters, provider bulletins, and similar instructions.

(d) On or before January 1, 2008, the department shall report to the Legislature the number and type of services provided, and the payments made related to the application of store and forward telemedicine as provided, under this section as a Medi-Cal benefit.

(e) The health care provider shall comply with the informed consent provisions of subdivisions (c) to (g), inclusive, of, and subdivisions (i) and (j) of, Section 2290.5 of the Business and Professions Code when a patient receives teleophthalmology or teledermatology by store and forward.

(f) 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.

CHAPTER 450

An act to amend Section 1357.120 of, to amend the heading of Article 2 (commencing with Section 1363.05) of Chapter 4 of Title 6 of Part 4 of Division 2 of, and to add Sections 1363.03, 1363.04, and 1363.09 to, the Civil Code, relating to common interest developments.

[Approved by Governor October 3, 2005. Filed with
Secretary of State October 3, 2005.]

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

SECTION 1. Section 1357.120 of the Civil Code is amended to read:
1357.120. (a) Sections 1357.130 and 1357.140 only apply to an operating rule that relates to one or more of the following subjects:

(1) Use of the common area or of an exclusive use common area.
(2) Use of a separate interest, including any aesthetic or architectural standards that govern alteration of a separate interest.

(3) Member discipline, including any schedule of monetary penalties for violation of the governing documents and any procedure for the imposition of penalties.

(4) Any standards for delinquent assessment payment plans.

(5) Any procedures adopted by the association for resolution of disputes.

(6) Any procedures for reviewing and approving or disapproving a proposed physical change to a member's separate interest or to the common area.

- (7) Procedures for elections.
- (b) Sections 1357.130 and 1357.140 do not apply to the following actions by the board of directors of an association:
 - (1) A decision regarding maintenance of the common area.
 - (2) A decision on a specific matter that is not intended to apply generally.
 - (3) A decision setting the amount of a regular or special assessment.
 - (4) A rule change that is required by law, if the board of directors has no discretion as to the substantive effect of the rule change.
 - (5) Issuance of a document that merely repeats existing law or the governing documents.

SEC. 2. The heading of Article 2 (commencing with Section 1363.05) of Chapter 4 of Title 6 of Part 4 of Division 2 of the Civil Code is amended to read:

Article 2. Elections and Meetings

SEC. 3. Section 1363.03 is added to Article 2 (commencing with Section 1363.05) of Chapter 4 of Title 6 of Part 4 of Division 2 of the Civil Code, to read:

1363.03. (a) An association shall adopt rules, in accordance with the procedures prescribed by Article 4 (commencing with Section 1357.100) of Chapter 2, that do all of the following:

(1) Ensure that if any candidate or member advocating a point of view is provided access to association media, newsletters, or Internet Web sites during a campaign, for purposes that are reasonably related to that election, equal access shall be provided to all candidates and members advocating a point of view, including those not endorsed by the board, for purposes that are reasonably related to the election. The association shall not edit or redact any content from these communications, but may include a statement specifying that the candidate or member, and not the association, is responsible for that content.

(2) Ensure access to the common area meeting space, if any exists, during a campaign, at no cost, to all candidates, including those who are not incumbents, and to all members advocating a point of view, including those not endorsed by the board, for purposes reasonably related to the election.

(3) Specify the qualifications for candidates for the board of directors and any other elected position, and procedures for the nomination of candidates. A nomination or election procedure shall not be deemed reasonable if it disallows any member of the association from nominating himself or herself for election to the board of directors.

(4) Specify the qualifications for voting, the voting power of each membership, the authenticity, validity, and effect of proxies, and the voting period for elections, including the times at which polls will open and close.

(5) Specify a method of selecting one or three independent third parties as inspector, or inspectors, of election utilizing one of the following methods:

(A) Appointment of the inspector or inspectors by the board.

(B) Election of the inspector or inspectors by the members of the association.

(C) Any other method for selecting the inspector or inspectors.

(b) Notwithstanding any other law or provision of the governing documents, an election within a common interest development regarding assessments, selection of members of the association board of directors, amendments to the governing documents, or the grant of exclusive use of common area property pursuant to Section 1363.07 shall be held by secret ballot in accordance with the procedures set forth in this section.

(c) (1) The association shall select an independent third party or parties as an inspector of election. The number of inspectors of election shall be one or three.

(2) For the purposes of this section, an independent third party includes, but is not limited to, a volunteer poll worker with the county registrar of voters, a licensee of the California Board of Accountancy, or a notary public. An independent third party may be a member of the association, but may not be a member of the board of directors or a candidate for the board of directors or related to a member of the board of directors or a candidate for the board of directors. An independent third party may not be a person who is currently employed or under contract to the association for any compensable services unless expressly authorized by rules of the association adopted pursuant to paragraph (5) of subdivision (a).

(3) The inspector or inspectors of election shall do all of the following:

(A) Determine the number of memberships entitled to vote and the voting power of each.

(B) Determine the authenticity, validity, and effect of proxies, if any.

(C) Receive ballots.

(D) Hear and determine all challenges and questions in any way arising out of or in connection with the right to vote.

(E) Count and tabulate all votes.

(F) Determine when the polls shall close.

(G) Determine the result of the election.

(H) Perform any acts as may be proper to conduct the election with fairness to all members in accordance with this section and all applicable

rules of the association regarding the conduct of the election that are not in conflict with this section.

(4) An inspector of election shall perform his or her duties impartially, in good faith, to the best of his or her ability, and as expeditiously as is practical. If there are three inspectors of election, the decision or act of a majority shall be effective in all respects as the decision or act of all. Any report made by the inspector or inspectors of election is prima facie evidence of the facts stated in the report.

(d) Any instruction given in a proxy issued for an election that directs the manner in which the proxy holder is to cast the vote shall be set forth on a separate page of the proxy that can be detached and given to the proxy holder to retain. The proxy holder shall cast the member's vote by secret ballot.

(e) Ballots and two preaddressed envelopes with instructions on how to return ballots shall be mailed by first-class mail or delivered by the association to every member not less than 30 days prior to the deadline for voting. In order to preserve confidentiality, a voter may not be identified by name, address, or lot, parcel, or unit number on the ballot. The association shall use as a model those procedures used by California counties for ensuring confidentiality of voter absentee ballots, including all of the following:

(1) The ballot itself is not signed by the voter, but is inserted into an envelope that is sealed. This envelope is inserted into a second envelope that is sealed. In the upper left hand corner of the second envelope, the voter prints and signs his or her name, address, and lot, or parcel, or unit number that entitles him or her to vote.

(2) The second envelope is addressed to the inspector or inspectors of election, who will be tallying the votes. The envelope may be mailed or delivered by hand to a location specified by the inspector or inspectors of election. The member may request a receipt for delivery.

(f) All votes shall be counted and tabulated by the inspector or inspectors of election in public at a properly noticed open meeting of the board of directors or members. Any candidate or other member of the association may witness the counting and tabulation of the votes. No person, including a member of the association or an employee of the management company, shall open or otherwise review any ballot prior to the time and place at which the ballots are counted and tabulated.

(g) The results of the election shall be promptly reported to the board of directors of the association and shall be recorded in the minutes of the next meeting of the board of directors and shall be available for review by members of the association. Within 15 days of the election, the board shall publicize the results of the election in a communication directed to all members.

(h) The sealed ballots at all times shall be in the custody of the inspector or inspectors of election or at a location designated by the inspector or inspectors until after the tabulation of the vote, at which time custody shall be transferred to the association.

(i) After tabulation, election ballots shall be stored by the association in a secure place for no less than one year after the date of the election. In the event of a recount or other challenge to the election process, the association shall, upon written request, make the ballots available for inspection and review by association members or their authorized representatives. Any recount shall be conducted in a manner that shall preserve the confidentiality of the vote.

(j) The provisions of this section apply to both incorporated and unincorporated associations, notwithstanding any contrary provision of the governing documents.

SEC. 4. Section 1363.04 is added to Article 2 (commencing with Section 1363.05 of Chapter 4 of Title 6 of Part 4 of Division 2 of the Civil Code, to read:

1363.04. (a) Association funds shall not be used for campaign purposes in connection with any association board election. Funds of the association shall not be used for campaign purposes in connection with any other association election except to the extent necessary to comply with duties of the association imposed by law.

(b) For the purposes of this section “campaign purposes” include, but are not limited to, the following:

(1) Expressly advocating the election or defeat or any candidate that is on the association election ballot.

(2) Including the photograph or prominently featuring the name of any candidate on a communication from the association or its board, excepting the ballot and ballot materials, within 30 days of an election, provided that this is not a campaign purpose if the communication is one for which subdivision (a) of Section 1363.03 requires that equal access be provided to another candidate or advocate.

SEC. 5. Section 1363.09 is added to Article 2 (commencing with Section 1363.05) of Chapter 4 of Title 6 of Part 4 of Division 2 of the Civil Code, to read:

1363.09. (a) A member of an association may bring a civil action for declaratory or equitable relief for a violation of this article by an association of which he or she is a member, including, but not limited to, injunctive relief, restitution, or a combination thereof, within one year of the date the cause of action accrues. Upon a finding that the election procedures of this article, or the adoption of and adherence to rules provided by Article 4 (commencing with Section 1357.100) of Chapter 2, were not followed, a court may void any results of the election.

(b) A member who prevails in a civil action to enforce his or her rights pursuant to this article shall be entitled to reasonable attorney's fees and court costs, and the court may impose a civil penalty of up to five hundred dollars (\$500) for each violation, except that each identical violation shall be subject to only one penalty if the violation affects each member of the association equally. A prevailing association shall not recover any costs, unless the court finds the action to be frivolous, unreasonable, or without foundation.

(c) A cause of action under Section 1363.03 with respect to access to association resources by a candidate or member advocating a point of view, the receipt of a ballot by a member, or the counting, tabulation, or reporting of, or access to, ballots for inspection and review after tabulation may be brought in small claims court if the amount of the demand does not exceed the jurisdiction of that court.

SEC. 6. This act shall become operative only if Assembly Bill 1098 of the 2005-06 Regular Session is enacted and becomes effective on or before January 1, 2006.

SEC. 7. This act shall become operative on July 1, 2006.

CHAPTER 451

An act to amend Section 14845 of the Government Code, and to amend Sections 999, 999.5, 999.7, 999.11, and 999.12 of the Military and Veterans Code, relating to veterans.

[Approved by Governor October 3, 2005. Filed with
Secretary of State October 3, 2005.]

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

SECTION 1. Section 14845 of the Government Code is amended to read:

14845. Using existing resources, the Department of General Services' small business advocate shall, at a minimum, provide the following services:

(a) Assist certified small businesses and certified disabled veteran business enterprises by providing information regarding all of the following:

(1) Identification of potential certified small business and certified disabled veteran business enterprise subcontractors and potential subcontracting opportunities.

(2) Solicitation protest procedures and timelines.

(3) Prompt payment procedures.

(b) Using existing resources, develop and maintain an outreach and education program to assist certified small businesses and certified disabled veteran business enterprises to establish the California multiple award schedule. The department shall actively promote the availability of certified small business and certified disabled veteran business enterprise suppliers to deliver or provide a broad range of goods and services to governmental agencies through their participation in the California multiple award schedule program established pursuant to Chapter 2 (commencing with Section 10290) of Part 2 of Division 2 of the Public Contract Code and other types of contracts established by state agencies for repetitively used and commonly needed goods and services.

(c) Whenever the director consolidates the needs of multiple state agencies and establishes a contract for repetitively purchased or commonly needed goods or services, the director shall both encourage bidders to utilize certified small business and certified disabled veteran business enterprise suppliers and subcontractors, and utilize multiple award methods whenever practicable to further ensure that a fair proportion of needed goods and services are obtained from certified small businesses and certified disabled veteran business enterprises.

(d) Using existing resources, establish a training and development program for acquisition professionals, including methods for structuring solicitations to enhance the participation of certified small businesses and certified disabled veteran business enterprises in state contracting.

(e) Using existing resources, the department shall establish a recognition and awards program for state employees who make an outstanding contribution to the state's overall effort to increase the level of certified small business participation in state contracting or certified disabled veteran business enterprise participation in state contracting.

(f) Prepare, and make available to the public, a directory of certified small business and certified disabled veteran business enterprise suppliers.

(g) In its review of state agency acquisitions, the department, as applicable, shall identify areas where improvements in the level of participation of certified small businesses and certified disabled veteran business enterprises in state contracting can be achieved.

SEC. 2. Section 999 of the Military and Veterans Code is amended to read:

999. (a) This article shall be known as, and may be cited as, the California Disabled Veteran Business Enterprise Program. The California Disabled Veteran Business Enterprise Program is established to address the special needs of disabled veterans seeking rehabilitation and training

through entrepreneurship and to recognize the sacrifices of Californians disabled during military service. It is the intent of the Legislature that every state procurement authority honor California's disabled veterans by taking all practical actions necessary to meet or exceed the disabled veteran business enterprise participation goal of a minimum of 3 percent of total contract value.

(b) As used in this article, the following definitions apply:

(1) "Administering agency" means the Treasurer in the case of contracts for professional bond services, and the Department of General Services' Office of Small Business and Disabled Veteran Business Enterprise Services, in the case of contracts governed by Section 999.2.

(2) "Awarding department" means any state agency, department, governmental entity, or other officer or entity empowered by law to issue bonds or enter into contracts on behalf of the State of California.

(3) "Bonds" means bonds, notes, warrants, certificates of participation, and other evidences of indebtedness issued by, or on behalf of, the State of California.

(4) "Contract" includes any agreement or joint agreement to provide professional bond services to the State of California or an awarding department. "Contract" also includes any agreement or joint development agreement to provide labor, services, materials, supplies, or equipment in the performance of a contract, franchise, concession, or lease granted, let, or awarded for, and on behalf of, the State of California.

(5) (A) "Contractor" means any person or persons, regardless of race, color, creed, national origin, ancestry, sex, marital status, disability, religious or political affiliation, age, or any sole proprietorship, firm, partnership, joint venture, corporation, or combination thereof who submits a bid and enters into a contract with a representative of a state agency, department, governmental entity, or other officer empowered by law to enter into contracts on behalf of the State of California. "Contractor" includes any provider of professional bond services who enters into a contract with an awarding department.

(B) "Disabled veteran business enterprise contractor, subcontractor, or supplier" means any person or entity that has been certified by the administering agency pursuant to this article and that performs a "commercially useful function," as defined below, in providing services or goods that contribute to the fulfillment of the contract requirements:

(i) A person or an entity is deemed to perform a "commercially useful function" if a person or entity does all of the following:

(I) (aa) Is responsible for the execution of a distinct element of the work of the contract.

(ab) Carries out the obligation by actually performing, managing, or supervising the work involved.

(ac) Performs work that is normal for its business services and functions.

(II) Is not further subcontracting a portion of the work that is greater than that expected to be subcontracted by normal industry practices.

(ii) A contractor, subcontractor, or supplier will not be considered to perform a “commercially useful function” if the contractor’s, subcontractor’s, or supplier’s role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of a disabled veteran business enterprise participation.

(6) “Disabled veteran” means a veteran of the military, naval, or air service of the United States, including, but not limited to, the Philippine Commonwealth Army, the Regular Scouts, “Old Scouts,” and the Special Philippine Scouts, “New Scouts,” who has at least a 10-percent service-connected disability and who is domiciled in the State of California.

(7) (A) “Disabled veteran business enterprise” means a business certified by the administering agency as meeting all of the following requirements:

(i) It is a sole proprietorship at least 51 percent owned by one or more disabled veterans or, in the case of a publicly owned business, at least 51 percent of its stock is owned by one or more disabled veterans; a subsidiary that is wholly owned by a parent corporation, but only if at least 51 percent of the voting stock of the parent corporation is owned by one or more disabled veterans; or a joint venture in which at least 51 percent of the joint venture’s management, control, and earnings are held by one or more disabled veterans.

(ii) The management and control of the daily business operations are by one or more disabled veterans. The disabled veterans who exercise management and control are not required to be the same disabled veterans as the owners of the business.

(iii) It is a sole proprietorship, corporation, or partnership with its home office located in the United States, which is not a branch or subsidiary of a foreign corporation, foreign firm, or other foreign-based business.

(B) Notwithstanding subparagraph (A), after the death or the certification of a permanent medical disability of a disabled veteran who is a majority owner of a business that qualified as a disabled veteran business enterprise prior to that death or certification of a permanent medical disability, and solely for purposes of any contract entered into before that death or certification, that business shall be deemed to be a disabled veteran business enterprise for a period not to exceed three years after the date of that death or certification of a permanent medical

disability, if the business is inherited or controlled by the spouse or child of that majority owner, or by both of those persons.

(8) “Foreign corporation,” “foreign firm,” or “foreign-based business” means a business entity that is incorporated or has its principal headquarters located outside the United States of America.

(9) “Goal” means a numerically expressed objective that awarding departments and contractors are required to make efforts to achieve.

(10) “Management and control” means effective and demonstrable management of the business entity.

(11) “Professional bond services” include services as financial advisers, bond counsel, underwriters in negotiated transactions, underwriter’s counsel, financial printers, feasibility consultants, and other professional services related to the issuance and sale of bonds.

SEC. 3. Section 999.5 of the Military and Veterans Code is amended to read:

999.5. (a) The administering agency for the California Disabled Veteran Business Enterprise Program is the Department of General Services, except in the case of contracts for professional bond services. The Department of General Services shall consult with the California Disabled Veteran Business Enterprise Program Advocate, appointed by the Department of Veterans Affairs pursuant to Section 999.11, on all matters relating to the California Disabled Veteran Business Enterprise Program. The Director of General Services shall adopt written policies and guidelines establishing a uniform process for state contracting that would provide a disabled veteran business enterprise participation incentive to bidders. The incentive program shall be used by all state agencies when awarding contracts.

(b) The Department of Veterans Affairs shall do all of the following:

(1) Establish a method of monitoring adherence to the goals specified in Sections 999.1 and 999.2.

(2) Promote the California Disabled Veteran Business Enterprise Program to the fullest extent possible.

(3) Maintain complete records of its promotional efforts.

(4) Establish a system to track the effectiveness of its efforts to promote the California Disabled Veteran Business Enterprise Program, which shall include regular, periodic surveys of newly certified disabled veteran business enterprises to determine how they learned of the program, why they became certified, and what their experience with awarding departments has been.

(c) An awarding department shall not credit toward the department’s 3-percent goal state funds expended on a contract with a disabled veteran business enterprise that does not meet and maintain the certification requirements.

(d) The administering agency shall adopt rules and regulations, including standards for good faith efforts, for the purpose of implementing this section. Emergency regulations consistent with this section may be adopted.

SEC. 4. Section 999.7 of the Military and Veterans Code, as amended by Section 55 of Chapter 74 of the Statutes of 2005, is amended to read:

999.7. (a) (1) Notwithstanding Section 10115.5 of the Public Contract Code, on January 1 of each year, each awarding department shall report to the Department of General Services and the Department of Veterans Affairs on the level of participation by disabled veteran business enterprises in contracts identified in this article for the previous fiscal year.

(2) If the awarding department has not met the established goals for that year, the awarding department shall report to the Department of General Services and the Department of Veterans Affairs the reasons for the awarding department's inability to achieve the goals and shall identify steps it shall take in an effort to achieve the goals.

(3) The Director of General Services shall adopt a streamlined reporting procedure for state agencies to use in reporting their disabled veteran business enterprise participation to the department.

(b) On April 1 of each year, the Department of General Services shall prepare for the Governor, the Legislature, and the Department of Veterans Affairs a statewide statistical summary detailing each awarding department's goal achievement and a statewide total of those goals.

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

SEC. 5. Section 999.11 of the Military and Veterans Code is amended to read:

999.11. The Secretary of the Department of Veterans Affairs shall appoint the California Disabled Veteran Business Enterprise Program Advocate. The California Disabled Veteran Business Enterprise Program Advocate shall report directly to the secretary and shall do all of the following:

(a) Oversee, promote, and coordinate efforts to facilitate implementation of this article.

(b) Disseminate information on this article.

(c) Coordinate reports pursuant to Section 999.7.

(d) Coordinate with administering agencies and existing and potential disabled veteran business enterprises to achieve the goals specified in Sections 999.1 and 999.2.

(e) Coordinate with the California Disabled Veteran Business Enterprise Program Advocate appointed in all awarding departments pursuant to Section 999.12.

SEC. 6. Section 999.12 of the Military and Veterans Code is amended to read:

999.12. Each awarding department shall appoint an agency Disabled Veteran Business Enterprise Program Advocate. This person shall be the same individual appointed pursuant to Section 14846 of the Government Code. The agency Disabled Veteran Business Enterprise Program Advocate shall do all of the following:

(a) Assist certified disabled veteran business enterprises in participating in that agency's contracting process.

(b) Assist contract officers in seeking disabled veteran business enterprises to participate in the agency's contract and procurement activities by performing outreach efforts to recruit disabled veteran business enterprises to offer their services as either a prime contractor or subcontractor on any contract proposed by the awarding department that requires disabled veteran business enterprise participation, and by other feasible means.

(c) Meet regularly with the California Disabled Veteran Business Enterprise Program Advocate and contract and procurement staffs of their departments to disseminate information about the California Disabled Veteran Business Enterprise Program.

(d) Serve as an advocate for the disabled veteran business enterprises that are utilized as the agency's contractors or subcontractors.

(e) Report to the Office of Small Business and Disabled Veteran Business Enterprise Services regarding any violation of this article.

(f) Coordinate and meet, on a regular basis, with the California Disabled Veteran Business Enterprise Program Advocate at the Department of Veterans Affairs in an effort to meet the statewide 3-percent goal provided for in Section 999.2.

CHAPTER 452

An act to amend Sections 1365.1 and 1367.1 of, to add Sections 1363.001, 1367.4, and 1367.5 to, and to repeal Section 1366.3 of, the Civil Code, and to amend Section 116.540 of, and to add Section 729.035 to, the Code of Civil Procedure, relating to common interest developments.

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

SECTION 1. Section 1363.001 is added to the Civil Code, to read:

1363.001. To the extent existing funds are available, the Department of Consumer Affairs and the Department of Real Estate shall develop an on-line education course for the board of directors of an association regarding the role, duties, laws, and responsibilities of board members and prospective board members, and the nonjudicial foreclosure process.

SEC. 2. Section 1365.1 of the Civil Code is amended to read:

1365.1. (a) The association shall distribute the written notice described in subdivision (b) to each member of the association during the 60-day period immediately preceding the beginning of the association's fiscal year. The notice shall be printed in at least 12-point type. An association distributing the notice to an owner of an interest that is described in Section 11212 of the Business and Professions Code that is not otherwise exempt from this section pursuant to subdivision (a) of Section 11211.7, may delete from the notice described in subdivision (b) the portion regarding meetings and payment plans.

(b) The notice required by this section shall read as follows:

“NOTICE ASSESSMENTS AND FORECLOSURE

This notice outlines some of the rights and responsibilities of owners of property in common interest developments and the associations that manage them. Please refer to the sections of the Civil Code indicated for further information. A portion of the information in this notice applies only to liens recorded on or after January 1, 2003. You may wish to consult a lawyer if you dispute an assessment.

ASSESSMENTS AND FORECLOSURE

Assessments become delinquent 15 days after they are due, unless the governing documents provide for a longer time. The failure to pay association assessments may result in the loss of an owner's property through foreclosure. Foreclosure may occur either as a result of a court action, known as judicial foreclosure or without court action, often referred to as nonjudicial foreclosure. For liens recorded on and after January 1, 2006, an association may not use judicial or nonjudicial foreclosure to enforce that lien if the amount of the delinquent assessments or dues, exclusive of any accelerated assessments, late charges, fees, attorney's fees, interest, and costs of collection, is less than one thousand eight hundred dollars (\$1,800). For delinquent assessments or dues in excess of one thousand eight hundred dollars

(\$1,800) or more than 12 months delinquent, an association may use judicial or nonjudicial foreclosure subject to the conditions set forth in Section 1367.4 of the Civil Code. When using judicial or nonjudicial foreclosure, the association records a lien on the owner's property. The owner's property may be sold to satisfy the lien if the amounts secured by the lien are not paid. (Sections 1366, 1367.1, and 1367.4 of the Civil Code)

In a judicial or nonjudicial foreclosure, the association may recover assessments, reasonable costs of collection, reasonable attorney's fees, late charges, and interest. The association may not use nonjudicial foreclosure to collect fines or penalties, except for costs to repair common areas damaged by a member or a member's guests, if the governing documents provide for this. (Sections 1366 and 1367.1 of the Civil Code)

The association must comply with the requirements of Section 1367.1 of the Civil Code when collecting delinquent assessments. If the association fails to follow these requirements, it may not record a lien on the owner's property until it has satisfied those requirements. Any additional costs that result from satisfying the requirements are the responsibility of the association. (Section 1367.1 of the Civil Code)

At least 30 days prior to recording a lien on an owner's separate interest, the association must provide the owner of record with certain documents by certified mail, including a description of its collection and lien enforcement procedures and the method of calculating the amount. It must also provide an itemized statement of the charges owed by the owner. An owner has a right to review the association's records to verify the debt. (Section 1367.1 of the Civil Code)

If a lien is recorded against an owner's property in error, the person who recorded the lien is required to record a lien release within 21 days, and to provide an owner certain documents in this regard. (Section 1367.1 of the Civil Code)

The collection practices of the association may be governed by state and federal laws regarding fair debt collection. Penalties can be imposed for debt collection practices that violate these laws.

PAYMENTS

When an owner makes a payment, he or she may request a receipt, and the association is required to provide it. On the receipt, the association must indicate the date of payment and the person who received it. The association must inform owners of a mailing address for overnight payments. (Section 1367.1 of the Civil Code)

An owner may dispute an assessment debt by submitting a written request for dispute resolution to the association as set forth in Article 5

(commencing with Section 1368.810) of Chapter 4 of Title 6 of Division 2 of the Civil Code. In addition, an association may not initiate a foreclosure without participating in alternative dispute resolution with a neutral third party as set forth in Article 2 (commencing with Section 1369.510) of Chapter 7 of Title 6 of Division 2 of the Civil Code, if so requested by the owner. Binding arbitration shall not be available if the association intends to initiate a judicial foreclosure.

An owner is not liable for charges, interest, and costs of collection, if it is established that the assessment was paid properly on time. (Section 1367.1 of the Civil Code)

MEETINGS AND PAYMENT PLANS

An owner of a separate interest that is not a timeshare may request the association to consider a payment plan to satisfy a delinquent assessment. The association must inform owners of the standards for payment plans, if any exist. (Section 1367.1 of the Civil Code)

The board of directors must meet with an owner who makes a proper written request for a meeting to discuss a payment plan when the owner has received a notice of a delinquent assessment. These payment plans must conform with the payment plan standards of the association, if they exist. (Section 1367.1 of the Civil Code)”

(c) A member of an association may provide written notice by facsimile transmission or United States mail to the association of a secondary address. If a secondary address is provided, the association shall send any and all correspondence and legal notices required pursuant to this article to both the primary and the secondary address.

SEC. 3. Section 1366.3 of the Civil Code is repealed.

SEC. 4. Section 1367.1 of the Civil Code is amended to read:

1367.1. (a) A regular or special assessment and any late charges, reasonable fees and costs of collection, reasonable attorney’s fees, if any, and interest, if any, as determined in accordance with Section 1366, shall be a debt of the owner of the separate interest at the time the assessment or other sums are levied. At least 30 days prior to recording a lien upon the separate interest of the owner of record to collect a debt that is past due under this subdivision, the association shall notify the owner of record in writing by certified mail of the following:

(1) A general description of the collection and lien enforcement procedures of the association and the method of calculation of the amount, a statement that the owner of the separate interest has the right to inspect the association records, pursuant to Section 8333 of the Corporations Code, and the following statement in 14-point boldface type, if printed, or in capital letters, if typed: “IMPORTANT NOTICE:

IF YOUR SEPARATE INTEREST IS PLACED IN FORECLOSURE BECAUSE YOU ARE BEHIND IN YOUR ASSESSMENTS, IT MAY BE SOLD WITHOUT COURT ACTION.”

(2) An itemized statement of the charges owed by the owner, including items on the statement which indicate the amount of any delinquent assessments, the fees and reasonable costs of collection, reasonable attorney’s fees, any late charges, and interest, if any.

(3) A statement that the owner shall not be liable to pay the charges, interest, and costs of collection, if it is determined the assessment was paid on time to the association.

(4) The right to request a meeting with the board as provided by paragraph (3) of subdivision (c).

(5) The right to dispute the assessment debt by submitting a written request for dispute resolution to the association pursuant to the association’s “meet and confer” program required in Article 5 (commencing with Section 1363.810) of Chapter 4.

(6) The right to request alternative dispute resolution with a neutral third party pursuant to Article 2 (commencing with Section 1369.510) of Chapter 7 before the association may initiate foreclosure against the owner’s separate interest, except that binding arbitration shall not be available if the association intends to initiate a judicial foreclosure.

(b) Any payments made by the owner of a separate interest toward the debt set forth, as required in subdivision (a), shall first be applied to the assessments owed, and, only after the assessments owed are paid in full shall the payments be applied to the fees and costs of collection, attorney’s fees, late charges, or interest. When an owner makes a payment, the owner may request a receipt and the association shall provide it. The receipt shall indicate the date of payment and the person who received it. The association shall provide a mailing address for overnight payment of assessments.

(c) (1) (A) Prior to recording a lien for delinquent assessments, an association shall offer the owner and, if so requested by the owner, participate in dispute resolution pursuant to the association’s “meet and confer” program required in Article 5 (commencing with Section 1363.810) of Chapter 4.

(B) Prior to initiating a foreclosure for delinquent assessments, an association shall offer the owner and, if so requested by the owner, shall participate in dispute resolution pursuant to the association’s “meet and confer” program required in Article 5 (commencing with Section 1363.810) of Chapter 4 or alternative dispute resolution with a neutral third party pursuant to Article 2 (commencing with Section 1369.510) of Chapter 7. The decision to pursue dispute resolution or a particular type of alternative dispute resolution shall be the choice of the owner,

except that binding arbitration shall not be available if the association intends to initiate a judicial foreclosure.

(2) For liens recorded on or after January 1, 2006, the decision to record a lien for delinquent assessments shall be made only by the board of directors of the association and may not be delegated to an agent of the association. The board shall approve the decision by a majority vote of the board members in an open meeting. The board shall record the vote in the minutes of that meeting.

(3) An owner, other than an owner of any interest that is described in Section 11212 of the Business and Professions Code that is not otherwise exempt from this section pursuant to subdivision (a) of Section 11211.7, may submit a written request to meet with the board to discuss a payment plan for the debt noticed pursuant to subdivision (a). The association shall provide the owners the standards for payment plans, if any exist. The board shall meet with the owner in executive session within 45 days of the postmark of the request, if the request is mailed within 15 days of the date of the postmark of the notice, unless there is no regularly scheduled board meeting within that period, in which case the board may designate a committee of one or more members to meet with the owner. Payment plans may incorporate any assessments that accrue during the payment plan period. Payment plans shall not impede an association's ability to record a lien on the owner's separate interest to secure payment of delinquent assessments. Additional late fees shall not accrue during the payment plan period if the owner is in compliance with the terms of the payment plan. In the event of a default on any payment plan, the association may resume its efforts to collect the delinquent assessments from the time prior to entering into the payment plan.

(d) The amount of the assessment, plus any costs of collection, late charges, and interest assessed in accordance with Section 1366, shall be a lien on the owner's separate interest in the common interest development from and after the time the association causes to be recorded with the county recorder of the county in which the separate interest is located, a notice of delinquent assessment, which shall state the amount of the assessment and other sums imposed in accordance with Section 1366, a legal description of the owner's separate interest in the common interest development against which the assessment and other sums are levied, and the name of the record owner of the separate interest in the common interest development against which the lien is imposed. The itemized statement of the charges owed by the owner described in paragraph (2) of subdivision (a) shall be recorded together with the notice of delinquent assessment. In order for the lien to be enforced by nonjudicial foreclosure as provided in subdivision (g), the notice of

delinquent assessment shall state the name and address of the trustee authorized by the association to enforce the lien by sale. The notice of delinquent assessment shall be signed by the person designated in the declaration or by the association for that purpose, or if no one is designated, by the president of the association. A copy of the recorded notice of delinquent assessment shall be mailed by certified mail to every person whose name is shown as an owner of the separate interest in the association's records, and the notice shall be mailed no later than 10 calendar days after recordation. Within 21 days of the payment of the sums specified in the notice of delinquent assessment, the association shall record or cause to be recorded in the office of the county recorder in which the notice of delinquent assessment is recorded a lien release or notice of rescission and provide the owner of the separate interest a copy of the lien release or notice that the delinquent assessment has been satisfied. A monetary charge imposed by the association as a means of reimbursing the association for costs incurred by the association in the repair of damage to common areas and facilities for which the member or the member's guests or tenants were responsible may become a lien against the member's separate interest enforceable by the sale of the interest under Sections 2924, 2924b, and 2924c, provided the authority to impose a lien is set forth in the governing documents. It is the intent of the Legislature not to contravene Section 2792.26 of Title 10 of the California Code of Regulations, as that section appeared on January 1, 1996, for associations of subdivisions that are being sold under authority of a subdivision public report, pursuant to Part 2 (commencing with Section 11000) of Division 4 of the Business and Professions Code.

(e) Except as indicated in subdivision (d), a monetary penalty imposed by the association as a disciplinary measure for failure of a member to comply with the governing instruments, except for the late payments, may not be characterized nor treated in the governing instruments as an assessment that may become a lien against the member's subdivision separate interest enforceable by the sale of the interest under Sections 2924, 2924b, and 2924c.

(f) A lien created pursuant to subdivision (d) shall be prior to all other liens recorded subsequent to the notice of assessment, except that the declaration may provide for the subordination thereof to any other liens and encumbrances.

(g) An association may not voluntarily assign or pledge the association's right to collect payments or assessments, or to enforce or foreclose a lien to a third party, except when the assignment or pledge is made to a financial institution or lender chartered or licensed under federal or state law, when acting within the scope of that charter or license, as security for a loan obtained by the association; however, the

foregoing provision may not restrict the right or ability of an association to assign any unpaid obligations of a former member to a third party for purposes of collection. Subject to the limitations of this subdivision, after the expiration of 30 days following the recording of a lien created pursuant to subdivision (d), the lien may be enforced in any manner permitted by law, including sale by the court, sale by the trustee designated in the notice of delinquent assessment, or sale by a trustee substituted pursuant to Section 2934a. Any sale by the trustee shall be conducted in accordance with Sections 2924, 2924b, and 2924c applicable to the exercise of powers of sale in mortgages and deeds of trust. The fees of a trustee may not exceed the amounts prescribed in Sections 2924c and 2924d.

(h) Nothing in this section or in subdivision (a) of Section 726 of the Code of Civil Procedure prohibits actions against the owner of a separate interest to recover sums for which a lien is created pursuant to this section or prohibits an association from taking a deed in lieu of foreclosure.

(i) If it is determined that a lien previously recorded against the separate interest was recorded in error, the party who recorded the lien shall, within 21 calendar days, record or cause to be recorded in the office of the county recorder in which the notice of delinquent assessment is recorded a lien release or notice of rescission and provide the owner of the separate interest with a declaration that the lien filing or recording was in error and a copy of the lien release or notice of rescission.

(j) In addition to the requirements of Section 2924, a notice of default shall be served by the association on the owner's legal representative in accordance with the manner of service of summons in Article 3 (commencing with Section 415.10) of Chapter 4 of Title 5 of Part 2 of the Code of Civil Procedure.

(k) Upon receipt of a written request by an owner identifying a secondary address for purposes of collection notices, the association shall send additional copies of any notices required by this section to the secondary address provided. The association shall notify owners of their right to submit secondary addresses to the association, at the time the association issues the pro forma operating budget pursuant to Section 1365. The owner's request shall be in writing and shall be mailed to the association in a manner that shall indicate the association has received it. The owner may identify or change a secondary address at any time, provided that, if a secondary address is identified or changed during the collection process, the association shall only be required to send notices to the indicated secondary address from the point the association receives the request.

(l) (1) An association that fails to comply with the procedures set forth in this section shall, prior to recording a lien, recommence the required notice process.

(2) Any costs associated with recommencing the notice process shall be borne by the association and not by the owner of a separate interest.

(m) This section only applies to liens recorded on or after January 1, 2003.

(n) This section is subordinate to, and shall be interpreted in conformity with, Section 1367.4.

SEC. 5. Section 1367.4 is added to the Civil Code, to read:

1367.4. (a) Notwithstanding any law or any provisions of the governing documents to the contrary, this section shall apply to debts for assessments that arise on and after January 1, 2006.

(b) An association that seeks to collect delinquent regular or special assessments of an amount less than one thousand eight hundred dollars (\$1,800), not including any accelerated assessments, late charges, fees and costs of collection, attorney's fees, or interest, may not collect that debt through judicial or nonjudicial foreclosure, but may attempt to collect or secure that debt in any of the following ways:

(1) By a civil action in small claims court, pursuant to Chapter 5.5 (commencing with Section 116.110) of Title 1 of the Code of Civil Procedure. An association that chooses to proceed by an action in small claims court, and prevails, may enforce the judgment as permitted under Article 8 (commencing with Section 116.810) of Title 1 of the Code of Civil Procedure. The amount that may be recovered in small claims court to collect upon a debt for delinquent assessments may not exceed the jurisdictional limits of the small claims court and shall be the sum of the following:

(A) The amount owed as of the date of filing the complaint in the small claims court proceeding.

(B) In the discretion of the court, an additional amount to that described in subparagraph (A) equal to the amount owed for the period from the date the complaint is filed until satisfaction of the judgment, which total amount may include accruing unpaid assessments and any reasonable late charges, fees and costs of collection, attorney's fees, and interest, up to the jurisdictional limits of the small claims court.

(2) By recording a lien on the owner's separate interest upon which the association may not foreclose until the amount of the delinquent assessments secured by the lien, exclusive of any accelerated assessments, late charges, fees and costs of collection, attorney's fees, or interest, equals or exceeds one thousand eight hundred dollars (\$1,800) or the assessments are more than 12 months delinquent. An association that chooses to record a lien under these provisions, prior to recording the

lien, shall offer the owner and, if so requested by the owner, participate in dispute resolution as set forth in Article 5 (commencing with Section 1368.810) of Chapter 4.

(3) Any other manner provided by law, except for judicial or nonjudicial foreclosure.

(c) An association that seeks to collect delinquent regular or special assessments of an amount of one thousand eight hundred dollars (\$1,800) or more, not including any accelerated assessments, late charges, fees and costs of collection, attorney's fees, or interest, or any assessments that are more than 12 months delinquent, may use judicial or nonjudicial foreclosure subject to the following conditions:

(1) Prior to initiating a foreclosure on an owner's separate interest, the association shall offer the owner and, if so requested by the owner, participate in dispute resolution pursuant to the association's "meet and confer" program required in Article 5 (commencing with Section 1363.810) of Chapter 4 or alternative dispute resolution as set forth in Article 2 (commencing with Section 1369.510) of Chapter 7. The decision to pursue dispute resolution or a particular type of alternative dispute resolution shall be the choice of the owner, except that binding arbitration shall not be available if the association intends to initiate a judicial foreclosure.

(2) The decision to initiate foreclosure of a lien for delinquent assessments that has been validly recorded shall be made only by the board of directors of the association and may not be delegated to an agent of the association. The board shall approve the decision by a majority vote of the board members in an executive session. The board shall record the vote in the minutes of the next meeting of the board open to all members. The board shall maintain the confidentiality of the owner or owners of the separate interest by identifying the matter in the minutes by the parcel number of the property, rather than the name of the owner or owners. A board vote to approve foreclosure of a lien shall take place at least 30 days prior to any public sale.

(3) The board shall provide notice by personal service to an owner of a separate interest who occupies the separate interest or to the owner's legal representative, if the board votes to foreclose upon the separate interest. The board shall provide written notice to an owner of a separate interest who does not occupy the separate interest by first-class mail, postage prepaid, at the most current address shown on the books of the association. In the absence of written notification by the owner to the association, the address of the owner's separate interest may be treated as the owner's mailing address.

(4) A nonjudicial foreclosure by an association to collect upon a debt for delinquent assessments shall be subject to a right of redemption. The

redemption period within which the separate interest may be redeemed from a foreclosure sale under this paragraph ends 90 days after the sale.

(d) The limitation on foreclosure of assessment liens for amounts under the stated minimum in this section does not apply to assessments owed by owners of separate interests in timeshare estates, as defined in subdivision (x) of Section 11112 of the Business and Professions Code, or to assessments owed by developers.

SEC. 6. Section 1367.5 is added to the Civil Code, to read:

1367.5. If it is determined through dispute resolution pursuant to the association's "meet and confer" program required in Article 5 (commencing with Section 1363.810) of Chapter 4 or alternative dispute resolution with a neutral third party pursuant to Article 2 (commencing with Section 1369.510) of Chapter 7 that an association has recorded a lien for a delinquent assessment in error, the association shall promptly reverse all late charges, fees, interest, attorney's fees, costs of collection, costs imposed for the notice prescribed in subdivision (a) of Section 1367.1, and costs of recordation and release of the lien authorized under subdivision (b) of Section 1367.4, and pay all costs related to the dispute resolution or alternative dispute resolution.

SEC. 7. Section 116.540 of the Code of Civil Procedure is amended to read:

116.540. (a) Except as permitted by this section, no individual other than the plaintiff and the defendant may take part in the conduct or defense of a small claims action.

(b) Except as additionally provided in subdivision (i), a corporation may appear and participate in a small claims action only through a regular employee, or a duly appointed or elected officer or director, who is employed, appointed, or elected for purposes other than solely representing the corporation in small claims court.

(c) A party who is not a corporation or a natural person may appear and participate in a small claims action only through a regular employee, or a duly appointed or elected officer or director, or in the case of a partnership, a partner, engaged for purposes other than solely representing the party in small claims court.

(d) If a party is an individual doing business as a sole proprietorship, the party may appear and participate in a small claims action by a representative and without personally appearing if both of the following conditions are met:

(1) The claim can be proved or disputed by evidence of an account that constitutes a business record as defined in Section 1271 of the Evidence Code, and there is no other issue of fact in the case.

(2) The representative is a regular employee of the party for purposes other than solely representing the party in small claims actions and is

qualified to testify to the identity and mode of preparation of the business record.

(e) A plaintiff is not required to personally appear, and may submit declarations to serve as evidence supporting his or her claim or allow another individual to appear and participate on his or her behalf, if (1) the plaintiff is serving on active duty in the United States Armed Forces outside this state, (2) the plaintiff was assigned to his or her duty station after his or her claim arose, (3) the assignment is for more than six months, (4) the representative is serving without compensation, and (5) the representative has appeared in small claims actions on behalf of others no more than four times during the calendar year. The defendant may file a claim in the same action in an amount not to exceed the jurisdictional limits stated in Sections 116.220 and 116.231.

(f) A party incarcerated in a county jail, a Department of Corrections facility, or a Youth Authority facility is not required to personally appear, and may submit declarations to serve as evidence supporting his or her claim, or may authorize another individual to appear and participate on his or her behalf if that individual is serving without compensation and has appeared in small claims actions on behalf of others no more than four times during the calendar year.

(g) A defendant who is a nonresident owner of real property may defend against a claim relating to that property without personally appearing by (1) submitting written declarations to serve as evidence supporting his or her defense, (2) allowing another individual to appear and participate on his or her behalf if that individual is serving without compensation and has appeared in small claims actions on behalf of others no more than four times during the calendar year, or (3) taking the action described in both (1) and (2).

(h) A party who is an owner of rental real property may appear and participate in a small claims action through a property agent under contract with the owner to manage the rental of that property, if (1) the owner has retained the property agent principally to manage the rental of that property and not principally to represent the owner in small claims court, and (2) the claim relates to the rental property.

(i) A party that is an association created to manage a common interest development, as defined in Section 1351 of the Civil Code, may appear and participate in a small claims action through an agent, a management company representative, or bookkeeper who appears on behalf of that association.

(j) At the hearing of a small claims action, the court shall require any individual who is appearing as a representative of a party under subdivisions (b) to (i), inclusive, to file a declaration stating (1) that the individual is authorized to appear for the party, and (2) the basis for that

authorization. If the representative is appearing under subdivision (b), (c), (d), (h), or (i), the declaration also shall state that the individual is not employed solely to represent the party in small claims court. If the representative is appearing under subdivision (e), (f), or (g), the declaration also shall state that the representative is serving without compensation, and has appeared in small claims actions on behalf of others no more than four times during the calendar year.

(k) A husband or wife who sues or who is sued with his or her spouse may appear and participate on behalf of his or her spouse if (1) the claim is a joint claim, (2) the represented spouse has given his or her consent, and (3) the court determines that the interests of justice would be served.

(l) If the court determines that a party cannot properly present his or her claim or defense and needs assistance, the court may in its discretion allow another individual to assist that party.

(m) Nothing in this section shall operate or be construed to authorize an attorney to participate in a small claims action except as expressly provided in Section 116.530.

SEC. 8. Section 729.035 is added to the Code of Civil Procedure, to read:

729.035. Notwithstanding any provision of law to the contrary, the sale of a separate interest in a common interest development is subject to the right of redemption within 90 days after the sale if the sale arises from a foreclosure by the association of a common interest development pursuant to subdivision (g) of Section 1367.1 of the Civil Code, subject to the conditions of Section 1367.4 of the Civil Code.

CHAPTER 453

An act to amend Section 2881 of the Public Utilities Code, relating to telecommunications.

[Approved by Governor October 3, 2005. Filed with
Secretary of State October 3, 2005.]

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

SECTION 1. Section 2881 of the Public Utilities Code is amended to read:

2881. (a) The commission shall design and implement a program to provide a telecommunications device capable of serving the needs of individuals who are deaf or hearing impaired, together with a single party line, at no charge additional to the basic exchange rate, to any

subscriber who is certified as an individual who is deaf or hearing impaired by a licensed physician and surgeon, audiologist, or a qualified state or federal agency, as determined by the commission, and to any subscriber that is an organization representing individuals who are deaf or hearing impaired, as determined and specified by the commission pursuant to subdivision (e). A licensed hearing aid dispenser may certify the need of an individual to participate in the program if that individual has been previously fitted with an amplified device by the dispenser and the dispenser has the individual's hearing records on file prior to certification.

(b) The commission shall also design and implement a program to provide a dual-party relay system, using third-party intervention to connect individuals who are deaf or hearing impaired and offices of organizations representing individuals who are deaf or hearing impaired, as determined and specified by the commission pursuant to subdivision (e), with persons of normal hearing by way of intercommunications devices for individuals who are deaf or hearing impaired and the telephone system, making available reasonable access of all phases of public telephone service to telephone subscribers who are deaf or hearing impaired. In order to make a dual-party relay system that will meet the requirements of individuals who are deaf or hearing impaired available at a reasonable cost, the commission shall initiate an investigation, conduct public hearings to determine the most cost-effective method of providing dual-party relay service to the deaf or hearing impaired when using a telecommunications device, and solicit the advice, counsel, and physical assistance of statewide nonprofit consumer organizations of the deaf, during the development and implementation of the system. The commission shall phase in this program, on a geographical basis, over a three-year period ending on January 1, 1987. The commission shall apply for certification of this program under rules adopted by the Federal Communications Commission pursuant to Section 401 of the federal Americans with Disabilities Act of 1990 (Public Law 101-336).

(c) The commission shall also design and implement a program whereby specialized or supplemental telephone communications equipment may be provided to subscribers who are certified to be disabled at no charge additional to the basic exchange rate. The certification, including a statement of visual or medical need for specialized telecommunications equipment, shall be provided by a licensed optometrist or physician and surgeon, acting within the scope of practice of his or her license, or by a qualified state or federal agency as determined by the commission. The commission shall, in this connection, study the feasibility of, and implement, if determined to be

feasible, personal income criteria, in addition to the certification of disability, for determining a subscriber's eligibility under this subdivision.

(d) The commission shall establish a rate recovery mechanism through a surcharge not to exceed one-half of 1 percent uniformly applied to a subscriber's intrastate telephone service, other than one-way radio paging service and universal telephone service, both within a service area and between service areas, to allow providers of the equipment and service specified in subdivisions (a), (b), and (c), to recover costs as they are incurred under this section. The surcharge shall be in effect until January 1, 2010. The commission shall require that the programs implemented under this section be identified on subscribers' bills, and shall establish a fund and require separate accounting for each of the programs implemented under this section.

(e) The commission shall determine and specify those statewide organizations representing the deaf or hearing impaired that shall receive a telecommunications device pursuant to subdivision (a) or a dual-party relay system pursuant to subdivision (b), or both, and in which offices the equipment shall be installed in the case of an organization having more than one office.

(f) The commission may direct any telephone corporation subject to its jurisdiction to comply with its determinations and specifications pursuant to this section.

(g) The commission shall annually review the surcharge level and the balances in the funds established pursuant to subdivision (d). Until January 1, 2010, the commission shall be authorized to make, within the limits set by subdivision (d), any necessary adjustments to the surcharge to ensure that the programs supported thereby are adequately funded and that the fund balances are not excessive. A fund balance which is projected to exceed six months' worth of projected expenses at the end of the fiscal year is excessive.

(h) The commission shall prepare and submit to the Legislature, on or before December 31, 1988, and annually thereafter, a report on the fiscal status of the programs established and funded pursuant to this section and Sections 2881.1 and 2881.2. The report shall include a statement of the surcharge level established pursuant to subdivision (d) and revenues produced by the surcharge, an accounting of program expenses, and an evaluation of options for controlling those expenses and increasing program efficiency, including, but not limited to, all of the following proposals:

(1) The establishment of a means test for persons to qualify for program equipment or free or reduced charges for the use of telecommunication services.

(2) If and to the extent not prohibited under Section 401 of the federal Americans with Disabilities Act of 1990 (Public Law 101-336), the imposition of limits or other restrictions on maximum usage levels for the relay service, which shall include the development of a program to provide basic communications requirements to all relay users at discounted rates, including discounted toll-call rates, and, for usage in excess of those basic requirements, at rates which recover the full costs of service.

(3) More efficient means for obtaining and distributing equipment to qualified subscribers.

(4) The establishment of quality standards for increasing the efficiency of the relay system.

(i) In order to continue to meet the access needs of individuals with functional limitations of hearing, vision, movement, manipulation, speech and interpretation of information, the commission shall perform ongoing assessment of, and if appropriate, expand the scope of the program to allow for additional access capability consistent with evolving telecommunications technology.

(j) The commission shall structure the programs required by this section so that any charge imposed to promote the goals of universal service reasonably equals the value of the benefits of universal service to contributing entities and their subscribers.

CHAPTER 454

An act to amend Sections 1771.7 and 1788 of the Health and Safety Code, relating to continuing care retirement communities.

[Approved by Governor October 3, 2005. Filed with
Secretary of State October 3, 2005.]

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

SECTION 1. Section 1771.7 of the Health and Safety Code is amended to read:

1771.7. (a) No resident of a continuing care retirement community shall be deprived of any civil or legal right, benefit, or privilege guaranteed by law, by the California Constitution, or by the United States Constitution solely by reason of status as a resident of a community. In addition, because of the discretely different character of residential living unit programs that are a part of continuing care retirement communities, this section shall augment Chapter 3.9 (commencing with Section 1599),

Sections 73523 and 87572 of Title 22 of the California Code of Regulations, and other applicable state and federal law and regulations.

(b) A prospective resident shall have the right to visit each of the different care levels and to inspect assisted living and skilled nursing home licensing reports including, but not limited to, the most recent inspection reports and findings of complaint investigations covering a period of no less than two years, prior to signing a continuing care contract.

(c) All residents in residential living units shall have all of the following rights:

(1) To live in an attractive, safe, and well maintained physical environment.

(2) To live in an environment that enhances personal dignity, maintains independence, and encourages self-determination.

(3) To participate in activities that meet individual physical, intellectual, social, and spiritual needs.

(4) To expect effective channels of communication between residents and staff, and between residents and the administration or provider's governing body.

(5) To receive a clear and complete written contract that establishes the mutual rights and obligations of the resident and the continuing care retirement community.

(6) To manage his or her financial affairs.

(7) To be assured that all donations, contributions, gifts, or purchases of provider-sponsored financial products shall be voluntary, and may not be a condition of acceptance or of ongoing eligibility for services.

(8) To maintain and establish ties to the local community.

(9) To organize and participate freely in the operation of independent resident organizations and associations.

(d) A continuing care retirement community shall maintain an environment that enhances the residents' self-determination and independence. The provider shall do both of the following:

(1) Encourage the formation of a resident association by interested residents who may elect a governing body. The provider shall provide space and post notices for meetings, and provide assistance in attending meetings for those residents who request it. In order to promote a free exchange of ideas, at least part of each meeting shall be conducted without the presence of any continuing care retirement community personnel. The association may, among other things, make recommendations to management regarding resident issues that impact the residents' quality of life, quality of care, exercise of rights, safety and quality of the physical environment, concerns about the contract, fiscal matters, or other issues of concern to residents. The management

shall respond, in writing, to a written request or concern of the resident association within 20 working days of receiving the written request or concern. Meetings shall be open to all residents to attend as well as to present issues. Executive sessions of the governing body shall be attended only by the governing body.

(2) Establish policies and procedures that promote the sharing of information, dialogue between residents and management, and access to the provider's governing body. The provider shall biennially conduct a resident satisfaction survey that shall be made available to the resident association or its governing body, or, if neither exists, to a committee of residents at least 14 days prior to the next semiannual meeting of residents and the governing board of the provider required by subdivision (c) of Section 1771.8. A copy of the survey shall be posted in a conspicuous location at each facility.

(e) In addition to any statutory or regulatory bill of rights required to be provided to residents of residential care facilities for the elderly or skilled nursing facilities, the provider shall provide a copy of the bill of rights prescribed by this section to each resident at the time or before the resident signs a continuing care contract, and at any time when the resident is proposed to be moved to a different level of care.

(f) Each continuing care retirement community shall prominently post in areas accessible to the residents and visitors a notice that a copy of rights applicable to residents pursuant to this section and any governing regulation issued by the Continuing Care Contracts Branch of the State Department of Social Services is available upon request from the provider. The notice shall also state that the residents have a right to file a complaint with the Continuing Care Contracts Branch for any violation of those rights and shall contain information explaining how a complaint may be filed, including the telephone number and address of the Continuing Care Contracts Branch.

(g) The resident has the right to freely exercise all rights pursuant to this section, in addition to political rights, without retaliation by the provider.

(h) The department may, upon receiving a complaint of a violation of this section, request a copy of the policies and procedures along with documentation on the conduct and findings of any self-evaluations and consult with the Continuing Care Advisory Committee for determination of compliance.

(i) Failure to comply with this section shall be grounds for the imposition of conditions on, suspension of, or revocation of the provisional certificate of authority or certificate of authority pursuant to Section 1793.21.

(j) Failure to comply with this section constitutes a violation of residents' rights. Pursuant to Section 1569.49 of the Health and Safety Code, the department shall impose and collect a civil penalty of not more than one hundred fifty dollars (\$150) per violation upon a continuing care retirement community that violates a right guaranteed by this section.

SEC. 2. Section 1788 of the Health and Safety Code is amended to read:

1788. (a) A continuing care contract shall contain all of the following:

- (1) The legal name and address of each provider.
- (2) The name and address of the continuing care retirement community.
- (3) The resident's name and the identity of the unit the resident will occupy.
- (4) If there is a transferor other than the resident, the transferor shall be a party to the contract and the transferor's name and address shall be specified.
- (5) If the provider has used the name of any charitable or religious or nonprofit organization in its title before January 1, 1979, and continues to use that name, and that organization is not responsible for the financial and contractual obligations of the provider or the obligations specified in the continuing care contract, the provider shall include in every continuing care contract a conspicuous statement which clearly informs the resident that the organization is not financially responsible.
- (6) The date the continuing care contract is signed by the resident and, where applicable, any other transferor.
- (7) The duration of the continuing care contract.
- (8) A list of the services that will be made available to the resident as required to provide the appropriate level of care. The list of services shall include the services required as a condition for licensure as a residential care facility for the elderly, including all of the following:
 - (A) Regular observation of the resident's health status to ensure that his or her dietary needs, social needs, and needs for special services are satisfied.
 - (B) Safe and healthful living accommodations, including housekeeping services and utilities.
 - (C) Maintenance of house rules for the protection of residents.
 - (D) A planned activities program, which includes social and recreational activities appropriate to the interests and capabilities of the resident.
 - (E) Three balanced, nutritious meals and snacks made available daily, including special diets prescribed by a physician as a medical necessity.
 - (F) Assisted living services.

(G) Assistance with taking medications.

(H) Central storing and distribution of medications.

(I) Arrangements to meet health needs, including arranging transportation.

(9) An itemization of the services that are included in the monthly fee and the services that are available at an extra charge. The provider shall attach a current fee schedule to the continuing care contract.

(10) The procedures and conditions under which a resident may be voluntarily and involuntarily transferred from a designated living unit. The transfer procedures, at a minimum, shall include provisions addressing all of the following circumstances under which a transfer may be authorized:

(A) A continuing care retirement community shall transfer a resident under the following conditions, taking into consideration the appropriateness and necessity of the transfer and the goal of promoting resident independence:

(i) The resident is nonambulatory. The definition of “nonambulatory,” as provided in Section 13131, shall either be stated in full in the continuing care contract or be cited. If Section 13131 is cited, a copy of the statute shall be made available to the resident, either as an attachment to the continuing care contract or by specifying that it will be provided upon request. If a nonambulatory resident occupies a room that has a fire clearance for nonambulatory residence, transfer shall not be necessary.

(ii) The resident develops a physical or mental condition that endangers the health, safety, or well-being of the resident or another person.

(iii) The resident’s condition or needs require the resident’s transfer to an assisted living care unit or skilled nursing facility, because the level of care required by the resident exceeds that which may be lawfully provided in the living unit.

(iv) The resident’s condition or needs require the resident’s transfer to a nursing facility, hospital, or other facility, and the provider has no facilities available to provide that level of care.

(B) Before the continuing care retirement community transfers a resident under any of the conditions set forth in subparagraph (A), the community shall satisfy all of the following requirements:

(i) Involve the resident and the resident’s responsible person, as defined in paragraph (6) of subdivision (r) of Section 87101 of Title 22 of the California Code of Regulations, and upon the resident’s or responsible person’s request, family members, or the resident’s physician or other appropriate health professional, in the assessment process that forms the basis for the level of care transfer decision by the provider.

The provider shall offer an explanation of the assessment process. If an assessment tool or tools, including scoring and evaluating criteria, are used in the determination of the appropriateness of the transfer, the provider shall make copies of the completed assessment available upon the request of the resident or the resident's responsible person.

(ii) Prior to sending a formal notification of transfer, the provider shall conduct a care conference with the resident and the resident's responsible person, and upon the resident's or responsible person's request, family members, and the resident's health care professionals, to explain the reasons for transfer.

(iii) Notify the resident and the resident's responsible person the reasons for the transfer in writing.

(iv) Notwithstanding any other provision of this subparagraph, if the resident does not have impairment of cognitive abilities, the resident may request that his or her responsible person not be involved in the transfer process.

(v) The notice of transfer shall be made at least 30 days before the transfer is expected to occur, except when the health or safety of the resident or other residents is in danger, or the transfer is required by the resident's urgent medical needs. Under those circumstances, the written notice shall be made as soon as practicable before the transfer.

(vi) The written notice shall contain the reasons for the transfer, the effective date, the designated level of care or location to which the resident will be transferred, a statement of the resident's right to a review of the transfer decision at a care conference, as provided for in subparagraph (C), and for disputed transfer decisions, the right to review by the Continuing Care Contracts Branch of the State Department of Social Services, as provided for in subparagraph (D). The notice shall also contain the name, address, and telephone number of the department's Continuing Care Contracts Branch.

(vii) The continuing care community shall provide sufficient preparation and orientation to the resident to ensure a safe and orderly transfer and to minimize trauma.

(C) The resident has the right to review the transfer decision at a subsequent care conference that shall include the resident, the resident's responsible person, and upon the resident's or responsible person's request, family members, the resident's physician or other appropriate health care professional, and members of the provider's interdisciplinary team. The local ombudsperson may also be included in the care conference, upon the request of the resident, the resident's responsible person, or the provider.

(D) For disputed transfer decisions, the resident or the resident's responsible person has the right to a prompt and timely review of the

transfer process by the Continuing Care Contracts Branch of the State Department of Social Services.

(E) The decision of the department's Continuing Care Contracts Branch shall be in writing and shall determine whether the provider failed to comply with the transfer process pursuant to subparagraphs (A) to (C), inclusive. Pending the decision of the Continuing Care Contracts Branch, the provider shall specify any additional care the provider believes is necessary in order for the resident to remain in his or her unit. The resident may be required to pay for the extra care, as provided in the contract.

(F) Transfer of a second resident when a shared accommodation arrangement is terminated.

(11) Provisions describing any changes in the resident's monthly fee and any changes in the entrance fee refund payable to the resident that will occur if the resident transfers from any unit.

(12) The provider's continuing obligations if any, in the event a resident is transferred from the continuing care retirement community to another facility.

(13) The provider's obligations, if any, to resume care upon the resident's return after a transfer from the continuing care retirement community.

(14) The provider's obligations to provide services to the resident while the resident is absent from the continuing care retirement community.

(15) The conditions under which the resident must permanently release his or her living unit.

(16) If real or personal properties are transferred in lieu of cash, a statement specifying each item's value at the time of transfer, and how the value was ascertained.

(A) An itemized receipt which includes the information described above is acceptable if incorporated as a part of the continuing care contract.

(B) When real property is or will be transferred, the continuing care contract shall include a statement that the deed or other instrument of conveyance shall specify that the real property is conveyed pursuant to a continuing care contract and may be subject to rescission by the transferor within 90 days from the date that the resident first occupies the residential unit.

(C) The failure to comply with paragraph (16) shall not affect the validity of title to real property transferred pursuant to this chapter.

(17) The amount of the entrance fee.

(18) In the event two parties have jointly paid the entrance fee or other payment which allows them to occupy the unit, the continuing care contract shall describe how any refund of entrance fees is allocated.

(19) The amount of any processing fee.

(20) The amount of any monthly care fee.

(21) For continuing care contracts that require a monthly care fee or other periodic payment, the continuing care contract shall include the following:

(A) A statement that the occupancy and use of the accommodations by the resident is contingent upon the regular payment of the fee.

(B) The regular rate of payment agreed upon (per day, week, or month).

(C) A provision specifying whether payment will be made in advance or after services have been provided.

(D) A provision specifying the provider will adjust monthly care fees for the resident's support, maintenance, board, or lodging, when a resident requires medical attention while away from the continuing care retirement community.

(E) A provision specifying whether a credit or allowance will be given to a resident who is absent from the continuing care retirement community or from meals. This provision shall also state, when applicable, that the credit may be permitted at the discretion or by special permission of the provider.

(F) A statement of billing practices, procedures, and timelines. A provider shall allow a minimum of 14 days between the date a bill is sent and the date payment is due. A charge for a late payment may only be assessed if the amount and any condition for the penalty is stated on the bill.

(22) All continuing care contracts that include monthly care fees shall address changes in monthly care fees by including either of the following provisions:

(A) For prepaid continuing care contracts, which include monthly care fees, one of the following methods:

(i) Fees shall not be subject to change during the lifetime of the agreement.

(ii) Fees shall not be increased by more than a specified number of dollars in any one year and not more than a specified number of dollars during the lifetime of the agreement.

(iii) Fees shall not be increased in excess of a specified percentage over the preceding year and not more than a specified percentage during the lifetime of the agreement.

(B) For monthly fee continuing care contracts, except prepaid contracts, changes in monthly care fees shall be based on projected costs, prior year per capita costs, and economic indicators.

(23) A provision requiring that the provider give written notice to the resident at least 30 days in advance of any change in the resident's monthly care fees or in the price or scope of any component of care or other services.

(24) A provision indicating whether the resident's rights under the continuing care contract include any proprietary interests in the assets of the provider or in the continuing care retirement community, or both.

(25) If the continuing care retirement community property is encumbered by a security interest that is senior to any claims the residents may have to enforce continuing care contracts, a provision shall advise the residents that any claims they may have under the continuing care contract are subordinate to the rights of the secured lender. For equity projects, the continuing care contract shall specify the type and extent of the equity interest and whether any entity holds a security interest.

(26) Notice that the living units are part of a continuing care retirement community that is licensed as a residential care facility for the elderly and, as a result, any duly authorized agent of the department may, upon proper identification and upon stating the purpose of his or her visit, enter and inspect the entire premises at any time, without advance notice.

(27) A conspicuous statement, in at least 10-point boldface type in immediate proximity to the space reserved for the signatures of the resident and, if applicable, the transferor, that provides as follows: "You, the resident or transferor, may cancel the transaction without cause at any time within 90 days from the date you first occupy your living unit. See the attached notice of cancellation form for an explanation of this right."

(28) Notice that during the cancellation period, the continuing care contract may be canceled upon 30 days' written notice by the provider without cause, or that the provider waives this right.

(29) The terms and conditions under which the continuing care contract may be terminated after the cancellation period by either party, including any health or financial conditions.

(30) A statement that, after the cancellation period, a provider may unilaterally terminate the continuing care contract only if the provider has good and sufficient cause.

(A) Any continuing care contract containing a clause that provides for a continuing care contract to be terminated for "just cause," "good cause," or other similar provision, shall also include a provision that none of the following activities by the resident, or on behalf of the

resident, constitutes “just cause,” “good cause,” or otherwise activates the termination provision:

(i) Filing or lodging a formal complaint with the department or other appropriate authority.

(ii) Participation in an organization or affiliation of residents, or other similar lawful activity.

(B) The provision required by this paragraph shall also state that the provider shall not discriminate or retaliate in any manner against any resident of a continuing care retirement community for contacting the department, or any other state, county, or city agency, or any elected or appointed government official to file a complaint or for any other reason, or for participation in a residents’ organization or association.

(C) Nothing in this paragraph diminishes the provider’s ability to terminate the continuing care contract for good and sufficient cause.

(31) A statement that at least 90 days’ written notice to the resident is required for a unilateral termination of the continuing care contract by the provider.

(32) A statement concerning the length of notice that a resident is required to give the provider to voluntarily terminate the continuing care contract after the cancellation period.

(33) The policy or terms for refunding any portion of the entrance fee, in the event of cancellation, termination, or death. Every continuing care contract that provides for a refund of all or a part of the entrance fee shall also do all of the following:

(A) Specify the amount, if any, the resident has paid or will pay for upgrades, special features, or modifications to the resident’s unit.

(B) State that if the continuing care contract is cancelled or terminated by the provider, the provider shall do both of the following:

(i) Amortize the specified amount at the same rate as the resident’s entrance fee.

(ii) Refund the unamortized balance to the resident at the same time the provider pays the resident’s entrance fee refund.

(34) The following notice at the bottom of the signatory page:

“NOTICE”

(date)

This is a continuing care contract as defined by paragraph (8) of subdivision (c), or subdivision (l) of Section 1771 of the California Health and Safety Code. This continuing care contract form has been approved by the State Department of Social Services as required by subdivision (b) of Section 1787 of the California Health and Safety Code. The basis for this approval was a determination that (provider name) has submitted a contract that complies with the minimum statutory

requirements applicable to continuing care contracts. The department does not approve or disapprove any of the financial or health care coverage provisions in this contract. Approval by the department is NOT a guaranty of performance or an endorsement of any continuing care contract provisions. Prospective transferors and residents are strongly encouraged to carefully consider the benefits and risks of this continuing care contract and to seek financial and legal advice before signing.

(35) The provider may not attempt to absolve itself in the continuing care contract from liability for its negligence by any statement to that effect, and shall include the following statement in the contract: "Nothing in this continuing care contract limits either the provider's obligation to provide adequate care and supervision for the resident or any liability on the part of the provider which may result from the provider's failure to provide this care and supervision."

(b) A life care contract shall also provide that:

(1) All levels of care, including acute care and physicians' and surgeons' services will be provided to a resident.

(2) Care will be provided for the duration of the resident's life unless the life care contract is canceled or terminated by the provider during the cancellation period or after the cancellation period for good cause.

(3) A comprehensive continuum of care will be provided to the resident, including skilled nursing, in a facility under the ownership and supervision of the provider on, or adjacent to, the continuing care retirement community premises.

(4) Monthly care fees will not be changed based on the resident's level of care or service.

(5) A resident who becomes financially unable to pay his or her monthly care fees shall be subsidized provided the resident's financial need does not arise from action by the resident to divest the resident of his or her assets.

(c) Continuing care contracts may include provisions that do any of the following:

(1) Subsidize a resident who becomes financially unable to pay for his or her monthly care fees at some future date. If a continuing care contract provides for subsidizing a resident, it may also provide for any of the following:

(A) The resident shall apply for any public assistance or other aid for which he or she is eligible and that the provider may apply for assistance on behalf of the resident.

(B) The provider's decision shall be final and conclusive regarding any adjustments to be made or any action to be taken regarding any charitable consideration extended to any of its residents.

(C) The provider is entitled to payment for the actual costs of care out of any property acquired by the resident subsequent to any adjustment extended to the resident under paragraph (1), or from any other property of the resident which the resident failed to disclose.

(D) The provider may pay the monthly premium of the resident's health insurance coverage under Medicare to ensure that those payments will be made.

(E) The provider may receive an assignment from the resident of the right to apply for and to receive the benefits, for and on behalf of the resident.

(F) The provider is not responsible for the costs of furnishing the resident with any services, supplies, and medication, when reimbursement is reasonably available from any governmental agency, or any private insurance.

(G) Any refund due to the resident at the termination of the continuing care contract may be offset by any prior subsidy to the resident by the provider.

(2) Limit responsibility for costs associated with the treatment or medication of an ailment or illness existing prior to the date of admission. In these cases, the medical or surgical exceptions, as disclosed by the medical entrance examination, shall be listed in the continuing care contract or in a medical report attached to and made a part of the continuing care contract.

(3) Identify legal remedies which may be available to the provider if the resident makes any material misrepresentation or omission pertaining to the resident's assets or health.

(4) Restrict transfer or assignments of the resident's rights and privileges under a continuing care contract due to the personal nature of the continuing care contract.

(5) Protect the provider's ability to waive a resident's breach of the terms or provisions of the continuing care contract in specific instances without relinquishing its right to insist upon full compliance by the resident with all terms or provisions in the contract.

(6) Provide that the resident shall reimburse the provider for any uninsured loss or damage to the resident's unit, beyond normal wear and tear, resulting from the resident's carelessness or negligence.

(7) Provide that the resident agrees to observe the off-limit areas of the continuing care retirement community designated by the provider for safety reasons. The provider may not include any provision in a continuing care contract that absolves the provider from liability for its negligence.

(8) Provide for the subrogation to the provider of the resident's rights in the case of injury to a resident caused by the acts or omissions of a

third party, or for the assignment of the resident's recovery or benefits in this case to the provider, to the extent of the value of the goods and services furnished by the provider to or on behalf of the resident as a result of the injury.

(9) Provide for a lien on any judgment, settlement, or recovery for any additional expense incurred by the provider in caring for the resident as a result of injury.

(10) Require the resident's cooperation and assistance in the diligent prosecution of any claim or action against any third party.

(11) Provide for the appointment of a conservator or guardian by a court with jurisdiction in the event a resident becomes unable to handle his or her personal or financial affairs.

(12) Allow a provider, whose property is tax exempt, to charge the resident on a pro rata basis property taxes, or in-lieu taxes, that the provider is required to pay.

(13) Make any other provision approved by the department.

(d) A copy of the resident's rights as described in Section 1771.7 shall be attached to every continuing care contract.

(e) A copy of the current audited financial statement of the provider shall be attached to every continuing care contract. For a provider whose current audited financial statement does not accurately reflect the financial ability of the provider to fulfill the continuing care contract obligations, the financial statement attached to the continuing care contract shall include all of the following:

(1) A disclosure that the reserve requirement has not yet been determined or met, and that entrance fees will not be held in escrow.

(2) A disclosure that the ability to provide the services promised in the continuing care contract will depend on successful compliance with the approved financial plan.

(3) A copy of the approved financial plan for meeting the reserve requirements.

(4) Any other supplemental statements or attachments necessary to accurately represent the provider's financial ability to fulfill its continuing care contract obligations.

(f) A schedule of the average monthly care fees charged to residents for each type of residential living unit for each of the five years preceding execution of the continuing care contract shall be attached to every continuing care contract. The provider shall update this schedule annually at the end of each fiscal year. If the continuing care retirement community has not been in existence for five years, the information shall be provided for each of the years the continuing care retirement community has been in existence.

(g) If any continuing care contract provides for a health insurance policy for the benefit of the resident, the provider shall attach to the continuing care contract a binder complying with Sections 382 and 382.5 of the Insurance Code.

(h) The provider shall attach to every continuing care contract a completed form in duplicate, captioned "Notice of Cancellation." The notice shall be easily detachable, and shall contain, in at least 10-point boldface type, the following statement:

"NOTICE OF CANCELLATION"

(date)

Your first date of occupancy under this contract is:

"You may cancel this transaction, without any penalty within 90 calendar days from the above date.

If you cancel, any property transferred, any payments made by you under the contract, and any negotiable instrument executed by you will be returned within 14 calendar days after making possession of the living unit available to the provider. Any security interest arising out of the transaction will be canceled.

If you cancel, you are obligated to pay a reasonable processing fee to cover costs and to pay for the reasonable value of the services received by you from the provider up to the date you canceled or made available to the provider the possession of any living unit delivered to you under this contract, whichever is later.

If you cancel, you must return possession of any living unit delivered to you under this contract to the provider in substantially the same condition as when you took possession.

Possession of the living unit must be made available to the provider within 20 calendar days of your notice of cancellation. If you fail to make the possession of any living unit available to the provider, then you remain liable for performance of all obligations under the contract.

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 provider)

at

(Address of provider's place of business)

not later than midnight of _____ (date).

I hereby cancel this
transaction

(Resident or
Transferor's signature)"

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 455

An act to amend Section 1047 of the Military and Veterans Code, relating to veterans' homes.

[Approved by Governor October 3, 2005. Filed with
Secretary of State October 3, 2005.]

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

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

(a) The Morale, Welfare, and Recreation Fund is critical to promoting an enhanced quality of life for residents of veterans' homes.

(b) A financially sound Morale, Welfare, and Recreation Fund is necessary to meet the long-term financial obligations of providing services and activities for the residents of veterans' homes.

(c) Annual contributions to the Morale, Welfare, and Recreation Fund are uncertain and likely to decrease in the coming years.

(d) A prudent reserve of income-producing funds is desirable to ensure that services and activities for residents of veterans' homes are maintained.

SEC. 2. Section 1047 of the Military and Veterans Code is amended to read:

1047. (a) The administrator shall maintain a Morale, Welfare, and Recreation Fund that shall be used, at the discretion of the administrator and subject to the approval of the secretary, to provide for the general welfare of the veterans, including, but not limited to, providing for operations of the Veterans' Home Exchange, hobby shop, motion picture

theater, library, band, and any other function that is operated for the morale, welfare, and recreation of the veterans, and to pay for newspapers, chapel expenses, welfare and entertainment expenses, sport activities, celebrations, and any other activity that is for the morale, welfare, and recreation of the veterans.

(b) Money in the Morale, Welfare, and Recreation Fund may not be expended for any of the following:

- (1) Medical treatments or any other related treatment.
- (2) Maintenance of the physical plant of the home.
- (3) Any function, operation, or activity that is not directly related to the morale, welfare, or recreation of the veterans.

(c) Appropriations from the General Fund for the purposes described in paragraph (3) of subdivision (b) may not be reduced for the purpose of, or to have the effect of, requiring increased expenditures from the Morale, Welfare, and Recreation Fund for those described purposes.

(d) The administrator shall prepare an itemized report that is organized by category and accounts for all expenditures made from the Morale, Welfare, and Recreation Fund during the previous fiscal year and shall submit the report on or before August 20 of each year to all of the following:

- (1) The secretary.
- (2) The fiscal committees of the Assembly and the Senate.
- (3) The committees of the Assembly and the Senate that have subject matter jurisdiction over veterans' affairs.
- (4) The Veterans' Home Allied Council.

(e) The Morale, Welfare, and Recreation Fund for the Veterans' Home of California, Yountville, shall maintain a reserve in the amount of two million dollars (\$2,000,000). The reserve shall be invested in securities, upon the advice of the Morale, Welfare, and Recreation Fund Advisory Committee and with the approval of the administrator and the secretary.

CHAPTER 456

An act to amend Section 1569.885 of, and to add Section 1569.889 to, the Health and Safety Code, relating to residential care facilities for the elderly.

[Approved by Governor October 3, 2005. Filed with
Secretary of State October 3, 2005.]

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

SECTION 1. Section 1569.885 of the Health and Safety Code is amended to read:

1569.885. (a) When referring to a resident's obligation to observe facility rules, the admission agreement shall indicate that the rules must be reasonable, and that there is a facility procedure for suggesting changes in the rules. A facility rule shall not violate any right set forth in this article or in other applicable laws and regulations.

(b) The admission agreement shall specify that a copy of the facility grievance procedure for resolution of resident complaints about facility practices shall be made available to the resident or his or her representative.

(c) The admission agreement shall inform a resident of the right to contact the State Department of Social Services, the long-term care ombudsman, or both, regarding grievances against the facility.

(d) A copy of any applicable resident's rights specified by law or regulation shall be an attachment to all admission agreements.

(e) The statement of resident's rights attached to admissions agreements by a residential care facility for the elderly shall include information on the reporting of suspected or known elder and dependent adult abuse, as set forth in Section 1569.889.

SEC. 2. Section 1569.889 is added to the Health and Safety Code, to read:

1569.889. (a) The personal rights form made available by the department's Community Care Licensing Division to residential care facilities for the elderly shall include a statement regarding procedures for reporting known or suspected elder and dependent adult abuse, including the toll-free telephone number of the State Long-Term Care Ombudsman's CRISISline and a blank space for the telephone number of the nearest approved organization for long-term care ombudsperson activities. A residential care facility for the elderly shall insert in the form's blank space the telephone number of the nearest approved organization for long-term care ombudsperson activities.

(b) The department's Community Care Licensing Division shall adopt or amend any regulation and revise any document or policy as necessary to implement this section.

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

definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

CHAPTER 457

An act to amend Section 532b of the Penal Code, relating to crime.

[Approved by Governor October 3, 2005. Filed with
Secretary of State October 3, 2005.]

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

SECTION 1. Section 532b of the Penal Code is amended to read:

532b. (a) Any person who falsely represents himself or herself as a veteran or ex-serviceman of any war in which the United States was engaged, in connection with the soliciting of aid or the sale or attempted sale of any property, is guilty of a misdemeanor.

(b) Any person who falsely claims, or presents himself or herself, to be a veteran or member of the Armed Forces of the United States, with the intent to defraud, is guilty of a misdemeanor.

(c) This section does not apply to face-to-face solicitations involving less than ten dollars (\$10).

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 458

An act to add Section 1363.07 to, and to repeal and add Section 1365.2 of, the Civil Code, relating to common interest developments.

[Approved by Governor October 3, 2005. Filed with
Secretary of State October 3, 2005.]

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

SECTION 1. Section 1363.07 is added to the Civil Code, to read:

1363.07. (a) After an association acquires fee title to or any easement right over a common area, unless the association's governing documents specify a different percentage, the affirmative vote of members owning at least sixty seven percent of the separate interests in the common interest development shall be required before the board of directors may grant exclusive use of any portion of that common area to any member, except for any of the following:

(1) A reconveyance of all or any portion of that common area to the subdivider to enable the continuation of development that is in substantial conformance with a detailed plan of phased development submitted to the Commissioner of the Department of Real Estate with the application for a public report;

(2) Any grant of exclusive use that is in substantial conformance with a detailed plan of phased development submitted to the Commissioner of the Department of Real Estate with the application for a public report or in accordance with the governing documents approved by the Commissioner of the Department of Real Estate.

(3) Any grant of exclusive use that is for any of the following reasons:

(A) To eliminate or correct engineering errors in documents recorded with the county recorder or on file with a public agency or utility company.

(B) To eliminate or correct encroachments due to errors in construction of any improvements.

(C) To permit changes in the plan of development submitted to the Commissioner of the Department of Real Estate in circumstances where the changes are the result of topography, obstruction, hardship, aesthetic considerations, or environmental conditions.

(D) To fulfill the requirement of a public agency.

(E) To transfer the burden of management and maintenance of any common area that is generally inaccessible and is not of general use to the membership at large of the association.

(F) Any grant in connection with an expressly zoned industrial or commercial development, or any grant within a subdivision of the type defined in Section 1373.

(b) Any measure placed before the members requesting that the board of directors grant exclusive use of any portion of the common area shall specify whether the association will receive any monetary consideration for the grant and whether the association or the transferee will be responsible for providing any insurance coverage for exclusive use of the common area.

SEC. 2. Section 1365.2 of the Civil Code is repealed.

SEC. 3. Section 1365.2 is added to the Civil Code, to read:

1365.2. (a) For the purposes of this section, the following definitions shall apply:

(1) "Association records" means all of the following:

(A) Any financial document required to be provided to a member in Section 1365.

(B) Any financial document or statement required to be provided in Section 1368.

(C) Interim unaudited financial statements, periodic or as compiled, containing any of the following:

(i) Balance sheet.

(ii) Income and expense statement.

(iii) Budget comparison.

(iv) General ledger. A "general ledger" is a report that shows all transactions that occurred in an association account over a specified period of time.

The records described in this paragraph shall be prepared in accordance with generally accepted accounting principles.

(D) Executed contracts not otherwise privileged under law.

(E) Written board approval of vendor or contractor proposals or invoices.

(F) State and federal tax returns.

(G) Reserve account balances and records of payments made from reserve accounts.

(H) Agendas and minutes of meetings of the members, the board of directors and any committees appointed by the board of directors; excluding, however, agendas, minutes, and other information from executive sessions of the board of directors as described in Section 1363.05.

(I) (i) Membership lists, including name, property address, and mailing address, if the conditions set forth in clause (ii) are met and except as otherwise provided in clause (iii).

(ii) The member requesting the list shall state the purpose for which the list is requested which purpose shall be reasonably related to the requester's interest as a member. If the association reasonably believes that the information in the list will be used for another purpose, it may deny the member access to the list. If the request is denied, in any subsequent action brought by the member under subdivision (f), the association shall have the burden to prove that the member would have allowed use of the information for purposes unrelated to his or her interest as a member.

(iii) A member of the association may opt out of the sharing of his or her name, property address, and mailing address by notifying the association in writing that he or she prefers to be contacted via the alternative process described in subdivision (c) of Section 8330 of the Corporations Code. This opt-out shall remain in effect until changed by the member.

(J) Check registers.

(2) "Enhanced association records" means invoices, receipts and canceled checks for payments made by the association, purchase orders approved by the association, credit card statements for credit cards issued in the name of the association, statements for services rendered, and reimbursement requests submitted to the association, provided that the person submitting the reimbursement request shall be solely responsible for removing all personal identification information from the request.

(b) (1) The association shall make available association records and enhanced association records for the time periods and within the timeframes provided in subdivisions (i) and (j) for inspection and copying by a member of the association, or the member's designated representative. The association may bill the requesting member for the direct and actual cost of copying requested documents. The association shall inform the member of the amount of the copying costs before copying the requested documents.

(2) A member of the association may designate another person to inspect and copy the specified association records on the member's behalf. The member shall make this designation in writing.

(c) (1) The association shall make the specified association records available for inspection and copying in the association's business office within the common interest development.

(2) If the association does not have a business office within the development, the association shall make the specified association records available for inspection and copying at a place that the requesting member and the association agree upon.

(3) If the association and the requesting member cannot agree upon a place for inspection and copying pursuant to paragraph (2), or if the requesting member submits a written request directly to the association for copies of specifically identified records, the association may satisfy the requirement to make the association records available for inspection and copying by mailing copies of the specifically identified records to the member by first-class mail within the timeframes set forth in subdivision (j).

(4) The association may bill the requesting member for the direct and actual cost of copying and mailing requested documents. The association shall inform the member of the amount of the copying and mailing costs,

and the member shall agree to pay those costs, before copying and sending the requested documents.

(5) In addition to the direct and actual costs of copying and mailing, the association may bill the requesting member an amount not in excess of ten dollars (\$10) per hour, and not to exceed two hundred dollars (\$200) total per written request, for the time actually and reasonably involved in redacting the enhanced association records as provided in paragraph (2) of subdivision (a). The association shall inform the member of the estimated costs, and the member shall agree to pay those costs, before retrieving the requested documents.

(d) (1) Except as provided in paragraph (2), the association may withhold or redact information from the association records for any of the following reasons:

(A) The release of the information is reasonably likely to lead to identity theft. For the purposes of this section, “identity theft” means the unauthorized use of another person’s personal identifying information to obtain credit, goods, services, money, or property. Examples of information that may be withheld or redacted pursuant to this paragraph include bank account numbers of members or vendors, social security or tax identification numbers, and check, stock, and credit card numbers.

(B) The release of the information is reasonably likely to lead to fraud in connection with the association.

(C) The information is privileged under law. Examples include documents subject to attorney-client privilege or relating to litigation in which the association is or may become involved, and confidential settlement agreements.

(D) The release of the information is reasonably likely to compromise the privacy of an individual member of the association.

(E) The information contains any of the following:

(i) Records of a-la-carte goods or services provided to individual members of the association for which the association received monetary consideration other than assessments.

(ii) Records of disciplinary actions, collection activities, or payment plans of homeowners other than the homeowner requesting the records.

(iii) Any person’s personal identification information, including, without limitation, social security number, tax identification number, driver’s license number, credit card account numbers, bank account number, and bank routing number.

(iv) Agendas, minutes, and other information from executive sessions of the board of directors as described in Section 1363.05, except for executed contracts not otherwise privileged. Privileged contracts shall not include contracts for maintenance, management, or legal services.

(v) Personnel records other than the payroll records required to be provided under paragraph (2).

(vi) Interior architectural plans, including security features, for individual homes.

(2) Except as provided by the attorney-client privilege, the association may not withhold or redact information concerning the compensation paid to employees, vendors, or contractors. Compensation information for individual employees shall be set forth by job classification or title, not by the employee's name, social security number, or other personal information.

(3) No association, officer, director, employee, agent or volunteer of an association shall be liable for damages to a member of the association as the result of identity theft or other breach of privacy because of the failure to withhold or redact that member's information under this subdivision unless the failure to withhold or redact the information was intentional, willful, or negligent.

(4) If requested by the requesting homeowner, an association that denies or redacts records shall provide a written explanation specifying the legal basis for withholding or redacting the requested records.

(e) (1) The association records, and any information from them, may not be sold, used for a commercial purpose, or used for any other purpose not reasonably related to a member's interest as a member. An association may bring an action against any person who violates this section for injunctive relief and for actual damages to the association caused by the violation.

(2) This section may not be construed to limit the right of an association to damages for misuse of information obtained from the association records pursuant to this section or to limit the right of an association to injunctive relief to stop the misuse of this information.

(3) An association shall be entitled to recover reasonable costs and expenses, including reasonable attorney's fees, in a successful action to enforce its rights under this section.

(f) A member of an association may bring an action to enforce the member's right to inspect and copy the association records. If a court finds that the association unreasonably withheld access to the association records, the court shall award the member reasonable costs and expenses, including reasonable attorney's fees, and may assess a civil penalty of up to five hundred dollars (\$500) for the denial of each separate written request. A cause of action under this section may be brought in small claims court if the amount of the demand does not exceed the jurisdiction of that court. A prevailing association may recover any costs if the court finds the action to be frivolous, unreasonable, or without foundation.

(g) The provisions of this section apply to any community service organization or similar entity, as defined in paragraph (3) of subdivision (c) of Section 1368, that is related to the association, and this section shall operate to give a member of the community service organization or similar entity a right to inspect and copy the records of that organization or entity equivalent to that granted to association members by this section.

(h) Requesting parties shall have the option of receiving specifically identified records by electronic transmission or machine-readable storage media as long as those records can be transmitted in a redacted format that does not allow the records to be altered. The cost of duplication shall be limited to the direct cost of producing the copy of a record in that electronic format.

(i) The time periods for which specified records shall be provided is as follows:

(1) Association records shall be made available for the current fiscal year and for each of the previous two fiscal years.

(2) Minutes of member and board meetings shall be permanently made available. If a committee has decisionmaking authority, minutes of the meetings of that committee shall be made available commencing January 1, 2007, and shall thereafter be permanently made available.

(j) The timeframes in which access to specified records shall be provided to a requesting member is as follows:

(1) Association records prepared during the current fiscal year, within 10 business days following the association's receipt of the request.

(2) Association records prepared during the previous two fiscal years, within 30 calendar days following the association's receipt of the request.

(3) Any record or statement available pursuant to Section 1365 or 1368, within the timeframe specified therein.

(4) Minutes of member and board meetings, within the timeframe specified in subdivision (d) of Section 1363.05.

(5) Minutes of meetings of committees with decisionmaking authority for meetings commencing on or after January 1, 2007, within 15 calendar days following approval.

(6) Membership list, within the timeframe specified in Section 8330 of the Corporations Code.

(l) There shall be no liability pursuant to this section for an association that fails to retain records for the periods specified in subdivision (i) that were created prior to January 1, 2006.

(m) As applied to an association and its members, the provisions of this section are intended to supersede the provisions of Sections 8330 and 8333 of the Corporations Code to the extent those sections are inconsistent.

(n) The provisions of this section shall not apply to any common interest development in which separate interests are being offered for sale by a subdivider under the authority of a public report issued by the Department of Real Estate so long as the subdivider or all subdividers offering those separate interests for sale, or any employees of those subdividers or any other person who receives direct or indirect compensation from any of those subdividers, comprise a majority of the members of the board of directors of the association. Notwithstanding the foregoing this section shall apply to that common interest development no later than 10 years after the close of escrow for the first sale of a separate interest to a member of the general public pursuant to the public report issued for the first phase of the development.

(o) The section shall become operative on July 1, 2006.

SEC. 4. This bill shall become operative only if Senate Bill 61 is enacted and becomes effective on or before January 1, 2006, and adds Section 1363.03 to the Civil Code.

CHAPTER 459

An act to amend Section 987.65 of the Military and Veterans Code, relating to veterans.

[Approved by Governor October 3, 2005. Filed with
Secretary of State October 3, 2005.]

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

SECTION 1. Section 987.65 of the Military and Veterans Code is amended to read:

987.65. (a) The purchase price of a home to the department, or the sum to be expended by the department pursuant to a contract for the construction of a dwelling house and other improvements, or the purchase price of a mobilehome sited on a lot owned by the purchaser and installed on a foundation system pursuant to Section 18551 of the Health and Safety Code, or the purchase price of a mobilehome converted to a fixture and improvement to the underlying real property in a mobilehome park that has been converted to a resident-owned subdivision, cooperative, condominium, or nonprofit corporation as set forth in Section 18555 of the Health and Safety Code, shall not exceed 125 percent of the then current maximum Fannie Mae loan limit that is annually set by Fannie Mae for a single-family home.

(b) The purchase price of a mobilehome that is to be sited in a mobilehome park, as defined in Section 18214 of the Health and Safety Code, in addition to any assistance provided by the department to a veteran pursuant to subdivision (e) of Section 987.85, may not exceed one hundred twenty-five thousand dollars (\$125,000).

(c) A veteran purchasing the home may advance, subject to Section 987.64, the difference between the total price or cost of the home and the sum of the purchase price of the home to the department and any amount the department adds, under Section 987.69, to the purchase price of the home in fixing the selling price to the veteran. Any amount of the purchase price to the department may be provided by funds from participation contracts or revenue bonds.

(d) The purchase price of a farm to the department shall not exceed 150 percent of the limit described in subdivision (a). A veteran purchasing the farm may advance the difference between the total price of the farm, or the cost of the dwelling and improvements to be constructed on a farm under a contract, and the sum of the purchase price to the department or contract price to the department and any amount that the department adds, under Section 987.69, to the purchase or contract price to the department in fixing the selling price of the farm to the veteran.

CHAPTER 460

An act to amend Section 15819.60 of the Government Code, and to amend Section 1104.2 of the Military and Veterans Code, relating to veterans.

[Approved by Governor October 3, 2005. Filed with
Secretary of State October 3, 2005.]

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

SECTION 1. Section 15819.60 of the Government Code is amended to read:

15819.60. (a) The Department of General Services, on behalf of the Department of Veterans Affairs, may acquire, design, equip, construct, and establish additional veterans' homes to be located in Lancaster, Saticoy, West Los Angeles, Fresno County, and Shasta County.

(b) The Department of General Services, on behalf of the Department of Veterans Affairs, may design, equip, construct, and renovate the veterans' homes at Yountville, Barstow, and Chula Vista, as needed and justified.

(c) The Department of General Services, on behalf of the Department of Veterans Affairs, may design, equip, construct, and expand the homes proposed to be built at Lancaster, Saticoy, and West Los Angeles, as needed and justified.

(d) The construction of veterans' homes in Fresno County and Shasta County may not commence until the veterans' homes in Lancaster, Saticoy, and West Los Angeles have been fully funded.

(e) The veterans' homes to be constructed in Fresno County and Shasta County may be built concurrently. However, the construction of the veterans' homes in Redding and Fresno shall be treated as separate public works projects that are subject to separate bids.

(f) The Department of General Services, on behalf of the Department of Veterans Affairs, may acquire, design, equip, construct, and establish the veterans' homes to be constructed in Fresno and Shasta Counties using the design-build construction procurement process in accordance with Section 14661.

SEC. 2. Section 1104.2 of the Military and Veterans Code is amended to read:

1104.2. (a) Notwithstanding Section 13340 of the Government Code, an amount, not to exceed the sum of fifteen million dollars (\$15,000,000), is hereby continuously appropriated, without regard to fiscal years, from the Veterans' Home Fund to the Department of Veterans Affairs, subject to the approval of the Department of Finance, for the state's matching share for the design, construction, equipping, and renovation of the Veterans' Home of California, Yountville, as described in Section 1011.

(b) Excluding any funds required to pay for costs associated with issuing and administering general obligation bonds, any remaining general obligation bond funds available in the Veterans' Home Fund created under Section 1103 after funding the design, construction, equipping, expansion, or renovation of the Lancaster, Saticoy, West Los Angeles, or Yountville veterans homes, as specified in Section 1104.1 and subdivision (a), and projects funded through any Budget Act, are, notwithstanding Section 13340 of the Government Code, hereby continuously appropriated without regard to fiscal years to the Department of Veterans Affairs, subject to the approval of the Department of Finance, to fund the state's matching share for renovations, design, construction, and equipping at Yountville consistent with the purposes established in subdivision (a) of Section 1104.

(c) Notwithstanding Section 13340 of the Government Code, in addition to the funds appropriated pursuant to this section, the federal matching funds available pursuant to the State Veterans' Home Assistance Improvement Act of 1977 (38 U.S.C. Sec. 8131 et seq.), are hereby continuously appropriated, without regard to fiscal years, to the

Department of Veterans Affairs, subject to the approval of the Department of Finance, for the purpose of design, construction, equipping, renovation of, or expansion or repayment of any loan related to, the projects specified in this section.

(d) Subject to approval of the Department of Finance, the Department of Veterans Affairs may expend state funds pursuant to this section for the design of projects specified in this section in anticipation of the receipt of federal matching funds.

(e) The Department of Veterans Affairs shall prepare and submit a report to the Legislature and Governor semiannually, beginning on March 1, 2005, on the progress of the acquisition, design, equipping, construction, establishment, and expansion of the veterans' homes specified in Section 15819.60 of the Government Code, including updated cost estimates and a synopsis on the efficacy of the design-build procurement process.

CHAPTER 461

An act to amend Sections 272 and 502.01 of the Penal Code, relating to crime.

[Approved by Governor October 4, 2005. Filed with
Secretary of State October 4, 2005.]

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

SECTION 1. Section 272 of the Penal Code is amended to read:

272. (a) (1) Every person who commits any act or omits the performance of any duty, which act or omission causes or tends to cause or encourage any person under the age of 18 years to come within the provisions of Section 300, 601, or 602 of the Welfare and Institutions Code or which act or omission contributes thereto, or any person who, by any act or omission, or by threats, commands, or persuasion, induces or endeavors to induce any person under the age of 18 years or any ward or dependent child of the juvenile court to fail or refuse to conform to a lawful order of the juvenile court, or to do or to perform any act or to follow any course of conduct or to so live as would cause or manifestly tend to cause that person to become or to remain a person within the provisions of Section 300, 601, or 602 of the Welfare and Institutions Code, is guilty of a misdemeanor and upon conviction thereof shall be punished by a fine not exceeding two thousand five hundred dollars (\$2,500), or by imprisonment in the county jail for not more than one

year, or by both fine and imprisonment in a county jail, or may be released on probation for a period not exceeding five years.

(2) For purposes of this subdivision, a parent or legal guardian to any person under the age of 18 years shall have the duty to exercise reasonable care, supervision, protection, and control over their minor child.

(b) (1) An adult stranger who is 21 years of age or older, who knowingly contacts or communicates with a minor who is under 14 years of age, who knew or reasonably should have known that the minor is under 14 years of age, for the purpose of persuading and luring, or transporting, or attempting to persuade and lure, or transport, that minor away from the minor's home or from any location known by the minor's parent, legal guardian, or custodian, to be a place where the minor is located, for any purpose, without the express consent of the minor's parent or legal guardian, and with the intent to avoid the consent of the minor's parent or legal guardian, is guilty of an infraction or a misdemeanor, subject to subdivision (d) of Section 17.

(2) This subdivision shall not apply in an emergency situation.

(3) As used in this subdivision, the following terms are defined to mean:

(A) "Emergency situation" means a situation where the minor is threatened with imminent bodily harm, emotional harm, or psychological harm.

(B) "Contact" or "communication" includes, but is not limited to, the use of a telephone or the Internet, as defined in Section 17538 of the Business and Professions Code.

(C) "Stranger" means a person of casual acquaintance with whom no substantial relationship exists, or an individual with whom a relationship has been established or promoted for the primary purpose of victimization, as defined in subdivision (e) of Section 6600 of the Welfare and Institutions Code.

(D) "Express consent" means oral or written permission that is positive, direct, and unequivocal, requiring no inference or implication to supply its meaning.

(4) This section shall not be interpreted to criminalize acts of persons contacting minors within the scope and course of their employment, or status as a volunteer of a recognized civic or charitable organization.

(5) This section is intended to protect minors and to help parents and legal guardians exercise reasonable care, supervision, protection, and control over minor children.

SEC. 2. Section 502.01 of the Penal Code is amended to read:

502.01. (a) As used in this section:

(1) "Property subject to forfeiture" means any property of the defendant that is illegal telecommunications equipment as defined in subdivision (g) of Section 502.8, or a computer, computer system, or computer network, and any software or data residing thereon, if the telecommunications device, computer, computer system, or computer network was used in committing a violation of, or conspiracy to commit a violation of, subdivision (b) of Section 272, Section 288, 288.2, 311.1, 311.2, 311.3, 311.4, 311.5, 311.10, 311.11, 422, 470, 470a, 472, 475, 476, 480, 483.5, 484g, or subdivision (a), (b), or (d) of Section 484e, subdivision (a) of Section 484f, subdivision (b) or (c) of Section 484i, subdivision (c) of Section 502, or Section 502.7, 502.8, 529, 529a, or 530.5, 537e, 593d, 593e, or 646.9, or was used as a repository for the storage of software or data obtained in violation of those provisions. Forfeiture shall not be available for any property used solely in the commission of an infraction. If the defendant is a minor, it also includes property of the parent or guardian of the defendant.

(2) "Sentencing court" means the court sentencing a person found guilty of violating or conspiring to commit a violation of subdivision (b) of Section 272, Section 288, 288.2, 311.1, 311.2, 311.3, 311.4, 311.5, 311.10, 311.11, 422, 470, 470a, 472, 475, 476, 480, 483.5, 484g, or subdivision (a), (b), or (d) of Section 484e, subdivision (d) of Section 484e, subdivision (a) of Section 484f, subdivision (b) or (c) of Section 484i, subdivision (c) of Section 502, or Section 502.7, 502.8, 529, 529a, 530.5, 537e, 593d, 593e, or 646.9, or, in the case of a minor, found to be a person described in Section 602 of the Welfare and Institutions Code because of a violation of those provisions, the juvenile court.

(3) "Interest" means any property interest in the property subject to forfeiture.

(4) "Security interest" means an interest that is a lien, mortgage, security interest, or interest under a conditional sales contract.

(5) "Value" has the following meanings:

(A) When counterfeit items of computer software are manufactured or possessed for sale, the "value" of those items shall be equivalent to the retail price or fair market price of the true items that are counterfeited.

(B) When counterfeited but unassembled components of computer software packages are recovered, including, but not limited to, counterfeited computer diskettes, instruction manuals, or licensing envelopes, the "value" of those components of computer software packages shall be equivalent to the retail price or fair market price of the number of completed computer software packages that could have been made from those components.

(b) The sentencing court shall, upon petition by the prosecuting attorney, at any time following sentencing, or by agreement of all parties,

at the time of sentencing, conduct a hearing to determine whether any property or property interest is subject to forfeiture under this section. At the forfeiture hearing, the prosecuting attorney shall have the burden of establishing, by a preponderance of the evidence, that the property or property interests are subject to forfeiture. The prosecuting attorney may retain seized property that may be subject to forfeiture until the sentencing hearing.

(c) Prior to the commencement of a forfeiture proceeding, the law enforcement agency seizing the property subject to forfeiture shall make an investigation as to any person other than the defendant who may have an interest in it. At least 30 days before the hearing to determine whether the property should be forfeited, the prosecuting agency shall send notice of the hearing to any person who may have an interest in the property that arose before the seizure.

A person claiming an interest in the property shall file a motion for the redemption of that interest at least 10 days before the hearing on forfeiture, and shall send a copy of the motion to the prosecuting agency and to the probation department.

If a motion to redeem an interest has been filed, the sentencing court shall hold a hearing to identify all persons who possess valid interests in the property. No person shall hold a valid interest in the property if, by a preponderance of the evidence, the prosecuting agency shows that the person knew or should have known that the property was being used in violation of, or conspiracy to commit a violation of, subdivision (b) of Section 272, Section 288, 288.2, 311.1, 311.2, 311.3, 311.4, 311.5, 311.10, 311.11, 470, 470a, 472, 475, 476, 480, 483.5, 484g, or subdivision (a), (b), or (d) of Section 484e, subdivision (a) of Section 484f, subdivision (b) or (c) of Section 484i, subdivision (c) of Section 502, or Section 502.7, 502.8, 529, 529a, 530.5, 537e, 593d, 593e, or 646.9, and that the person did not take reasonable steps to prevent that use, or if the interest is a security interest, the person knew or should have known at the time that the security interest was created that the property would be used for a violation.

(d) If the sentencing court finds that a person holds a valid interest in the property, the following provisions shall apply:

- (1) The court shall determine the value of the property.
- (2) The court shall determine the value of each valid interest in the property.

- (3) If the value of the property is greater than the value of the interest, the holder of the interest shall be entitled to ownership of the property upon paying the court the difference between the value of the property and the value of the valid interest.

If the holder of the interest declines to pay the amount determined under paragraph (2), the court may order the property sold and designate the prosecutor or any other agency to sell the property. The designated agency shall be entitled to seize the property and the holder of the interest shall forward any documentation underlying the interest, including any ownership certificates for that property, to the designated agency. The designated agency shall sell the property and pay the owner of the interest the proceeds, up to the value of that interest.

(4) If the value of the property is less than the value of the interest, the designated agency shall sell the property and pay the owner of the interest the proceeds, up to the value of that interest.

(e) If the defendant was a minor at the time of the offense, this subdivision shall apply to property subject to forfeiture that is the property of the parent or guardian of the minor.

(1) The prosecuting agency shall notify the parent or guardian of the forfeiture hearing at least 30 days before the date set for the hearing.

(2) The computer or telecommunications device shall not be subject to forfeiture if the parent or guardian files a signed statement with the court at least 10 days before the date set for the hearing that the minor shall not have access to any computer or telecommunications device owned by the parent or guardian for two years after the date on which the minor is sentenced.

(3) If the minor is convicted of a violation of Section 288, 288.2, 311.1, 311.2, 311.3, 311.4, 311.5, 311.10, 311.11, 470, 470a, 472, 476, 480, or subdivision (b) of Section 484e, subdivision (d) of Section 484e, subdivision (a) of Section 484f, subdivision (b) of Section 484i, subdivision (c) of Section 502, or Section 502.7, 502.8, 529, 529a, or 530.5, within two years after the date on which the minor is sentenced, and the violation involves a computer or telecommunications device owned by the parent or guardian, the original property subject to forfeiture, and the property involved in the new offense, shall be subject to forfeiture notwithstanding paragraph (2).

(4) Notwithstanding paragraph (1), (2), or (3), or any other provision of this chapter, if a minor's parent or guardian makes full restitution to the victim of a crime enumerated in this chapter in an amount or manner determined by the court, the forfeiture provisions of this chapter do not apply to the property of that parent or guardian if the property was located in the family's primary residence during the commission of the crime.

(f) Notwithstanding any other provision of this chapter, the court may exercise its discretion to deny forfeiture where the court finds that the convicted defendant, or minor adjudicated to come within the jurisdiction of the juvenile court, is not likely to use the property otherwise subject to forfeiture for future illegal acts.

(g) If the defendant is found to have the only valid interest in the property subject to forfeiture, it shall be distributed as follows:

(1) First, to the victim, if the victim elects to take the property as full or partial restitution for injury, victim expenditures, or compensatory damages, as defined in paragraph (1) of subdivision (e) of Section 502. If the victim elects to receive the property under this paragraph, the value of the property shall be determined by the court and that amount shall be credited against the restitution owed by the defendant. The victim shall not be penalized for electing not to accept the forfeited property in lieu of full or partial restitution.

(2) Second, at the discretion of the court, to one or more of the following agencies or entities:

(A) The prosecuting agency.

(B) The public entity of which the prosecuting agency is a part.

(C) The public entity whose officers or employees conducted the investigation resulting in forfeiture.

(D) Other state and local public entities, including school districts.

(E) Nonprofit charitable organizations.

(h) If the property is to be sold, the court may designate the prosecuting agency or any other agency to sell the property at auction. The proceeds of the sale shall be distributed by the court as follows:

(1) To the bona fide or innocent purchaser or encumbrancer, conditional sales vendor, or mortgagee of the property up to the amount of his or her interest in the property, if the court orders a distribution to that person.

(2) The balance, if any, to be retained by the court, subject to the provisions for distribution under subdivision (g).

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 462

An act to amend 124250 of the Health and Safety Code, relating to domestic violence.

[Approved by Governor October 4, 2005. Filed with
Secretary of State October 4, 2005.]

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

SECTION 1. Section 124250 of the Health and Safety Code is amended to read:

124250. (a) The following definitions shall apply for purposes of this section:

(1) "Domestic violence" means the infliction or threat of physical harm against past or present adult or adolescent female intimate partners, and shall include physical, sexual, and psychological abuse against the woman, and is a part of a pattern of assaultive, coercive, and controlling behaviors directed at achieving compliance from or control over, that woman.

(2) "Shelter-based" means an established system of services where battered women and their children may be provided safe or confidential emergency housing on a 24-hour basis, including, but not limited to, hotel or motel arrangements, haven, and safe houses.

(3) "Emergency shelter" means a confidential or safe location that provides emergency housing on a 24-hour basis for battered women and their children.

(b) The Maternal and Child Health Branch of the State Department of Health Services shall administer a comprehensive shelter-based services grant program to battered women's shelters pursuant to this section.

(c) The Maternal and Child Health Branch shall administer grants, awarded as the result of a request for application process, to battered women's shelters that propose to maintain shelters or services previously granted funding pursuant to this section, to expand existing services or create new services, and to establish new battered women's shelters to provide services, in any of the following four areas:

(1) Emergency shelter to women and their children escaping violent family situations.

(2) Transitional housing programs to help women and their children find housing and jobs so that they are not forced to choose between returning to a violent relationship or becoming homeless. The programs may offer up to 18 months of housing, case management, job training and placement, counseling, support groups, and classes in parenting and family budgeting.

(3) Legal and other types of advocacy and representation to help women and their children pursue the appropriate legal options.

(4) Other support services for battered women and their children.

(d) (1) The Maternal and Child Health Branch of the State Department of Health Services shall conduct a minimum of one site visit per grant term to each agency funded to provide shelter-based services to battered women and their children. The purpose of the site visit shall be a performance assessment of, and technical assistance for, each agency visited. The performance assessment shall include, but need not be limited to, a review of all of the following:

- (A) Progress in meeting program goals and objectives.
- (B) Agency organization and facilities.
- (C) Personnel policies, files, and training.
- (D) Recordkeeping, budgeting, and expenditures.
- (E) Documentation, data collection, and client confidentiality.

(2) Subsequent to each site visit conducted under paragraph (1), the Maternal and Child Health Branch shall provide a written report to the agency summarizing the agency's performance, any deficiencies noted, and any corrective action needed.

(3) Where an agency receives funding from both the Maternal and Child Health Branch of the State Department of Health Services and the Domestic Violence Branch of the Office of Criminal Justice Planning during any grant cycle, the Maternal and Child Health Branch and the Domestic Violence Branch shall, to the extent feasible, coordinate agency site visits and share performance assessment data with the goal of improving efficiency, eliminating duplication, and reducing administrative costs.

(e) In implementing the grant program pursuant to this section, the State Department of Health Services shall consult with an advisory council that shall remain in existence until January 1, 2010. The council shall be composed of not to exceed 13 voting members and two nonvoting members appointed as follows:

- (1) Seven members appointed by the Governor.
- (2) Three members appointed by the Speaker of the Assembly.
- (3) Three members appointed by the Senate Committee on Rules.
- (4) Two nonvoting ex officio members who shall be Members of the Legislature, one appointed by the Speaker of the Assembly and one appointed by the Senate Committee on Rules. Any Member of the Legislature appointed to the council shall meet with, and participate in the activities of, the council to the extent that participation is not incompatible with his or her position as a Member of the Legislature.

The membership of the council shall consist of domestic violence advocates, battered women service providers, and representatives of women's organizations, law enforcement, and other groups involved with domestic violence. At least one-half of the council membership shall consist of domestic violence advocates or battered women service

providers from organizations such as the California Alliance Against Domestic Violence.

It is the intent of the Legislature that the council membership reflect the ethnic, racial, cultural, and geographic diversity of the state.

(f) The department shall collaborate closely with the council in the development of funding priorities, the framing of the Request for Proposals, and the solicitation of proposals.

(g) (1) The Maternal and Child Health Branch of the State Department of Health Services shall administer grants, awarded as the result of a request for application process, to agencies to conduct demonstration projects to serve battered women, including, but not limited to, creative and innovative service approaches, such as community response teams and pilot projects to develop new interventions emphasizing prevention and education, and other support projects identified by the advisory council.

(2) For purposes of this subdivision, “agency” means a state agency, a local government, a community-based organization, or a nonprofit organization.

(h) It is the intent of the Legislature that services funded by this program include services in underserved and ethnic and racial communities. Therefore, the Maternal and Child Health Branch of the State Department of Health Services shall do all of the following:

(1) Fund shelters pursuant to this section that reflect the ethnic, racial, economic, cultural, and geographic diversity of the state.

(2) Target geographic areas and ethnic and racial communities of the state whereby, based on a needs assessment, it is determined that no shelter-based services exist or that additional resources are necessary.

(i) The director may award additional grants to shelter-based agencies when it is determined that there exists a critical need for shelter or shelter-based services.

(j) As a condition of receiving funding pursuant to this section, battered women’s shelters shall do all of the following:

(1) Provide matching funds or in-kind contributions equivalent to not less than 20 percent of the grant they would receive. The matching funds or in-kind contributions may come from other governmental or private sources.

(2) Ensure that appropriate staff and volunteers having client contact meet the definition of “domestic violence counselor” as specified in subdivision (a) of Section 1037.1 of the Evidence Code. The minimum training specified in paragraph (2) of subdivision (a) of Section 1037.1 of the Evidence Code shall be provided to those staff and volunteers

who do not meet the requirements of paragraph (1) of subdivision (a) of Section 1037.1 of the Evidence Code.

CHAPTER 463

An act to amend Section 3003 of the Penal Code, relating to parole.

[Approved by Governor October 4, 2005. Filed with
Secretary of State October 4, 2005.]

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

SECTION 1. Section 3003 of the Penal Code is amended to read:

3003. (a) Except as otherwise provided in this section, an inmate who is released on parole shall be returned to the county that was the last legal residence of the inmate prior to his or her incarceration.

For purposes of this subdivision, “last legal residence” shall not be construed to mean the county wherein the inmate committed an offense while confined in a state prison or local jail facility or while confined for treatment in a state hospital.

(b) Notwithstanding subdivision (a), an inmate may be returned to another county if that would be in the best interests of the public. If the Board of Prison Terms setting the conditions of parole for inmates sentenced pursuant to subdivision (b) of Section 1168, as determined by the parole consideration panel, or the Department of Corrections setting the conditions of parole for inmates sentenced pursuant to Section 1170, decides on a return to another county, it shall place its reasons in writing in the parolee’s permanent record and include these reasons in the notice to the sheriff or chief of police pursuant to Section 3058.6. In making its decision, the paroling authority shall consider, among others, the following factors, giving the greatest weight to the protection of the victim and the safety of the community:

(1) The need to protect the life or safety of a victim, the parolee, a witness, or any other person.

(2) Public concern that would reduce the chance that the inmate’s parole would be successfully completed.

(3) The verified existence of a work offer, or an educational or vocational training program.

(4) The existence of family in another county with whom the inmate has maintained strong ties and whose support would increase the chance that the inmate’s parole would be successfully completed.

(5) The lack of necessary outpatient treatment programs for parolees receiving treatment pursuant to Section 2960.

(c) The Department of Corrections, in determining an out-of-county commitment, shall give priority to the safety of the community and any witnesses and victims.

(d) In making its decision about an inmate who participated in a joint venture program pursuant to Article 1.5 (commencing with Section 2717.1) of Chapter 5, the paroling authority shall give serious consideration to releasing him or her to the county where the joint venture program employer is located if that employer states to the paroling authority that he or she intends to employ the inmate upon release.

(e) (1) The following information, if available, shall be released by the Department of Corrections to local law enforcement agencies regarding a paroled inmate who is released in their jurisdictions:

(A) Last, first, and middle name.

(B) Birth date.

(C) Sex, race, height, weight, and hair and eye color.

(D) Date of parole and discharge.

(E) Registration status, if the inmate is required to register as a result of a controlled substance, sex, or arson offense.

(F) California Criminal Information Number, FBI number, social security number, and driver's license number.

(G) County of commitment.

(H) A description of scars, marks, and tattoos on the inmate.

(I) Offense or offenses for which the inmate was convicted that resulted in parole in this instance.

(J) Address, including all of the following information:

(i) Street name and number. Post office box numbers are not acceptable for purposes of this subparagraph.

(ii) City and ZIP Code.

(iii) Date that the address provided pursuant to this subparagraph was proposed to be effective.

(K) Contact officer and unit, including all of the following information:

(i) Name and telephone number of each contact officer.

(ii) Contact unit type of each contact officer such as units responsible for parole, registration, or county probation.

(L) A digitized image of the photograph and at least a single digit fingerprint of the parolee.

(M) A geographic coordinate for the parolee's residence location for use with a Geographical Information System (GIS) or comparable computer program.

(2) The information required by this subdivision shall come from the statewide parolee database. The information obtained from each source shall be based on the same timeframe.

(3) All of the information required by this subdivision shall be provided utilizing a computer-to-computer transfer in a format usable by a desktop computer system. The transfer of this information shall be continually available to local law enforcement agencies upon request.

(4) The unauthorized release or receipt of the information described in this subdivision is a violation of Section 11143.

(f) Notwithstanding any other provision of law, an inmate who is released on parole shall not be returned to a location within 35 miles of the actual residence of a victim of, or a witness to, a violent felony as defined in paragraphs (1) to (7), inclusive, of subdivision (c) of Section 667.5 or a felony in which the defendant inflicts great bodily injury on any person other than an accomplice that has been charged and proved as provided for in Section 12022.53, 12022.7, or 12022.9, if the victim or witness has requested additional distance in the placement of the inmate on parole, and if the Board of Prison Terms or the Department of Corrections finds that there is a need to protect the life, safety, or well-being of a victim or witness.

(g) (1) Notwithstanding any other law, an inmate who is released on parole for any violation of Section 288 or 288.5 shall not be placed or reside, for the duration of his or her period of parole, within one-quarter mile of any public or private school, including any or all of kindergarten and grades 1 to 8, inclusive.

(2) Notwithstanding any other law, an inmate who is released on parole for a violation of Section 288 or 288.5 whom the Department of Corrections and Rehabilitation determines poses a high risk to the public shall not be placed or reside, for the duration of his or her parole, within one-half mile of any public or private school including any or all of kindergarten and grades 1 to 12, inclusive.

(h) Notwithstanding any other law, an inmate who is released on parole for an offense involving stalking shall not be returned to a location within 35 miles of the victim's actual residence or place of employment if the victim or witness has requested additional distance in the placement of the inmate on parole, and if the Board of Prison Terms or the Department of Corrections finds that there is a need to protect the life, safety, or well-being of the victim.

(i) The authority shall give consideration to the equitable distribution of parolees and the proportion of out-of-county commitments from a county compared to the number of commitments from that county when making parole decisions.

(j) An inmate may be paroled to another state pursuant to any other law.

(k) (1) Except as provided in paragraph (2), the Department of Corrections shall be the agency primarily responsible for, and shall have control over, the program, resources, and staff implementing the Law Enforcement Automated Data System (LEADS) in conformance with subdivision (e).

(2) Notwithstanding paragraph (1), the Department of Justice shall be the agency primarily responsible for the proper release of information under LEADS that relates to fingerprint cards.

SEC. 2. Section 3003 of the Penal Code is amended to read:

3003. (a) Except as otherwise provided in this section, an inmate who is released on parole shall be returned to the county that was the last legal residence of the inmate prior to his or her incarceration.

For purposes of this subdivision, “last legal residence” shall not be construed to mean the county wherein the inmate committed an offense while confined in a state prison or local jail facility or while confined for treatment in a state hospital.

(b) Notwithstanding subdivision (a), an inmate may be returned to another county if that would be in the best interests of the public. If the Board of Prison Terms setting the conditions of parole for inmates sentenced pursuant to subdivision (b) of Section 1168, as determined by the parole consideration panel, or the Department of Corrections setting the conditions of parole for inmates sentenced pursuant to Section 1170, decides on a return to another county, it shall place its reasons in writing in the parolee’s permanent record and include these reasons in the notice to the sheriff or chief of police pursuant to Section 3058.6. In making its decision, the paroling authority shall consider, among others, the following factors, giving the greatest weight to the protection of the victim and the safety of the community:

(1) The need to protect the life or safety of a victim, the parolee, a witness, or any other person.

(2) Public concern that would reduce the chance that the inmate’s parole would be successfully completed.

(3) The verified existence of a work offer, or an educational or vocational training program.

(4) The existence of family in another county with whom the inmate has maintained strong ties and whose support would increase the chance that the inmate’s parole would be successfully completed.

(5) The lack of necessary outpatient treatment programs for parolees receiving treatment pursuant to Section 2960.

(c) The Department of Corrections, in determining an out-of-county commitment, shall give priority to the safety of the community and any witnesses and victims.

(d) In making its decision about an inmate who participated in a joint venture program pursuant to Article 1.5 (commencing with Section 2717.1) of Chapter 5, the paroling authority shall give serious consideration to releasing him or her to the county where the joint venture program employer is located if that employer states to the paroling authority that he or she intends to employ the inmate upon release.

(e) (1) The following information, if available, shall be released by the Department of Corrections to local law enforcement agencies regarding a paroled inmate who is released in their jurisdictions:

- (A) Last, first, and middle name.
- (B) Birth date.
- (C) Sex, race, height, weight, and hair and eye color.
- (D) Date of parole and discharge.
- (E) Registration status, if the inmate is required to register as a result of a controlled substance, sex, or arson offense.
- (F) California Criminal Information Number, FBI number, social security number, and driver's license number.
- (G) County of commitment.
- (H) A description of scars, marks, and tattoos on the inmate.
- (I) Offense or offenses for which the inmate was convicted that resulted in parole in this instance.
- (J) Address, including all of the following information:
 - (i) Street name and number. Post office box numbers are not acceptable for purposes of this subparagraph.
 - (ii) City and ZIP Code.
 - (iii) Date that the address provided pursuant to this subparagraph was proposed to be effective.
- (K) Contact officer and unit, including all of the following information:
 - (i) Name and telephone number of each contact officer.
 - (ii) Contact unit type of each contact officer such as units responsible for parole, registration, or county probation.
- (L) A digitized image of the photograph and at least a single digit fingerprint of the parolee.
- (M) A geographic coordinate for the parolee's residence location for use with a Geographical Information System (GIS) or comparable computer program.

(2) The information required by this subdivision shall come from the statewide parolee database. The information obtained from each source shall be based on the same timeframe.

(3) All of the information required by this subdivision shall be provided utilizing a computer-to-computer transfer in a format usable by a desktop computer system. The transfer of this information shall be continually available to local law enforcement agencies upon request.

(4) The unauthorized release or receipt of the information described in this subdivision is a violation of Section 11143.

(f) Notwithstanding any other provision of law, an inmate who is released on parole shall not be returned to a location within 35 miles of the actual residence of a victim of, or a witness to, a violent felony as defined in paragraphs (1) to (7), inclusive, of subdivision (c) of Section 667.5 or a felony in which the defendant inflicts great bodily injury on any person other than an accomplice that has been charged and proved as provided for in Section 12022.53, 12022.7, or 12022.9, if the victim or witness has requested additional distance in the placement of the inmate on parole, and if the Board of Prison Terms or the Department of Corrections finds that there is a need to protect the life, safety, or well-being of a victim or witness.

(g) (1) Notwithstanding any other law, an inmate who is released on parole for any violation of Section 288 or 288.5 shall not be placed or reside, for the duration of his or her period of parole, within one-quarter mile of any public or private school including any or all of kindergarten and grades 1 to 8, inclusive.

(2) In addition to the prohibition contained in paragraph (1) and not in lieu of it, and notwithstanding any other law, effective July 1, 2006, an inmate who is released on parole for a violation of subdivision (c) of Section 288 shall not be placed or reside, for the duration of his or her period of parole, within one-quarter mile of any public or private school including any or all of grades 9 to 12, inclusive.

(3) Notwithstanding any other law, an inmate who is released on parole for a violation of Section 288 or 288.5 whom the Department of Corrections and Rehabilitation determines poses a high risk to the public shall not be placed or reside, for the duration of his or her parole, within one-half mile of any public or private school including any or all of kindergarten and grades 1 to 12, inclusive.

(h) Notwithstanding any other law, an inmate who is released on parole for an offense involving stalking shall not be returned to a location within 35 miles of the victim's actual residence or place of employment if the victim or witness has requested additional distance in the placement of the inmate on parole, and if the Board of Prison Terms or the Department of Corrections finds that there is a need to protect the life, safety, or well-being of the victim.

(i) The authority shall give consideration to the equitable distribution of parolees and the proportion of out-of-county commitments from a

county compared to the number of commitments from that county when making parole decisions.

(j) An inmate may be paroled to another state pursuant to any other law.

(k) (1) Except as provided in paragraph (2), the Department of Corrections shall be the agency primarily responsible for, and shall have control over, the program, resources, and staff implementing the Law Enforcement Automated Data System (LEADS) in conformance with subdivision (e).

(2) Notwithstanding paragraph (1), the Department of Justice shall be the agency primarily responsible for the proper release of information under LEADS that relates to fingerprint cards.

SEC. 3. Section 2 of this bill incorporates amendments to Section 3003 of the Penal Code proposed by this bill and AB 240. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2006, (2) each bill amends Section 3003 of the Penal Code, and (3) this bill is enacted after AB 240, in which case Section 3003 of the Penal Code, as amended by AB 240, shall remain operative only until the operative date of this bill, at which time Section 2 of this bill shall become operative, and Section 1 of this bill shall not become operative.

CHAPTER 464

An act to amend Section 1109 of the Evidence Code, relating to child abuse.

[Approved by Governor October 4, 2005. Filed with
Secretary of State October 4, 2005.]

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 person, evidence of the defendant's commission of other abuse of an elder or dependent person is not made inadmissible

by Section 1101 if the evidence is not inadmissible pursuant to Section 352.

(3) Except as provided in subdivision (e) or (f) and subject to a hearing conducted pursuant to Section 352, which shall include consideration of any corroboration and remoteness in time, in a criminal action in which the defendant is accused of an offense involving child abuse, evidence of the defendant's commission of child abuse is not made inadmissible by Section 1101 if the evidence is not inadmissible pursuant to Section 352. Nothing in this paragraph prohibits or limits the admission of evidence pursuant to subdivision (b) of Section 1101.

(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:

(1) "Abuse of an elder or dependent person" means physical or sexual abuse, neglect, financial abuse, abandonment, isolation, abduction, or other treatment that results in physical harm, pain, or mental suffering, the deprivation of care by a caregiver, or other deprivation by a custodian or provider of goods or services that are necessary to avoid physical harm or mental suffering.

(2) "Child abuse" means an act proscribed by Section 273d of the Penal Code.

(3) "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.

(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 465

An act to amend Section 3100 of the Family Code, and to amend Section 136.2 of the Penal Code, relating to protective orders.

[Approved by Governor October 4, 2005. Filed with
Secretary of State October 4, 2005.]

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

SECTION 1. Section 3100 of the Family Code is amended to read:
3100. (a) In making an order pursuant to Chapter 4 (commencing with Section 3080), the court shall grant reasonable visitation rights to a parent unless it is shown that the visitation would be detrimental to the best interest of the child. In the discretion of the court, reasonable visitation rights may be granted to any other person having an interest in the welfare of the child.

(b) If a protective order, as defined in Section 6218, has been directed to a parent, the court shall consider whether the best interest of the child requires that any visitation by that parent shall be limited to situations in which a third person, specified by the court, is present, or whether visitation shall be suspended or denied. The court shall include in its deliberations a consideration of the nature of the acts from which the parent was enjoined and the period of time that has elapsed since that order. A parent may submit to the court the name of a person that the parent deems suitable to be present during visitation.

(c) If visitation is ordered in a case in which domestic violence is alleged and an emergency protective order, protective order, or other restraining order has been issued, the visitation order shall specify the time, day, place, and manner of transfer of the child, so as to limit the child's exposure to potential domestic conflict or violence and to ensure the safety of all family members. If a criminal protective order has been issued pursuant to Section 136.2 of the Penal Code, the visitation order shall make reference to, and acknowledge the precedence of enforcement of, any appropriate criminal protective order.

(d) If the court finds a party is staying in a place designated as a shelter for victims of domestic violence or other confidential location, the court's order for time, day, place, and manner of transfer of the child for visitation shall be designed to prevent disclosure of the location of the shelter or other confidential location.

SEC. 2 Section 136.2 of the Penal Code is amended to read:

136.2. (a) Upon a good cause belief that harm to, or intimidation or dissuasion of, a victim or witness has occurred or is reasonably likely

to occur, any court with jurisdiction over a criminal matter may issue orders including, but not limited to, the following:

(1) Any order issued pursuant to Section 6320 of the Family Code.
(2) An order that a defendant shall not violate any provision of Section 136.1.

(3) An order that a person before the court other than a defendant, including, but not limited to, a subpoenaed witness or other person entering the courtroom of the court, shall not violate any provisions of Section 136.1.

(4) An order that any person described in this section shall have no communication whatsoever with any specified witness or any victim, except through an attorney under any reasonable restrictions that the court may impose.

(5) An order calling for a hearing to determine if an order as described in paragraphs (1) to (4), inclusive, should be issued.

(6) An order that a particular law enforcement agency within the jurisdiction of the court provide protection for a victim or a witness, or both, or for immediate family members of a victim or a witness who reside in the same household as the victim or witness or within reasonable proximity of the victim's or witness' household, as determined by the court. The order shall not be made without the consent of the law enforcement agency except for limited and specified periods of time and upon an express finding by the court of a clear and present danger of harm to the victim or witness or immediate family members of the victim or witness.

For purposes of this paragraph, "immediate family members" include the spouse, children, or parents of the victim or witness.

(7) Any order protecting victims of violent crime from contact, with the intent to annoy, harass, threaten, or commit acts of violence, by the defendant. The court or its designee shall transmit orders made under this paragraph to law enforcement personnel within one business day of the issuance, modification, extension, or termination of the order, pursuant to subdivision (a) of Section 6380 of the Family Code. It is the responsibility of the court to transmit the modification, extension, or termination orders made under this paragraph to the same agency that entered the original protective order into the Domestic Violence Restraining Order System.

Any order issued, modified, extended, or terminated by a court pursuant to this paragraph shall be issued on forms adopted by the Judicial Council of California and that have been approved by the Department of Justice pursuant to subdivision (i) of Section 6380 of the Family Code. However, the fact that an order issued by a court pursuant to this section was not issued on forms adopted by the Judicial Council

and approved by the Department of Justice shall not, in and of itself, make the order unenforceable.

(b) Any person violating any order made pursuant to subdivision (a) may be punished for any substantive offense described in Section 136.1, or for a contempt of the court making the order. A finding of contempt shall not be a bar to prosecution for a violation of Section 136.1. However, any person so held in contempt shall be entitled to credit for any punishment imposed therein against any sentence imposed upon conviction of an offense described in Section 136.1. Any conviction or acquittal for any substantive offense under Section 136.1 shall be a bar to a subsequent punishment for contempt arising out of the same act.

(c) (1) A person subject to a protective order issued under this section shall not own, possess, purchase, receive, or attempt to purchase or receive a firearm while the protective order is in effect.

(2) The court shall order a person subject to a protective order issued under this section to relinquish any firearms he or she owns or possesses pursuant to Section 527.9 of the Code of Civil Procedure.

(3) Every person who owns, possesses, purchases or receives, or attempts to purchase or receive a firearm while the protective order is in effect is punishable pursuant to subdivision (g) of Section 12021 of the Penal Code.

(d) (1) In all cases where the defendant is charged with a crime of domestic violence, as defined in Section 13700, the court shall consider issuing the above-described orders on its own motion. All interested parties shall receive a copy of those orders. In order to facilitate this, the court's records of all criminal cases involving domestic violence shall be marked to clearly alert the court to this issue.

(2) In those cases in which a complaint, information, or indictment charging a crime of domestic violence, as defined in Section 13700, has been issued, a restraining order or protective order against the defendant issued by the criminal court in that case has precedence in enforcement over any civil court order against the defendant.

(3) Custody and visitation with respect to the defendant and his or her minor children may be ordered by a family or juvenile court consistent with the protocol established pursuant to subdivision (e), but if ordered after a criminal protective order has been issued pursuant to this section, the custody and visitation order shall make reference to, and acknowledge the precedence of enforcement of, any appropriate criminal protective order. On or before July 1, 2006, the Judicial Council shall modify the criminal and civil court forms consistent with this subdivision.

(e) On or before January 1, 2003, the Judicial Council shall promulgate a protocol, for adoption by each local court in substantially similar terms,

to provide for the timely coordination of all orders against the same defendant and in favor of the same named victim or victims. The protocol shall include, but shall not be limited to, mechanisms for assuring appropriate communication and information sharing between criminal, family, and juvenile courts concerning orders and cases that involve the same parties, and shall permit a family or juvenile court order to coexist with a criminal court protective order subject to the following conditions:

(1) Any order that permits contact between the restrained person and his or her children shall provide for the safe exchange of the children and shall not contain language either printed or handwritten that violates a “no contact order” issued by a criminal court.

(2) Safety of all parties shall be the courts’ paramount concern. The family or juvenile court shall specify the time, day, place, and manner of transfer of the child, as provided in Section 3100 of the Family Code.

(f) On or before January 1, 2003, the Judicial Council shall modify the criminal and civil court protective order forms consistent with this section.

SEC. 2.1. Section 136.2 of the Penal Code is amended to read:

136.2. (a) Except as provided in subdivision (c), upon a good cause belief that harm to, or intimidation or dissuasion of, a victim or witness has occurred or is reasonably likely to occur, any court with jurisdiction over a criminal matter may issue orders including, but not limited to, the following:

(1) Any order issued pursuant to Section 6320 of the Family Code.

(2) An order that a defendant shall not violate any provision of Section 136.1.

(3) An order that a person before the court other than a defendant, including, but not limited to, a subpoenaed witness or other person entering the courtroom of the court, shall not violate any provisions of Section 136.1.

(4) An order that any person described in this section shall have no communication whatsoever with any specified witness or any victim, except through an attorney under any reasonable restrictions that the court may impose.

(5) An order calling for a hearing to determine if an order as described in paragraphs (1) to (4), inclusive, should be issued.

(6) An order that a particular law enforcement agency within the jurisdiction of the court provide protection for a victim or a witness, or both, or for immediate family members of a victim or a witness who reside in the same household as the victim or witness or within reasonable proximity of the victim’s or witness’ household, as determined by the court. The order shall not be made without the consent of the law enforcement agency except for limited and specified periods of time and

upon an express finding by the court of a clear and present danger of harm to the victim or witness or immediate family members of the victim or witness.

For purposes of this paragraph, "immediate family members" include the spouse, children, or parents of the victim or witness.

(7) (A) Any order protecting victims of violent crime from contact, with the intent to annoy, harass, threaten, or commit acts of violence, by the defendant. The court or its designee shall transmit orders made under this paragraph to law enforcement personnel within one business day of the issuance, modification, extension, or termination of the order, pursuant to subdivision (a) of Section 6380 of the Family Code. It is the responsibility of the court to transmit the modification, extension, or termination orders made under this paragraph to the same agency that entered the original protective order into the Domestic Violence Restraining Order System.

(B) Any order issued, modified, extended, or terminated by a court pursuant to this paragraph shall be issued on forms adopted by the Judicial Council of California and that have been approved by the Department of Justice pursuant to subdivision (i) of Section 6380 of the Family Code. However, the fact that an order issued by a court pursuant to this section was not issued on forms adopted by the Judicial Council and approved by the Department of Justice shall not, in and of itself, make the order unenforceable.

(b) Any person violating any order made pursuant to paragraphs (1) to (7), inclusive, of subdivision (a) may be punished for any substantive offense described in Section 136.1, or for a contempt of the court making the order. A finding of contempt shall not be a bar to prosecution for a violation of Section 136.1. However, any person so held in contempt shall be entitled to credit for any punishment imposed therein against any sentence imposed upon conviction of an offense described in Section 136.1. Any conviction or acquittal for any substantive offense under Section 136.1 shall be a bar to a subsequent punishment for contempt arising out of the same act.

(c) (1) Notwithstanding subdivisions (a) and (e), an emergency protective order issued pursuant to Chapter 2 (commencing with Section 6250) of Part 3 of Division 10 of the Family Code or Section 646.91 of the Penal Code shall have precedence in enforcement over any other restraining or protective order, provided the emergency protective order meets all of the following requirements:

(A) The emergency protective order is issued to protect one or more individuals who are already protected persons under another restraining or protective order.

(B) The emergency protective order restrains the individual who is the restrained person in the other restraining or protective order specified in subparagraph (A).

(C) The provisions of the emergency protective order are more restrictive in relation to the restrained person than are the provisions of the other restraining or protective order specified in subparagraph (A).

(2) An emergency protective order that meets the requirements of paragraph (1) shall have precedence in enforcement over the provisions of any other restraining or protective order only with respect to those provisions of the emergency protective order that are more restrictive in relation to the restrained person.

(d) (1) A person subject to a protective order issued under this section shall not own, possess, purchase, receive, or attempt to purchase or receive a firearm while the protective order is in effect.

(2) The court shall order a person subject to a protective order issued under this section to relinquish any firearms he or she owns or possesses pursuant to Section 527.9 of the Code of Civil Procedure.

(3) Every person who owns, possesses, purchases or receives, or attempts to purchase or receive a firearm while the protective order is in effect is punishable pursuant to subdivision (g) of Section 12021 of the Penal Code.

(e) (1) In all cases where the defendant is charged with a crime of domestic violence, as defined in Section 13700, the court shall consider issuing the above-described orders on its own motion. All interested parties shall receive a copy of those orders. In order to facilitate this, the court's records of all criminal cases involving domestic violence shall be marked to clearly alert the court to this issue.

(2) In those cases in which a complaint, information, or indictment charging a crime of domestic violence, as defined in Section 13700, has been issued, a restraining order or protective order against the defendant issued by the criminal court in that case has precedence in enforcement over any civil court order against the defendant, unless a court issues an emergency protective order pursuant to Chapter 2 (commencing with Section 6250) of Part 3 of Division 10 of the Family Code or Section 646.91 of the Penal Code, in which case the emergency protective order shall have precedence in enforcement over any other restraining or protective order, provided the emergency protective order meets the following requirements:

(A) The emergency protective order is issued to protect one or more individuals who are already protected persons under another restraining or protective order.

(B) The emergency protective order restrains the individual who is the restrained person in the other restraining or protective order specified in subparagraph (A).

(C) The provisions of the emergency protective order are more restrictive in relation to the restrained person than are the provisions of the other restraining or protective order specified in subparagraph (A).

(3) Custody and visitation with respect to the defendant and his or her minor children may be ordered by a family or juvenile court consistent with the protocol established pursuant to subdivision (f), but if ordered after a criminal protective order has been issued pursuant to this section, the custody and visitation order shall make reference to, and acknowledge the precedence of enforcement of, any appropriate criminal protective order. On or before July 1, 2006, the Judicial Council shall modify the criminal and civil court forms consistent with this subdivision.

(f) On or before January 1, 2003, the Judicial Council shall promulgate a protocol, for adoption by each local court in substantially similar terms, to provide for the timely coordination of all orders against the same defendant and in favor of the same named victim or victims. The protocol shall include, but shall not be limited to, mechanisms for assuring appropriate communication and information sharing between criminal, family, and juvenile courts concerning orders and cases that involve the same parties, and shall permit a family or juvenile court order to coexist with a criminal court protective order subject to the following conditions:

(1) Any order that permits contact between the restrained person and his or her children shall provide for the safe exchange of the children and shall not contain language either printed or handwritten that violates a “no contact order” issued by a criminal court.

(2) Safety of all parties shall be the courts’ paramount concern. The family or juvenile court shall specify the time, day, place, and manner of transfer of the child, as provided in Section 3100 of the Family Code.

(g) On or before January 1, 2003, the Judicial Council shall modify the criminal and civil court protective order forms consistent with this section.

SEC. 2.2. Section 136.2 of the Penal Code is amended to read:

136.2. (a) Upon a good cause belief that harm to, or intimidation or dissuasion of, a victim or witness has occurred or is reasonably likely to occur, any court with jurisdiction over a criminal matter may issue orders including, but not limited to, the following:

(1) Any order issued pursuant to Section 6320 of the Family Code.

(2) An order that a defendant shall not violate any provision of Section 136.1.

(3) An order that a person before the court other than a defendant, including, but not limited to, a subpoenaed witness or other person entering the courtroom of the court, shall not violate any provisions of Section 136.1.

(4) An order that any person described in this section shall have no communication whatsoever with any specified witness or any victim, except through an attorney under any reasonable restrictions that the court may impose.

(5) An order calling for a hearing to determine if an order as described in paragraphs (1) to (4), inclusive, should be issued.

(6) An order that a particular law enforcement agency within the jurisdiction of the court provide protection for a victim or a witness, or both, or for immediate family members of a victim or a witness who reside in the same household as the victim or witness or within reasonable proximity of the victim's or witness' household, as determined by the court. The order shall not be made without the consent of the law enforcement agency except for limited and specified periods of time and upon an express finding by the court of a clear and present danger of harm to the victim or witness or immediate family members of the victim or witness.

For purposes of this paragraph, "immediate family members" include the spouse, children, or parents of the victim or witness.

(7) (A) Any order protecting victims of violent crime from contact, with the intent to annoy, harass, threaten, or commit acts of violence, by the defendant. The court or its designee shall transmit orders made under this paragraph to law enforcement personnel within one business day of the issuance, modification, extension, or termination of the order, pursuant to subdivision (a) of Section 6380 of the Family Code. It is the responsibility of the court to transmit the modification, extension, or termination orders made under this paragraph to the same agency that entered the original protective order into the Domestic Violence Restraining Order System.

(B) (i) If a court does not issue an order pursuant to subparagraph (A) in a case in which the defendant is charged with a crime of domestic violence as defined in Section 13700, the court on its own motion shall consider issuing a protective order upon a good cause belief that harm to, or intimidation or dissuasion of, a victim or witness has occurred or is reasonably likely to occur, that provides as follows:

(I) The defendant shall not own, possess, purchase, receive, or attempt to purchase or receive, a firearm while the protective order is in effect.

(II) The defendant shall relinquish any firearms that he or she owns or possesses pursuant to Section 527.9 of the Code of Civil Procedure.

(ii) Every person who owns, possesses, purchases, or receives, or attempts to purchase or receive, a firearm while this protective order is in effect is punishable pursuant to subdivision (g) of Section 12021.

(C) Any order issued, modified, extended, or terminated by a court pursuant to this paragraph shall be issued on forms adopted by the Judicial Council of California and that have been approved by the Department of Justice pursuant to subdivision (i) of Section 6380 of the Family Code. However, the fact that an order issued by a court pursuant to this section was not issued on forms adopted by the Judicial Council and approved by the Department of Justice shall not, in and of itself, make the order unenforceable.

(b) Any person violating any order made pursuant to subdivision (a), may be punished for any substantive offense described in Section 136.1, or for a contempt of the court making the order. A finding of contempt shall not be a bar to prosecution for a violation of Section 136.1. However, any person so held in contempt shall be entitled to credit for any punishment imposed therein against any sentence imposed upon conviction of an offense described in Section 136.1. Any conviction or acquittal for any substantive offense under Section 136.1 shall be a bar to a subsequent punishment for contempt arising out of the same act.

(c) (1) A person subject to a protective order issued under this section shall not own, possess, purchase, receive, or attempt to purchase or receive a firearm while the protective order is in effect.

(2) The court shall order a person subject to a protective order issued under this section to relinquish any firearms he or she owns or possesses pursuant to Section 527.9 of the Code of Civil Procedure.

(3) Every person who owns, possesses, purchases or receives, or attempts to purchase or receive a firearm while the protective order is in effect is punishable pursuant to subdivision (g) of Section 12021 of the Penal Code.

(d) (1) In all cases where the defendant is charged with a crime of domestic violence, as defined in Section 13700, the court shall consider issuing the above-described orders on its own motion. All interested parties shall receive a copy of those orders. In order to facilitate this, the court's records of all criminal cases involving domestic violence shall be marked to clearly alert the court to this issue.

(2) In those cases in which a complaint, information, or indictment charging a crime of domestic violence, as defined in Section 13700, has been issued, a restraining order or protective order against the defendant issued by the criminal court in that case has precedence in enforcement over any civil court order against the defendant.

(3) Custody and visitation with respect to the defendant and his or her minor children may be ordered by a family or juvenile court

consistent with the protocol established pursuant to subdivision (e), but if ordered after a criminal protective order has been issued pursuant to this section, the custody and visitation order shall make reference to, and acknowledge the precedence of enforcement of, any appropriate criminal protective order. On or before July 1, 2006, the Judicial Council shall modify the criminal and civil court forms consistent with this subdivision.

(e) On or before January 1, 2003, the Judicial Council shall promulgate a protocol, for adoption by each local court in substantially similar terms, to provide for the timely coordination of all orders against the same defendant and in favor of the same named victim or victims. The protocol shall include, but shall not be limited to, mechanisms for assuring appropriate communication and information sharing between criminal, family, and juvenile courts concerning orders and cases that involve the same parties, and shall permit a family or juvenile court order to coexist with a criminal court protective order subject to the following conditions:

(1) Any order that permits contact between the restrained person and his or her children shall provide for the safe exchange of the children and shall not contain language either printed or handwritten that violates a “no contact order” issued by a criminal court.

(2) Safety of all parties shall be the courts’ paramount concern. The family or juvenile court shall specify the time, day, place, and manner of transfer of the child, as provided in Section 3100 of the Family Code.

(f) On or before January 1, 2003, the Judicial Council shall modify the criminal and civil court protective order forms consistent with this section.

SEC. 2.3. Section 136.2 of the Penal Code is amended to read:

136.2. (a) Upon a good cause belief that harm to, or intimidation or dissuasion of, a victim or witness has occurred or is reasonably likely to occur, any court with jurisdiction over a criminal matter may issue orders including, but not limited to, the following:

(1) Any order issued pursuant to Section 6320 of the Family Code.

(2) An order that a defendant shall not violate any provision of Section 136.1.

(3) An order that a person before the court other than a defendant, including, but not limited to, a subpoenaed witness or other person entering the courtroom of the court, shall not violate any provisions of Section 136.1.

(4) An order that any person described in this section shall have no communication whatsoever with any specified witness or any victim, except through an attorney under any reasonable restrictions that the court may impose.

(5) An order calling for a hearing to determine if an order as described in paragraphs (1) to (4), inclusive, should be issued.

(6) An order that a particular law enforcement agency within the jurisdiction of the court provide protection for a victim or a witness, or both, or for immediate family members of a victim or a witness who reside in the same household as the victim or witness or within reasonable proximity of the victim's or witness' household, as determined by the court. The order shall not be made without the consent of the law enforcement agency except for limited and specified periods of time and upon an express finding by the court of a clear and present danger of harm to the victim or witness or immediate family members of the victim or witness.

For purposes of this paragraph, "immediate family members" include the spouse, children, or parents of the victim or witness.

(7) (A) Any order protecting victims of violent crime from all contact by the defendant, or contact, with the intent to annoy, harass, threaten, or commit acts of violence, by the defendant. The court or its designee shall transmit orders made under this paragraph to law enforcement personnel within one business day of the issuance, modification, extension, or termination of the order, pursuant to subdivision (a) of Section 6380 of the Family Code. It is the responsibility of the court to transmit the modification, extension, or termination orders made under this paragraph to the same agency that entered the original protective order into the Domestic Violence Restraining Order System.

(B) Any order issued, modified, extended, or terminated by a court pursuant to this paragraph shall be issued on forms adopted by the Judicial Council of California and that have been approved by the Department of Justice pursuant to subdivision (i) of Section 6380 of the Family Code. However, the fact that an order issued by a court pursuant to this section was not issued on forms adopted by the Judicial Council and approved by the Department of Justice shall not, in and of itself, make the order unenforceable.

(b) Any person violating any order made pursuant to subdivision (a) may be punished for any substantive offense described in Section 136.1, or for a contempt of the court making the order. A finding of contempt shall not be a bar to prosecution for a violation of Section 136.1. However, any person so held in contempt shall be entitled to credit for any punishment imposed therein against any sentence imposed upon conviction of an offense described in Section 136.1. Any conviction or acquittal for any substantive offense under Section 136.1 shall be a bar to a subsequent punishment for contempt arising out of the same act.

(c) (1) A person subject to a protective order issued under this section shall not own, possess, purchase, receive, or attempt to purchase or receive a firearm while the protective order is in effect.

(2) The court shall order a person subject to a protective order issued under this section to relinquish any firearms he or she owns or possesses pursuant to Section 527.9 of the Code of Civil Procedure.

(3) Every person who owns, possesses, purchases or receives, or attempts to purchase or receive a firearm while the protective order is in effect is punishable pursuant to subdivision (g) of Section 12021 of the Penal Code.

(d) (1) In all cases where the defendant is charged with a crime of domestic violence, as defined in Section 13700, the court shall consider issuing the above-described orders on its own motion. All interested parties shall receive a copy of those orders. In order to facilitate this, the court's records of all criminal cases involving domestic violence shall be marked to clearly alert the court to this issue.

(2) In those cases in which a complaint, information, or indictment charging a crime of domestic violence, as defined in Section 13700, has been issued, a restraining order or protective order against the defendant issued by the criminal court in that case has precedence in enforcement over any civil court order against the defendant.

(3) Custody and visitation with respect to the defendant and his or her minor children may be ordered by a family or juvenile court consistent with the protocol established pursuant to subdivision (e), but if ordered after a criminal protective order has been issued pursuant to this section, the custody and visitation order shall make reference to, and acknowledge the precedence of enforcement of, any appropriate criminal protective order. On or before July 1, 2006, the Judicial Council shall modify the criminal and civil court forms consistent with this subdivision.

(e) On or before January 1, 2003, the Judicial Council shall promulgate a protocol, for adoption by each local court in substantially similar terms, to provide for the timely coordination of all orders against the same defendant and in favor of the same named victim or victims. The protocol shall include, but shall not be limited to, mechanisms for assuring appropriate communication and information sharing between criminal, family, and juvenile courts concerning orders and cases that involve the same parties, and shall permit a family or juvenile court order to coexist with a criminal court protective order subject to the following conditions:

(1) Any order that permits contact between the restrained person and his or her children shall provide for the safe exchange of the children and shall not contain language either printed or handwritten that violates a "no contact order" issued by a criminal court.

(2) Safety of all parties shall be the courts' paramount concern. The family or juvenile court shall specify the time, day, place, and manner of transfer of the child, as provided in Section 3100 of the Family Code.

(f) On or before January 1, 2003, the Judicial Council shall modify the criminal and civil court protective order forms consistent with this section.

SEC. 2.4. Section 136.2 of the Penal Code is amended to read:

136.2. (a) Except as provided in subdivision (c), upon a good cause belief that harm to, or intimidation or dissuasion of, a victim or witness has occurred or is reasonably likely to occur, any court with jurisdiction over a criminal matter may issue orders including, but not limited to, the following:

- (1) Any order issued pursuant to Section 6320 of the Family Code.
- (2) An order that a defendant shall not violate any provision of Section 136.1.
- (3) An order that a person before the court other than a defendant, including, but not limited to, a subpoenaed witness or other person entering the courtroom of the court, shall not violate any provisions of Section 136.1.
- (4) An order that any person described in this section shall have no communication whatsoever with any specified witness or any victim, except through an attorney under any reasonable restrictions that the court may impose.
- (5) An order calling for a hearing to determine if an order as described in paragraphs (1) to (4), inclusive, should be issued.
- (6) An order that a particular law enforcement agency within the jurisdiction of the court provide protection for a victim or a witness, or both, or for immediate family members of a victim or a witness who reside in the same household as the victim or witness or within reasonable proximity of the victim's or witness' household, as determined by the court. The order shall not be made without the consent of the law enforcement agency except for limited and specified periods of time and upon an express finding by the court of a clear and present danger of harm to the victim or witness or immediate family members of the victim or witness.

For purposes of this paragraph, "immediate family members" include the spouse, children, or parents of the victim or witness.

(7) (A) Any order protecting victims of violent crime from contact, with the intent to annoy, harass, threaten, or commit acts of violence, by the defendant. The court or its designee shall transmit orders made under this paragraph to law enforcement personnel within one business day of the issuance, modification, extension, or termination of the order, pursuant to subdivision (a) of Section 6380 of the Family Code. It is the

responsibility of the court to transmit the modification, extension, or termination orders made under this paragraph to the same agency that entered the original protective order into the Domestic Violence Restraining Order System.

(B) (i) If a court does not issue an order pursuant to subparagraph (A) in a case in which the defendant is charged with a crime of domestic violence as defined in Section 13700, the court on its own motion shall consider issuing a protective order upon a good cause belief that harm to, or intimidation or dissuasion of, a victim or witness has occurred or is reasonably likely to occur, that provides as follows:

(I) The defendant shall not own, possess, purchase, receive, or attempt to purchase or receive, a firearm while the protective order is in effect.

(II) The defendant shall relinquish any firearms that he or she owns or possesses pursuant to Section 527.9 of the Code of Civil Procedure.

(ii) Every person who owns, possesses, purchases, or receives, or attempts to purchase or receive, a firearm while this protective order is in effect is punishable pursuant to subdivision (g) of Section 12021.

(C) Any order issued, modified, extended, or terminated by a court pursuant to this paragraph shall be issued on forms adopted by the Judicial Council of California and that have been approved by the Department of Justice pursuant to subdivision (i) of Section 6380 of the Family Code. However, the fact that an order issued by a court pursuant to this section was not issued on forms adopted by the Judicial Council and approved by the Department of Justice shall not, in and of itself, make the order unenforceable.

(b) Any person violating any order made pursuant to paragraphs (1) to (7), inclusive, of subdivision (a) may be punished for any substantive offense described in Section 136.1, or for a contempt of the court making the order. A finding of contempt shall not be a bar to prosecution for a violation of Section 136.1. However, any person so held in contempt shall be entitled to credit for any punishment imposed therein against any sentence imposed upon conviction of an offense described in Section 136.1. Any conviction or acquittal for any substantive offense under Section 136.1 shall be a bar to a subsequent punishment for contempt arising out of the same act.

(c) (1) Notwithstanding subdivisions (a) and (e), an emergency protective order issued pursuant to Chapter 2 (commencing with Section 6250) of Part 3 of Division 10 of the Family Code or Section 646.91 of the Penal Code shall have precedence in enforcement over any other restraining or protective order, provided the emergency protective order meets all of the following requirements:

(A) The emergency protective order is issued to protect one or more individuals who are already protected persons under another restraining or protective order.

(B) The emergency protective order restrains the individual who is the restrained person in the other restraining or protective order specified in subparagraph (A).

(C) The provisions of the emergency protective order are more restrictive in relation to the restrained person than are the provisions of the other restraining or protective order specified in subparagraph (A).

(2) An emergency protective order that meets the requirements of paragraph (1) shall have precedence in enforcement over the provisions of any other restraining or protective order only with respect to those provisions of the emergency protective order that are more restrictive in relation to the restrained person.

(d) (1) A person subject to a protective order issued under this section shall not own, possess, purchase, receive, or attempt to purchase or receive a firearm while the protective order is in effect.

(2) The court shall order a person subject to a protective order issued under this section to relinquish any firearms he or she owns or possesses pursuant to Section 527.9 of the Code of Civil Procedure.

(3) Every person who owns, possesses, purchases or receives, or attempts to purchase or receive a firearm while the protective order is in effect is punishable pursuant to subdivision (g) of Section 12021 of the Penal Code.

(e) (1) In all cases where the defendant is charged with a crime of domestic violence, as defined in Section 13700, the court shall consider issuing the above-described orders on its own motion. All interested parties shall receive a copy of those orders. In order to facilitate this, the court's records of all criminal cases involving domestic violence shall be marked to clearly alert the court to this issue.

(2) In those cases in which a complaint, information, or indictment charging a crime of domestic violence, as defined in Section 13700, has been issued, a restraining order or protective order against the defendant issued by the criminal court in that case has precedence in enforcement over any civil court order against the defendant, unless a court issues an emergency protective order pursuant to Chapter 2 (commencing with Section 6250) of Part 3 of Division 10 of the Family Code or Section 646.91 of the Penal Code, in which case the emergency protective order shall have precedence in enforcement over any other restraining or protective order, provided the emergency protective order meets the following requirements:

(A) The emergency protective order is issued to protect one or more individuals who are already protected persons under another restraining or protective order.

(B) The emergency protective order restrains the individual who is the restrained person in the other restraining or protective order specified in subparagraph (A).

(C) The provisions of the emergency protective order are more restrictive in relation to the restrained person than are the provisions of the other restraining or protective order specified in subparagraph (A).

(3) Custody and visitation with respect to the defendant and his or her minor children may be ordered by a family or juvenile court consistent with the protocol established pursuant to subdivision (f), but if ordered after a criminal protective order has been issued pursuant to this section, the custody and visitation order shall make reference to, and acknowledge the precedence of enforcement of, any appropriate criminal protective order. On or before July 1, 2006, the Judicial Council shall modify the criminal and civil court forms consistent with this subdivision.

(f) On or before January 1, 2003, the Judicial Council shall promulgate a protocol, for adoption by each local court in substantially similar terms, to provide for the timely coordination of all orders against the same defendant and in favor of the same named victim or victims. The protocol shall include, but shall not be limited to, mechanisms for assuring appropriate communication and information sharing between criminal, family, and juvenile courts concerning orders and cases that involve the same parties, and shall permit a family or juvenile court order to coexist with a criminal court protective order subject to the following conditions:

(1) Any order that permits contact between the restrained person and his or her children shall provide for the safe exchange of the children and shall not contain language either printed or handwritten that violates a “no contact order” issued by a criminal court.

(2) Safety of all parties shall be the courts’ paramount concern. The family or juvenile court shall specify the time, day, place, and manner of transfer of the child, as provided in Section 3100 of the Family Code.

(g) On or before January 1, 2003, the Judicial Council shall modify the criminal and civil court protective order forms consistent with this section.

SEC. 2.5. Section 136.2 of the Penal Code is amended to read:

136.2. (a) Except as provided in subdivision (b), upon a good cause belief that harm to, or intimidation or dissuasion of, a victim or witness has occurred or is reasonably likely to occur, any court with jurisdiction over a criminal matter may issue orders including, but not limited to, the following:

- (1) Any order issued pursuant to Section 6320 of the Family Code.
- (2) An order that a defendant shall not violate any provision of Section 136.1.
- (3) An order that a person before the court other than a defendant, including, but not limited to, a subpoenaed witness or other person entering the courtroom of the court, shall not violate any provisions of Section 136.1.
- (4) An order that any person described in this section shall have no communication whatsoever with any specified witness or any victim, except through an attorney under any reasonable restrictions that the court may impose.
- (5) An order calling for a hearing to determine if an order as described in paragraphs (1) to (4), inclusive, should be issued.
- (6) An order that a particular law enforcement agency within the jurisdiction of the court provide protection for a victim or a witness, or both, or for immediate family members of a victim or a witness who reside in the same household as the victim or witness or within reasonable proximity of the victim's or witness' household, as determined by the court. The order shall not be made without the consent of the law enforcement agency except for limited and specified periods of time and upon an express finding by the court of a clear and present danger of harm to the victim or witness or immediate family members of the victim or witness.

For purposes of this paragraph, "immediate family members" include the spouse, children, or parents of the victim or witness.

(7) (A) Any order protecting victims of violent crime from all contact by the defendant, or contact, with the intent to annoy, harass, threaten, or commit acts of violence, by the defendant. The court or its designee shall transmit orders made under this paragraph to law enforcement personnel within one business day of the issuance, modification, extension, or termination of the order, pursuant to subdivision (a) of Section 6380 of the Family Code. It is the responsibility of the court to transmit the modification, extension, or termination orders made under this paragraph to the same agency that entered the original protective order into the Domestic Violence Restraining Order System.

(B) Any order issued, modified, extended, or terminated by a court pursuant to this paragraph shall be issued on forms adopted by the Judicial Council of California and that have been approved by the Department of Justice pursuant to subdivision (i) of Section 6380 of the Family Code. However, the fact that an order issued by a court pursuant to this section was not issued on forms adopted by the Judicial Council and approved by the Department of Justice shall not, in and of itself, make the order unenforceable.

(b) (1) Notwithstanding subdivisions (a) and (e), an emergency protective order issued pursuant to Chapter 2 (commencing with Section 6250) of Part 3 of Division 10 of the Family Code or Section 646.91 of the Penal Code shall have precedence in enforcement over any other restraining or protective order, provided the emergency protective order meets all of the following requirements:

(A) The emergency protective order is issued to protect one or more individuals who are already protected persons under another restraining or protective order.

(B) The emergency protective order restrains the individual who is the restrained person in the other restraining or protective order specified in subparagraph (A).

(C) The provisions of the emergency protective order are more restrictive in relation to the restrained person than are the provisions of the other restraining or protective order specified in subparagraph (A).

(2) An emergency protective order that meets the requirements of paragraph (1) shall have precedence in enforcement over the provisions of any other restraining or protective order only with respect to those provisions of the emergency protective order that are more restrictive in relation to the restrained person.

(c) Any person violating any order made pursuant to paragraphs (1) to (7), inclusive, of subdivision (a) may be punished for any substantive offense described in Section 136.1, or for a contempt of the court making the order. A finding of contempt shall not be a bar to prosecution for a violation of Section 136.1. However, any person so held in contempt shall be entitled to credit for any punishment imposed therein against any sentence imposed upon conviction of an offense described in Section 136.1. Any conviction or acquittal for any substantive offense under Section 136.1 shall be a bar to a subsequent punishment for contempt arising out of the same act.

(d) (1) A person subject to a protective order issued under this section shall not own, possess, purchase, receive, or attempt to purchase or receive a firearm while the protective order is in effect.

(2) The court shall order a person subject to a protective order issued under this section to relinquish any firearms he or she owns or possesses pursuant to Section 527.9 of the Code of Civil Procedure.

(3) Every person who owns, possesses, purchases or receives, or attempts to purchase or receive a firearm while the protective order is in effect is punishable pursuant to subdivision (g) of Section 12021 of the Penal Code.

(e) (1) In all cases where the defendant is charged with a crime of domestic violence, as defined in Section 13700, the court shall consider issuing the above-described orders on its own motion. All interested

parties shall receive a copy of those orders. In order to facilitate this, the court's records of all criminal cases involving domestic violence shall be marked to clearly alert the court to this issue.

(2) In those cases in which a complaint, information, or indictment charging a crime of domestic violence, as defined in Section 13700, has been issued, a restraining order or protective order against the defendant issued by the criminal court in that case has precedence in enforcement over any civil court order against the defendant, unless a court issues an emergency protective order pursuant to Chapter 2 (commencing with Section 6250) of Part 3 of Division 10 of the Family Code or Section 646.91 of the Penal Code, in which case the emergency protective order shall have precedence in enforcement over any other restraining or protective order, provided the emergency protective order meets the following requirements:

(A) The emergency protective order is issued to protect one or more individuals who are already protected persons under another restraining or protective order.

(B) The emergency protective order restrains the individual who is the restrained person in the other restraining or protective order specified in subparagraph (A).

(C) The provisions of the emergency protective order are more restrictive in relation to the restrained person than are the provisions of the other restraining or protective order specified in subparagraph (A).

(3) Custody and visitation with respect to the defendant and his or her minor children may be ordered by a family or juvenile court consistent with the protocol established pursuant to subdivision (f), but if ordered after a criminal protective order has been issued pursuant to this section, the custody and visitation order shall make reference to, and acknowledge the precedence of enforcement of, any appropriate criminal protective order. On or before July 1, 2006, the Judicial Council shall modify the criminal and civil court forms consistent with this subdivision.

(f) On or before January 1, 2003, the Judicial Council shall promulgate a protocol, for adoption by each local court in substantially similar terms, to provide for the timely coordination of all orders against the same defendant and in favor of the same named victim or victims. The protocol shall include, but shall not be limited to, mechanisms for assuring appropriate communication and information sharing between criminal, family, and juvenile courts concerning orders and cases that involve the same parties, and shall permit a family or juvenile court order to coexist with a criminal court protective order subject to the following conditions:

(1) Any order that permits contact between the restrained person and his or her children shall provide for the safe exchange of the children

and shall not contain language either printed or handwritten that violates a “no contact order” issued by a criminal court.

(2) Safety of all parties shall be the courts’ paramount concern. The family or juvenile court shall specify the time, day, place, and manner of transfer of the child, as provided in Section 3100 of the Family Code.

(g) On or before January 1, 2003, the Judicial Council shall modify the criminal and civil court protective order forms consistent with this section.

SEC. 2.6. Section 136.2 of the Penal Code is amended to read:

136.2. (a) Upon a good cause belief that harm to, or intimidation or dissuasion of, a victim or witness has occurred or is reasonably likely to occur, any court with jurisdiction over a criminal matter may issue orders including, but not limited to, the following:

(1) Any order issued pursuant to Section 6320 of the Family Code.

(2) An order that a defendant shall not violate any provision of Section 136.1.

(3) An order that a person before the court other than a defendant, including, but not limited to, a subpoenaed witness or other person entering the courtroom of the court, shall not violate any provisions of Section 136.1.

(4) An order that any person described in this section shall have no communication whatsoever with any specified witness or any victim, except through an attorney under any reasonable restrictions that the court may impose.

(5) An order calling for a hearing to determine if an order as described in paragraphs (1) to (4), inclusive, should be issued.

(6) An order that a particular law enforcement agency within the jurisdiction of the court provide protection for a victim or a witness, or both, or for immediate family members of a victim or a witness who reside in the same household as the victim or witness or within reasonable proximity of the victim’s or witness’ household, as determined by the court. The order shall not be made without the consent of the law enforcement agency except for limited and specified periods of time and upon an express finding by the court of a clear and present danger of harm to the victim or witness or immediate family members of the victim or witness.

For purposes of this paragraph, “immediate family members” include the spouse, children, or parents of the victim or witness.

(7) (A) Any order protecting victims of violent crime from all contact by the defendant, or contact, with the intent to annoy, harass, threaten, or commit acts of violence, by the defendant. The court or its designee shall transmit orders made under this paragraph to law enforcement personnel within one business day of the issuance, modification,

extension, or termination of the order, pursuant to subdivision (a) of Section 6380 of the Family Code. It is the responsibility of the court to transmit the modification, extension, or termination orders made under this paragraph to the same agency that entered the original protective order into the Domestic Violence Restraining Order System.

(B) (i) If a court does not issue an order pursuant to subparagraph (A) in a case in which the defendant is charged with a crime of domestic violence as defined in Section 13700, the court on its own motion shall consider issuing a protective order upon a good cause belief that harm to, or intimidation or dissuasion of, a victim or witness has occurred or is reasonably likely to occur, that provides as follows:

(I) The defendant shall not own, possess, purchase, receive, or attempt to purchase or receive, a firearm while the protective order is in effect.

(II) The defendant shall relinquish any firearms that he or she owns or possesses pursuant to Section 527.9 of the Code of Civil Procedure.

(ii) Every person who owns, possesses, purchases, or receives, or attempts to purchase or receive, a firearm while this protective order is in effect is punishable pursuant to subdivision (g) of Section 12021.

(C) Any order issued, modified, extended, or terminated by a court pursuant to this paragraph shall be issued on forms adopted by the Judicial Council of California and that have been approved by the Department of Justice pursuant to subdivision (i) of Section 6380 of the Family Code. However, the fact that an order issued by a court pursuant to this section was not issued on forms adopted by the Judicial Council and approved by the Department of Justice shall not, in and of itself, make the order unenforceable.

(b) Any person violating any order made pursuant to subdivision (a), may be punished for any substantive offense described in Section 136.1, or for a contempt of the court making the order. A finding of contempt shall not be a bar to prosecution for a violation of Section 136.1. However, any person so held in contempt shall be entitled to credit for any punishment imposed therein against any sentence imposed upon conviction of an offense described in Section 136.1. Any conviction or acquittal for any substantive offense under Section 136.1 shall be a bar to a subsequent punishment for contempt arising out of the same act.

(c) (1) A person subject to a protective order issued under this section shall not own, possess, purchase, receive, or attempt to purchase or receive a firearm while the protective order is in effect.

(2) The court shall order a person subject to a protective order issued under this section to relinquish any firearms he or she owns or possesses pursuant to Section 527.9 of the Code of Civil Procedure.

(3) Every person who owns, possesses, purchases or receives, or attempts to purchase or receive a firearm while the protective order is

in effect is punishable pursuant to subdivision (g) of Section 12021 of the Penal Code.

(d) (1) In all cases where the defendant is charged with a crime of domestic violence, as defined in Section 13700, the court shall consider issuing the above-described orders on its own motion. All interested parties shall receive a copy of those orders. In order to facilitate this, the court's records of all criminal cases involving domestic violence shall be marked to clearly alert the court to this issue.

(2) In those cases in which a complaint, information, or indictment charging a crime of domestic violence, as defined in Section 13700, has been issued, a restraining order or protective order against the defendant issued by the criminal court in that case has precedence in enforcement over any civil court order against the defendant.

(3) Custody and visitation with respect to the defendant and his or her minor children may be ordered by a family or juvenile court consistent with the protocol established pursuant to subdivision (e), but if ordered after a criminal protective order has been issued pursuant to this section, the custody and visitation order shall make reference to, and acknowledge the precedence of enforcement of, any appropriate criminal protective order. On or before July 1, 2006, the Judicial Council shall modify the criminal and civil court forms consistent with this subdivision.

(e) On or before January 1, 2003, the Judicial Council shall promulgate a protocol, for adoption by each local court in substantially similar terms, to provide for the timely coordination of all orders against the same defendant and in favor of the same named victim or victims. The protocol shall include, but shall not be limited to, mechanisms for assuring appropriate communication and information sharing between criminal, family, and juvenile courts concerning orders and cases that involve the same parties, and shall permit a family or juvenile court order to coexist with a criminal court protective order subject to the following conditions:

(1) Any order that permits contact between the restrained person and his or her children shall provide for the safe exchange of the children and shall not contain language either printed or handwritten that violates a "no contact order" issued by a criminal court.

(2) Safety of all parties shall be the courts' paramount concern. The family or juvenile court shall specify the time, day, place, and manner of transfer of the child, as provided in Section 3100 of the Family Code.

(f) On or before January 1, 2003, the Judicial Council shall modify the criminal and civil court protective order forms consistent with this section.

SEC. 2.7. Section 136.2 of the Penal Code is amended to read:

136.2. (a) Except as provided in subdivision (c), upon a good cause belief that harm to, or intimidation or dissuasion of, a victim or witness has occurred or is reasonably likely to occur, any court with jurisdiction over a criminal matter may issue orders including, but not limited to, the following:

(1) Any order issued pursuant to Section 6320 of the Family Code.

(2) An order that a defendant shall not violate any provision of Section 136.1.

(3) An order that a person before the court other than a defendant, including, but not limited to, a subpoenaed witness or other person entering the courtroom of the court, shall not violate any provisions of Section 136.1.

(4) An order that any person described in this section shall have no communication whatsoever with any specified witness or any victim, except through an attorney under any reasonable restrictions that the court may impose.

(5) An order calling for a hearing to determine if an order as described in paragraphs (1) to (4), inclusive, should be issued.

(6) An order that a particular law enforcement agency within the jurisdiction of the court provide protection for a victim or a witness, or both, or for immediate family members of a victim or a witness who reside in the same household as the victim or witness or within reasonable proximity of the victim's or witness' household, as determined by the court. The order shall not be made without the consent of the law enforcement agency except for limited and specified periods of time and upon an express finding by the court of a clear and present danger of harm to the victim or witness or immediate family members of the victim or witness.

For purposes of this paragraph, "immediate family members" include the spouse, children, or parents of the victim or witness.

(7) (A) Any order protecting victims of violent crime from all contact by the defendant, or contact, with the intent to annoy, harass, threaten, or commit acts of violence, by the defendant. The court or its designee shall transmit orders made under this paragraph to law enforcement personnel within one business day of the issuance, modification, extension, or termination of the order, pursuant to subdivision (a) of Section 6380 of the Family Code. It is the responsibility of the court to transmit the modification, extension, or termination orders made under this paragraph to the same agency that entered the original protective order into the Domestic Violence Restraining Order System.

(B) (i) If a court does not issue an order pursuant to subparagraph (A) in a case in which the defendant is charged with a crime of domestic violence as defined in Section 13700, the court on its own motion shall

consider issuing a protective order upon a good cause belief that harm to, or intimidation or dissuasion of, a victim or witness has occurred or is reasonably likely to occur, that provides as follows:

(I) The defendant shall not own, possess, purchase, receive, or attempt to purchase or receive, a firearm while the protective order is in effect.

(II) The defendant shall relinquish any firearms that he or she owns or possesses pursuant to Section 527.9 of the Code of Civil Procedure.

(ii) Every person who owns, possesses, purchases, or receives, or attempts to purchase or receive, a firearm while this protective order is in effect is punishable pursuant to subdivision (g) of Section 12021.

(C) Any order issued, modified, extended, or terminated by a court pursuant to this paragraph shall be issued on forms adopted by the Judicial Council of California and that have been approved by the Department of Justice pursuant to subdivision (i) of Section 6380 of the Family Code. However, the fact that an order issued by a court pursuant to this section was not issued on forms adopted by the Judicial Council and approved by the Department of Justice shall not, in and of itself, make the order unenforceable.

(b) Any person violating any order made pursuant to paragraphs (1) to (7), inclusive, of subdivision (a) may be punished for any substantive offense described in Section 136.1, or for a contempt of the court making the order. A finding of contempt shall not be a bar to prosecution for a violation of Section 136.1. However, any person so held in contempt shall be entitled to credit for any punishment imposed therein against any sentence imposed upon conviction of an offense described in Section 136.1. Any conviction or acquittal for any substantive offense under Section 136.1 shall be a bar to a subsequent punishment for contempt arising out of the same act.

(c) (1) Notwithstanding subdivisions (a) and (e), an emergency protective order issued pursuant to Chapter 2 (commencing with Section 6250) of Part 3 of Division 10 of the Family Code or Section 646.91 of the Penal Code shall have precedence in enforcement over any other restraining or protective order, provided the emergency protective order meets all of the following requirements:

(A) The emergency protective order is issued to protect one or more individuals who are already protected persons under another restraining or protective order.

(B) The emergency protective order restrains the individual who is the restrained person in the other restraining or protective order specified in subparagraph (A).

(C) The provisions of the emergency protective order are more restrictive in relation to the restrained person than are the provisions of the other restraining or protective order specified in subparagraph (A).

(2) An emergency protective order that meets the requirements of paragraph (1) shall have precedence in enforcement over the provisions of any other restraining or protective order only with respect to those provisions of the emergency protective order that are more restrictive in relation to the restrained person.

(d) (1) A person subject to a protective order issued under this section shall not own, possess, purchase, receive, or attempt to purchase or receive a firearm while the protective order is in effect.

(2) The court shall order a person subject to a protective order issued under this section to relinquish any firearms he or she owns or possesses pursuant to Section 527.9 of the Code of Civil Procedure.

(3) Every person who owns, possesses, purchases or receives, or attempts to purchase or receive a firearm while the protective order is in effect is punishable pursuant to subdivision (g) of Section 12021 of the Penal Code.

(e) (1) In all cases where the defendant is charged with a crime of domestic violence, as defined in Section 13700, the court shall consider issuing the above-described orders on its own motion. All interested parties shall receive a copy of those orders. In order to facilitate this, the court's records of all criminal cases involving domestic violence shall be marked to clearly alert the court to this issue.

(2) In those cases in which a complaint, information, or indictment charging a crime of domestic violence, as defined in Section 13700, has been issued, a restraining order or protective order against the defendant issued by the criminal court in that case has precedence in enforcement over any civil court order against the defendant, unless a court issues an emergency protective order pursuant to Chapter 2 (commencing with Section 6250) of Part 3 of Division 10 of the Family Code or Section 646.91 of the Penal Code, in which case the emergency protective order shall have precedence in enforcement over any other restraining or protective order, provided the emergency protective order meets the following requirements:

(A) The emergency protective order is issued to protect one or more individuals who are already protected persons under another restraining or protective order.

(B) The emergency protective order restrains the individual who is the restrained person in the other restraining or protective order specified in subparagraph (A).

(C) The provisions of the emergency protective order are more restrictive in relation to the restrained person than are the provisions of the other restraining or protective order specified in subparagraph (A).

(3) Custody and visitation with respect to the defendant and his or her minor children may be ordered by a family or juvenile court

consistent with the protocol established pursuant to subdivision (f), but if ordered after a criminal protective order has been issued pursuant to this section, the custody and visitation order shall make reference to, and acknowledge the precedence of enforcement of, any appropriate criminal protective order. On or before July 1, 2006, the Judicial Council shall modify the criminal and civil court forms consistent with this subdivision.

(f) On or before January 1, 2003, the Judicial Council shall promulgate a protocol, for adoption by each local court in substantially similar terms, to provide for the timely coordination of all orders against the same defendant and in favor of the same named victim or victims. The protocol shall include, but shall not be limited to, mechanisms for assuring appropriate communication and information sharing between criminal, family, and juvenile courts concerning orders and cases that involve the same parties, and shall permit a family or juvenile court order to coexist with a criminal court protective order subject to the following conditions:

(1) Any order that permits contact between the restrained person and his or her children shall provide for the safe exchange of the children and shall not contain language either printed or handwritten that violates a “no contact order” issued by a criminal court.

(2) Safety of all parties shall be the courts’ paramount concern. The family or juvenile court shall specify the time, day, place, and manner of transfer of the child, as provided in Section 3100 of the Family Code.

(g) On or before January 1, 2003, the Judicial Council shall modify the criminal and civil court protective order forms consistent with this section.

SEC. 3. (a) Section 2.1 of this bill incorporates amendments to Section 136.2 of the Penal Code proposed by both this bill and AB 112. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2006, (2) each bill amends Section 136.2 of the Penal Code, (3) AB 1288 and SB 720 are not enacted or as enacted do not amend that section, and (4) this bill is enacted after AB 112, in which case Sections 2, 2.2, 2.3, 2.4, 2.5, 2.6, and 2.7 of this bill shall not become operative.

(b) Section 2.2 of this bill incorporates amendments to Section 136.2 of the Penal Code proposed by both this bill and AB 1288. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2006, (2) each bill amends Section 136.2 of the Penal Code, (3) AB 112 and SB 720 are not enacted or as enacted do not amend that section, and (4) this bill is enacted after AB 1288, in which case Sections 2, 2.1, 2.3, 2.4, 2.5, 2.6, and 2.7 of this bill shall not become operative.

(c) Section 2.3 of this bill incorporates amendments to Section 136.2 of the Penal Code proposed by both this bill and SB 720. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2006, (2) each bill amends Section 136.2 of the Penal Code, (3) AB 112 and AB 1288 are not enacted or as enacted do not amend that section, and (4) this bill is enacted after SB 720, in which case Sections 2, 2.1, 2.2, 2.4, 2.5, 2.6, and 2.7 of this bill shall not become operative.

(d) Section 2.4 of this bill incorporates amendments to Section 136.2 of the Penal Code proposed by this bill, AB 112, and AB 1288. It shall only become operative if (1) all three bills are enacted and become effective on or before January 1, 2006, (2) each bill amends Section 136.2 of the Penal Code, (3) SB 720 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after AB 112 and AB 1288, in which case Sections 2, 2.1, 2.2, 2.3, 2.5, 2.6, and 2.7 of this bill shall not become operative.

(e) Section 2.5 of this bill incorporates amendments to Section 136.2 of the Penal Code proposed by this bill, AB 112, and SB 720. It shall only become operative if (1) all three bills are enacted and become effective on or before January 1, 2006, (2) each bill amends Section 136.2 of the Penal Code, (3) AB 1288 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after AB 112 and SB 720, in which case Sections 2., 2.1, 2.2, 2.3, 2.4, 2.6, and 2.7 of this bill shall not become operative.

(f) Section 2.6 of this bill incorporates amendments to Section 136.2 of the Penal Code proposed by this bill, AB 1288 and SB 720. It shall only become operative if (1) all three bills are enacted and become effective on or before January 1, 2006, (2) each bill amends Section 136.2 of the Penal Code, (3) AB 112 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after AB 1288 and SB 720, in which case Sections 2, 2.1, 2.2, 2.3, 2.4, 2.5, and 2.7 of this bill shall not become operative.

(g) Section 2.7 of this bill incorporates amendments to Section 136.2 of the Penal Code proposed by this bill, AB 112, AB 1288, and SB 720. It shall only become operative if (1) all four bills are enacted and become effective on or before January 1, 2006, (2) all four bills amend Section 136.2 of the Penal Code, and (3) this bill is enacted after AB 112, AB 1288, and SB 720, in which case Sections 2, 2.1, 2.2, 2.3, 2.4, 2.5, and 2.6 of this bill shall not become operative.

CHAPTER 466

An act to add Article 6.5 (commencing with Section 1312) to Chapter 2 of Division 2 of the Health and Safety Code, relating to sex offenders.

[Approved by Governor October 4, 2005. Filed with
Secretary of State October 4, 2005.]

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

SECTION 1. Article 6.5 (commencing with Section 1312) is added to Chapter 2 of Division 2 of the Health and Safety Code, to read:

Article 6.5. Release of Sex Offender to Long-Term Health Care
Facility

1312. Before a person who is required to register as a sex offender under Section 290 of the Penal Code is released into a long-term health care facility, as defined in Section 1418, the Department of Corrections and Rehabilitation, the State Department of Mental Health, any or other official in charge of the place of confinement, shall notify the facility, in writing, that the sex offender is being released to reside at the facility.

SEC. 2. 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.

CHAPTER 467

An act to amend Section 527.8 of the Code of Civil Procedure, to amend Section 6383 of the Family Code, and to amend Section 15657.03 of the Welfare and Institutions Code, relating to temporary restraining orders and protective orders.

[Approved by Governor October 4, 2005. Filed with
Secretary of State October 4, 2005.]

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

SECTION 1. Section 527.8 of the Code of Civil Procedure is amended to read:

527.8. (a) Any employer, whose employee has suffered unlawful violence or a credible threat of violence from any individual, that can reasonably be construed to be carried out or to have been carried out at the workplace, may seek a temporary restraining order and an injunction on behalf of the employee prohibiting further unlawful violence or threats of violence by that individual.

(b) For the purposes of this section:

(1) “Unlawful violence” is any assault or battery, or stalking as prohibited in Section 646.9 of the Penal Code, but shall not include lawful acts of self-defense or defense of others.

(2) “Credible threat of violence” is a knowing and willful statement or course of conduct that would place a reasonable person in fear for his or her safety, or the safety of his or her immediate family, and that serves no legitimate purpose.

(3) “Course of conduct” is a pattern of conduct composed of a series of acts over a period of time, however short, evidencing a continuity of purpose, including following or stalking an employee to or from the place of work; entering the workplace; following an employee during hours of employment; making telephone calls to an employee; or sending correspondence to an employee by any means, including, but not limited to, the use of the public or private mails, interoffice mail, fax, or computer e-mail.

(c) This section does not permit a court to issue a temporary restraining order or injunction prohibiting speech or other activities that are constitutionally protected, or otherwise protected by Section 527.3 or any other provision of law.

(d) For purposes of this section, the terms “employer” and “employee” mean persons defined in Section 350 of the Labor Code. “Employer” also includes a federal agency, the state, a state agency, a city, county, or district, and a private, public, or quasi-public corporation, or any public agency thereof or therein. “Employee” also includes the members of boards of directors of private, public, and quasi-public corporations and elected and appointed public officers. For purposes of this section only, “employee” also includes a volunteer or independent contractor who performs services for the employer at the employer’s worksite.

(e) Upon filing a petition for an injunction under this section, the plaintiff may obtain a temporary restraining order in accordance with subdivision (a) of Section 527, if the plaintiff also files an affidavit that, to the satisfaction of the court, shows reasonable proof that an employee has suffered unlawful violence or a credible threat of violence by the defendant, and that great or irreparable harm would result to an employee. In the discretion of the court, and on a showing of good cause, a temporary restraining order or injunction issued under this section may

include other named family or household members who reside with the employee.

A temporary restraining order granted under this section shall remain in effect, at the court's discretion, for a period not to exceed 15 days, unless otherwise modified or terminated by the court.

(f) Within 15 days of the filing of the petition, a hearing shall be held on the petition for the injunction. The defendant may file a response that explains, excuses, justifies, or denies the alleged unlawful violence or credible threats of violence or may file a cross-complaint under this section. At the hearing, the judge shall receive any testimony that is relevant and may make an independent inquiry. Moreover, if the defendant is a current employee of the entity requesting the injunction, the judge shall receive evidence concerning the employer's decision to retain, terminate, or otherwise discipline the defendant. If the judge finds by clear and convincing evidence that the defendant engaged in unlawful violence or made a credible threat of violence, an injunction shall issue prohibiting further unlawful violence or threats of violence. An injunction issued pursuant to this section shall have a duration of not more than three years. At any time within the three months before the expiration of the injunction, the plaintiff may apply for a renewal of the injunction by filing a new petition for an injunction under this section.

(g) This section does not preclude either party from representation by private counsel or from appearing on his or her own behalf.

(h) Upon filing of a petition for an injunction under this section, the defendant shall be personally served with a copy of the petition, temporary restraining order, if any, and notice of hearing of the petition. Service shall be made at least five days before the hearing. The court may, for good cause, on motion of the plaintiff or on its own motion, shorten the time for service on the defendant.

(i) (1) The court shall order the plaintiff or the attorney for the plaintiff to deliver a copy of each temporary restraining order or injunction, or modification or termination thereof, granted under this section, by the close of the business day on which the order was granted, to the law enforcement agencies within the court's discretion as are requested by the plaintiff. Each appropriate law enforcement agency shall make available information as to the existence and current status of these orders to law enforcement officers responding to the scene of reported unlawful violence or a credible threat of violence.

(2) At the request of the plaintiff, an order issued under this section shall be served on the defendant, regardless of whether the defendant has been taken into custody, by any law enforcement officer who is present at the scene of reported unlawful violence or a credible threat of violence involving the parties to the proceedings. The plaintiff shall

provide the officer with an endorsed copy of the order and proof of service that the officer shall complete and send to the issuing court.

(3) Upon receiving information at the scene of an incident of unlawful violence or a credible threat of violence that a protective order has been issued under this section, or that a person who has been taken into custody is the subject of an order, if the plaintiff or the protected person cannot produce an endorsed copy of the order, a law enforcement officer shall immediately attempt to verify the existence of the order.

(4) If the law enforcement officer determines that a protective order has been issued, but not served, the officer shall immediately notify the defendant of the terms of the order and obtain the defendant's address. The law enforcement officer shall at that time also enforce the order, but may not arrest or take the defendant into custody for acts in violation of the order that were committed prior to the verbal notice of the terms and conditions of the order. The law enforcement officer's verbal notice of the terms of the order shall constitute service of the order and constitutes sufficient notice for the purposes of this section and for the purposes of Section 273.6 and subdivision (g) of Section 12021 of the Penal Code. The plaintiff shall mail an endorsed copy of the order to the defendant's mailing address provided to the law enforcement officer within one business day of the reported incident of unlawful violence or a credible threat of violence at which a verbal notice of the terms of the order was provided by a law enforcement officer.

(j) (1) A person subject to a protective order issued under this section shall not own, possess, purchase, receive, or attempt to purchase or receive a firearm while the protective order is in effect.

(2) The court shall order a person subject to a protective order issued under this section to relinquish any firearms he or she owns or possesses pursuant to Section 527.9.

(3) Every person who owns, possesses, purchases or receives, or attempts to purchase or receive a firearm while the protective order is in effect is punishable pursuant to subdivision (g) of Section 12021 of the Penal Code.

(k) Any intentional disobedience of any temporary restraining order or injunction granted under this section is punishable pursuant to Section 273.6 of the Penal Code.

(l) Nothing in this section may be construed as expanding, diminishing, altering, or modifying the duty, if any, of an employer to provide a safe workplace for employees and other persons.

(m) The Judicial Council shall develop forms, instructions, and rules for scheduling of hearings and other procedures established pursuant to this section. The forms for the petition and response shall be simple and

concise, and their use by parties in actions brought pursuant to this section shall be mandatory.

(n) A temporary restraining order or injunction relating to harassment or domestic violence issued by a court pursuant to this section shall be issued on forms adopted by the Judicial Council of California and that have been approved by the Department of Justice pursuant to subdivision (i) of Section 6380 of the Family Code. However, the fact that an order issued by a court pursuant to this section was not issued on forms adopted by the Judicial Council and approved by the Department of Justice shall not, in and of itself, make the order unenforceable.

(o) Information on any temporary restraining order or injunction relating to harassment or domestic violence issued by a court pursuant to this section shall be transmitted to the Department of Justice in accordance with subdivision (b) of Section 6380 of the Family Code.

(p) There is no filing fee for a petition that alleges that a person has inflicted or threatened violence against an employee of the petitioner, or stalked the employee, or acted or spoke in any other manner that has placed the employee in reasonable fear of violence, and that seeks protective or restraining orders or injunctions restraining stalking or future violence or threats of violence, in any action brought pursuant to this section. No fee shall be paid for filing a response to a petition alleging these acts.

SEC. 2. Section 6383 of the Family Code is amended to read:

6383. (a) A temporary restraining order or emergency protective order issued under this part shall, on request of the petitioner, be served on the respondent, whether or not the respondent has been taken into custody, by any law enforcement officer who is present at the scene of reported domestic violence involving the parties to the proceeding.

(b) The petitioner shall provide the officer with an endorsed copy of the order and a proof of service that the officer shall complete and transmit to the issuing court.

(c) It is a rebuttable presumption that the proof of service was signed on the date of service.

(d) Upon receiving information at the scene of a domestic violence incident that a protective order has been issued under this part, or that a person who has been taken into custody is the respondent to that order, if the protected person cannot produce an endorsed copy of the order, a law enforcement officer shall immediately inquire of the Department of Justice Domestic Violence Restraining Order System to verify the existence of the order.

(e) If the law enforcement officer determines that a protective order has been issued, but not served, the officer shall immediately notify the respondent of the terms of the order and where a written copy of the

order can be obtained and the officer shall, at that time, also enforce the order. The law enforcement officer's verbal notice of the terms of the order shall constitute service of the order and is sufficient notice for the purposes of this section and for the purposes of Section 273.6 and subdivision (g) of Section 12021 of the Penal Code.

(f) If a report is required under Section 13730 of the Penal Code, or if no report is required, then in the daily incident log, the officer shall provide the name and assignment of the officer notifying the respondent pursuant to subdivision (e) and the case number of the order.

(g) Upon service of the order outside of the court, a law enforcement officer shall advise the respondent to go to the local court to obtain a copy of the order containing the full terms and conditions of the order.

(h) There shall be no civil liability on the part of, and no cause of action for, false arrest or false imprisonment against any peace officer who makes an arrest pursuant to a protective or restraining order that is regular upon its face, if the peace officer in making the arrest acts in good faith and has reasonable cause to believe that the person against whom the order is issued has notice of the order and has committed an act in violation of the order. If there is more than one civil order regarding the same parties, the peace officer shall enforce the order that was issued last. If there are both civil and criminal orders regarding the same parties, the peace officer shall enforce the criminal order issued last, subject to the provisions of subdivisions (h) and (i) of Section 136.2 of the Penal Code. Nothing in this section shall be deemed to exonerate a peace officer from liability for the unreasonable use of force in the enforcement of the order. The immunities afforded by this section shall not affect the availability of any other immunity which may apply, including, but not limited to, Sections 820.2 and 820.4 of the Government Code.

SEC. 3. Section 15657.03 of the Welfare and Institutions Code is amended to read:

15657.03. (a) An elder or dependent adult who has suffered abuse as defined in Section 15610.07 may seek protective orders as provided in this section.

(b) For the purposes of this section, "protective order" means an order that includes any of the following restraining orders, whether issued ex parte, after notice and hearing, or in a judgment:

(1) An order enjoining a party from abusing, intimidating, molesting, attacking, striking, stalking, threatening, sexually assaulting, battering, harassing, telephoning, including, but not limited to, annoying telephone calls as described in Section 653m of the Penal Code, destroying personal property, contacting, either directly or indirectly, by mail or otherwise, or coming within a specified distance of, or disturbing the peace of the petitioner.

(2) An order excluding a party from the petitioner's residence or dwelling, except that this order shall not be issued if legal or equitable title to, or lease of, the residence or dwelling is in the sole name of the party to be excluded or is in the name of the party to be excluded and any other party besides the petitioner.

(3) An order enjoining a party from specified behavior that the court determines is necessary to effectuate orders described in paragraph (1) or (2).

(c) An order may be issued under this section, with or without notice, to restrain any person for the purpose of preventing a recurrence of abuse, if an affidavit shows, to the satisfaction of the court, reasonable proof of a past act or acts of abuse of the petitioning elder or dependent adult.

(d) (1) Upon filing a petition for protective orders under this section, the petitioner may obtain a temporary restraining order in accordance with Section 527 of the Code of Civil Procedure, except to the extent this section provides a rule that is inconsistent. The temporary restraining order may include any of the protective orders described in subdivision (b). However, the court may issue an ex parte order excluding a party from the petitioner's residence or dwelling only on a showing of all of the following:

(A) Facts sufficient for the court to ascertain that the party who will stay in the dwelling has a right under color of law to possession of the premises.

(B) That the party to be excluded has assaulted or threatens to assault the petitioner.

(C) That physical or emotional harm would otherwise result to the petitioner.

(2) If a temporary restraining order is granted without notice, the matter shall be made returnable on an order requiring cause to be shown why a permanent order should not be granted, on the earliest day that the business of the court will permit, but not later than 20 days or, if good cause appears to the court, 25 days from the date the temporary restraining order is granted, unless the order is otherwise modified or terminated by the court.

(e) The court may issue, upon notice and a hearing, any of the orders set forth in subdivision (b). The court may issue, after notice and hearing, an order excluding a person from a residence or dwelling if the court finds that physical or emotional harm would otherwise result to the other party.

(f) In the discretion of the court, an order issued after notice and a hearing under this section may have a duration of not more than three years, subject to termination or modification by further order of the court either on written stipulation filed with the court or on the motion of a

party. These orders may be renewed upon the request of a party, either for three years or permanently, without a showing of any further abuse since the issuance of the original order, subject to termination or modification by further order of the court either on written stipulation filed with the court or on the motion of a party. The failure to state the expiration date on the face of the form creates an order with a duration of three years from the date of issuance.

(g) Upon the filing of a petition for protective orders under this section, the respondent shall be personally served with a copy of the petition, notice of the hearing or order to show cause, temporary restraining order, if any, and any affidavits in support of the petition. Service shall be made at least two days before the hearing. The court may, on motion of the petitioner or on its own motion, shorten the time for service on the respondent.

(h) The court may, upon the filing of an affidavit by the applicant that the respondent could not be served within the time required by statute, reissue an order previously issued and dissolved by the court for failure to serve the respondent. The reissued order shall be made returnable on the earliest day that the business of the court will permit, but not later than 20 days or, if good cause appears to the court, 25 days from the date of reissuance. The reissued order shall state on its face the date of expiration of the order.

(i) (1) If the person named in a temporary restraining order is personally served with the order and notice of hearing with respect to a restraining order or protective order based thereon, but the person does not appear at the hearing, either personally or by counsel, and the terms and conditions of the restraining order or protective order, are identical to the temporary restraining order, except for the duration of the order, then the restraining order or protective order may be served on the person by first-class mail sent to that person at the most current address for the person available to the court.

(2) The judicial form for orders issued pursuant to this subdivision shall contain a statement in substantially the following form:

“NO ADDITIONAL PROOF OF SERVICE IS REQUIRED IF THE FACE OF THIS FORM INDICATES THAT BOTH PARTIES WERE PERSONALLY PRESENT AT THE HEARING WHERE THE ORDER WAS ISSUED. IF YOU HAVE BEEN PERSONALLY SERVED WITH A TEMPORARY RESTRAINING ORDER OR EMERGENCY PROTECTIVE ORDER AND NOTICE OF HEARING, BUT YOU DO NOT APPEAR AT THE HEARING EITHER IN PERSON OR BY COUNSEL, AND A RESTRAINING ORDER OR PROTECTIVE ORDER IS ISSUED AT THE HEARING THAT DOES NOT DIFFER

FROM THE PRIOR TEMPORARY RESTRAINING ORDER OR EMERGENCY PROTECTIVE ORDER, A COPY OF THE ORDER WILL BE SERVED UPON YOU BY MAIL AT THE FOLLOWING ADDRESS _____. IF THAT ADDRESS IS NOT CORRECT OR YOU WISH TO VERIFY THAT THE TEMPORARY OR EMERGENCY ORDER WAS MADE PERMANENT WITHOUT SUBSTANTIVE CHANGE, CALL THE CLERK OF THE COURT AT _____."

(j) (1) The court shall order the petitioner or the attorney for the petitioner to deliver, or the clerk of the court to mail, a copy of an order issued under this section, or a reissuance, extension, modification, or termination of the order, and any subsequent proof of service, by the close of the business day on which the order, reissuance, extension, modification, or termination was made, to each local law enforcement agency designated by the petitioner or the attorney for the petitioner having jurisdiction over the residence of the petitioner, and to any additional law enforcement agencies within the court's discretion as are requested by the petitioner. Each appropriate law enforcement agency shall make available information as to the existence and current status of these orders to law enforcement officers responding to the scene of reported abuse.

(2) An order issued under this section shall, on request of the petitioner, be served on the respondent, whether or not the respondent has been taken into custody, by any law enforcement officer who is present at the scene of reported abuse involving the parties to the proceeding. The petitioner shall provide the officer with an endorsed copy of the order and a proof of service which the officer shall complete and send to the issuing court.

(3) Upon receiving information at the scene of an incident of abuse that a protective order has been issued under this section, or that a person who has been taken into custody is the respondent to that order, if the protected person cannot produce an endorsed copy of the order, a law enforcement officer shall immediately attempt to verify the existence of the order.

(4) If the law enforcement officer determines that a protective order has been issued, but not served, the officer shall immediately notify the respondent of the terms of the order and where a written copy of the order can be obtained and the officer shall at that time also enforce the order. The law enforcement officer's verbal notice of the terms of the order shall constitute service of the order and is sufficient notice for the purposes of this section and for the purposes of Section 273.6 of the Penal Code.

(k) Nothing in this section shall preclude either party from representation by private counsel or from appearing on the party's own behalf.

(l) There is no filing fee for a petition, response, or paper seeking the reissuance, modification, or enforcement of a protective order filed in a proceeding brought pursuant to this section.

(m) (1) Fees otherwise payable by a petitioner to a law enforcement agency for serving an order issued under this section may be waived in any case in which the petitioner has requested a fee waiver on the initiating petition and has filed a declaration that demonstrates, to the satisfaction of the court, the financial need of the petitioner for the fee waiver. The declaration required by this subdivision shall be on one of the following forms:

(A) The form formulated and adopted by the Judicial Council for litigants proceeding in forma pauperis pursuant to Section 68511.3 of the Government Code, but the petitioner is not subject to any other requirements of litigants proceeding in forma pauperis.

(B) Any other form that the Judicial Council may adopt for this purpose pursuant to subdivision (r).

(2) In conjunction with a hearing pursuant to this section, the court may make an order for the waiver of fees otherwise payable by the petitioner to a law enforcement agency for serving an order issued under this section.

(n) The prevailing party in any action brought under this section may be awarded court costs and attorney's fees, if any.

(o) (1) An order issued pursuant to this section shall prohibit the person subject to it from owning, possessing, purchasing, receiving, or attempting to purchase or receive, a firearm.

(2) Paragraph (1) shall not apply to a case consisting solely of financial abuse unaccompanied by force, threat, harassment, intimidation, or any other form of abuse.

(3) The court shall order a person subject to a protective order issued under this section to relinquish any firearms he or she owns or possesses pursuant to Section 527.9 of the Code of Civil Procedure.

(4) Every person who owns, possesses, purchases, or receives, or attempts to purchase or receive a firearm while the protective order is in effect is punishable pursuant to subdivision (g) of Section 12021 of the Penal Code.

(p) Any willful disobedience of any temporary restraining order or restraining order after hearing granted under this section is punishable pursuant to Section 273.6 of the Penal Code.

(q) This section does not apply to any action or proceeding covered by Title 1.6C (commencing with Section 1788) of the Civil Code, by

Chapter 3 (commencing with Section 525) of the Code of Civil Procedure, or by Division 10 (commencing with Section 6200) of the Family Code. Nothing in this section shall preclude a petitioner's right to use other existing civil remedies.

(r) The Judicial Council shall promulgate forms and instructions therefor, rules for service of process, scheduling of hearings, and any other matters required by this section. The petition and response forms shall be simple and concise.

SEC. 4. 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.

CHAPTER 468

An act to amend Sections 11100, 11100.05, 11100.1, 11104, 11104.5, 11106, and 11107.1 of the Health and Safety Code, relating to controlled substances.

[Approved by Governor October 4, 2005. Filed with
Secretary of State October 4, 2005.]

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

SECTION 1. Section 11100 of the Health and Safety Code is amended to read:

11100. (a) Any manufacturer, wholesaler, retailer, or other person or entity in this state that sells, transfers, or otherwise furnishes any of the following substances to any person or entity in this state or any other state shall submit a report to the Department of Justice of all of those transactions:

- (1) Phenyl-2-propanone.
- (2) Methylamine.
- (3) Ethylamine.
- (4) D-lysergic acid.
- (5) Ergotamine tartrate.
- (6) Diethyl malonate.
- (7) Malonic acid.
- (8) Ethyl malonate.
- (9) Barbituric acid.
- (10) Piperidine.

- (11) N-acetylanthranilic acid.
 - (12) Pyrrolidine.
 - (13) Phenylacetic acid.
 - (14) Anthranilic acid.
 - (15) Morpholine.
 - (16) Ephedrine.
 - (17) Pseudoephedrine.
 - (18) Norpseudoephedrine.
 - (19) Phenylpropanolamine.
 - (20) Propionic anhydride.
 - (21) Isosafrole.
 - (22) Safrole.
 - (23) Piperonal.
 - (24) Thionylchloride.
 - (25) Benzyl cyanide.
 - (26) Ergonovine maleate.
 - (27) N-methylephedrine.
 - (28) N-ethylephedrine.
 - (29) N-methylpseudoephedrine.
 - (30) N-ethylpseudoephedrine.
 - (31) Chloroephedrine.
 - (32) Chloropseudoephedrine.
 - (33) Hydriodic acid.
 - (34) Gamma-butyrolactone, including butyrolactone; butyrolactone gamma; 4-butyrolactone; 2(3H)-furanone dihydro; dihydro-2(3H)-furanone; tetrahydro-2-furanone; 1,2-butanolide; 1,4-butanolide; 4-butanolide; gamma-hydroxybutyric acid lactone; 3-hydroxybutyric acid lactone and 4-hydroxybutanoic acid lactone with Chemical Abstract Service number (96-48-0).
 - (35) 1,4-butanediol, including butanediol; butane-1,4-diol; 1,4-butylene glycol; butylene glycol; 1,4-dihydroxybutane; 1,4-tetramethylene glycol; tetramethylene glycol; tetramethylene 1,4-diol with Chemical Abstract Service number (110-63-4).
 - (36) Red phosphorus, including white phosphorus, hypophosphorous acid and its salts, ammonium hypophosphite, calcium hypophosphite, iron hypophosphite, potassium hypophosphite, manganese hypophosphite, magnesium hypophosphite, sodium hypophosphite, and phosphorous acid and its salts.
 - (37) Iodine or tincture of iodine.
 - (38) Any of the substances listed by the Department of Justice in regulations promulgated pursuant to subdivision (b).
- (b) The Department of Justice may adopt rules and regulations in accordance with Chapter 3.5 (commencing with Section 11340) of Part

1 of Division 3 of Title 2 of the Government Code that add substances to subdivision (a) if the substance is a precursor to a controlled substance and delete substances from subdivision (a). However, no regulation adding or deleting a substance shall have any effect beyond March 1 of the year following the calendar year during which the regulation was adopted.

(c) (1) (A) Any manufacturer, wholesaler, retailer, or other person or entity in this state, prior to selling, transferring, or otherwise furnishing any substance specified in subdivision (a) to any person or business entity in this state or any other state, shall require (A) a letter of authorization from that person or business entity that includes the currently valid business license number or federal Drug Enforcement Administration (DEA) registration number, the address of the business, and a full description of how the substance is to be used, and (B) proper identification from the purchaser. The manufacturer, wholesaler, retailer, or other person or entity in this state shall retain this information in a readily available manner for three years. The requirement for a full description of how the substance is to be used does not require the person or business entity to reveal their chemical processes that are typically considered trade secrets and proprietary information.

(B) For the purposes of this paragraph, "proper identification" for in-state or out-of-state purchasers includes two or more of the following: federal tax identification number; seller's permit identification number; city or county business license number; license issued by the California Department of Health Services; registration number issued by the Federal Drug Enforcement Administration; precursor business permit number issued by the Bureau of Narcotic Enforcement of the California Department of Justice; driver's license; or other identification issued by a state.

(2) (A) Any manufacturer, wholesaler, retailer, or other person or entity in this state that exports a substance specified in subdivision (a) to any person or business entity located in a foreign country shall, on or before the date of exportation, submit to the Department of Justice a notification of that transaction, which notification shall include the name and quantity of the substance to be exported and the name, address, and, if assigned by the foreign country or subdivision thereof, business identification number of the person or business entity located in a foreign country importing the substance.

(B) The department may authorize the submission of the notification on a monthly basis with respect to repeated, regular transactions between an exporter and an importer involving a substance specified in subdivision (a), if the department determines that a pattern of regular supply of the substance exists between the exporter and importer and that the importer

has established a record of utilization of the substance for lawful purposes.

(d) (1) Any manufacturer, wholesaler, retailer, or other person or entity in this state that sells, transfers, or otherwise furnishes a substance specified in subdivision (a) to a person or business entity in this state or any other state shall, not less than 21 days prior to delivery of the substance, submit a report of the transaction, which includes the identification information specified in subdivision (c), to the Department of Justice. The Department of Justice may authorize the submission of the reports on a monthly basis with respect to repeated, regular transactions between the furnisher and the recipient involving the substance or substances if the Department of Justice determines that a pattern of regular supply of the substance or substances exists between the manufacturer, wholesaler, retailer, or other person or entity that sells, transfers, or otherwise furnishes the substance or substances and the recipient of the substance or substances, and the recipient has established a record of utilization of the substance or substances for lawful purposes.

(2) The person selling, transferring, or otherwise furnishing any substance specified in subdivision (a) shall affix his or her signature or otherwise identify himself or herself as a witness to the identification of the purchaser or purchasing individual, and shall, if a common carrier is used, maintain a manifest of the delivery to the purchaser for three years.

(e) This section shall not apply to any of the following:

(1) Any pharmacist or other authorized person who sells or furnishes a substance upon the prescription of a physician, dentist, podiatrist, or veterinarian.

(2) Any physician, dentist, podiatrist, or veterinarian who administers or furnishes a substance to his or her patients.

(3) Any manufacturer or wholesaler licensed by the California State Board of Pharmacy that sells, transfers, or otherwise furnishes a substance to a licensed pharmacy, physician, dentist, podiatrist, or veterinarian, or a retail distributor as defined in subdivision (h), provided that the manufacturer or wholesaler submits records of any suspicious sales or transfers as determined by the Department of Justice.

(4) Any analytical research facility that is registered with the federal Drug Enforcement Administration of the United States Department of Justice.

(5) A state-licensed health care facility that administers or furnishes a substance to its patients.

(6) (A) Any sale, transfer, furnishing, or receipt of any product that contains ephedrine, pseudoephedrine, norpseudoephedrine, or phenylpropanolamine and which is lawfully sold, transferred, or furnished

over the counter without a prescription pursuant to the federal Food, Drug, and Cosmetic Act (21 U.S.C. Sec. 301 et seq.) or regulations adopted thereunder. However, this section shall apply to preparations in solid or liquid dosage form, except pediatric liquid forms, as defined, containing ephedrine, pseudoephedrine, norpseudoephedrine, or phenylpropanolamine where the individual transaction involves more than three packages or nine grams of ephedrine, pseudoephedrine, norpseudoephedrine, or phenylpropanolamine.

(B) Any ephedrine, pseudoephedrine, norpseudoephedrine, or phenylpropanolamine product subsequently removed from exemption pursuant to Section 814 of Title 21 of the United States Code shall similarly no longer be exempt from any state reporting or permitting requirement, unless otherwise reinstated pursuant to subdivision (d) or (e) of Section 814 of Title 21 of the United States Code as an exempt product.

(7) The sale, transfer, furnishing, or receipt of any betadine or povidone solution with an iodine content not exceeding 1 percent in containers of eight ounces or less, or any tincture of iodine not exceeding 2 percent in containers of one ounce or less, that is sold over the counter.

(8) Any transfer of a substance specified in subdivision (a) for purposes of lawful disposal as waste.

(f) (1) Any person specified in subdivision (a) or (d) who does not submit a report as required by that subdivision or who knowingly submits a report with false or fictitious information shall be punished by imprisonment in a county jail not exceeding six months, by a fine not exceeding five thousand dollars (\$5,000), or by both the fine and imprisonment.

(2) Any person specified in subdivision (a) or (d) who has previously been convicted of a violation of paragraph (1) shall, upon a subsequent conviction thereof, be punished by imprisonment in the state prison, or by imprisonment in a county jail not exceeding one year, by a fine not exceeding one hundred thousand dollars (\$100,000), or by both the fine and imprisonment.

(g) (1) Except as otherwise provided in subparagraph (A) of paragraph (6) of subdivision (e), it is unlawful for any manufacturer, wholesaler, retailer, or other person to sell, transfer, or otherwise furnish a substance specified in subdivision (a) to a person under 18 years of age.

(2) Except as otherwise provided in subparagraph (A) of paragraph (6) of subdivision (e), it is unlawful for any person under 18 years of age to possess a substance specified in subdivision (a).

(3) Notwithstanding any other law, it is unlawful for any retail distributor to (i) sell in a single transaction more than three packages of a product that he or she knows to contain ephedrine, pseudoephedrine,

norpseudoephedrine, or phenylpropanolamine, or (ii) knowingly sell more than nine grams of ephedrine, pseudoephedrine, norpseudoephedrine, or phenylpropanolamine, other than pediatric liquids as defined. Except as otherwise provided in this section, the three package per transaction limitation or nine gram per transaction limitation imposed by this paragraph shall apply to any product that is lawfully sold, transferred, or furnished over the counter without a prescription pursuant to the federal Food, Drug, and Cosmetic Act (21 U.S.C. Sec. 301 et seq.), or regulations adopted thereunder, unless exempted from the requirements of the federal Controlled Substances Act by the federal Drug Enforcement Administration pursuant to Section 814 of Title 21 of the United States Code.

(4) (A) A first violation of this subdivision is a misdemeanor.

(B) Any person who has previously been convicted of a violation of this subdivision shall, upon a subsequent conviction thereof, be punished by imprisonment in a county jail not exceeding one year, by a fine not exceeding ten thousand dollars (\$10,000), or by both the fine and imprisonment.

(h) For the purposes of this article, the following terms have the following meanings:

(1) "Drug store" is any entity described in Code 5912 of the Standard Industrial Classification (SIC) Manual published by the United States Office of Management and Budget, 1987 edition.

(2) "General merchandise store" is any entity described in Codes 5311 to 5399, inclusive, and Code 5499 of the Standard Industrial Classification (SIC) Manual published by the United States Office of Management and Budget, 1987 edition.

(3) "Grocery store" is any entity described in Code 5411 of the Standard Industrial Classification (SIC) Manual published by the United States Office of Management and Budget, 1987 edition.

(4) "Pediatric liquid" means a nonencapsulated liquid whose unit measure according to product labeling is stated in milligrams, ounces, or other similar measure. In no instance shall the dosage units exceed 15 milligrams of phenylpropanolamine or pseudoephedrine per five milliliters of liquid product, except for liquid products primarily intended for administration to children under two years of age for which the recommended dosage unit does not exceed two milliliters and the total package content does not exceed one fluid ounce.

(5) "Retail distributor" means a grocery store, general merchandise store, drugstore, or other related entity, the activities of which, as a distributor of ephedrine, pseudoephedrine, norpseudoephedrine, or phenylpropanolamine products, are limited exclusively to the sale of ephedrine, pseudoephedrine, norpseudoephedrine, or

phenylpropanolamine products for personal use both in number of sales and volume of sales, either directly to walk-in customers or in face-to-face transactions by direct sales. "Retail distributor" includes an entity that makes a direct sale, but does not include the parent company of that entity if the company is not involved in direct sales regulated by this article.

(6) "Sale for personal use" means the sale in a single transaction to an individual customer for a legitimate medical use of a product containing ephedrine, pseudoephedrine, norpseudoephedrine, or phenylpropanolamine in dosages at or below that specified in paragraph (3) of subdivision (g). "Sale for personal use" also includes the sale of those products to employers to be dispensed to employees from first-aid kits or medicine chests.

(i) It is the intent of the Legislature that this section shall preempt all local ordinances or regulations governing the sale by a retail distributor of over-the-counter products containing ephedrine, pseudoephedrine, norpseudoephedrine, or phenylpropanolamine.

SEC. 2. Section 11100.05 of the Health and Safety Code is amended to read:

11100.05. (a) In addition to any fine or imprisonment imposed under subdivision (f) of Section 11100 or subdivision (j) of Section 11106 of the Health and Safety Code, the following drug cleanup fine shall be imposed:

(1) Ten thousand dollars (\$10,000) for violations described in paragraph (1) of subdivision (f) of Section 11100.

(2) One hundred thousand dollars (\$100,000) for violations described in paragraph (2) of subdivision (f) of Section 11100.

(3) Ten thousand dollars (\$10,000) for violations described in subdivision (j) of Section 11106.

(b) At least once a month, all fines collected under this section shall be transferred to the State Treasury for deposit in the Clandestine Drug Lab Clean-up Account. The transmission to the State Treasury shall be carried out in the same manner as fines collected for the state by a county.

SEC. 3. Section 11100.1 of the Health and Safety Code is amended to read:

11100.1. (a) Any manufacturer, wholesaler, retailer, or other person or entity in this state that obtains from a source outside of this state any substance specified in subdivision (a) of Section 11100 shall submit a report of that transaction to the Department of Justice 21 days in advance of obtaining the substance. However, the Department of Justice may authorize the submission of reports within 72 hours, or within a timeframe and in a manner acceptable to the Department of Justice, after the actual physical obtaining of a specified substance with respect to repeated

transactions between a furnisher and an obtainer involving the substances, if the Department of Justice determines that the obtainer has established a record of utilization of the substances for lawful purposes. This section does not apply to any person whose prescribing or dispensing activities are subject to the reporting requirements set forth in Section 11164; any manufacturer or wholesaler who is licensed by the California State Board of Pharmacy and also registered with the federal Drug Enforcement Administration of the United States Department of Justice; any analytical research facility that is registered with the federal Drug Enforcement Administration of the United States Department of Justice; or any state-licensed health care facility.

(b) (1) Any person specified in subdivision (a) who does not submit a report as required by that subdivision shall be punished by imprisonment in a county jail not exceeding six months, by a fine not exceeding five thousand dollars (\$5,000), or by both that fine and imprisonment.

(2) Any person specified in subdivision (a) who has been previously convicted of a violation of subdivision (a) who subsequently does not submit a report as required by subdivision (a) shall be punished by imprisonment in the state prison, or by imprisonment in a county jail not exceeding one year, by a fine not exceeding one hundred thousand dollars (\$100,000), or by both that fine and imprisonment.

SEC. 4. Section 11104 of the Health and Safety Code is amended to read:

11104. (a) Any manufacturer, wholesaler, retailer, or other person or entity that sells, transfers, or otherwise furnishes any of the substances listed in subdivision (a) of Section 11100 with knowledge or the intent that the recipient will use the substance to unlawfully manufacture a controlled substance is guilty of a felony.

(b) Any manufacturer, wholesaler, retailer, or other person or entity that sells, transfers, or otherwise furnishes any laboratory glassware or apparatus, any chemical reagent or solvent, or any combination thereof, or any chemical substance specified in Section 11107.1, with knowledge that the recipient will use the goods or chemical substance to unlawfully manufacture a controlled substance, is guilty of a misdemeanor.

(c) Any person who receives or distributes any substance listed in subdivision (a) of Section 11100, or any laboratory glassware or apparatus, any chemical reagent or solvent, or any combination thereof, or any chemical substance specified in Section 11107.1, with the intent of causing the evasion of the recordkeeping or reporting requirements of this article, is guilty of a misdemeanor.

SEC. 5. Section 11104.5 of the Health and Safety Code is amended to read:

11104.5. Any person who knowingly or intentionally possesses any laboratory glassware or apparatus, any chemical reagent or solvent, or any combination thereof, or any chemical substance specified in paragraph (36) or (37) of subdivision (a) of Section 11100, Section 11107, or Section 11107.1, with the intent to manufacture a controlled substance, is guilty of a misdemeanor.

SEC. 6. Section 11106 of the Health and Safety Code is amended to read:

11106. (a) (1) (A) Any manufacturer, wholesaler, retailer, or any other person or entity in this state that sells, transfers, or otherwise furnishes any substance specified in subdivision (a) of Section 11100 to a person or business entity in this state or any other state or who obtains from a source outside of the state any substance specified in subdivision (a) of Section 11100 shall submit an application to, and obtain a permit for the conduct of that business from, the Department of Justice. For any substance added to the list set forth in subdivision (a) of Section 11100 on or after January 1, 2002, the Department of Justice may postpone the effective date of the requirement for a permit for a period not to exceed six months from the listing date of the substance.

(B) An intracompany transfer does not require a permit if the transferor is a permittee. Transfers between company partners or between a company and an analytical laboratory do not require a permit if the transferor is a permittee and a report as to the nature and extent of the transfer is made to the Department of Justice pursuant to Section 11100 or 11100.1.

(C) This paragraph shall not apply to any manufacturer, wholesaler, or wholesale distributor who is licensed by the California State Board of Pharmacy and also registered with the federal Drug Enforcement Administration of the United States Department of Justice; any pharmacist or other authorized person who sells or furnishes a substance upon the prescription of a physician, dentist, podiatrist, or veterinarian; any state-licensed health care facility, physician, dentist, podiatrist, veterinarian, or veterinary food-animal drug retailer licensed by the California State Board of Pharmacy that administers or furnishes a substance to a patient; or any analytical research facility that is registered with the federal Drug Enforcement Administration of the United States Department of Justice.

(D) This paragraph shall not apply to the sale, transfer, furnishing, or receipt of any betadine or povidone solution with an iodine content not exceeding 1 percent in containers of eight ounces or less, or any tincture of iodine not exceeding 2 percent in containers of one ounce or less, that is sold over the counter.

(2) Except as provided in paragraph (3), no permit shall be required of any manufacturer, wholesaler, retailer, or other person or entity for the sale, transfer, furnishing, or obtaining of any product which contains ephedrine, pseudoephedrine, norpseudoephedrine, or phenylpropanolamine and which is lawfully sold, transferred, or furnished over the counter without a prescription or by a prescription pursuant to the federal Food, Drug, and Cosmetic Act (21 U.S.C. Sec. 301 et seq.) or regulations adopted thereunder.

(3) A permit shall be required for the sale, transfer, furnishing, or obtaining of preparations in solid or liquid dosage form containing ephedrine, pseudoephedrine, norpseudoephedrine, or phenylpropanolamine, unless (A) the transaction involves the sale of ephedrine, pseudoephedrine, norpseudoephedrine, or phenylpropanolamine products by retail distributors as defined by this article over the counter and without a prescription, or (B) the transaction is made by a person or business entity exempted from the permitting requirements of this subdivision under paragraph (1).

(b) (1) The department shall provide application forms, which are to be completed under penalty of perjury, in order to obtain information relating to the identity of any applicant applying for a permit, including, but not limited to, the business name of the applicant or the individual name, and if a corporate entity, the names of its board of directors, the business in which the applicant is engaged, the business address of the applicant, a full description of any substance to be sold, transferred, or otherwise furnished or to be obtained, the specific purpose for the use, sale, or transfer of those substances specified in subdivision (a) of Section 11100, the training, experience, or education relating to this use, and any additional information requested by the department relating to possible grounds for denial as set forth in this section, or by applicable regulations adopted by the department.

(2) The requirement for the specific purpose for the use, sale, or transfer of those substances specified in subdivision (a) of Section 11100 does not require applicants or permittees to reveal their chemical processes that are typically considered trade secrets and proprietary business information.

(c) Applicants and permittees shall authorize the department, or any of its duly authorized representatives, as a condition of being permitted, to make any examination of the books and records of any applicant, permittee, or other person, or visit and inspect the business premises of any applicant or permittee during normal business hours, as deemed necessary to enforce this chapter.

(d) An application may be denied, or a permit may be revoked or suspended, for reasons which include, but are not limited to, the following:

(1) Materially falsifying an application for a permit or an application for the renewal of a permit.

(2) If any individual owner, manager, agent, representative, or employee for the applicant who has direct access, management, or control for any substance listed under subdivision (a) of Section 11100, is or has been convicted of a misdemeanor or felony relating to any of the substances listed under subdivision (a) of Section 11100, any misdemeanor drug-related offense, or any felony under the laws of this state or the United States.

(3) Failure to maintain effective controls against the diversion of precursors to unauthorized persons or entities.

(4) Failure to comply with this article or any regulations of the department adopted thereunder.

(5) Failure to provide the department, or any duly authorized federal or state official, with access to any place for which a permit has been issued, or for which an application for a permit has been submitted, in the course of conducting a site investigation, inspection, or audit; or failure to promptly produce for the official conducting the site investigation, inspection, or audit any book, record, or document requested by the official.

(6) Failure to provide adequate documentation of a legitimate business purpose involving the applicant's or permittee's use of any substance listed in subdivision (a) of Section 11100.

(7) Commission of any act which would demonstrate actual or potential unfitness to hold a permit in light of the public safety and welfare, which act is substantially related to the qualifications, functions, or duties of a permitholder.

(8) If any individual owner, manager, agent, representative, or employee for the applicant who has direct access, management, or control for any substance listed under subdivision (a) of Section 11100, willfully violates or has been convicted of violating, any federal, state, or local criminal statute, rule, or ordinance regulating the manufacture, maintenance, disposal, sale, transfer, or furnishing of any of those substances.

(e) Notwithstanding any other provision of law, an investigation of an individual applicant's qualifications, or the qualifications of an applicant's owner, manager, agent, representative, or employee who has direct access, management, or control of any substance listed under subdivision (a) of Section 11100, for a permit may include review of his or her summary criminal history information pursuant to Sections 11105

and 13300 of the Penal Code, including, but not limited to, records of convictions, regardless of whether those convictions have been expunged pursuant to Section 1203.4 of the Penal Code, and any arrests pending adjudication.

(f) The department may retain jurisdiction of a canceled or expired permit in order to proceed with any investigation or disciplinary action relating to a permittee.

(g) The department may grant permits on forms prescribed by it, which shall be effective for not more than one year from the date of issuance and which shall not be transferable. Applications and permits shall be uniform throughout the state, on forms prescribed by the department.

(h) Each applicant shall pay at the time of filing an application for a permit a fee determined by the department which shall not exceed the application processing costs of the department.

(i) A permit granted pursuant to this article may be renewed one year from the date of issuance, and annually thereafter, following the timely filing of a complete renewal application with all supporting documents, the payment of a permit renewal fee not to exceed the application processing costs of the department, and a review of the application by the department.

(j) Selling, transferring, or otherwise furnishing or obtaining any substance specified in subdivision (a) of Section 11100 without a permit is a misdemeanor or a felony.

(k) (1) No person under 18 years of age shall be eligible for a permit under this section.

(2) No business for which a permit has been issued shall employ a person under 18 years of age in the capacity of a manager, agent, or representative.

(l) (1) An applicant, or an applicant's employees who have direct access, management, or control of any substance listed under subdivision (a) of Section 11100, for an initial permit shall submit with the application one set of 10-print fingerprints for each individual acting in the capacity of an owner, manager, agent, or representative for the applicant, unless the applicant's employees are exempted from this requirement by the Department of Justice. These exemptions may only be obtained upon the written request of the applicant.

(2) In the event of subsequent changes in ownership, management, or employment, the permittee shall notify the department in writing within 15 calendar days of the changes, and shall submit one set of 10-print fingerprints for each individual not previously fingerprinted under this section.

SEC. 7. Section 11107.1 of the Health and Safety Code is amended to read:

11107.1. (a) Any manufacturer, wholesaler, retailer, or other person or entity in this state that sells to any person or entity in this state or any other state any quantity of sodium cyanide, potassium cyanide, cyclohexanone, bromobenzene, magnesium turnings, mercuric chloride, sodium metal, lead acetate, palladium black, hydrogen chloride gas, trichlorofluoromethane (fluorotrichloromethane), dichlorodifluoromethane, 1,1,2-trichloro-1,2,2-trifluoroethane (trichlorotrifluoroethane), sodium acetate, or acetic anhydride shall do the following:

(1) (A) Notwithstanding any other provision of law, in any face-to-face or will-call sale, the seller shall prepare a bill of sale which identifies the date of sale, cost of sale, method of payment, the specific items and quantities purchased and the proper purchaser identification information, all of which shall be entered onto the bill of sale or a legible copy of the bill of sale, and shall also affix on the bill of sale his or her signature as witness to the purchase and identification of the purchaser.

(B) For the purposes of this paragraph, "proper purchaser identification" includes a valid driver's license or other official and valid state-issued identification of the purchaser that contains a photograph of the purchaser, and includes the residential or mailing address of the purchaser, other than a post office box number, the motor vehicle license number of the motor vehicle used by the purchaser at the time of purchase, a description of how the substance is to be used, the Environmental Protection Agency certification number or resale tax identification number assigned to the individual or business entity for which the individual is purchasing any chlorofluorocarbon product, and the signature of the purchaser.

(C) The seller shall retain the original bill of sale containing the purchaser identification information for five years in a readily presentable manner, and present the bill of sale containing the purchaser identification information upon demand by any law enforcement officer or authorized representative of the Attorney General. Copies of these bills of sale obtained by representatives of the Attorney General shall be maintained by the Department of Justice for a period of not less than five years.

(2) (A) Notwithstanding any other law, in all sales other than face-to-face or will-call sales the seller shall maintain for a period of five years the following sales information: the name and address of the purchaser, date of sale, product description, cost of product, method of payment, method of delivery, delivery address, and valid identifying information.

(B) For the purposes of this paragraph, “valid identifying information” includes two or more of the following: federal tax identification number; resale tax identification number; city or county business license number; license issued by the State Department of Health Services; registration number issued by the federal Drug Enforcement Administration; precursor business permit number issued by the Bureau of Narcotic Enforcement of the Department of Justice; driver’s license; or other identification issued by a state.

(C) The seller shall, upon the request of any law enforcement officer or any authorized representative of the Attorney General, produce a report or record of sale containing the information in a readily presentable manner.

(D) If a common carrier is used, the seller shall maintain a manifest regarding the delivery in a readily presentable manner for a period of five years.

(b) Any manufacturer, wholesaler, retailer, or other person or entity in this state that purchases any item listed in subdivision (a) of Section 11107.1 shall do the following:

(1) Provide on the record of purchase information on the source of the items purchased, the date of purchase, a description of the specific items, the quantities of each item purchased, and the cost of the items purchased.

(2) Retain the record of purchase for three years in a readily presentable manner and present the record of purchase upon demand to any law enforcement officer or authorized representative of the Attorney General.

(c) (1) A first violation of this section is a misdemeanor.

(2) Any person who has previously been convicted of a violation of this section shall, upon a subsequent conviction thereof, be punished by imprisonment in a county jail not exceeding one year, by a fine not exceeding one hundred thousand dollars (\$100,000), or both the fine and imprisonment.

SEC. 8. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

CHAPTER 469

An act to amend Section 1261.6 of the Health and Safety Code, to add Section 290.02 to the Penal Code, and to add Section 14133.225 to the Welfare and Institutions Code, relating to prescription drugs and other therapies, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 4, 2005. Filed with
Secretary of State October 4, 2005.]

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

SECTION 1. Section 1261.6 of the Health and Safety Code is amended to read:

1261.6. (a) (1) For purposes of this section and Section 1261.5, an “automated drug delivery system” means a mechanical system that performs operations or activities, other than compounding or administration, relative to the storage, dispensing, or distribution of drugs. An automated drug delivery system shall collect, control, and maintain all transaction information to accurately track the movement of drugs into and out of the system for security, accuracy, and accountability.

(2) For purposes of this section, “facility” means a health facility licensed pursuant to subdivision (c), (d), or both, of Section 1250 that has an automated drug delivery system provided by a pharmacy.

(3) For purposes of this section, “pharmacy services” means the provision of both routine and emergency drugs and biologicals to meet the needs of the patient as prescribed by a physician.

(b) Transaction information shall be made readily available in a written format for review and inspection by individuals authorized by law. These records shall be maintained in the facility for a minimum of three years.

(c) Individualized and specific access to automated drug delivery systems shall be limited to facility and contract personnel authorized by law to administer drugs.

(d) (1) The facility and the pharmacy shall develop and implement written policies and procedures to ensure safety, accuracy, accountability, security, patient confidentiality, and maintenance of the quality, potency, and purity of stored drugs. Policies and procedures shall define access to the automated drug delivery system and limits to access to equipment and drugs.

(2) All policies and procedures shall be maintained at the pharmacy operating the automated drug delivery system and the location where the automated drug delivery system is being used.

(e) When used as an emergency pharmaceutical supplies container, drugs removed from the automated drug delivery system shall be limited to the following:

(1) A new drug order given by a prescriber for a patient of the facility for administration prior to the next scheduled delivery from the pharmacy, or 72 hours, whichever is less. The drugs shall be retrieved only upon authorization by a pharmacist and after the pharmacist has reviewed the prescriber's order and the patient's profile for potential contraindications and adverse drug reactions.

(2) Drugs that a prescriber has ordered for a patient on an as-needed basis, if the utilization and retrieval of those drugs are subject to ongoing review by a pharmacist.

(3) Drugs designed by the patient care policy committee or pharmaceutical service committee of the facility as emergency drugs or acute onset drugs. These drugs may be retrieved from an automated drug delivery system pursuant to the order of a prescriber for emergency or immediate administration to a patient of the facility. Within 48 hours after retrieval under this paragraph, the case shall be reviewed by a pharmacist.

(f) When used to provide pharmacy services pursuant to Section 4119.1 of the Business and Professions Code, the automated drug delivery system shall be subject to all of the following requirements:

(1) Drugs removed from the automated drug delivery system for administration to a patient shall be in properly labeled units of administration containers or packages.

(2) A pharmacist shall review and approve all orders prior to a drug being removed from the automated drug delivery system for administration to a patient. The pharmacist shall review the prescriber's order and the patient's profile for potential contraindications and adverse drug reactions.

(3) The pharmacy providing services to the facility pursuant to Section 4119.1 of the Business and Professions Code shall control access to the drugs stored in the automated drug delivery system.

(4) Access to the automated drug delivery system shall be controlled and tracked using an identification or password system or biosensor.

(5) The automated drug delivery system shall make a complete and accurate record of all transactions which will include all users accessing the system and all drugs added to or removed from the system.

(6) After the pharmacist reviews the prescriber's order, access by licensed personnel to the automated drug delivery system shall be limited

only to the drug as ordered by the prescriber and reviewed by the pharmacist and that is specific to the patient. When the prescriber's order requires a dosage variation of the same drug, licensed personnel shall only have access to the drug ordered for that scheduled time of administration.

(g) The stocking of an automated drug delivery system shall be performed by a pharmacist. If the automated drug delivery system utilizes removable pockets or drawers, or similar technology, the stocking system may be done outside of the facility and be delivered to the facility if all of the following conditions are met:

(1) The task of placing drugs into the removable pockets or drawers is performed by a pharmacist or by an intern pharmacist or a pharmacy technician working under the direct supervision of a pharmacist.

(2) The removable pockets or drawers are transported between the pharmacy and the facility in a secure tamper-evident container.

(3) The facility, in conjunction with the pharmacy, has developed policies and procedures to ensure that the pockets or drawers are properly placed into the automated drug delivery system.

(h) Review of the drugs contained within, and the operation and maintenance of, the automated drug delivery system shall be done in accordance with law and shall be the responsibility of the pharmacy. The review shall be conducted on a monthly basis by a pharmacist and shall include a physical inspection of the drugs in the automated drug delivery system, an inspection of the automated drug delivery system machine for cleanliness, and a review of all transaction records in order to verify the security and accountability of the system.

(i) Drugs dispensed from an automated drug delivery system that meets the requirements of this section shall not be subject to the labeling requirements of Section 4076 of the Business and Professions Code or Section 111480 of this code if the drugs to be placed into the automated drug delivery system are in unit dose packaging or unit of use and if the information required by Section 4076 of the Business and Professions Code and Section 111480 of this code is readily available at the time of drug administration.

SEC. 2. Section 290.02 is added to the Penal Code, to read:

290.02. (a) Notwithstanding any other law, the Department of Justice shall identify the names of persons required to register pursuant to Section 290 from a list of persons provided by the requesting agency, and provide those names and other information necessary to verify proper identification, to any state governmental entity responsible for authorizing or providing publicly funded prescription drugs or other therapies to treat erectile dysfunction of those persons. State governmental entities shall use information received pursuant to this section to protect public

safety by preventing the use of prescription drugs or other therapies to treat erectile dysfunction by convicted sex offenders.

(b) Use or disclosure of the information disclosed pursuant to this section is prohibited for any purpose other than that authorized by this section or Section 14133.225 of the Welfare and Institutions Code. The Department of Justice may establish a fee for requests, including all actual and reasonable costs associated with the service.

(c) Notwithstanding any other provision of law, any state governmental entity that is responsible for authorizing or providing publicly funded prescription drugs or other therapies to treat erectile dysfunction may use the sex offender database authorized by Section 290.46 to protect public safety by preventing the use of those drugs or therapies for convicted sex offenders.

SEC. 3. Section 14133.225 is added to the Welfare and Institutions Code, to read:

14133.225. Notwithstanding any other law, the department shall not provide or pay for any prescription drug or other therapy to treat erectile dysfunction for any person who is required to register pursuant to Section 290 of the Penal Code, except to the extent required under federal law. The department may require from the Department of Justice the information necessary to implement this section.

SEC. 4. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to prevent funding of drugs or other therapies prescribed for erectile dysfunction for use by high-risk sex offenders and to make statutory changes related to automated drug delivery systems, as soon as possible, it is necessary that this act take effect immediately.

CHAPTER 470

An act to amend Section 9250.19 of the Vehicle Code, relating to vehicles, and making an appropriation therefor.

[Approved by Governor October 4, 2005. Filed with
Secretary of State October 4, 2005.]

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

SECTION 1. Section 9250.19 of the Vehicle Code is amended to read:

9250.19. (a) (1) In addition to any other fees specified in this code and the Revenue and Taxation Code, upon the adoption of a resolution pursuant to this subdivision by any county board of supervisors, a fee of one dollar (\$1) shall be paid at the time of registration, renewal, or supplemental application for apportioned registration pursuant to Article 4 (commencing with Section 8050) of Chapter 4 of every vehicle, except vehicles described in subdivision (a) of Section 5014.1, registered to an address within that county except those expressly exempted from payment of registration fees. The fees, after deduction of the administrative costs incurred by the department in carrying out this section, shall be paid quarterly to the Controller.

(2) In addition to the one-dollar (\$1) service fee, and upon the implementation of the permanent trailer identification plate program, and as part of the Commercial Vehicle Registration Act of 2001, all commercial motor vehicles subject to Section 9400.1 registered to an owner with an address in the county that established a service authority under this section, shall pay an additional service fee of two dollars (\$2).

(3) A resolution adopted pursuant to paragraph (1) shall include findings as to the purpose of, and the need for, imposing the additional registration fee, and shall identify the date after which the fee shall no longer be imposed.

(b) Notwithstanding Section 13340 of the Government Code, the money paid to the Controller pursuant to subdivision (a) is continuously appropriated, without regard to fiscal years, for disbursement by the Controller to each county that has adopted a resolution pursuant to subdivision (a), based upon the number of vehicles registered, or whose registration is renewed, to an address within that county, or supplemental application for apportioned registration, and for the administrative costs of the Controller incurred under this section.

(c) Money allocated to a county pursuant to subdivision (b) shall be expended exclusively to fund programs that enhance the capacity of local law enforcement to provide automated mobile and fixed location fingerprint identification of individuals who may be involved in driving under the influence of alcohol or drugs in violation of Section 23152 or 23153, or vehicular manslaughter in violation of Section 191.5 of the Penal Code or subdivision (c) of Section 192 of the Penal Code, or any combination of those and other vehicle-related crimes, and other crimes committed while operating a motor vehicle.

(d) The data from any program funded pursuant to subdivision (c) shall be made available by the local law enforcement agency to any local public agency that is required by law to obtain a criminal history background of persons as a condition of employment with that local

public agency. A local law enforcement agency that provides the data may charge a fee to cover its actual costs in providing that data.

(e) (1) No money collected pursuant to this section shall be used to offset a reduction in any other source of funds for the purposes authorized under this section.

(2) Funds collected pursuant to this section, upon recommendation of local or regional Remote Access Network Boards to the board of supervisors, shall be used exclusively for the purchase, by competitive bidding procedures, and the operation of equipment which is compatible with the Department of Justice's Cal-ID master plan, as described in Section 11112.2 of the Penal Code, and the equipment shall interface in a manner that is in compliance with the requirement described in the Criminal Justice Information Services, Electronic Fingerprint Transmission Specification, prepared by the Federal Bureau of Investigation and dated August 24, 1995.

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

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

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

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

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

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

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

(h) If any funds received by a county pursuant to subdivision (a) are not expended or encumbered in accordance with this section by the close of the fiscal year in which the funds were received, the Controller shall notify the Department of Motor Vehicles to suspend the fee for that

county imposed pursuant to subdivision (a) for one year. For purposes of this subdivision, “encumbered funds” means funding that is scheduled to be spent pursuant to a determined schedule and for an identified purchase consistent with this section.

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

(j) This section shall remain in effect only until January 1, 2012, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2012, deletes or extends that date. No fee imposed pursuant to this section may be collected beyond that date.

CHAPTER 471

An act to amend Section 14251 of the Penal Code, relating to missing persons.

[Approved by Governor October 4, 2005. Filed with
Secretary of State October 4, 2005.]

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

SECTION 1. Section 14251 of the Penal Code is amended to read:
14251. (a) The “Missing Persons DNA Data Base” shall be funded by a two dollar (\$2) fee increase on death certificates issued by a local government agency or by the State of California. The issuing agencies may retain up to 5 percent of the funds from the fee increase for administrative costs. This fee shall remain in effect only until January 1, 2010.

(b) Funds shall be directed on a quarterly basis to the “Missing Persons DNA Data Base Fund,” hereby established, to be administered by the department for establishing and maintaining laboratory infrastructure, DNA sample storage, DNA analysis, and labor costs for cases of missing persons and unidentified remains. Funds may also be distributed by the department to various counties for the purposes of pathology and exhumation consistent with this title. The department may also use those funds to publicize the database for the purpose of contacting parents and

relatives so that they may provide a DNA sample for training law enforcement officials about the database and DNA sampling and for outreach.

(c) The department shall create an advisory committee, comprised of coroners and appropriate law enforcement officials, and interested stakeholders to prioritize the identification of the backlog of unidentified remains. The identification of the backlog may be outsourced to other laboratories at the department's discretion.

(d) (1) The death certificate fee increase shall begin and funds shall be directed to the Missing Persons DNA Data Base Fund beginning January 1, 2001. Funding for year one shall be used to develop the database and laboratory infrastructure, and to establish Department of Justice protocols and personnel.

(2) The Department of Justice shall begin case analysis in 2002. The Department of Justice shall retain the authority to prioritize case analysis, giving priority to those cases involving children.

(3) If federal funding is made available, it shall be used to assist in the identification of the backlog of high-risk missing person cases and long-term unidentified remains.

SEC. 2. 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.

CHAPTER 472

An act to add Section 527.10 to the Code of Civil Procedure, to add Sections 6252.5 and 6322.7 to the Family Code, to add Sections 136.3 and 646.91A to the Penal Code, and to add Sections 213.7 and 15657.04 to the Welfare and Institutions Code, relating to protective orders.

[Approved by Governor October 4, 2005. Filed with
Secretary of State October 4, 2005.]

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

SECTION 1. Section 527.10 is added to the Code of Civil Procedure, to read:

527.10. (a) The court shall order that any party enjoined pursuant to Sections 527.6 and 527.8 be prohibited from taking any action to obtain the address or location of a protected party or a protected party's

family members, caretakers, or guardian, unless there is good cause not to make that order.

(b) The Judicial Council shall promulgate forms necessary to effectuate this section.

SEC. 2. Section 6252.5 is added to the Family Code, to read:

6252.5. (a) The court shall order that any party enjoined pursuant to an order issued under this part be prohibited from taking any action to obtain the address or location of a protected party or a protected party's family members, caretakers, or guardian, unless there is good cause not to make that order.

(b) The Judicial Council shall promulgate forms necessary to effectuate this section.

SEC. 3. Section 6322.7 is added to the Family Code, to read:

6322.7. (a) The court shall order that any party enjoined pursuant to an order issued under this part be prohibited from taking any action to obtain the address or location of a protected party or a protected party's family members, caretakers, or guardian, unless there is good cause not to make that order.

(b) The Judicial Council shall promulgate forms necessary to effectuate this section.

SEC. 4. Section 136.3 is added to the Penal Code, to read:

136.3. (a) The court shall order that any party enjoined pursuant to Section 136.2 be prohibited from taking any action to obtain the address or location of a protected party or a protected party's family members, caretakers, or guardian, unless there is good cause not to make that order.

(b) The Judicial Council shall promulgate forms necessary to effectuate this section.

SEC. 5. Section 646.91A is added to the Penal Code, to read:

646.91A. (a) The court shall order that any party enjoined pursuant to Section 646.91 be prohibited from taking any action to obtain the address or location of a protected party or a protected party's family members, caretakers, or guardian, unless there is good cause not to make that order.

(b) The Judicial Council shall promulgate forms necessary to effectuate this section.

SEC. 6. Section 213.7 is added to the Welfare and Institutions Code, to read:

213.7. (a) The court shall order that any party enjoined pursuant to Section 213.5, 304, 362.4, or 726.5 be prohibited from taking any action to obtain the address or location of a protected party or a protected party's family members, caretakers, or guardian, unless there is good cause not to make that order.

(b) The Judicial Council shall promulgate forms necessary to effectuate this section.

SEC. 7. Section 15657.04 is added to the Welfare and Institutions Code, to read:

15657.04. (a) The court shall order that any party enjoined pursuant to Section 15657.03 be prohibited from taking any action to obtain the address or location of a protected party or a protected party's family members, caretakers, or guardian, unless there is good cause not to make that order.

(b) The Judicial Council shall promulgate forms necessary to effectuate this section.

SEC. 8. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

CHAPTER 473

An act to amend Sections 9853, 9860, 9861, and 9863 of the Vehicle Code, relating to vessels.

[Approved by Governor October 4, 2005. Filed with
Secretary of State October 4, 2005.]

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

SECTION 1. Section 9853 of the Vehicle Code is amended to read:

9853. (a) The owner of each vessel requiring numbering by this state shall file an initial application for a number with the department or with an agent authorized by the department on forms approved by the department. The forms shall be prepared in cooperation with the Department of Boating and Waterways. The application shall contain the true name and address of the owner and of the legal owner, if any, and the hull identification number of the vessel as may be required by the department. The application shall be signed by the owner of the vessel and shall be accompanied by a fee of nine dollars (\$9), in addition to the fees required under subdivision (b), except that an owner of a vessel registered outside this state who is submitting an application for

registration in this state shall pay a fee of thirty-seven dollars (\$37), in addition to the fees required under subdivision (b).

(b) (1) Whenever the fee for original registration of a vessel becomes due between January 1 and December 31 of any even-numbered year, the application shall be accompanied by a fee of ten dollars (\$10), in addition to any other fees that are then due and payable.

(2) Whenever the fee for original registration of a vessel becomes due, or is filed with the department, between January 1 and December 31 of any odd-numbered year, the application shall be accompanied by a fee of twenty dollars (\$20) in addition to any other fees that are then due and payable.

SEC. 2. Section 9860 of the Vehicle Code is amended to read:

9860. (a) Certificates of number shall be renewed before midnight of the expiration date by presentation of the certificate of number last issued for the vessel or by presentation of a potential registration card issued by the department.

(b) The fee for renewal shall be twenty dollars (\$20) for each two-year period, and shall accompany the request for renewal.

(c) If the certificate of number and potential registration card are unavailable, the fee specified in Section 9867 shall not be paid.

SEC. 3. Section 9861 of the Vehicle Code is amended to read:

9861. All certificates of number expire on December 31 of every odd-numbered year.

SEC. 4. Section 9863 of the Vehicle Code is amended to read:

9863. (a) Except as required under subdivision (b), and except moneys collected under Section 9875, fees received pursuant to this chapter shall be deposited in the Harbors and Watercraft Revolving Fund and, notwithstanding Section 13340 of the Government Code, are continuously appropriated, without regard to fiscal years, for the administration of this chapter by the department. Funds in the Harbors and Watercraft Revolving Fund derived pursuant to this chapter in excess of the amount determined by the Director of Finance, from time to time, to be necessary for expenditure for the administration of this chapter, notwithstanding Section 13340 of the Government Code, are continuously appropriated to the Department of Boating and Waterways, without regard to fiscal years, for expenditure in accordance with Section 663.7 of the Harbors and Navigation Code.

(b) Funds derived from imposition of the biennial registration fee under paragraph (2) of subdivision (b) of Section 9853, or under Section 9860, shall be distributed as follows:

(1) One-half shall be continuously appropriated pursuant to subdivision (a).

(2) One-half shall be allocated, upon appropriation, to the Department of Boating and Waterways for expenditure in support of programs under the department's jurisdiction.

CHAPTER 474

An act to amend Sections 1992 and 1994 of, to add Sections 1993.1 and 1993.2 to, and to repeal and add Section 1993 of, the Code of Civil Procedure, and to add Section 26744.5 to the Government Code, relating to civil warrants.

[Approved by Governor October 4, 2005. Filed with
Secretary of State October 4, 2005.]

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

SECTION 1. Section 1992 of the Code of Civil Procedure is amended to read:

1992. A person failing to appear pursuant to a subpoena or a court order also forfeits to the party aggrieved the sum of five hundred dollars (\$500), and all damages that he or she may sustain by the failure of the person to appear pursuant to the subpoena or court order, which forfeiture and damages may be recovered in a civil action.

SEC. 2. Section 1993 of the Code of Civil Procedure is repealed.

SEC. 3. Section 1993 is added to the Code of Civil Procedure, to read:

1993. (a) (1) As an alternative to issuing a warrant for contempt pursuant to paragraph (5) or (9) of subdivision (a) of Section 1209, the court may issue a warrant for the arrest of a witness who failed to appear pursuant to a subpoena or a person who failed to appear pursuant to a court order. The court, upon proof of the service of the subpoena or order, may issue a warrant to the sheriff of the county in which the witness or person may be located and shall, upon payment of fees as provided for in Section 26744 of the Government Code, arrest the witness or person and bring him or her before the court.

(2) Before issuing a warrant for a failure to appear pursuant to a subpoena pursuant to this section, the court shall issue a "failure to appear" notice informing the person subject to the subpoena that a failure to appear in response to the notice may result in the issuance of a warrant. This notice requirement may be omitted only upon a showing that the appearance of the person subject to the subpoena is material to the case and that urgency dictates the person's immediate appearance.

- (b) The warrant shall contain all of the following:
- (1) The title and case number of the action.
 - (2) The name and physical description of the person to be arrested.
 - (3) The last known address of the person to be arrested.
 - (4) The date of issuance and county in which it is issued.
 - (5) The signature of the magistrate issuing the warrant, the title of his or her office, and the name of the court.
 - (6) A command to arrest the person for failing to appear pursuant to the subpoena or court order, and specifying the date of service of the subpoena or court order.
 - (7) A command to bring the person to be arrested before the issuing court, or the nearest court if in session, for the setting of bail in the amount of the warrant or to release on the person's own recognizance. Any person so arrested shall be released from custody if he or she cannot be brought before the court within 12 hours of arrest, and the person shall not be arrested if the court will not be in session during the 12-hour period following the arrest.
 - (8) A statement indicating the expiration date of the warrant as determined by the court.
 - (9) The amount of bail.
 - (10) An endorsement for nighttime service if good cause is shown as provided in Section 840 of the Penal Code.
 - (11) A statement indicating whether the person may be released upon a promise to appear as provided by Section 1993.1. The court shall permit release upon a promise to appear, unless it makes a written finding that the urgency and materiality of the person's appearance in court precludes use of the promise to appear process.
 - (12) The date and time to appear in court if arrested and released pursuant to paragraph (11).

SEC. 4. Section 1993.1 is added to the Code of Civil Procedure, to read:

1993.1. (a) If authorized by the court as provided by paragraph (11) of subdivision (b) of Section 1993, the sheriff may release the person arrested upon his or her promise to appear as provided in this section.

(b) The sheriff shall prepare in duplicate a written notice to appear in court, containing the title of the case, case number, name and address of the person, the offense charged, and the time when, and place where, the person shall appear in court. In addition, the notice shall advise the person arrested of the provisions of Section 1992.

(c) The date and time specified in the notice to appear in court shall be that determined by the issuing court pursuant to paragraph (12) of subdivision (b) of Section 1993.

(d) The sheriff shall deliver one copy of the notice to appear to the arrested person, and the arrested person, in order to secure release, shall give his or her written promise to appear in court as specified in the notice by signing the duplicate notice, which shall be retained by the sheriff, and the sheriff may require the arrested person, if he or she has no satisfactory identification, to place a right thumbprint, or a left thumbprint or fingerprint if the person has a missing or disfigured right thumb, on the notice to appear. Except for law enforcement purposes relating to the identity of the arrestee, no person or entity may sell, give away, allow the distribution of, include in a database, or create a database with, this print. Upon the signing of the duplicate notice, the arresting officer shall immediately release the person arrested from custody.

(e) The sheriff shall, as soon as practicable, file the original notice with the issuing court. The notice may be electronically transmitted to the court.

(f) The person arrested shall be released unless one of the following is a reason for nonrelease, in which case the arresting officer either may release the person or shall indicate, on a form to be established by his or her employing law enforcement agency, which of the following was a reason for the nonrelease:

(1) The person arrested was so intoxicated that he or she could have been a danger to himself or herself or to others.

(2) The person arrested required medical examination or medical care or was otherwise unable to care for his or her own safety.

(3) There were one or more additional outstanding arrest warrants for the person.

(4) The person arrested demanded to be taken before a magistrate or refused to sign the notice to appear.

SEC. 5. Section 1993.2 is added to the Code of Civil Procedure, to read:

1993.2. If a person arrested on a civil bench warrant issued pursuant to Section 1993 fails to appear after being released on a promise to appear, the court may issue another warrant to bring the person before the court or assess a civil assessment in the amount of not more than one thousand dollars (\$1,000), which shall be collected as follows:

(a) The assessment shall not become effective until at least 10 calendar days after the court mails a warning notice to the person by first-class mail to the address shown on the promise to appear or to the person's last known address. If the person appears within the time specified in the notice and shows good cause for the failure to appear or for the failure to pay a fine, the court shall vacate the assessment.

(b) The assessment imposed under subdivision (a) may be enforced in the same manner as a money judgment in a limited civil case, and

shall be subject to the due process requirements governing defense of actions and collection of civil money judgments generally.

SEC. 6. Section 1994 of the Code of Civil Procedure is amended to read:

1994. Every warrant of commitment, issued by a court or officer pursuant to this chapter, shall specify therein, particularly, the cause of the commitment, and if it be for refusing to answer a question, that question shall be stated in the warrant.

SEC. 7. Section 26744.5 is added to the Government Code, to read:

26744.5. (a) The fees for processing a warrant issued pursuant to Section 1993 of the Code of Civil Procedure shall be paid by the moving party, as follows:

(1) Thirty dollars (\$30) to receive and process the warrant, which shall include the issuance and mailing of a notice advising the person to be arrested of the issuance of the warrant and demanding that the person appear in court.

(2) Twenty-eight dollars (\$28) to cancel the service of the warrant.

(3) Sixty dollars (\$60) if unable to find the person at the address specified using due diligence.

(4) Seventy-five dollars (\$75) to arrest the person, which shall include the arrest and release of the person on a promise to appear pursuant to Section 1993.2 of the Code of Civil Procedure.

(b) The in forma pauperis fee waiver provisions under Rule 985 of the California Rules of Court shall apply to the collection of fees under this section.

SEC. 8. 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 475

An act to amend Section 23109 of the Vehicle Code, relating to vehicles.

[Approved by Governor October 4, 2005. Filed with
Secretary of State October 4, 2005.]

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

SECTION 1. Section 23109 of the Vehicle Code is amended to read:

23109. (a) A person shall not engage in a motor vehicle speed contest on a highway. As used in this section, a motor vehicle speed contest includes a motor vehicle race against another vehicle, a clock, or other timing device. For purposes of this section, an event in which the time to cover a prescribed route of more than 20 miles is measured, but where the vehicle does not exceed the speed limits, is not a speed contest.

(b) A person shall not aid or abet in any motor vehicle speed contest on any highway.

(c) A person shall not engage in any motor vehicle exhibition of speed on a highway, and no person shall aid or abet in a motor vehicle exhibition of speed on any highway.

(d) A person shall not for the purpose of facilitating or aiding or as an incident to any motor vehicle speed contest or exhibition upon a highway in any manner obstruct or place a barricade or obstruction or assist or participate in placing a barricade or obstruction upon any highway.

(e) (1) A person convicted of a violation of subdivision (a) shall be punished by imprisonment in a county jail for not less than 24 hours nor more than 90 days or by a fine of not less than three hundred fifty-five dollars (\$355) nor more than one thousand dollars (\$1,000), or by both that fine and imprisonment. That person shall also be required to perform 40 hours of community service. The court may order the privilege to operate a motor vehicle suspended for 90 days to six months, as provided in paragraph (8) of subdivision (a) of Section 13352. The person's privilege to operate a motor vehicle may be restricted for 90 days to six months to necessary travel to and from that person's place of employment and, if driving a motor vehicle is necessary to perform the duties of the person's employment, restricted to driving in that person's scope of employment. This subdivision does not interfere with the court's power to grant probation in a suitable case.

(2) If a person is convicted of a violation of subdivision (a) and that violation proximately causes bodily injury to a person other than the driver, the person convicted is punishable by imprisonment in a county jail for not less than 30 days nor more than six months or by a fine of not less than five hundred dollars (\$500) nor more than one thousand dollars (\$1,000), or by both the fine and imprisonment.

(f) (1) If a person is convicted of a violation of subdivision (a) for an offense that occurred within five years of the date of a prior offense that resulted in a conviction of a violation of subdivision (a), that person shall be punished by imprisonment in a county jail for not less than four

days nor more than six months, and by a fine of not less than five hundred dollars (\$500) nor more than one thousand dollars (\$1,000).

(2) If the perpetration of the most recent offense within the five-year period described in paragraph (1) proximately causes bodily injury to a person other than the driver, a person convicted of that second violation shall be imprisoned in a county jail for not less than 30 days nor more than six months and by a fine of not less than five hundred dollars (\$500) nor more than one thousand dollars (\$1,000).

(3) If the perpetration of the most recent offense within the five-year period described in paragraph (1) proximately causes serious bodily injury, as defined in paragraph (4) of subdivision (f) of Section 243 of the Penal Code, to a person other than the driver, a person convicted of that second violation shall be imprisoned in the state prison, or in a county jail for not less than 30 days nor more than one year, and by a fine of not less than five hundred dollars (\$500) nor more than one thousand dollars (\$1,000).

(4) The court shall order the privilege of a person convicted under paragraph (1), (2), or (3), to operate a motor vehicle suspended for a period of six months, as provided in paragraph (9) of subdivision (a) of Section 13352. In lieu of the suspension, the person's privilege to operate a motor vehicle may be restricted for six months to necessary travel to and from that person's place of employment and, if driving a motor vehicle is necessary to perform the duties of the person's employment, restricted to driving in that person's scope of employment. This subdivision does not interfere with the court's power to grant probation in a suitable case.

(g) If the court grants probation to any person punishable under subdivision (f), in addition to the provisions of subdivision (f) and any other terms and conditions imposed by the court, which may include a fine, the court shall impose as a condition of probation that the person be confined in a county jail for not less than 48 hours nor more than six months. The court shall order the person's privilege to operate a motor vehicle to be suspended for a period of six months, as provided in paragraph (9) of subdivision (a) of Section 13352 or restricted pursuant to subdivision (f).

(h) If a person is convicted of a violation of subdivision (a) and the vehicle used in the violation is registered to that person, the vehicle may be impounded at the registered owner's expense for not less than one day nor more than 30 days.

(i) Any person who violates subdivision (b), (c), or (d) of this section shall upon conviction thereof be punished by imprisonment in a county jail for not more than 90 days or by a fine of not more than five hundred dollars (\$500) or by both that fine and imprisonment.

(j) If a person's privilege to operate a motor vehicle is restricted by a court pursuant to this section, the court shall clearly mark the restriction and the dates of the restriction on that person's driver's license and promptly notify the Department of Motor Vehicles of the terms of the restriction in a manner prescribed by the department. The Department of Motor Vehicles shall place that restriction in the person's records in the Department of Motor Vehicles and enter the restriction on any license subsequently issued by the Department of Motor Vehicles to that person during the period of the restriction.

(k) The court may order that any person convicted under this section, who is to be punished by imprisonment in a county jail, be imprisoned on days other than days of regular employment of the person, as determined by the court.

(l) This section shall be known and may be cited as the Louis Friend Memorial Act.

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 476

An act to amend Section 6254 of the Government Code, relating to public records, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 4, 2005. Filed with
Secretary of State October 4, 2005.]

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 may not be used directly or indirectly, or furnished to another, 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. Nothing in this paragraph shall be construed to prohibit or limit a scholarly, journalistic, political, or government use of address information obtained pursuant to this paragraph.

(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 and the Legislative Analyst's Office. The committee and that office 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) Critical infrastructure information, as defined in Section 131(3) of Title 6 of the United States Code, that is voluntarily submitted to the California Office of Homeland Security for use by that office, including the identity of the person who or entity that voluntarily submitted the information. As used in this subdivision, "voluntarily submitted" means submitted in the absence of the office exercising any legal authority to compel access to or submission of critical infrastructure information. This subdivision shall not affect the status of information in the possession of any other state or local governmental agency.

(cc) All information provided to the Secretary of State by a person for the purpose of registration in the Advance Health Care Directive Registry, except that those records shall be released at the request of a health care provider, a public guardian, or the registrant's legal representative.

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. 1.5. 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 may not be used directly or indirectly, or furnished to another, 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. Nothing in this paragraph shall be construed to prohibit or limit a scholarly, journalistic, political, or government use of address information obtained pursuant to this paragraph.

(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 and the Legislative Analyst's Office. The committee and that office 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 and records of Native American places, features, and objects described in Sections 5097.9 and 5097.993 of the Public Resources Code maintained by, or in the possession of, the Native American Heritage Commission, another state agency, or a local agency.

(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) Critical infrastructure information, as defined in Section 131(3) of Title 6 of the United States Code, that is voluntarily submitted to the California Office of Homeland Security for use by that office, including the identity of the person who or entity that voluntarily submitted the information. As used in this subdivision, "voluntarily submitted" means submitted in the absence of the office exercising any legal authority to compel access to or submission of critical infrastructure information. This subdivision shall not affect the status of information in the possession of any other state or local governmental agency.

(cc) All information provided to the Secretary of State by a person for the purpose of registration in the Advance Health Care Directive Registry, except that those records shall be released at the request of a health care provider, a public guardian, or the registrant's legal representative.

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. The Legislature finds and declares that Section 1 of this act, which amends Section 6254 of the Government Code, imposes a limitation on the public's right of access to the meetings of public bodies or the writings of public officials and agencies within the meaning of Section 3 of Article I of the California Constitution. Pursuant to that constitutional provision, the Legislature makes the following findings

to demonstrate the interest protected by this limitation and the need for protecting that interest:

In order to ensure that important economic infrastructure, including, but not limited to, the manufacturing, transportation, refining, and processing industries, is protected from terrorist attack, it is necessary that critical infrastructure information, as defined in Section 131(3) of Title 6 of the United States Code, that is voluntarily submitted to the California Office of Homeland Security for use by that office, 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).

SEC. 3. Section 1.5 of this bill incorporates amendments to Section 6254 of the Government Code proposed by both this bill and SB 922. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2006, (2) each bill amends Section 6254 of the Government Code, and (3) this bill is enacted after SB 922, 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 to ensure that important economic infrastructure is protected from terrorist attack, it is necessary for this act to take effect immediately.

CHAPTER 477

An act to amend Sections 285, 288.1, 1000.12, and 1203.066 of, and to repeal Section 1000.13 of, the Penal Code, relating to sexual abuse.

[Approved by Governor October 4, 2005. Filed with
Secretary of State October 4, 2005.]

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

SECTION 1. Section 285 of the Penal Code is amended to read:

285. Persons being within the degrees of consanguinity within which marriages are declared by law to be incestuous and void, who intermarry with each other, or who being 14 years of age or older, commit fornication or adultery with each other, are punishable by imprisonment in the state prison.

SEC. 2. Section 288.1 of the Penal Code is amended to read:

288.1. Any person convicted of committing any lewd or lascivious act including any of the acts constituting other crimes provided for in Part 1 of this code upon or with the body, or any part or member thereof, of a child under the age of 14 years shall not have his or her sentence suspended until the court obtains a report from a reputable psychiatrist, from a reputable psychologist who meets the standards set forth in Section 1027, as to the mental condition of that person.

SEC. 3 Section 1000.12 of the Penal Code is amended to read:

1000.12. (a) It is the intent of the Legislature that nothing in this chapter deprive a prosecuting attorney of the ability to prosecute any person who is suspected of committing any crime in which a minor is a victim of an act of physical abuse or neglect to the fullest extent of the law, if the prosecuting attorney so chooses.

(b) In lieu of prosecuting a person suspected of committing any crime, involving a minor victim, of an act of physical abuse or neglect, the prosecuting attorney may refer that person to the county department in charge of public social services or the probation department for counseling or psychological treatment and such other services as the department deems necessary. The prosecuting attorney shall seek the advice of the county department in charge of public social services or the probation department in determining whether or not to make the referral.

(c) This section shall not apply to any person who is charged with sexual abuse or molestation of a minor victim, or any sexual offense involving force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the minor victim or another person.

SEC. 4. Section 1000.13 of the Penal Code is repealed.

SEC. 5. Section 1203.066 of the Penal Code is amended to read:

1203.066. (a) Notwithstanding Section 1203 or any other law, probation shall not be granted to, nor shall the execution or imposition of sentence be suspended for, nor shall a finding bringing the defendant within the provisions of this section be stricken pursuant to Section 1385 for, any of the following persons:

(1) A person who is convicted of violating Section 288 or 288.5 when the act is committed by the use of force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person.

(2) A person who caused bodily injury on the child victim in committing a violation of Section 288 or 288.5.

(3) A person who is convicted of a violation of Section 288 or 288.5 and who was a stranger to the child victim or befriended the child victim for the purpose of committing an act in violation of Section 288 or 288.5,

unless the defendant honestly and reasonably believed the victim was 14 years of age or older.

(4) A person who used a weapon during the commission of a violation of Section 288 or 288.5.

(5) A person who is convicted of committing a violation of Section 288 or 288.5 and who has been previously convicted of a violation of Section 261, 262, 264.1, 266, 266c, 267, 285, 286, 288, 288.5, 288a, or 289, or of assaulting another person with intent to commit a crime specified in this paragraph in violation of Section 220, or who has been previously convicted in another state of an offense which, if committed or attempted in this state, would constitute an offense enumerated in this paragraph.

(6) A person who violated Section 288 or 288.5 while kidnapping the child victim in violation of Section 207, 209, or 209.5.

(7) A person who is convicted of committing a violation of Section 288 or 288.5 against more than one victim.

(8) A person who, in violating Section 288 or 288.5, has substantial sexual conduct with a victim who is under 14 years of age.

(9) A person who, in violating Section 288 or 288.5, used obscene matter, as defined in Section 311, or matter, as defined in Section 311, depicting sexual conduct, as defined in Section 311.3.

(b) "Substantial sexual conduct" means penetration of the vagina or rectum of either the victim or the offender by the penis of the other or by any foreign object, oral copulation, or masturbation of either the victim or the offender.

(c) (1) Except for a violation of subdivision (b) of Section 288, this section shall only apply if the existence of any fact required in subdivision (a) is alleged in the accusatory pleading and is either admitted by the defendant in open court, or found to be true by the trier of fact.

(2) For the existence of any fact under paragraph (7) of subdivision (a), the allegation must be made pursuant to this section.

(d) (1) If a person is convicted of a violation of Section 288 or 288.5, and the factors listed in subdivision (a) are not pled or proven, probation may be granted only if the following terms and conditions are met:

(A) If the defendant is a member of the victim's household, the court finds that probation is in the best interest of the child victim.

(B) The court finds that rehabilitation of the defendant is feasible and that the defendant is amenable to undergoing treatment, and the defendant is placed in a recognized treatment program designed to deal with child molestation immediately after the grant of probation or the suspension of execution or imposition of sentence.

(C) If the defendant is a member of the victim's household, probation shall not be granted unless the defendant is removed from the household

of the victim until the court determines that the best interests of the victim would be served by his or her return. While removed from the household, the court shall prohibit contact by the defendant with the victim, with the exception that the court may permit supervised contact, upon the request of the director of the court-ordered supervised treatment program, and with the agreement of the victim and the victim's parent or legal guardian, other than the defendant.

(D) The court finds that there is no threat of physical harm to the victim if probation is granted.

(2) The court shall state its reasons on the record for whatever sentence it imposes on the defendant.

(3) The court shall order the psychiatrist or psychologist who is appointed pursuant to Section 288.1 to include a consideration of the factors specified in subparagraphs (A), (B), and (C) in making his or her report to the court.

(4) The court shall order the defendant to comply with all probation requirements, including the requirements to attend counseling, keep all program appointments, and pay program fees based upon ability to pay.

(5) No victim shall be compelled to participate in a program or counseling, and no program may condition a defendant's enrollment on participation by the victim.

(e) As used in subdivision (d), the following definitions apply:

(1) "Contact with the victim" includes all physical contact, being in the presence of the victim, communicating by any means, including by a third party acting on behalf of the defendant, or sending any gifts.

(2) "Recognized treatment program" means a program that consists of the following components:

(A) Substantial expertise in the treatment of child sexual abuse.

(B) A treatment regimen designed to specifically address the offense.

(C) The ability to serve indigent clients.

(D) Adequate reporting requirements to ensure that all persons who, after being ordered to attend and complete a program, may be identified for either failure to enroll in, or failure to successfully complete, the program, or for the successful completion of the program as ordered. The program shall notify the court and the probation department, in writing, within the period of time and in the manner specified by the court of any person who fails to complete the program. Notification shall be given if the program determines that the defendant is performing unsatisfactorily or if the defendant is not benefiting from the education, treatment, or counseling.

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 478

An act to amend Sections 26602 and 41601 of the Government Code, and to add Sections 100106, 101029, and 101317.2 to, the Health and Safety Code, relating to public health.

[Approved by Governor October 4, 2005. Filed with
Secretary of State October 4, 2005.]

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

SECTION 1. Section 26602 of the Government Code is amended to read:

26602. The sheriff shall prevent and suppress any affrays, breaches of the peace, riots, and insurrections that come to his or her knowledge, and investigate public offenses which have been committed. The sheriff may execute all orders of the local health officer issued for the purpose of preventing the spread of any contagious or communicable disease.

SEC. 2. Section 41601 of the Government Code is amended to read:

41601. For the suppression of riot, public tumult, disturbance of the peace, or resistance against the laws or public authorities in the lawful exercise of their functions, and for the execution of all orders of the local health officer issued for the purpose of preventing the spread of any contagious, infectious, or communicable disease, the chief of police has the powers conferred upon sheriffs by general law and in all respects is entitled to the same protection.

SEC. 3. Section 100106 is added to the Health and Safety Code, to read:

100106. Pursuant to Section 11158 of the Government Code, the sheriff of each county, or city and county, may enforce within the county, or the city and county, all orders of the State Department of Health Services issued for the purpose of preventing the spread of any contagious, infectious, or communicable disease. Every peace officer of every political subdivision of the county, or city and county, may enforce within the area subject to his or her jurisdiction all orders of the State Department of Health Services issued for the purpose of preventing

the spread of any contagious, infectious, or communicable disease. This section is not a limitation on the authority of peace officers or public officers to enforce orders of the State Department of Health Services. When deciding whether to request this assistance in enforcement of its orders, the State Department of Health Services may consider whether it would be necessary to advise the enforcement agency of any measures that should be taken to prevent infection of the enforcement officers.

SEC. 4. Section 101029 is added to the Health and Safety Code, to read:

101029. The sheriff of each county, or city and county, may enforce within the county, or the city and county, all orders of the local health officer issued for the purpose of preventing the spread of any contagious, infectious, or communicable disease. Every peace officer of every political subdivision of the county, or city and county, may enforce within the area subject to his or her jurisdiction all orders of the local health officer issued for the purpose of preventing the spread of any contagious, infectious, or communicable disease. This section is not a limitation on the authority of peace officers or public officers to enforce orders of the local health officer. When deciding whether to request this assistance in enforcement of its orders, the local health officer may consider whether it would be necessary to advise the enforcement agency of any measures that should be taken to prevent infection of the enforcement officers.

SEC. 5. Section 101317.2 is added to the Health and Safety Code, to read:

101317.2. Notwithstanding any other provision of law, moneys made available in the 2004-05 Budget Act for bioterrorism preparedness shall be available for expenditure and encumbrance until August 30, 2006.

CHAPTER 479

An act to amend Sections 801.1 and 803 of the Penal Code, relating to statutes of limitations.

[Approved by Governor October 4, 2005. Filed with
Secretary of State October 4, 2005.]

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

SECTION 1. This act shall be known, and may be cited, as the Child Sexual Abuse Prevention Act.

SEC. 2. Section 801.1 of the Penal Code is amended to read:

801.1. (a) Notwithstanding any other limitation of time described in this chapter, prosecution for a felony offense described in Section 261, 286, 288, 288.5, 288a, or 289, or Section 289.5, as enacted by Chapter 293 of the Statutes of 1991 relating to penetration by an unknown object, that is alleged to have been committed when the victim was under the age of 18 years, may be commenced any time prior to the victim's 28th birthday.

(b) Notwithstanding any other limitation of time described in this chapter, if subdivision (a) does not apply, prosecution for a felony offense described in subparagraph (A) of paragraph (2) of subdivision (a) of Section 290 shall be commenced within 10 years after commission of the offense.

SEC. 3. Section 803 of the Penal Code, as added by Chapter 2 of the Statutes of 2005, is amended to read:

803. (a) Except as provided in this section, a limitation of time prescribed in this chapter is not tolled or extended for any reason.

(b) No time during which prosecution of the same person for the same conduct is pending in a court of this state is a part of a limitation of time prescribed in this chapter.

(c) A limitation of time prescribed in this chapter does not commence to run until the discovery of an offense described in this subdivision. This subdivision applies to an offense punishable by imprisonment in the state prison, a material element of which is fraud or breach of a fiduciary obligation, the commission of the crimes of theft or embezzlement upon an elder or dependent adult, or the basis of which is misconduct in office by a public officer, employee, or appointee, including, but not limited to, the following offenses:

(1) Grand theft of any type, forgery, falsification of public records, or acceptance of a bribe by a public official or a public employee.

(2) A violation of Section 72, 118, 118a, 132, 134, or 186.10.

(3) A violation of Section 25540, of any type, or Section 25541 of the Corporations Code.

(4) A violation of Section 1090 or 27443 of the Government Code.

(5) Felony welfare fraud or Medi-Cal fraud in violation of Section 11483 or 14107 of the Welfare and Institutions Code.

(6) Felony insurance fraud in violation of Section 548 or 550 of this code or former Section 1871.1, or Section 1871.4, of the Insurance Code.

(7) A violation of Section 580, 581, 582, 583, or 584 of the Business and Professions Code.

(8) A violation of Section 22430 of the Business and Professions Code.

(9) A violation of Section 10690 of the Health and Safety Code.

(10) A violation of Section 529a.

(11) A violation of subdivision (d) or (e) of Section 368.

(d) If the defendant is out of the state when or after the offense is committed, the prosecution may be commenced as provided in Section 804 within the limitations of time prescribed by this chapter, and no time up to a maximum of three years during which the defendant is not within the state shall be a part of those limitations.

(e) A limitation of time prescribed in this chapter does not commence to run until the offense has been discovered, or could have reasonably been discovered, with regard to offenses under Division 7 (commencing with Section 13000) of the Water Code, under Chapter 6.5 (commencing with Section 25100) of, Chapter 6.7 (commencing with Section 25280) of, or Chapter 6.8 (commencing with Section 25300) of, Division 20 of, or Part 4 (commencing with Section 41500) of Division 26 of, the Health and Safety Code, or under Section 386, or offenses under Chapter 5 (commencing with Section 2000) of Division 2 of, Chapter 9 (commencing with Section 4000) of Division 2 of, Section 6126 of, Chapter 10 (commencing with Section 7301) of Division 3 of, or Chapter 19.5 (commencing with Section 22440) of Division 8 of, the Business and Professions Code.

(f) (1) Notwithstanding any other limitation of time described in this chapter, a criminal complaint may be filed within one year of the date of a report to a California law enforcement agency by a person of any age alleging that he or she, while under the age of 18 years, was the victim of a crime described in Section 261, 286, 288, 288a, 288.5, or 289, or Section 289.5, as enacted by Chapter 293 of the Statutes of 1991 relating to penetration by an unknown object.

(2) This subdivision applies only if all of the following occur:

(A) The limitation period specified in Section 800, 801, or 801.1, whichever is later, has expired.

(B) The crime involved substantial sexual conduct, as described in subdivision (b) of Section 1203.066, excluding masturbation that is not mutual.

(C) There is independent evidence that corroborates the victim's allegation. If the victim was 21 years of age or older at the time of the report, the independent evidence shall clearly and convincingly corroborate the victim's allegation.

(3) No evidence may be used to corroborate the victim's allegation that otherwise would be inadmissible during trial. Independent evidence does not include the opinions of mental health professionals.

(4) (A) In a criminal investigation involving any of the crimes listed in paragraph (1) committed against a child, when the applicable limitations period has not expired, that period shall be tolled from the time a party initiates litigation challenging a grand jury subpoena until

the end of the litigation, including any associated writ or appellate proceeding, or until the final disclosure of evidence to the investigating or prosecuting agency, if that disclosure is ordered pursuant to the subpoena after the litigation.

(B) Nothing in this subdivision affects the definition or applicability of any evidentiary privilege.

(C) This subdivision shall not apply where a court finds that the grand jury subpoena was issued or caused to be issued in bad faith.

(g) (1) Notwithstanding any other limitation of time described in this chapter, a criminal complaint may be filed within one year of the date on which the identity of the suspect is conclusively established by DNA testing, if both of the following conditions are met:

(A) The crime is one that is described in subparagraph (A) of paragraph (2) of subdivision (a) of Section 290.

(B) The offense was committed prior to January 1, 2001, and biological evidence collected in connection with the offense is analyzed for DNA type no later than January 1, 2004, or the offense was committed on or after January 1, 2001, and biological evidence collected in connection with the offense is analyzed for DNA type no later than two years from the date of the offense.

(2) For purposes of this section, "DNA" means deoxyribonucleic acid.

(h) For any crime, the proof of which depends substantially upon evidence that was seized under a warrant, but which is unavailable to the prosecuting authority under the procedures described in *People v. Superior Court (Laff)* (2001) 25 Cal.4th 703, *People v. Superior Court (Bauman & Rose)* (1995) 37 Cal.App.4th 1757, or subdivision (c) of Section 1524, relating to claims of evidentiary privilege or attorney work product, the limitation of time prescribed in this chapter shall be tolled from the time of the seizure until final disclosure of the evidence to the prosecuting authority. Nothing in this section otherwise affects the definition or applicability of any evidentiary privilege or attorney work product.

CHAPTER 480

An act to amend Section 1347 of the Penal Code, relating to criminal procedure.

[Approved by Governor October 4, 2005. Filed with
Secretary of State October 4, 2005.]

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

SECTION 1. Section 1347 of the Penal Code is amended to read:

1347. (a) It is the intent of the Legislature in enacting this section to provide the court with discretion to employ alternative court procedures to protect the rights of a child witness, the rights of the defendant, and the integrity of the judicial process. In exercising its discretion, the court necessarily will be required to balance the rights of the defendant or defendants against the need to protect a child witness and to preserve the integrity of the court's truthfinding function. This discretion is intended to be used selectively when the facts and circumstances in the individual case present compelling evidence of the need to use these alternative procedures.

(b) Notwithstanding any other law, the court in any criminal proceeding, upon written notice by the prosecutor made at least three days prior to the date of the preliminary hearing or trial date on which the testimony of the minor is scheduled, or during the course of the proceeding on the court's own motion, may order that the testimony of a minor 13 years of age or younger at the time of the motion be taken by contemporaneous examination and cross-examination in another place and out of the presence of the judge, jury, defendant or defendants, and attorneys, and communicated to the courtroom by means of closed-circuit television, if the court makes all of the following findings:

(1) The minor's testimony will involve a recitation of the facts of any of the following:

(A) An alleged sexual offense committed on or with the minor.

(B) An alleged violent felony, as defined in subdivision (c) of Section 667.5, of which the minor is a victim.

(C) An alleged felony offense specified in Section 273a or 273d of which the minor is a victim.

(2) The impact on the minor of one or more of the factors enumerated in subparagraphs (A) to (E), inclusive, is shown by clear and convincing evidence to be so substantial as to make the minor unavailable as a witness unless closed-circuit testimony is used.

(A) Testimony by the minor in the presence of the defendant would result in the child suffering serious emotional distress so that the child would be unavailable as a witness.

(B) The defendant used a deadly weapon in the commission of the offense.

(C) The defendant threatened serious bodily injury to the child or the child's family, threatened incarceration or deportation of the child or a member of the child's family, threatened removal of the child from the child's family, or threatened the dissolution of the child's family in order

to prevent or dissuade the minor from attending or giving testimony at any trial or court proceeding, or to prevent the minor from reporting the alleged sexual offense, or from assisting in criminal prosecution.

(D) The defendant inflicted great bodily injury upon the child in the commission of the offense.

(E) The defendant or his or her counsel behaved during the hearing or trial in a way that caused the minor to be unable to continue his or her testimony.

In making the determination required by this section, the court shall consider the age of the minor, the relationship between the minor and the defendant or defendants, any handicap or disability of the minor, and the nature of the acts charged. The minor's refusal to testify shall not alone constitute sufficient evidence that the special procedure described in this section is necessary to obtain the minor's testimony.

(3) The equipment available for use of closed-circuit television would accurately communicate the image and demeanor of the minor to the judge, jury, defendant or defendants, and attorneys.

(c) If the court orders the use of closed-circuit television, two-way closed-circuit television shall be used, except that if the impact on the minor of one or more of the factors enumerated in subparagraphs (A) to (E), inclusive, of paragraph (2) of subdivision (b), is shown by clear and convincing evidence to be so substantial as to make the minor unavailable as a witness even if two-way closed-circuit television is used, one-way closed-circuit television may be used. The prosecution shall give the defendant or defendants at least 30 days' written notice of the prosecution's intent to seek the use of one-way closed-circuit television, unless good cause is shown to the court why this 30-day notice requirement should not apply.

(d) (1) The hearing on a motion brought pursuant to this section shall be conducted out of the presence of the jury.

(2) Notwithstanding Section 804 of the Evidence Code or any other law, the court, in determining the merits of the motion, shall not compel the minor to testify at the hearing; nor shall the court deny the motion on the ground that the minor has not testified.

(3) In determining whether the impact on an individual child of one or more of the five factors enumerated in paragraph (2) of subdivision (b) is so substantial that the minor is unavailable as a witness unless two-way or one-way closed-circuit television is used, the court may question the minor in chambers, or at some other comfortable place other than the courtroom, on the record for a reasonable period of time with the support person, the prosecutor, and defense counsel present. The defendant or defendants shall not be present. The court shall conduct the questioning of the minor and shall not permit the prosecutor or

defense counsel to examine the minor. The prosecutor and defense counsel shall be permitted to submit proposed questions to the court prior to the session in chambers. Defense counsel shall be afforded a reasonable opportunity to consult with the defendant or defendants prior to the conclusion of the session in chambers.

(e) When the court orders the testimony of a minor to be taken in another place outside of the courtroom, the court shall do all of the following:

(1) Make a brief statement on the record, outside of the presence of the jury, of the reasons in support of its order. While the statement need not include traditional findings of fact, the reasons shall be set forth with sufficient specificity to permit meaningful review and to demonstrate that discretion was exercised in a careful, reasonable, and equitable manner.

(2) Instruct the members of the jury that they are to draw no inferences from the use of closed-circuit television as a means of facilitating the testimony of the minor.

(3) Instruct respective counsel, outside of the presence of the jury, that they are to make no comment during the course of the trial on the use of closed-circuit television procedures.

(4) Instruct the support witness, outside of the presence of the jury, that he or she is not to coach, cue, or in any way influence or attempt to influence the testimony of the minor.

(5) Order that a complete record of the examination of the minor, including the images and voices of all persons who in any way participate in the examination, be made and preserved on videotape in addition to being stenographically recorded. The videotape shall be transmitted to the clerk of the court in which the action is pending and shall be made available for viewing to the prosecuting attorney, the defendant or defendants, and his or her attorney during ordinary business hours. The videotape shall be destroyed after five years have elapsed from the date of entry of judgment. If an appeal is filed, the tape shall not be destroyed until a final judgment on appeal has been ordered. Any videotape that is taken pursuant to this section is subject to a protective order of the court for the purpose of protecting the privacy of the witness. This subdivision does not affect the provisions of subdivision (b) of Section 868.7.

(f) When the court orders the testimony of a minor to be taken in another place outside the courtroom, only the minor, a support person designated pursuant to Section 868.5, a nonuniformed bailiff any technicians necessary to operate the closed-circuit equipment, and, after consultation with the prosecution and the defense, a representative appointed by the court, shall be physically present for the testimony. A

videotape shall record the image of the minor and his or her testimony, and a separate videotape shall record the image of the support person.

(g) When the court orders the testimony of a minor to be taken in another place outside the courtroom, the minor shall be brought into the judge's chambers prior to the taking of his or her testimony to meet for a reasonable period of time with the judge, the prosecutor, and defense counsel. A support person for the minor shall also be present. This meeting shall be for the purpose of explaining the court process to the child and to allow the attorneys an opportunity to establish rapport with the child to facilitate later questioning by closed-circuit television. No participant shall discuss the defendant or defendants or any of the facts of the case with the minor during this meeting.

(h) When the court orders the testimony of a minor to be taken in another place outside the courtroom, nothing in this section prohibits the court from ordering the minor to be brought into the courtroom for a limited purpose, including the identification of the defendant or defendants as the court deems necessary.

(i) The examination shall be under oath, and the defendant or defendants shall be able to see and hear the minor witness, and if two-way closed-circuit television is used, the defendant's image shall be transmitted live to the witness.

(j) Nothing in this section affects the disqualification of witnesses pursuant to Section 701 of the Evidence Code.

(k) The cost of examination by contemporaneous closed-circuit television ordered pursuant to this section shall be borne by the court out of its existing budget.

(l) Nothing in this section shall be construed to prohibit a defendant from being represented by counsel during any closed-circuit testimony.

CHAPTER 481

An act to add and repeal Section 4011.10 of the Penal Code, relating to health care.

[Approved by Governor October 4, 2005. Filed with
Secretary of State October 4, 2005.]

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

SECTION 1. Section 4011.10 is added to the Penal Code, to read:
4011.10. (a) It is the intent of the Legislature in enacting this section to provide county sheriffs, chiefs of police, and directors or administrators

of local detention facilities with an incentive to not engage in practices designed to avoid payment of legitimate emergency health care costs for the treatment or examination of persons lawfully in their custody, and to promptly pay those costs as requested by the provider of services. Further, it is the intent of the Legislature to encourage county sheriffs, chiefs of police, and directors or administrators of local detention facilities to bargain in good faith when negotiating a service contract with hospitals providing emergency health care services. The Legislature has set a date of January 1, 2009, for this section to be repealed, and does not intend to delete or extend that date if county sheriffs, chiefs of police, and directors or administrators have not complied with the intent of the Legislature, as expressed in this subdivision.

(b) Notwithstanding any other provision of law, a county sheriff or police chief may contract with providers of emergency health care services. Hospitals that do not contract with the sheriff or police chief for emergency health care services shall provide these services to their departments at a rate equal to 110 percent of the hospital's actual costs according to the most recent Hospital Annual Financial Data report issued by the Office of Statewide Health Planning and Development, as calculated using a cost-to-charge ratio.

(c) A county sheriff or police chief shall not request the release of an inmate from custody for the purpose of allowing the inmate to seek medical care at a hospital, and then immediately rearrest the same individual upon discharge from the hospital, unless the hospital determines this action would enable it to bill and collect from a third-party payment source.

(d) The California Hospital Association, the University of California, the California State Sheriffs' Association and the California Police Chiefs' Association shall, immediately upon enactment of this section, convene the Inmate Health Care and Medical Provider Fair Pricing Working Group. The working group shall consist of at least six members from the California Hospital Association and the University of California, and six members from the California State Sheriffs' Association and the California Police Chiefs' Association. Each organization should give great weight and consideration to appointing members of the working group with diverse geographic and demographic interests. The working group shall meet at least three times annually to identify and resolve industry issues that create fiscal barriers to timely and affordable emergency inmate health care. In addition, the working group shall address issues including, but not limited to, inmates being admitted for care and later rearrested and any other fiscal barriers to hospitals being able to enter into fair market contracts with public agencies. No reimbursement is required under this provision.

(e) Nothing in this section shall require or encourage a hospital or public agency to replace any existing arrangements that any city police chief, county sheriff, or other public agency that contracts for health services for those departments, has with his or her health care providers.

(f) An entity that provides ambulance or any other emergency or nonemergency response service to a sheriff or police chief, and that does not contract with their departments for that service, shall be reimbursed for the service at the rate established by Medicare. Neither the sheriff nor the police chief shall reimburse a provider of any of these services that their department has not contracted with at a rate that exceeds the provider's reasonable and allowable costs, regardless of whether the provider is located within or outside of California.

(g) For the purposes of this section, "reasonable and allowable costs" shall be defined in accordance with Part 413 of Title 42 of the Code of Federal Regulations and federal Centers for Medicare and Medicaid Services Publication Numbers 15.1 and 15.2.

(h) For purposes of this section, in those counties in which the sheriff does not administer a jail facility, a director or administrator of a local department of corrections established pursuant to Section 23013 of the Government Code is the person who may contract for services provided to jail inmates in the facilities he or she administers in those counties.

(i) This section is repealed as of January 1, 2009.

SEC. 2. 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.

CHAPTER 482

An act to amend Section 186.22 of the Penal Code, relating to crime.

[Approved by Governor October 4, 2005. Filed with
Secretary of State October 4, 2005.]

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

SECTION 1. Section 186.22 of the Penal Code is amended to read:
186.22. (a) Any person who actively participates in any criminal street gang with knowledge that its members engage in or have engaged in a pattern of criminal gang activity, and who willfully promotes, furthers, or assists in any felonious criminal conduct by members of that

gang, shall be punished by imprisonment in a county jail for a period not to exceed one year, or by imprisonment in the state prison for 16 months, or two or three years.

(b) (1) Except as provided in paragraphs (4) and (5), any person who is convicted of a felony committed for the benefit of, at the direction of, or in association with any criminal street gang, with the specific intent to promote, further, or assist in any criminal conduct by gang members, shall, upon conviction of that felony, in addition and consecutive to the punishment prescribed for the felony or attempted felony of which he or she has been convicted, be punished as follows:

(A) Except as provided in subparagraphs (B) and (C), the person shall be punished by an additional term of two, three, or four years at the court's discretion.

(B) If the felony is a serious felony, as defined in subdivision (c) of Section 1192.7, the person shall be punished by an additional term of five years.

(C) If the felony is a violent felony, as defined in subdivision (c) of Section 667.5, the person shall be punished by an additional term of 10 years.

(2) If the underlying felony described in paragraph (1) is committed on the grounds of, or within 1,000 feet of, a public or private elementary, vocational, junior high, or high school, during hours in which the facility is open for classes or school-related programs or when minors are using the facility that fact shall be a circumstance in aggravation of the crime in imposing a term under paragraph (1).

(3) The court shall order the imposition of the middle term of the sentence enhancement, unless there are circumstances in aggravation or mitigation. The court shall state the reasons for its choice of sentencing enhancements on the record at the time of the sentencing.

(4) Any person who is convicted of a felony enumerated in this paragraph committed for the benefit of, at the direction of, or in association with any criminal street gang, with the specific intent to promote, further, or assist in any criminal conduct by gang members, shall, upon conviction of that felony, be sentenced to an indeterminate term of life imprisonment with a minimum term of the indeterminate sentence calculated as the greater of:

(A) The term determined by the court pursuant to Section 1170 for the underlying conviction, including any enhancement applicable under Chapter 4.5 (commencing with Section 1170) of Title 7 of Part 2, or any period prescribed by Section 3046, if the felony is any of the offenses enumerated in subparagraph (B) or (C) of this paragraph.

(B) Imprisonment in the state prison for 15 years, if the felony is a home invasion robbery, in violation of subparagraph (A) of paragraph

(1) of subdivision (a) of Section 213; carjacking, as defined in Section 215; a felony violation of Section 246; or a violation of Section 12022.55.

(C) Imprisonment in the state prison for seven years, if the felony is extortion, as defined in Section 519; or threats to victims and witnesses, as defined in Section 136.1.

(5) Except as provided in paragraph (4), any person who violates this subdivision in the commission of a felony punishable by imprisonment in the state prison for life, shall not be paroled until a minimum of 15 calendar years have been served.

(c) If the court grants probation or suspends the execution of sentence imposed upon the defendant for a violation of subdivision (a), or in cases involving a true finding of the enhancement enumerated in subdivision (b), the court shall require that the defendant serve a minimum of 180 days in a county jail as a condition thereof.

(d) Any person who is convicted of a public offense punishable as a felony or a misdemeanor, which is committed for the benefit of, at the direction of or in association with, any criminal street gang with the specific intent to promote, further, or assist in any criminal conduct by gang members, shall be punished by imprisonment in the county jail not to exceed one year, or by imprisonment in the state prison for one, two, or three years, provided that any person sentenced to imprisonment in the county jail shall be imprisoned for a period not to exceed one year, but not less than 180 days, and shall not be eligible for release upon completion of sentence, parole, or any other basis, until he or she has served 180 days. If the court grants probation or suspends the execution of sentence imposed upon the defendant, it shall require as a condition thereof that the defendant serve 180 days in a county jail.

(e) As used in this chapter, “pattern of criminal gang activity” means the commission of, attempted commission of, conspiracy to commit, or solicitation of, sustained juvenile petition for, or conviction of two or more of the following offenses, provided at least one of these offenses occurred after the effective date of this chapter and the last of those offenses occurred within three years after a prior offense, and the offenses were committed on separate occasions, or by two or more persons:

(1) Assault with a deadly weapon or by means of force likely to produce great bodily injury, as defined in Section 245.

(2) Robbery, as defined in Chapter 4 (commencing with Section 211) of Title 8 of Part 1.

(3) Unlawful homicide or manslaughter, as defined in Chapter 1 (commencing with Section 187) of Title 8 of Part 1.

(4) The sale, possession for sale, transportation, manufacture, offer for sale, or offer to manufacture controlled substances as defined in

Sections 11054, 11055, 11056, 11057, and 11058 of the Health and Safety Code.

(5) Shooting at an inhabited dwelling or occupied motor vehicle, as defined in Section 246.

(6) Discharging or permitting the discharge of a firearm from a motor vehicle, as defined in subdivisions (a) and (b) of Section 12034.

(7) Arson, as defined in Chapter 1 (commencing with Section 450) of Title 13.

(8) The intimidation of witnesses and victims, as defined in Section 136.1.

(9) Grand theft, as defined in subdivision (a) or (c) of Section 487.

(10) Grand theft of any firearm, vehicle, trailer, or vessel.

(11) Burglary, as defined in Section 459.

(12) Rape, as defined in Section 261.

(13) Looting, as defined in Section 463.

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

(15) Kidnapping, as defined in Section 207.

(16) Mayhem, as defined in Section 203.

(17) Aggravated mayhem, as defined in Section 205.

(18) Torture, as defined in Section 206.

(19) Felony extortion, as defined in Sections 518 and 520.

(20) Felony vandalism, as defined in paragraph (1) of subdivision (b) of Section 594.

(21) Carjacking, as defined in Section 215.

(22) The sale, delivery, or transfer of a firearm, as defined in Section 12072.

(23) Possession of a pistol, revolver, or other firearm capable of being concealed upon the person in violation of paragraph (1) of subdivision (a) of Section 12101.

(24) Threats to commit crimes resulting in death or great bodily injury, as defined in Section 422.

(25) Theft and unlawful taking or driving of a vehicle, as defined in Section 10851 of the Vehicle Code.

(26) Felony theft of an access card or account information, as defined in Section 484e.

(27) Counterfeiting, designing, using, attempting to use an access card, as defined in Section 484f.

(28) Felony fraudulent use of an access card or account information, as defined in Section 484g.

(29) Unlawful use of personal identifying information to obtain credit, goods, services, or medical information, as defined in Section 530.5.

(30) Wrongfully obtaining Department of Motor Vehicles documentation, as defined in Section 529.7.

(f) As used in this chapter, “criminal street gang” means any ongoing organization, association, or group of three or more persons, whether formal or informal, having as one of its primary activities the commission of one or more of the criminal acts enumerated in paragraphs (1) to (25), inclusive, of subdivision (e), having a common name or common identifying sign or symbol, and whose members individually or collectively engage in or have engaged in a pattern of criminal gang activity.

(g) Notwithstanding any other law, the court may strike the additional punishment for the enhancements provided in this section or refuse to impose the minimum jail sentence for misdemeanors in an unusual case where the interests of justice would best be served, if the court specifies on the record and enters into the minutes the circumstances indicating that the interests of justice would best be served by that disposition.

(h) Notwithstanding any other provision of law, for each person committed to the Division of Juvenile Facilities for a conviction pursuant to subdivision (a) or (b) of this section, the offense shall be deemed one for which the state shall pay the rate of 100 percent of the per capita institutional cost of the Division of Juvenile Facilities, pursuant to Section 912.5 of the Welfare and Institutions Code.

(i) In order to secure a conviction, or sustain a juvenile petition, pursuant to subdivision (a), it is not necessary for the prosecution to prove that the person devotes all, or a substantial part of his or her time or efforts to the criminal street gang, nor is it necessary to prove that the person is a member of the criminal street gang. Active participation in the criminal street gang is all that is required.

(j) A pattern of gang activity may be shown by the commission of one or more of the offenses enumerated in paragraphs (26) to (30), inclusive, of subdivision (e), and the commission of one or more of the offenses enumerated in paragraphs (1) to (25), inclusive of subdivision (e). A pattern of gang activity cannot be established solely by proof of commission of offenses enumerated in paragraphs (26) to (30), inclusive, of subdivision (e), alone.

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 483

An act to amend Section 3030 of, and to add Section 3030.5 to, the Family Code, relating to support obligations.

[Approved by Governor October 4, 2005. Filed with
Secretary of State October 4, 2005.]

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

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

(a) The children of the State of California are placed at risk when permitted to remain in contact with a parent or caretaker who has committed a sex crime.

(b) It is the policy of the State of California that the health, safety, and welfare of children shall be the court's primary concern in determining the best interest of children when making orders regarding custody or visitation.

(c) The perpetration of child abuse or domestic violence in a household in which a child resides is detrimental to the child.

(d) Custody and visitation orders shall be made in a manner that ensures the health, safety, and welfare of the child and the safety of all family members.

(e) The purpose of this legislation is to ensure that information regarding sex crimes is appropriately considered by the court in child custody matters and children are protected from an at-risk environment.

(f) With regard to juvenile court proceedings in which child protective services seeks to remove the child from the home and declare the child a dependant of the State of California, subdivision (d) of Section 355.1 of the Welfare and Institutions Code establishes a presumption that a child is placed at "substantial risk of abuse or neglect" if a "parent guardian, or any other person who resides with, or has the care or custody of, a minor who is currently the subject of the petition ... is required, as the result of a felony conviction, to register as a sex offender pursuant to Section 290 of the Penal Code..."

SEC. 2. Section 3030 of the Family Code is amended to read:

3030. (a) (1) No person shall be granted physical or legal custody of, or unsupervised visitation with, a child if the person is required to be registered as a sex offender under Section 290 of the Penal Code where the victim was a minor, or if the person has been convicted under Section 273a, 273d, or 647.6 of the Penal Code, unless the court finds that there is no significant risk to the child and states its reasons in writing or on the record.

(2) No person shall be granted physical or legal custody of, or unsupervised visitation with, a child if anyone residing in the person's household is required, as a result of a felony conviction in which the victim was a minor, to register as a sex offender under Section 290 of the Penal Code, unless the court finds there is no significant risk to the child and states its reasons in writing or on the record.

(3) The fact that a child is permitted unsupervised contact with a person who is required, as a result of a felony conviction in which the victim was a minor, to be registered as a sex offender under Section 290 of the Penal Code, shall be prima facie evidence that the child is at significant risk. When making a determination regarding significant risk to the child, the prima facie evidence shall constitute a presumption affecting the burden of producing evidence. However, this presumption shall not apply if there are factors mitigating against its application, including whether the party seeking custody or visitation is also required, as the result of a felony conviction in which the victim was a minor, to register as a sex offender under Section 290 of the Penal Code.

(b) No person shall be granted custody of, or visitation with, a child if the person has been convicted under Section 261 of the Penal Code and the child was conceived as a result of that violation.

(c) No person shall be granted custody of, or unsupervised visitation with, a child if the person has been convicted of murder in the first degree, as defined in Section 189 of the Penal Code, and the victim of the murder was the other parent of the child who is the subject of the order, unless the court finds that there is no risk to the child's health, safety, and welfare, and states the reasons for its finding in writing or on the record. In making its finding, the court may consider, among other things, the following:

(1) The wishes of the child, if the child is of sufficient age and capacity to reason so as to form an intelligent preference.

(2) Credible evidence that the convicted parent was a victim of abuse, as defined in Section 6203, committed by the deceased parent. That evidence may include, but is not limited to, written reports by law enforcement agencies, child protective services or other social welfare agencies, courts, medical facilities, or other public agencies or private nonprofit organizations providing services to victims of domestic abuse.

(3) Testimony of an expert witness, qualified under Section 1107 of the Evidence Code, that the convicted parent suffers from the effects of battered women's syndrome.

Unless and until a custody or visitation order is issued pursuant to this subdivision, no person shall permit or cause the child to visit or remain in the custody of the convicted parent without the consent of the child's custodian or legal guardian.

(d) The court may order child support that is to be paid by a person subject to subdivision (a), (b), or (c) to be paid through the local child support agency, as authorized by Section 4573 of the Family Code and Division 17 (commencing with Section 17000) of this code.

(e) The court shall not disclose, or cause to be disclosed, the custodial parent's place of residence, place of employment, or the child's school, unless the court finds that the disclosure would be in the best interest of the child.

SEC. 2.5. Section 3030 of the Family Code is amended to read:

3030. (a) (1) No person shall be granted physical or legal custody of, or unsupervised visitation with, a child if the person is required to be registered as a sex offender under Section 290 of the Penal Code where the victim was a minor, or if the person has been convicted under Section 273a, 273d, or 647.6 of the Penal Code, unless the court finds that there is no significant risk to the child and states its reasons in writing or on the record.

(2) No person shall be granted physical or legal custody of, or unsupervised visitation with, a child if anyone residing in the person's household is required, as a result of a felony conviction in which the victim was a minor, to register as a sex offender under Section 290 of the Penal Code, unless the court finds there is no significant risk to the child and states its reasons in writing or on the record.

(3) The fact that a child is permitted unsupervised contact with a person who is required, as a result of a felony conviction in which the victim was a minor, to be registered as a sex offender under Section 290 of the Penal Code, shall be prima facie evidence that the child is at significant risk. When making a determination regarding significant risk to the child, the prima facie evidence shall constitute a presumption affecting the burden of producing evidence. However, this presumption shall not apply if there are factors mitigating against its application, including whether the party seeking custody or visitation is also required, as the result of a felony conviction in which the victim was a minor, to register as a sex offender under Section 290 of the Penal Code.

(b) No person shall be granted custody of, or visitation with, a child if the person has been convicted under Section 261 of the Penal Code and the child was conceived as a result of that violation.

(c) No person shall be granted custody of, or unsupervised visitation with, a child if the person has been convicted of murder in the first degree, as defined in Section 189 of the Penal Code, and the victim of the murder was the other parent of the child who is the subject of the order, unless the court finds that there is no risk to the child's health, safety, and welfare, and states the reasons for its finding in writing or

on the record. In making its finding, the court may consider, among other things, the following:

(1) The wishes of the child, if the child is of sufficient age and capacity to reason so as to form an intelligent preference.

(2) Credible evidence that the convicted parent was a victim of abuse, as defined in Section 6203, committed by the deceased parent. That evidence may include, but is not limited to, written reports by law enforcement agencies, child protective services or other social welfare agencies, courts, medical facilities, or other public agencies or private nonprofit organizations providing services to victims of domestic abuse.

(3) Testimony of an expert witness, qualified under Section 1107 of the Evidence Code, that the convicted parent experiences intimate partner battering.

Unless and until a custody or visitation order is issued pursuant to this subdivision, no person shall permit or cause the child to visit or remain in the custody of the convicted parent without the consent of the child's custodian or legal guardian.

(d) The court may order child support that is to be paid by a person subject to subdivision (a), (b), or (c) to be paid through the local child support agency, as authorized by Section 4573 of the Family Code and Division 17 (commencing with Section 17000) of this code.

(e) The court shall not disclose, or cause to be disclosed, the custodial parent's place of residence, place of employment, or the child's school, unless the court finds that the disclosure would be in the best interest of the child.

SEC. 3. Section 3030.5 is added to the Family Code, to read:

3030.5. (a) Upon the motion of one or both parents, or the legal guardian or custodian, or upon the court's own motion, an order granting physical or legal custody of, or unsupervised visitation with, a child may be modified or terminated if either of the following circumstances has occurred since the order was entered, unless the court finds that there is no significant risk to the child and states its reasons in writing or on the record:

(1) The person who has been granted physical or legal custody of, or unsupervised visitation with the child is required, as a result of a felony conviction in which the victim was a minor, to be registered as a sex offender under Section 290 of the Penal Code.

(2) The person who has been granted physical or legal custody of, or unsupervised visitation with, the child resides with another person who is required, as a result of a felony conviction in which the victim was a minor, to be registered as a sex offender under Section 290 of the Penal Code.

(b) The fact that a child is permitted unsupervised contact with a person who is required, as a result of a felony conviction in which the victim was a minor, to be registered as a sex offender under Section 290 of the Penal Code, shall be prima facie evidence that the child is at significant risk. When making a determination regarding significant risk to the child, the prima facie evidence shall constitute a presumption affecting the burden of producing evidence. However, this presumption shall not apply if there are factors mitigating against its application, including whether the party seeking custody or visitation is also required, as the result of a felony conviction in which the victim was a minor, to register as a sex offender under Section 290 of the Penal Code.

(c) The court shall not modify an existing custody or visitation order upon the ex parte petition of one party pursuant to this section without providing notice to the other party and an opportunity to be heard. This notice provision applies only when the motion for custody or visitation change is based solely on the fact that the child is allowed unsupervised contact with a person required, as a result of a felony conviction in which the victim was a minor, to register as a sex offender under Section 290 of the Penal Code and does not affect the court's ability to remove a child upon an ex parte motion when there is a showing of immediate harm to the child.

SEC. 4. Section 2.5 of this bill incorporates amendments to Section 3030 of the Family Code proposed by both this bill and Assembly Bill 220. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2006, (2) each bill amends Section 3030 of the Family Code, and (3) this bill is enacted after Assembly Bill 220, in which case Section 2 of this bill shall not become operative.

CHAPTER 484

An act to add Chapter 1.4 (commencing with Section 1210.7) to Title 8 of Part 2 of, and to add Article 2 (commencing with Section 3010) to Title 1 of Part 3 of, the Penal Code, relating to electronic monitoring of offenders, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 4, 2005. Filed with
Secretary of State October 4, 2005.]

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

SECTION 1. Chapter 1.4 (commencing with Section 1210.7) is added to Title 8 of Part 2 of the Penal Code, to read:

CHAPTER 1.4. ELECTRONIC MONITORING

1210.7. (a) Notwithstanding any other provisions of law, a county probation department may utilize continuous electronic monitoring to electronically monitor the whereabouts of persons on probation, as provided by this chapter.

(b) Any use of continuous electronic monitoring pursuant to this chapter shall have as its primary objective the enhancement of public safety through the reduction in the number of people being victimized by crimes committed by persons on probation.

(c) It is the intent of the Legislature in enacting this chapter to specifically encourage a county probation department acting pursuant to this chapter to utilize a system of continuous electronic monitoring that conforms with the requirements of this chapter.

(d) For purposes of this chapter, "continuous electronic monitoring" may include the use of worldwide radio navigation system technology, known as the Global Positioning System, or GPS. The Legislature finds that because of its capability for continuous surveillance, continuous electronic monitoring has been used in other parts of the country to monitor persons on formal probation who are identified as requiring a high level of supervision.

(e) The Legislature finds that continuous electronic monitoring has proven to be an effective risk management tool for supervising high-risk persons on probation who are likely to reoffend where prevention and knowledge of their whereabouts is a high priority for maintaining public safety.

1210.8. A county probation department may utilize a continuous electronic monitoring device pursuant to this section that has all of the following attributes:

(a) A device designed to be worn by a human being.

(b) A device that emits a signal as a person is moving or is stationary. The signal shall be capable of being received and tracked across large urban or rural areas, statewide, and being received from within structures, vehicles, and other objects to the degree technically feasible in light of the associated costs, design, and other considerations as are determined relevant by the county probation department.

(c) A device that functions 24 hours a day.

(d) A device that is resistant or impervious to unintentional or willful damage.

1210.9. (a) A continuous electronic monitoring system may have the capacity to immediately notify a county probation department of violations, actual or suspected, of the terms of probation that have been identified by the monitoring system if the requirement is deemed necessary by the county probation officer with respect to an individual person.

(b) The information described in subdivision (a), including geographic location and tampering, may be used as evidence to prove a violation of the terms of probation.

1210.10. A county probation department shall establish the following standards as are necessary to enhance public safety:

(a) Standards for the minimum time interval between transmissions of information about the location of the person under supervision. The standards shall be established after an evaluation of, at a minimum, all of the following:

- (1) The resources of the county probation department.
- (2) The criminal history of the person under supervision.
- (3) The safety of the victim of the persons under supervision.

(b) Standards for the accuracy of the information identifying the location of the person under supervision. The standards shall be established after consideration of, at a minimum, all of the following:

- (1) The need to identify the location of a person proximate to the location of a crime, including a violation of probation.
- (2) Resources of the probation department.
- (3) The need to avoid false indications of proximity to crimes.

1210.11. (a) A county probation department operating a system of continuous electronic monitoring pursuant to this section shall establish prohibitions against unauthorized access to, and use of, information by private or public entities as may be deemed appropriate. Unauthorized access to, and use of, electronic signals includes signals transmitted in any fashion by equipment utilized for continuous electronic monitoring.

(b) Devices used pursuant to this section shall not be used to eavesdrop or record any conversation, except a conversation between the participant and the person supervising the participant that is to be used solely for the purposes of voice identification.

1210.12. (a) A county chief probation officer shall have the sole discretion, consistent with the terms and conditions of probation, to decide which persons shall be supervised using continuous electronic monitoring administered by the county probation department. No individual shall be required to participate in continuous electronic

monitoring authorized by this chapter for any period of time longer than the term of probation.

(b) The county chief probation officer shall establish written guidelines that identify those persons on probation subject to continuous electronic monitoring authorized by this chapter. These guidelines shall include the need for enhancing monitoring in comparison to other persons not subject to the enhanced monitoring and the public safety needs that will be served by the enhanced monitoring.

1210.13. A county chief probation officer may revoke, in his or her discretion, the continuous monitoring of any individual.

1210.14. Whenever a probation officer supervising an individual has reasonable cause to believe that the individual is not complying with the rules or conditions set forth for the use of continuous electronic monitoring as a supervision tool, the probation officer supervising the individual may, without a warrant of arrest, take the individual into custody for a violation of probation.

1210.15. (a) A chief probation officer may charge persons on probation for the costs of any form of supervision that utilizes continuous electronic monitoring devices that monitor the whereabouts of the person pursuant to this chapter, upon a finding of the ability to pay those costs. However, the department shall waive any or all of that payment upon a finding of an inability to pay. Inability to pay all or a portion of the costs of continuous electronic monitoring authorized by this chapter shall not preclude use of continuous electronic monitoring, and eligibility for probation shall not be enhanced by reason of ability to pay.

(b) A chief probation officer may charge a person on probation pursuant to subdivision (a) for the cost of continuous electronic monitoring in accordance with Section 1203.1b provided the person has first satisfied all other outstanding base fines, state and local penalties, restitution fines, and restitution orders imposed by a court.

1210.16. It is the intent of the Legislature that continuous electronic monitoring established pursuant to this chapter maintain the highest public confidence, credibility, and public safety. In the furtherance of these standards, the following shall apply:

(a) The chief probation officer may administer continuous electronic monitoring pursuant to written contracts and appropriate public or private agencies or entities to provide specified supervision services. No public or private agency or entity may operate a continuous electronic monitoring system as authorized by this section in any county without a written contract with the county's probation department. No public or private agency or entity entering into a contract may itself employ any person who is a participant in continuous electronic monitoring surveillance.

(b) The county board of supervisors, the chief probation officer, and designees of the chief probation officer shall comply with Section 1090 of the Government Code in the consideration, making, and execution of contracts pursuant to this section.

SEC. 2. Article 2 (commencing with Section 3010) is added to Chapter 8 of Title 1 of Part 3 of the Penal Code, to read:

Article 2. Electronic Monitoring

3010. (a) Notwithstanding any other provisions of law, the Department of Corrections and Rehabilitation may utilize continuous electronic monitoring to electronically monitor the whereabouts of persons on parole, as provided by this article.

(b) Any use of continuous electronic monitoring pursuant to this article shall have as its primary objective the enhancement of public safety through the reduction in the number of people being victimized by crimes committed by persons on parole.

(c) It is the intent of the Legislature in enacting this article to specifically expand the authority of the department acting pursuant to this article to utilize a system of continuous electronic monitoring that conforms with the requirements of this article.

(d) (1) For purposes of this article, “continuous electronic monitoring” may include the use of worldwide radio navigation system technology, known as the Global Positioning System, or GPS. The Legislature finds that because of its capability for continuous surveillance, continuous electronic monitoring has been used in other parts of the country to monitor persons on parole who are identified as requiring a high level of supervision.

(2) For purposes of this article, “department” means the Department of Corrections and Rehabilitation.

(e) The Legislature finds that continuous electronic monitoring has proven to be an effective risk management tool for supervising high-risk persons on parole who are likely to reoffend where prevention and knowledge of their whereabouts is a high priority for maintaining public safety.

3010.1. The department may utilize a continuous electronic monitoring device, as distinguished from an electronic monitoring device as described in Section 3004, pursuant to this section that has all of the following attributes:

(a) A device designed to be worn by a human being.

(b) A device that emits a signal as a person is moving or is stationary. The signal shall be capable of being received and tracked across large urban or rural areas, statewide, and being received from within structures,

vehicles, and other objects to the degree technically feasible in light of the associated costs, design, and other considerations as are determined relevant by the department.

(c) A device that functions 24 hours a day.

(d) A device that is resistant or impervious to unintentional or willful damage.

3010.2. (a) A continuous electronic monitoring system may have the capacity to immediately notify the department of violations, actual or suspected, of the terms of parole that have been identified by the monitoring system if the requirement is deemed necessary by the parole officer with respect to an individual person.

(b) This information, including geographic location and tampering, may be used as evidence to prove a violation of the terms of parole.

3010.3. The department shall establish the following standards as are necessary to enhance public safety:

(a) Standards for the minimum time interval between transmissions of information about the location of the person under supervision. The standards shall be established after an evaluation of, at a minimum, all of the following:

(1) The resources of the department.

(2) The criminal history of the person under supervision.

(3) The safety of the victim of the persons under supervision.

(b) Standards for the accuracy of the information identifying the location of the person under supervision. The standards shall be established after consideration of, at a minimum, all of the following:

(1) The need to identify the location of a person proximate to the location of a crime, including a violation of parole.

(2) Resources of the department.

(3) The need to avoid false indications of proximity to crimes.

3010.4. (a) The department, operating a system of continuous electronic monitoring pursuant to this section, shall establish prohibitions against unauthorized access to, and use of, information by private or public entities as may be deemed appropriate. Unauthorized access to, and use of, electronic signals includes signals transmitted in any fashion by equipment utilized for continuous electronic monitoring.

(b) Devices used pursuant to this article shall not be used to eavesdrop or record any conversation, except a conversation between the participant and the person supervising the participant that is to be used solely for the purposes of voice identification.

3010.5. (a) The department shall have the sole discretion to decide which persons shall be supervised using continuous electronic monitoring administered by the department. No individual shall be required to

participate in continuous electronic monitoring authorized by this article for any period of time longer than the term of parole.

(b) The department shall establish written guidelines that identify those persons on parole subject to continuous electronic monitoring authorized by this article. These guidelines shall include the need for enhanced monitoring in comparison to other persons not subject to the enhanced monitoring and the public safety needs that will be served by the enhanced monitoring.

3010.6. A parole officer may revoke, in his or her discretion, the continuous monitoring of any individual.

3010.7. Whenever a parole officer supervising an individual has reasonable cause to believe that the individual is not complying with the rules or conditions set forth for the use of continuous electronic monitoring as a supervision tool, the officer supervising the individual may, without a warrant of arrest, take the individual into custody for a violation of parole.

3010.8. (a) The department may charge persons on parole for the costs of any form of supervision that utilizes continuous electronic monitoring devices that monitor the whereabouts of the person pursuant to this article. Inability to pay all or a portion of the costs of continuous electronic monitoring authorized by this article shall not preclude use of continuous electronic monitoring and eligibility for parole shall not be enhanced by reason of ability to pay.

(b) Any person released on parole pursuant to subdivision (a) may be required to pay for that monitoring upon a finding of the ability to pay those costs. However, the department shall waive any or all of that payment upon a finding of an inability to pay. The department shall consider any remaining amounts the person has been ordered to pay in fines, assessments and restitution fines, fees, and orders, and shall give priority to the payment of those items before requiring that the person pay for the continuous electronic monitoring.

3010.9. It is the intent of the Legislature that continuous electronic monitoring established pursuant to this article maintain the highest public confidence, credibility, and public safety. In the furtherance of these standards, the following shall apply:

(a) The department may administer continuous electronic monitoring pursuant to written contracts and appropriate public or private agencies or entities to provide specified supervision services. No public or private agency or entity may operate a continuous electronic monitoring system as authorized by this section without a written contract with the department. No public or private agency or entity entering into a contract may itself employ any person who is a participant in continuous electronic monitoring surveillance.

(b) The department shall comply with Section 1090 of the Government Code in the consideration, making, and execution of contracts pursuant to this section.

SEC. 3. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to assure appropriate supervision of persons on probation and parole and to reduce incidents of crime and recidivism, it is necessary for this act to take effect immediately.

CHAPTER 485

An act to amend Section 13955 of the Government Code, to amend Section 13519.8 of the Penal Code, and to amend Sections 2800.1, 2800.3, and 14602.1 of, to add Sections 1666.1 and 2911 to, and to amend, repeal, and add Section 17004.7 of, the Vehicle Code, relating to vehicles, and making an appropriation therefor.

[Approved by Governor October 4, 2005. Filed with
Secretary of State October 4, 2005.]

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

SECTION 1. The Legislature finds and declares the following:

(a) Thousands of crime suspects flee each year often resulting in law enforcement officers in California engaging in motor vehicle pursuits. Many pursuits result in accidents, property damage, serious injuries, and death to innocent third parties, peace officers, and fleeing suspects.

(b) Motor vehicle pursuits of fleeing suspects present inescapable and inherent risks that sometimes offend public sensibilities.

(c) According to statistics from the National Highway Safety Administration, California has consistently led the nation in the past 20 years in fatalities from crashes involving these pursuits.

(d) California leads the nation in the number of innocent bystanders killed in these pursuits. A study by the National Highway Traffic Safety Administration indicates that in 2003 there were 46 deaths in California that resulted from high speed police pursuits of fleeing suspects. Twelve of the 46 deaths were innocent bystanders. Eighteen were passengers in the pursued vehicle, 15 were fleeing suspects, and one was a peace officer.

(e) Pursuit driving is a dangerous activity that must be undertaken with due care and with the understanding of specific risks as well as the need for a realistic proportionate response to apprehend a fleeing suspect who poses a danger to the public.

(f) Current law provides that a person operating a motor vehicle who is negligent in its operation may be liable for civil damages pursuant to Section 17150 of the Vehicle Code.

(g) The primary function of all law enforcement agencies is to protect the public against personal injury, death, or property damage.

(h) It is, therefore, the intent of the Legislature to enact legislation that guides instances where law enforcement pursuits are warranted so as to protect the public safety, lives, and property of the people of the State of California.

(i) It is also the intent of the Legislature to decrease peace officer motor vehicle pursuits through public education, enforcement, and regular and periodic training of peace officers.

(j) It is also the intent of the Legislature in enacting this act to eliminate any unnecessary risks that evolve from peace officer motor vehicle pursuits, and to ensure that law enforcement pursuits are conducted in the safest and most effective approach throughout California.

SEC. 2. Section 13955 of the Government Code is amended to read: 13955. Except as provided in Section 13956, a person shall be eligible for compensation when all of the following requirements are met:

(a) The person for whom compensation is being sought is any of the following:

- (1) A victim.
- (2) A derivative victim.
- (3) A person who is entitled to reimbursement for funeral, burial, or crime scene cleanup expenses pursuant to subdivision (i) of Section 13957.

(b) Either of the following conditions is met:

(1) The crime occurred within the State of California, whether or not the victim is a resident of the State of California. This paragraph shall apply only during those time periods during which the board determines that federal funds are available to the State of California for the compensation of victims of crime.

(2) Whether or not the crime occurred within the State of California, the victim was any of the following:

- (A) A resident of the State of California.
- (B) A member of the military stationed in California.
- (C) A family member living with a member of the military stationed in California.

(c) If compensation is being sought for a derivative victim, the derivative victim is a resident of California, or resident of another state, who is any of the following:

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

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

(3) At the time of the crime was a person who had previously lived in the household of the victim for a period of not less than two years in a relationship substantially similar to a relationship listed in paragraph (1).

(4) Is another family member of the victim, including, but not limited to, the victim's fiancé or fiancée, and who witnessed the crime.

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

(d) The application is timely pursuant to Section 13953.

(e) (1) Except as provided in paragraph (2), the injury or death was a direct result of a crime.

(2) Notwithstanding paragraph (1), no act involving the operation of a motor vehicle, aircraft, or water vehicle that results in injury or death constitutes a crime for the purposes of this chapter, except when the injury or death from such an act was any of the following:

(A) Intentionally inflicted through the use of a motor vehicle, aircraft, or water vehicle.

(B) Caused by a driver who fails to stop at the scene of an accident in violation of Section 20001 of the Vehicle Code.

(C) Caused by a person who is under the influence of any alcoholic beverage or drug.

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

(E) Caused by a person who commits vehicular manslaughter in violation of subdivision (c) of Section 192 or Section 192.5 of the Penal Code.

(F) Caused by any party where a peace officer is operating a motor vehicle in an effort to apprehend a suspect, and the suspect is evading, fleeing, or otherwise attempting to elude the peace officer.

(f) As a direct result of the crime, the victim or derivative victim sustained one or more of the following:

(1) Physical injury. The board may presume a child who has been the witness of a crime of domestic violence has sustained physical injury. A child who resides in a home where a crime or crimes of domestic violence have occurred may be presumed by the board to have sustained physical injury, regardless of whether the child has witnessed the crime.

(2) Emotional injury and a threat of physical injury.

(3) Emotional injury, where the crime was a violation of any of the following provisions:

(A) Section 261, 262, 271, 273a, 273d, 285, 286, 288, 288a, 288.5, or 289, or subdivision (b) or (c) of Section 311.4, of the Penal Code.

(B) Section 270 of the Penal Code, where the emotional injury was a result of conduct other than a failure to pay child support, and criminal charges were filed.

(C) Section 261.5 of the Penal Code, and criminal charges were filed.

(D) Section 278 or 278.5 of the Penal Code, where the deprivation of custody as described in those sections has endured for 30 calendar days or more. For purposes of this paragraph, the child, and not the nonoffending parent or other caretaker, shall be deemed the victim.

(g) The injury or death has resulted or may result in pecuniary loss within the scope of compensation pursuant to Sections 13957 to 13957.9, inclusive.

SEC. 3. Section 13955 of the Government Code is amended to read:

13955. Except as provided in Section 13956, a person shall be eligible for compensation when all of the following requirements are met:

(a) The person for whom compensation is being sought is any of the following:

(1) A victim.

(2) A derivative victim.

(3) A person who is entitled to reimbursement for funeral, burial, or crime scene cleanup expenses pursuant to subdivision (i) of Section 13957.

(b) Either of the following conditions is met:

(1) The crime occurred within the State of California, whether or not the victim is a resident of the State of California. This paragraph shall apply only during those time periods during which the board determines that federal funds are available to the State of California for the compensation of victims of crime.

(2) Whether or not the crime occurred within the State of California, the victim was any of the following:

(A) A resident of the State of California.

(B) A member of the military stationed in California.

(C) A family member living with a member of the military stationed in California.

(c) If compensation is being sought for a derivative victim, the derivative victim is a resident of California, or resident of another state, who is any of the following:

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

- (2) At the time of the crime was living in the household of the victim.
- (3) At the time of the crime was a person who had previously lived in the household of the victim for a period of not less than two years in a relationship substantially similar to a relationship listed in paragraph (1).
- (4) Is another family member of the victim, including, but not limited to, the victim's fiancé or fiancée, and who witnessed the crime.
- (5) Is the primary caretaker of a minor victim, but was not the primary caretaker at the time of the crime.
- (d) The application is timely pursuant to Section 13953.
- (e) (1) Except as provided in paragraph (2), the injury or death was a direct result of a crime.
- (2) Notwithstanding paragraph (1), no act involving the operation of a motor vehicle, aircraft, or water vehicle that results in injury or death constitutes a crime for the purposes of this chapter, except when the injury or death from such an act was any of the following:
 - (A) Intentionally inflicted through the use of a motor vehicle, aircraft, or water vehicle.
 - (B) Caused by a driver who fails to stop at the scene of an accident in violation of Section 20001 of the Vehicle Code.
 - (C) Caused by a person who is under the influence of any alcoholic beverage or drug.
 - (D) Caused by a driver of a motor vehicle in the immediate act of fleeing the scene of a crime in which he or she knowingly and willingly participated.
 - (E) Caused by a person who commits vehicular manslaughter in violation of subdivision (c) of Section 192 or Section 192.5 of the Penal Code.
 - (F) Caused by any party where a peace officer is operating a motor vehicle in an effort to apprehend a suspect, and the suspect is evading, fleeing, or otherwise attempting to elude the peace officer.
- (f) As a direct result of the crime, the victim or derivative victim sustained one or more of the following:
 - (1) Physical injury. The board may presume a child who has been the witness of a crime of domestic violence has sustained physical injury. A child who resides in a home where a crime or crimes of domestic violence have occurred may be presumed by the board to have sustained physical injury, regardless of whether the child has witnessed the crime.
 - (2) Emotional injury and a threat of physical injury.
 - (3) Emotional injury, where the crime was a violation of any of the following provisions:
 - (A) Section 261, 262, 271, 273a, 273d, 285, 286, 288, 288a, 288.5, or 289, or subdivision (b) or (c) of Section 311.4, of the Penal Code.

(B) Section 270 of the Penal Code, where the emotional injury was a result of conduct other than a failure to pay child support, and criminal charges were filed.

(C) Section 261.5 of the Penal Code, and criminal charges were filed.

(D) Section 278 or 278.5 of the Penal Code, where the deprivation of custody as described in those sections has endured for 30 calendar days or more. For purposes of this paragraph, the child, and not the nonoffending parent or other caretaker, shall be deemed the victim.

(E) Section 236.1 of the Penal Code, where the emotional injury was a result of human trafficking and one of the following occurred:

(i) Criminal charges were filed.

(ii) The victim received a Law Enforcement Agency Endorsement pursuant to Section 236.2 of the Penal Code.

(iii) A human trafficking caseworker, as identified in Section 1038.2 of the Evidence Code, has attested by affidavit that the individual was a victim of human trafficking.

(g) The injury or death has resulted or may result in pecuniary loss within the scope of compensation pursuant to Sections 13957 to 13957.9, inclusive.

SEC. 4. Section 13519.8 of the Penal Code is amended to read:

13519.8. (a) (1) The commission shall implement a course or courses of instruction for the regular and periodic training of law enforcement officers in the handling of high-speed vehicle pursuits and shall also develop uniform, minimum guidelines for adoption and promulgation by California law enforcement agencies for response to high-speed vehicle pursuits. The guidelines and course of instruction shall stress the importance of vehicle safety and protecting the public at all times, include a regular assessment of law enforcement's vehicle pursuit policies, practices, and training, and recognize the need to balance the known offense and the need for immediate capture against the risks to officers and other citizens of a high-speed pursuit. These guidelines shall be a resource for each agency executive to use in the creation of a specific pursuit policy that the agency is encouraged to adopt and promulgate, and that reflects the needs of the agency, the jurisdiction it serves, and the law.

(2) As used in this section, "law enforcement officer" includes any peace officer of a local police or sheriff's department or the California Highway Patrol, or of any other law enforcement agency authorized by law to conduct vehicular pursuits.

(b) The course or courses of basic training for law enforcement officers and the guidelines shall include adequate consideration of each of the following subjects:

(1) When to initiate a pursuit.

- (2) The number of involved law enforcement units permitted.
- (3) Responsibilities of primary and secondary law enforcement units.
- (4) Driving tactics.
- (5) Helicopter assistance.
- (6) Communications.
- (7) Capture of suspects.
- (8) Termination of a pursuit.
- (9) Supervisory responsibilities.
- (10) Blocking, ramming, boxing, and roadblock procedures.
- (11) Speed limits.
- (12) Interjurisdictional considerations.
- (13) Conditions of the vehicle, driver, roadway, weather, and traffic.
- (14) Hazards to uninvolved bystanders or motorists.
- (15) Reporting and postpursuit analysis.

(c) (1) All law enforcement officers who have received their basic training before January 1, 1995, shall participate in supplementary training on high-speed vehicle pursuits, as prescribed and certified by the commission.

(2) Law enforcement agencies are encouraged to include, as part of their advanced officer training program, periodic updates and training on high-speed vehicle pursuit. The commission shall assist where possible.

(d) (1) The course or courses of instruction, the learning and performance objectives, the standards for the training, and the guidelines shall be developed by the commission in consultation with appropriate groups and individuals having an interest and expertise in the field of high-speed vehicle pursuits. The groups and individuals shall include, but not be limited to, law enforcement agencies, police academy instructors, subject matter experts, and members of the public.

(2) The commission, in consultation with these groups and individuals, shall review existing training programs to determine the ways in which high-speed pursuit training may be included as part of ongoing programs.

(e) It is the intent of the Legislature that each law enforcement agency adopt, promulgate, and require regular and periodic training consistent with an agency's specific pursuit policy that, at a minimum, complies with the guidelines developed under subdivisions (a) and (b).

SEC. 5. Section 1666.1 is added to the Vehicle Code, to read:

1666.1. Upon updating the California Driver's Handbook, the department shall include at least one question in any of the noncommercial driver's license examinations, as administered under Section 12804.9, of an applicant's knowledge and understanding of this code, to verify that the applicant has an understanding of the risks and punishments associated with eluding a pursuing officer's motor vehicle.

SEC. 6. Section 2800.1 of the Vehicle Code is amended to read:

2800.1. (a) Any person who, while operating a motor vehicle and with the intent to evade, willfully flees or otherwise attempts to elude a pursuing peace officer's motor vehicle, is guilty of a misdemeanor punishable by imprisonment in a county jail for not more than one year if all of the following conditions exist:

(1) The peace officer's motor vehicle is exhibiting at least one lighted red lamp visible from the front and the person either sees or reasonably should have seen the lamp.

(2) The peace officer's motor vehicle is sounding a siren as may be reasonably necessary.

(3) The peace officer's motor vehicle is distinctively marked.

(4) The peace officer's motor vehicle is operated by a peace officer, as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code, and that peace officer is wearing a distinctive uniform.

(b) Any person who, while operating a motor vehicle and with the intent to evade, willfully flees or otherwise attempts to elude a pursuing peace officer's bicycle, is guilty of a misdemeanor punishable by imprisonment in a county jail for not more than one year if the following conditions exist:

(1) The peace officer's bicycle is distinctively marked.

(2) The peace officer's bicycle is operated by a peace officer, as defined in paragraph (4) of subdivision (a), and that peace officer is wearing a distinctive uniform.

(3) The peace officer gives a verbal command to stop.

(4) The peace officer sounds a horn that produces a sound of at least 115 decibels.

(5) The peace officer gives a hand signal commanding the person to stop.

(6) The person is aware or reasonably should have been aware of the verbal command, horn, and hand signal, but refuses to comply with the command to stop.

SEC. 7. Section 2800.3 of the Vehicle Code is amended to read:

2800.3. (a) Whenever willful flight or attempt to elude a pursuing peace officer in violation of Section 2800.1 proximately causes serious bodily injury to any person, the person driving the pursued vehicle, upon conviction, shall be punished by imprisonment in the state prison for three, five, or seven years, by imprisonment in a county jail for not more than one year, or by a fine of not less than two thousand dollars (\$2,000) nor more than ten thousand dollars (\$10,000), or by both that fine and imprisonment.

(b) Whenever willful flight or attempt to elude a pursuing peace officer in violation of Section 2800.1 proximately causes death to a person, the person driving the pursued vehicle, upon conviction, shall be punished by imprisonment in the state prison for a term of 4, 6, or 10 years.

(c) Nothing in this section shall preclude the imposition of a greater sentence pursuant to Section 190 of the Penal Code or any other provisions of law applicable to punishment for an unlawful death.

(d) For the purposes of this section, "serious bodily injury" has the same meaning as defined in paragraph (4) of subdivision (f) of Section 243 of the Penal Code.

SEC. 8. Section 2911 is added to the Vehicle Code, to read:

2911. All traffic safety programs that receive state funds and that include public awareness campaigns involving emergency vehicle operations shall include in the public awareness campaign, information on the risks to public safety of peace officer motor vehicle pursuits, and the penalties that may result from evading a peace officer.

SEC. 9. Section 14602.1 of the Vehicle Code is amended to read:

14602.1. (a) Every state and local law enforcement agency, including, but not limited to, city police departments and county sheriffs' offices, shall report to the Department of the California Highway Patrol, on a paper or electronic form developed and approved by the Department of the California Highway Patrol, all motor vehicle pursuit data.

(b) Effective January 1, 2006, the form shall require the reporting of all motor vehicle pursuit data, which shall include, but not be limited to, all of the following:

(1) Whether any person involved in a pursuit or a subsequent arrest was injured, specifying the nature of that injury. For all purposes of this section, the form shall differentiate between the suspect driver, a suspect passenger, and the peace officers involved.

(2) The violations that caused the pursuit to be initiated.

(3) The identity of the peace officers involved in the pursuit.

(4) The means or methods used to stop the suspect being pursued.

(5) All charges filed with the court by the district attorney.

(6) The conditions of the pursuit, including, but not limited to, all of the following:

(A) Duration.

(B) Mileage.

(C) Number of peace officers involved.

(D) Maximum number of law enforcement vehicles involved.

(E) Time of day.

(F) Weather conditions.

(G) Maximum speeds.

(7) Whether a pursuit resulted in a collision, and a resulting injury or fatality to an uninvolved third party, and the corresponding number of persons involved.

(8) Whether the pursuit involved multiple law enforcement agencies.

(9) How the pursuit was terminated.

(c) In order to minimize costs, the department, upon updating the form, shall update the corresponding database to include all of the reporting requirements specified in subdivision (b).

(d) All motor vehicle pursuit data obtained pursuant to subdivision (b) shall be submitted to the Department of the California Highway Patrol no later than 30 days following a motor vehicle pursuit.

(e) The Department of the California Highway Patrol shall submit annually to the Legislature a report that includes, but is not limited to, the following information:

(1) The number of motor vehicle pursuits reported to the Department of the California Highway Patrol during that year.

(2) The number of those motor vehicle pursuits that reportedly resulted in a collision in which an injury or fatality to an uninvolved third party occurred.

(3) The total number of uninvolved third parties who were injured or killed as a result of those collisions during that year.

SEC. 10. Section 17004.7 of the Vehicle Code is amended to read:

17004.7. (a) The immunity provided by this section is in addition to any other immunity provided by law. The adoption of a policy by a public agency pursuant to this section is discretionary.

(b) A public agency employing peace officers that adopts a written policy on vehicular pursuits complying with subdivision (c) is immune from liability for civil damages for personal injury to or death of any person or damage to property resulting from the collision of a vehicle being operated by an actual or suspected violator of the law who is being, has been, or believes he or she is being or has been, pursued in a motor vehicle by a peace officer employed by the public entity.

(c) If the public entity has adopted a policy for the safe conduct of vehicular pursuits by peace officers, it shall meet all of the following minimum standards:

(1) It provides that, if available, there be supervisory control of the pursuit.

(2) It provides procedures for designating the primary pursuit vehicle and for determining the total number of vehicles to be permitted to participate at one time in the pursuit.

(3) It provides procedures for coordinating operations with other jurisdictions.

(4) It provides guidelines for determining when the interests of public safety and effective law enforcement justify a vehicular pursuit and when a vehicular pursuit should not be initiated or should be terminated.

(d) A determination of whether a policy adopted pursuant to subdivision (c) complies with that subdivision is a question of law for the court.

(e) This section shall become inoperative on July 1, 2007, and, as of January 1, 2008, is repealed, unless a later enacted statute that is enacted before January 1, 2008, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 11. Section 17004.7 is added to the Vehicle Code, to read:

17004.7. (a) The immunity provided by this section is in addition to any other immunity provided by law. The adoption of a vehicle pursuit policy by a public agency pursuant to this section is discretionary.

(b) (1) A public agency employing peace officers that adopts and promulgates a written policy on, and provides regular and periodic training on an annual basis for, vehicular pursuits complying with subdivisions (c) and (d) is immune from liability for civil damages for personal injury to or death of any person or damage to property resulting from the collision of a vehicle being operated by an actual or suspected violator of the law who is being, has been, or believes he or she is being or has been, pursued in a motor vehicle by a peace officer employed by the public entity.

(2) Promulgation of the written policy under paragraph (1) shall include, but is not limited to, a requirement that all peace officers of the public agency certify in writing that they have received, read, and understand the policy. The failure of an individual officer to sign a certification shall not be used to impose liability on an individual officer or a public entity.

(c) A policy for the safe conduct of motor vehicle pursuits by peace officers shall meet all of the following minimum standards:

(1) Determine under what circumstances to initiate a pursuit. The policy shall define a "pursuit," articulate the reasons for which a pursuit is authorized, and identify the issues that should be considered in reaching the decision to pursue. It should also address the importance of protecting the public and balancing the known or reasonably suspected offense, and the apparent need for immediate capture against the risks to peace officers, innocent motorists, and others to protect the public.

(2) Determine the total number of law enforcement vehicles authorized to participate in a pursuit. Establish the authorized number of law enforcement units and supervisors who may be involved in a pursuit, describe the responsibility of each authorized unit and the role of each

peace officer and supervisor, and specify if and when additional units are authorized.

(3) Determine the communication procedures to be followed during a pursuit. Specify pursuit coordination and control procedures and determine assignment of communications responsibility by unit and organizational entity.

(4) Determine the role of the supervisor in managing and controlling a pursuit. Supervisory responsibility shall include management and control of a pursuit, assessment of risk factors associated with a pursuit, and when to terminate a pursuit.

(5) Determine driving tactics and the circumstances under which the tactics may be appropriate.

(6) Determine authorized pursuit intervention tactics. Pursuit intervention tactics include, but are not limited to, blocking, ramming, boxing, and roadblock procedures. The policy shall specify under what circumstances and conditions each approved tactic is authorized to be used.

(7) Determine the factors to be considered by a peace officer and supervisor in determining speeds throughout a pursuit. Evaluation shall take into consideration public safety, peace officer safety, and safety of the occupants in a fleeing vehicle.

(8) Determine the role of air support, where available. Air support shall include coordinating the activities of resources on the ground, reporting on the progress of a pursuit, and providing peace officers and supervisors with information to evaluate whether or not to continue the pursuit.

(9) Determine when to terminate or discontinue a pursuit. Factors to be considered include, but are not limited to, all of the following:

(A) Ongoing evaluation of risk to the public or pursuing peace officer.
(B) The protection of the public, given the known or reasonably suspected offense and apparent need for immediate capture against the risks to the public and peace officers.

(C) Vehicular or pedestrian traffic safety and volume.

(D) Weather conditions.

(E) Traffic conditions.

(F) Speeds.

(G) Availability of air support.

(H) Procedures when an offender is identified and may be apprehended at a later time or when the location of the pursuit vehicle is no longer known.

(10) Determine procedures for apprehending an offender following a pursuit. Safety of the public and peace officers during the law enforcement effort to capture an offender shall be an important factor.

(11) Determine effective coordination, management, and control of interjurisdictional pursuits. The policy shall include, but shall not be limited to, all of the following:

(A) Supervisory control and management of a pursuit that enters another jurisdiction.

(B) Communications and notifications among the agencies involved.

(C) Involvement in another jurisdiction's pursuit.

(D) Roles and responsibilities of units and coordination, management, and control at the termination of an interjurisdictional pursuit.

(12) Reporting and postpursuit analysis as required by Section 14602.1. Establish the level and procedures of postpursuit analysis, review, and feedback. Establish procedures for written postpursuit review and followup.

(d) "Regular and periodic training" under this section means annual training that shall include, at a minimum, coverage of each of the subjects and elements set forth in subdivision (c) and that shall comply, at a minimum, with the training guidelines established pursuant to Section 13519.8 of the Penal Code.

(e) The requirements of subdivision (c) represent minimum policy standards and do not limit an agency from adopting additional policy requirements. The requirements in subdivision (c) are consistent with the 1995 California Law Enforcement Vehicle Pursuit Guidelines developed by the Commission on Peace Officer Standards and Training pursuant to Section 13519.8 of the Penal Code that will assist agencies in the development of their pursuit policies. Nothing in this section precludes the adoption of a policy that limits or restricts pursuits.

(f) A determination of whether a public agency has complied with subdivisions (c) and (d) is a question of law for the court.

(g) This section shall become operative on July 1, 2007.

SEC. 12. Section 3 of this bill incorporates amendments to Section 13955 of the Government Code proposed by both this bill and AB 22. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2006, (2) each bill amends Section 13955 of the Government Code, and (3) this bill is enacted after AB 22, in which case Section 2 of this bill shall not become operative.

SEC. 13. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for certain costs that may be incurred by a local agency or school district because, in that regard, this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

However, if the Commission on State Mandates determines that this act contains other costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.

CHAPTER 486

An act to amend Section 6608.5 of the Welfare and Institutions Code, relating to mental health.

[Approved by Governor October 4, 2005. Filed with
Secretary of State October 4, 2005.]

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

SECTION 1. Section 6608.5 of the Welfare and Institutions Code is amended to read:

6608.5. (a) A person who is conditionally released pursuant to this article shall be placed in the county of domicile of the person prior to the person's incarceration, unless the court finds that extraordinary circumstances require placement outside the county of domicile.

(b) (1) For the purposes of this section, "county of domicile" means the county where the person has his or her true, fixed, and permanent home and principal residence and to which he or she has manifested the intention of returning whenever he or she is absent. For the purposes of determining the county of domicile, the court may consider information found on a California driver's license, California identification card, recent rent or utility receipt, printed personalized checks or other recent banking documents showing that person's name and address, or information contained in an arrest record, probation officer's report, trial transcript, or other court document. If no information can be identified or verified, the county of domicile of the individual shall be considered to be the county in which the person was arrested for the crime for which he or she was last incarcerated in the state prison or from which he or she was last returned from parole.

(2) In a case where the person committed a crime while being held for treatment in a state hospital, or while being confined in a state prison or local jail facility, the county wherein that facility was located shall not be considered the county of domicile unless the person resided in that county prior to being housed in the hospital, prison, or jail.

(c) For the purposes of this section, “extraordinary circumstances” means circumstances that would inordinately limit the department’s ability to effect conditional release of the person in the county of domicile in accordance with Section 6608 or any other provision of this article, and the procedures described in Sections 1605 to 1610, inclusive, of the Penal Code.

(d) The county of domicile shall designate a county agency or program that will provide assistance and consultation in the process of locating and securing housing within the county for persons committed as sexually violent predators who are about to be conditionally released under Section 6608. Upon notification by the department of a person’s potential or expected conditional release under Section 6608, the county of domicile shall notify the department of the name of the designated agency or program, at least 60 days before the date of the potential or expected release.

(e) The department shall take into consideration victim or victim next of kin concerns and proximity when recommending specific placement for community outpatient treatment.

(f) Notwithstanding any other provision of law, a person released under this section shall not be placed within one-quarter mile of any public or private school providing instruction in kindergarten or any of grades 1 to 12, inclusive, if either of the following conditions exist:

(1) The person has previously been convicted of a violation of Section 288.5 of, or subdivision (a) or (b), or paragraph (1) of subdivision (c) of Section 288 of, the Penal Code.

(2) The court finds that the person has a history of improper sexual conduct with children.

SEC. 1.5. Section 6608.5 of the Welfare and Institutions Code is amended to read:

6608.5. (a) A person who is conditionally released pursuant to this article shall be placed in the county of the domicile of the person prior to the person’s incarceration, unless the court finds that extraordinary circumstances require placement outside the county of domicile.

(b) (1) For the purposes of this section, “county of domicile” means the county where the person has his or her true, fixed, and permanent home and principal residence and to which he or she has manifested the intention of returning whenever he or she is absent. For the purposes of determining the county of domicile, the court may consider information found on a California driver’s license, California identification card, recent rent or utility receipt, printed personalized checks or other recent banking documents showing that person’s name and address, or information contained in an arrest record, probation officer’s report, trial transcript, or other court document. If no information can be identified

or verified, the county of domicile of the individual shall be considered to be the county in which the person was arrested for the crime for which he or she was last incarcerated in the state prison or from which he or she was last returned from parole.

(2) In a case where the person committed a crime while being held for treatment in a state hospital, or while being confined in a state prison or local jail facility, the county wherein that facility was located shall not be considered the county of domicile unless the person resided in that county prior to being housed in the hospital, prison, or jail.

(c) For the purposes of this section, “extraordinary circumstances” means circumstances that would inordinately limit the department’s ability to effect conditional release of the person in the county of domicile in accordance with Section 6608 or any other provision of this article, and the procedures described in Sections 1605 to 1610, inclusive, of the Penal Code.

(d) The county of domicile shall designate a county agency or program that will provide assistance and consultation in the process of locating and securing housing within the county for persons committed as sexually violent predators who are about to be conditionally released under Section 6608. Upon notification by the department of a person’s potential or expected conditional release under Section 6608, the county of domicile shall notify the department of the name of the designated agency or program, at least 60 days before the date of the potential or expected release.

(e) In recommending a specific placement for community outpatient treatment, the department or its designee shall consider all of the following:

(1) The concerns and proximity of the victim or the victim’s next of kin.

(2) The age and profile of the victim or victims in the sexually violent offenses committed by the person subject to placement. For purposes of this subdivision, the “profile” of a victim includes, but is not limited to, gender, physical appearance, economic background, profession, and other social or personal characteristics.

(f) Notwithstanding any other provision of law, a person released under this section shall not be placed within one-quarter mile of any public or private school providing instruction in kindergarten or any of grades 1 to 12, inclusive, if either of the following conditions exist:

(1) The person has previously been convicted of a violation of Section 288.5 of, or subdivision (a) or (b), or paragraph (1) of subdivision (c) of Section 288 of, the Penal Code.

(2) The court finds that the person has a history of improper sexual conduct with children.

SEC. 2. Section 1.5 of this bill incorporates amendments to Section 6608.5 of the Welfare and Institutions Code proposed by both this bill and Assembly Bill 893. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2006, (2) each bill amends Section 6608.5 of the Welfare and Institutions Code, and (3) this bill is enacted after Assembly Bill 893, in which case Section 1 of this bill shall not become operative.

CHAPTER 487

An act to amend Sections 11159.2, 11161, 11161.5, 11162.1, 11164, and 11190 of, and to add and repeal Section 11165.5 of, the Health and Safety Code, relating to controlled substances, and making an appropriation therefor.

[Approved by Governor October 4, 2005. Filed with
Secretary of State October 4, 2005.]

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

SECTION 1. Section 11159.2 of the Health and Safety Code is amended to read:

11159.2. (a) Notwithstanding any other provision of law, a prescription for a controlled substance for use by a patient who has a terminal illness may be written on a prescription form that does not meet the requirements of Section 11162.1 if the prescription meets the following requirements:

(1) Contain the information specified in subdivision (a) of Section 11164.

(2) Indicate that the prescriber has certified that the patient is terminally ill by the words "11159.2 exemption."

(b) A pharmacist may fill a prescription pursuant to this section when there is a technical error in the certification required by paragraph (2) of subdivision (a), provided that he or she has personal knowledge of the patient's terminal illness, and subsequently returns the prescription to the prescriber for correction within 72 hours.

(c) For purposes of this section, "terminally ill" means a patient who meets all of the following conditions:

(1) In the reasonable medical judgment of the prescribing physician, the patient has been determined to be suffering from an illness that is incurable and irreversible.

(2) In the reasonable medical judgment of the prescribing physician, the patient's illness will, if the illness takes its normal course, bring about the death of the patient within a period of one year.

(3) The patient's treatment by the physician prescribing a controlled substance pursuant to this section primarily is for the control of pain, symptom management, or both, rather than for cure of the illness.

(d) This section shall become operative on July 1, 2004.

SEC. 2. Section 11161 of the Health and Safety Code is amended to read:

11161. (a) When a practitioner is named in a warrant of arrest or is charged in an accusatory pleading with a felony violation of Section 11153, 11154, 11156, 11157, 11170, 11173, 11350, 11351, 11352, 11353, 11353.5, 11377, 11378, 11378.5, 11379, 11379.5, or 11379.6, the court in which the accusatory pleading is filed or the magistrate who issued the warrant of arrest shall, upon the motion of a law enforcement agency which is supported by reasonable cause, issue an order which requires the practitioner to surrender to the clerk of the court all controlled substance prescription forms in the practitioner's possession at a time set in the order and which prohibits the practitioner from obtaining, ordering, or using any additional prescription forms. The law enforcement agency obtaining the order shall notify the Department of Justice of this order. Except as provided in subdivisions (b) and (e) of this section, the order shall remain in effect until further order of the court. Any practitioner possessing prescription forms in violation of the order is guilty of a misdemeanor.

(b) The order provided by subdivision (a) shall be vacated if the court or magistrate finds that the underlying violation or violations are not supported by reasonable cause at a hearing held within two court days after the practitioner files and personally serves upon the prosecuting attorney and the law enforcement agency that obtained the order, a notice of motion to vacate the order with any affidavits on which the practitioner relies. At the hearing, the burden of proof, by a preponderance of the evidence, is on the prosecution. Evidence presented at the hearing shall be limited to the warrant of arrest with supporting affidavits, the motion to require the defendant to surrender controlled substance prescription forms and to prohibit the defendant from obtaining, ordering, or using controlled substance prescription forms, with supporting affidavits, the sworn complaint together with any documents or reports incorporated by reference thereto which, if based on information and belief, state the basis for the information, or any other documents of similar reliability as well as affidavits and counter affidavits submitted by the prosecution and defense. Granting of the motion to vacate the order is no bar to prosecution of the alleged violation or violations.

(c) The defendant may elect to challenge the order issued under subdivision (a) at the preliminary examination. At that hearing, the evidence shall be limited to that set forth in subdivision (b) and any other evidence otherwise admissible at the preliminary examination.

(d) If the practitioner has not moved to vacate the order issued under subdivision (a) by the time of the preliminary examination and he or she is held to answer on the underlying violation or violations, the practitioner shall be precluded from afterwards moving to vacate the order. If the defendant is not held to answer on the underlying charge or charges at the conclusion of the preliminary examination, the order issued under subdivision (a) shall be vacated.

(e) Notwithstanding subdivision (d), any practitioner who is diverted pursuant to Chapter 2.5 (commencing with Section 1000) of Title 7 of Part 2 of the Penal Code may file a motion to vacate the order issued under subdivision (a).

(f) This section shall become operative on November 1, 2004.

SEC. 3. Section 11161.5 of the Health and Safety Code is amended to read:

11161.5. (a) Prescription forms for controlled substance prescriptions shall be obtained from security printers approved by the Department of Justice.

(b) The department may approve security printer applications after the applicant has provided the following information:

- (1) Name, address, and telephone number of the applicant.
- (2) Policies and procedures of the applicant for verifying the identity of the prescriber ordering controlled substance prescription forms.
- (3) Policies and procedures of the applicant for verifying delivery of controlled substance prescription forms to prescribers.
- (4) (A) The location, names, and titles of the applicant's agent for service of process in this state; all principal corporate officers, if any; and all managing general partners, if any.

(B) A report containing this information shall be made on an annual basis and within 30 days after any change of office, principal corporate officers, or managing general partner.

(5) (A) A signed statement indicating whether the applicant, principal corporate officers, or managing general partners have ever been convicted of, or pled no contest to, a violation of any law of a foreign country, the United States, or any state, or of any local ordinance.

(B) The department shall provide the applicant with the means and direction to provide fingerprints and related information, in a manner specified by the department, for the purpose of completing state, federal, or foreign criminal background checks.

(C) Any applicant described in subdivision (b) shall submit his or her fingerprint images and related information to the department, for the purpose of the department obtaining information as to the existence and nature of a record of state, federal, or foreign level convictions and state, federal, or foreign level arrests for which the department establishes that the applicant was released on bail or on his or her own recognizance pending trial, as described in subdivision (l) of Section 11105 of the Penal Code. Requests for federal level criminal offender record information received by the department pursuant to this section shall be forwarded to the Federal Bureau of Investigation by the department.

(D) The department shall assess against each applicant a fee determined by the department to be sufficient to cover all processing, maintenance, and investigative costs generated from or associated with completing state, federal, or foreign background checks pursuant to this section with respect to that applicant; the fee shall be paid by the applicant at the time he or she submits fingerprints and related information to the department.

(E) The department shall retain fingerprint impressions and related information for subsequent arrest notification pursuant to Section 11105.2 of the Penal Code for all applicants.

(c) The department may, within 60 calendar days of receipt of the application from the applicant, deny the security printer application.

(d) The department may deny a security printer application on any of the following grounds:

(1) The applicant, any individual owner, partner, corporate officer, manager, agent, representative, employee, or subcontractor for the applicant, who has direct access, management, or control of controlled substance prescription forms, has been convicted of a crime. A conviction within the meaning of this paragraph means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action which a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code.

(2) The applicant committed any act involving dishonesty, fraud, or deceit with the intent to substantially benefit himself, herself, or another, or substantially injure another.

(3) The applicant committed any act that would constitute a violation of this division.

(4) The applicant knowingly made a false statement of fact required to be revealed in the application to produce controlled substance prescription forms.

(5) The department determines that the applicant failed to demonstrate adequate security procedures relating to the production and distribution of controlled substance prescription forms.

(6) The department determines that the applicant has submitted an incomplete application.

(7) As a condition for its approval as a security printer, an applicant shall authorize the Department of Justice to make any examination of the books and records of the applicant, or to visit and inspect the applicant during business hours, to the extent deemed necessary by the board or department to properly enforce this section.

(e) An approved applicant shall submit an exemplar of a controlled substance prescription form, with all security features, to the Department of Justice within 30 days of initial production.

(f) The department shall maintain a list of approved security printers and the department shall make this information available to prescribers and other appropriate government agencies, including the Board of Pharmacy.

(g) Before printing any controlled substance prescription forms, a security printer shall verify with the appropriate licensing board that the prescriber possesses a license and current prescribing privileges which permits the prescribing of controlled substances.

(h) Controlled substance prescription forms shall be provided directly to the prescriber either in person, by certified mail, or by a means that requires a signature signifying receipt of the package and provision of that signature to the security printer.

(i) Security printers shall retain ordering and delivery records in a readily retrievable manner for individual prescribers for three years.

(j) Security printers shall produce ordering and delivery records upon request by an authorized officer of the law as defined in Section 4017 of the Business and Professions Code.

(k) (1) The department may revoke its approval of a security printer for a violation of this division or action that would permit a denial pursuant to subdivision (d) of this section.

(2) When the department revokes its approval, it shall notify the appropriate licensing boards and remove the security printer from the list of approved security printers.

SEC. 4. Section 11162.1 of the Health and Safety Code is amended to read:

11162.1. (a) The prescription forms for controlled substances shall be printed with the following features:

(1) A latent, repetitive “void” pattern shall be printed across the entire front of the prescription blank; if a prescription is scanned or photocopied, the word “void” shall appear in a pattern across the entire front of the prescription.

(2) A watermark shall be printed on the backside of the prescription blank; the watermark shall consist of the words “California Security Prescription.”

(3) A chemical void protection that prevents alteration by chemical washing.

(4) A feature printed in thermo-chromic ink.

(5) An area of opaque writing so that the writing disappears if the prescription is lightened.

(6) A description of the security features included on each prescription form.

(7) (A) Six quantity check off boxes shall be printed on the form and the following quantities shall appear:

1-24

25-49

50-74

75-100

101-150

151 and over.

(B) In conjunction with the quantity boxes, a space shall be provided to designate the units referenced in the quantity boxes when the drug is not in tablet or capsule form.

(8) Prescription blanks shall contain a statement printed on the bottom of the prescription blank that the “Prescription is void if the number of drugs prescribed is not noted.”

(9) The preprinted name, category of licensure, license number, federal controlled substance registration number of the prescribing practitioner.

(10) A check box indicating the prescriber’s order not to substitute.

(11) An identifying number assigned to the approved security printer by the Department of Justice.

(12) (A) A check box by the name of each prescriber when a prescription form lists multiple prescribers.

(B) Each prescriber who signs the prescription form shall identify himself or herself as the prescriber by checking the box by their name.

(b) Each batch of controlled substance prescription forms shall have the lot number printed on the form and each form within that batch shall be numbered sequentially beginning with the numeral one.

(c) (1) A prescriber designated by a licensed health care facility, a clinic specified in Section 1200, or a clinic specified in subdivision (a) of Section 1206 that has 25 or more physicians or surgeons may order

controlled substance prescription forms for use by prescribers when treating patients in that facility without the information required in paragraph (9) of subdivision (a) or paragraph (3) of this subdivision.

(2) Forms ordered pursuant to this subdivision shall have the name, category of licensure, license number, and federal controlled substance registration number of the designated prescriber and the name, address, category of licensure, and license number of the licensed health care facility the clinic specified in Section 1200, or the clinic specified in subdivision (a) of Section 1206 that has 25 or more physicians or surgeons preprinted on the form.

(3) Forms ordered pursuant to this section shall not be valid prescriptions without the name, category of licensure, license number, and federal controlled substance registration number of the prescriber on the form.

(4) (A) Except as provided in subparagraph (B), the designated prescriber shall maintain a record of the prescribers to whom the controlled substance prescription forms are issued, that shall include the name, category of licensure, license number, federal controlled substance registration number, and the quantity of controlled substance prescription forms issued to each prescriber and be maintained in the health facility for three years.

(B) Forms ordered pursuant to this subdivision that are printed by a computerized prescription generation system shall not be subject to the requirements set forth in subparagraph (A) or paragraph (7) of subdivision (a). Forms printed pursuant to this subdivision that are printed by a computerized prescription generation system may contain the prescriber's name, category of professional licensure, license number, federal controlled substance registration number, and the date of the prescription.

(d) This section shall become operative on July 1, 2004.

SEC. 5. Section 11164 of the Health and Safety Code is amended to read:

11164. Except as provided in Section 11167, no person shall prescribe a controlled substance, nor shall any person fill, compound, or dispense a prescription for a controlled substance, unless it complies with the requirements of this section.

(a) Each prescription for a controlled substance classified in Schedule II, III, IV, or V, except as authorized by subdivision (b), shall be made on a controlled substance prescription form as specified in Section 11162.1 and shall meet the following requirements:

(1) The prescription shall be signed and dated by the prescriber in ink and shall contain the prescriber's address and telephone number; the name of the person for whom the controlled substance is prescribed; and

the name, quantity, strength, and directions for use of the controlled substance prescribed.

(2) The prescription shall also contain the address of the person for whom the controlled substance is prescribed. If the prescriber does not specify this address on the prescription, the pharmacist filling the prescription or an employee acting under the direction of the pharmacist shall write or type the address on the prescription or maintain this information in a readily retrievable form in the pharmacy.

(b) (1) Notwithstanding paragraph (1) of subdivision (a) of Section 11162.1, any controlled substance classified in Schedule III, IV, or V may be dispensed upon an oral or electronically transmitted prescription, which shall be produced in hard copy form and signed and dated by the pharmacist filling the prescription or by any other person expressly authorized by provisions of the Business and Professions Code. Any person who transmits, maintains, or receives any electronically transmitted prescription shall ensure the security, integrity, authority, and confidentiality of the prescription.

(2) The date of issue of the prescription and all the information required for a written prescription by subdivision (a) shall be included in the written record of the prescription; the pharmacist need not include the address, telephone number, license classification, or federal registry number of the prescriber or the address of the patient on the hard copy, if that information is readily retrievable in the pharmacy.

(3) Pursuant to an authorization of the prescriber, any agent of the prescriber on behalf of the prescriber may orally or electronically transmit a prescription for a controlled substance classified in Schedule III, IV, or V, if in these cases the written record of the prescription required by this subdivision specifies the name of the agent of the prescriber transmitting the prescription.

(c) The use of commonly used abbreviations shall not invalidate an otherwise valid prescription.

(d) Notwithstanding any provision of subdivisions (a) and (b), prescriptions for a controlled substance classified in Schedule V may be for more than one person in the same family with the same medical need.

(e) This section shall become operative on January 1, 2005.

SEC. 6. Section 11165.5 is added to the Health and Safety Code, to read:

11165.5. (a) The Board of Pharmacy shall, contingent upon the availability of adequate funds, evaluate the viability of the implementing real time reporting and access to data on prescriptions for controlled substances in the operation of the Controlled Substances Utilization Review and Evaluation System (CURES). For the purposes of this

subdivision, “real time reporting” means the ability to send and access prescription data instantaneously in the operation of CURES.

(b) The Board of Pharmacy, in consultation with the Medical Board of California and Department of Justice, shall contract with a vendor to prepare a feasibility study report in accordance with the State Administrative Manual (SAM) to analyze the costs, benefits, and processes necessary to implement real time reporting of controlled substances in the operation of CURES.

(c) This section shall be implemented to the extent that sufficient nonstate funds are received to cover the costs to the Board of Pharmacy of providing staff, and for the preparation of the report. The costs incurred by the Board of Pharmacy implementing this section shall be solicited and funded from nongovernmental entities. It is not the responsibility of the Board of Pharmacy to solicit the funds for this study. The costs for the feasibility study report and the staff to support the preparation of the report shall be no more than two hundred fifty thousand dollars (\$250,000). Any nonstate funds donated for that purpose are appropriated to the Board of Pharmacy for that purpose.

(d) The board shall submit the feasibility study report to the Legislature on or before July 1, 2007, or within 18 months of receipt of sufficient funding, whichever date is later.

(e) This section shall remain in effect until January 1, 2008, and as of that date is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2008, deletes or extends that date.

SEC. 7. Section 11190 of the Health and Safety Code is amended to read:

11190. (a) Every practitioner, other than a pharmacist, who prescribes or administers a controlled substance classified in Schedule II shall make a record that, as to the transaction, shows all of the following:

- (1) The name and address of the patient.
- (2) The date.
- (3) The character, including the name and strength, and quantity of controlled substances involved.

(b) The prescriber’s record shall show the pathology and purpose for which the controlled substance was administered or prescribed.

(c) (1) For each prescription for a Schedule II or Schedule III controlled substance that is dispensed by a prescriber pursuant to Section 4170 of the Business and Professions Code, the prescriber shall record and maintain the following information:

- (A) Full name, address, gender, and date of birth of the patient.
- (B) The prescriber’s category of licensure and license number; federal controlled substance registration number; and the state medical license

number of any prescriber using the federal controlled substance registration number of a government-exempt facility.

(C) NDC (National Drug Code) number of the controlled substance dispensed.

(D) Quantity of the controlled substance dispensed.

(E) ICD-9 (diagnosis code), if available.

(F) Date of dispensing of the prescription.

(2) Each prescriber that dispenses controlled substances shall provide the Department of Justice the information required by this subdivision on a monthly basis in a format set by the Department of Justice pursuant to regulation.

(d) This section shall become operative on January 1, 2005.

SEC. 8. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for certain costs that may be incurred by a local agency or school district because, in that regard, this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

However, if the Commission on State Mandates determines that this act contains other costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.

CHAPTER 488

An act to amend Section 1203.016 of the Penal Code, relating to home detention, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 4, 2005. Filed with
Secretary of State October 4, 2005.]

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

SECTION 1. Section 1203.016 of the Penal Code is amended to read:

1203.016. (a) Notwithstanding any other provision of law, the board of supervisors of any county may authorize the correctional administrator, as defined in subdivision (h), to offer a program under which minimum security inmates and low-risk offenders committed to a county jail or

other county correctional facility or granted probation, or inmates participating in a work furlough program, may voluntarily participate in a home detention program during their sentence in lieu of confinement in the county jail or other county correctional facility or program under the auspices of the probation officer.

(b) The board of supervisors may prescribe reasonable rules and regulations under which a home detention program may operate. As a condition of participation in the home detention program, the inmate shall give his or her consent in writing to participate in the home detention program and shall in writing agree to comply with the rules and regulations of the program, including, but not limited to, the following rules:

(1) The participant shall remain within the interior premises of his or her residence during the hours designated by the correctional administrator.

(2) The participant shall admit any person or agent designated by the correctional administrator into his or her residence at any time for purposes of verifying the participant's compliance with the conditions of his or her detention.

(3) The participant shall agree to the use of electronic monitoring, which may include global positioning system devices or other supervising devices for the purpose of helping to verify his or her compliance with the rules and regulations of the home detention program. The devices shall not be used to eavesdrop or record any conversation, except a conversation between the participant and the person supervising the participant which is to be used solely for the purposes of voice identification.

(4) The participant shall agree that the correctional administrator in charge of the county correctional facility from which the participant was released may, without further order of the court, immediately retake the person into custody to serve the balance of his or her sentence if the electronic monitoring or supervising devices are unable for any reason to properly perform their function at the designated place of home detention, if the person fails to remain within the place of home detention as stipulated in the agreement, if the person willfully fails to pay fees to the provider of electronic home detention services, as stipulated in the agreement, subsequent to the written notification of the participant that the payment has not been received and that return to custody may result, or if the person for any other reason no longer meets the established criteria under this section. A copy of the agreement shall be delivered to the participant and a copy retained by the correctional administrator.

(c) Whenever the peace officer supervising a participant has reasonable cause to believe that the participant is not complying with the rules or

conditions of the program, or that the electronic monitoring devices are unable to function properly in the designated place of confinement, the peace officer may, under general or specific authorization of the correctional administrator, and without a warrant of arrest, retake the person into custody to complete the remainder of the original sentence.

(d) Nothing in this section shall be construed to require the correctional administrator to allow a person to participate in this program if it appears from the record that the person has not satisfactorily complied with reasonable rules and regulations while in custody. A person shall be eligible for participation in a home detention program only if the correctional administrator concludes that the person meets the criteria for release established under this section and that the person's participation is consistent with any reasonable rules and regulations prescribed by the board of supervisors or the administrative policy of the correctional administrator.

(1) The rules and regulations and administrative policy of the program shall be written and reviewed on an annual basis by the county board of supervisors and the correctional administrator. The rules and regulations shall be given to or made available to any participant upon request.

(2) The correctional administrator, or his or her designee, shall have the sole discretionary authority to permit program participation as an alternative to physical custody. All persons referred or recommended by the court to participate in the home detention program pursuant to subdivision (e) who are denied participation or all persons removed from program participation shall be notified in writing of the specific reasons for the denial or removal. The notice of denial or removal shall include the participant's appeal rights, as established by program administrative policy.

(e) The court may recommend or refer a person to the correctional administrator for consideration for placement in the home detention program. The recommendation or referral of the court shall be given great weight in the determination of acceptance or denial. At the time of sentencing or at any time that the court deems it necessary, the court may restrict or deny the defendant's participation in a home detention program.

(f) The correctional administrator may permit home detention program participants to seek and retain employment in the community, attend psychological counseling sessions or educational or vocational training classes, or seek medical and dental assistance. Willful failure of the program participant to return to the place of home detention not later than the expiration of any period of time during which he or she is authorized to be away from the place of home detention pursuant to this

section and unauthorized departures from the place of home detention are punishable as provided in Section 4532.

(g) The board of supervisors may prescribe a program administrative fee to be paid by each home detention participant that shall be determined according to his or her ability to pay. Inability to pay all or a portion of the program fees shall not preclude participation in the program, and eligibility shall not be enhanced by reason of ability to pay. All program administration and supervision fees shall be administered in compliance with Section 1208.2.

(h) As used in this section, the following words have the following meanings:

(1) "Correctional administrator" means the sheriff, probation officer, or director of the county department of corrections.

(2) "Minimum security inmate" means an inmate who, by established local classification criteria, would be eligible for placement in a Type IV local detention facility, as described in Title 15 of the California Code of Regulations, or for placement into the community for work or school activities, or who is determined to be a minimum security risk under a classification plan developed pursuant to Section 1050 of Title 15 of the California Code of Regulations.

(3) "Low-risk offender" means a probationer, as defined by the National Institute of Corrections model probation system.

(i) Notwithstanding any other law, the police department of a city where an office is located to which persons on an electronic monitoring program report may require the county correctional administrator to provide information concerning those persons. This information shall be limited to the name, address, date of birth, and offense committed by the home detainee. Any information received by a police department pursuant to this paragraph shall be used only for the purpose of monitoring the impact of home detention programs on the community.

(j) It is the intent of the Legislature that home detention programs established under this section maintain the highest public confidence, credibility, and public safety. In the furtherance of these standards, the following shall apply:

(1) The correctional administrator, with the approval of the board of supervisors, may administer a home detention program pursuant to written contracts with appropriate public or private agencies or entities to provide specified program services. No public or private agency or entity may operate a home detention program in any county without a written contract with that county's correctional administrator. However, this does not apply to the use of electronic monitoring by the California Department of Corrections or the Department of the Youth Authority as established in Section 3004. No public or private agency or entity entering

into a contract may itself employ any person who is in the home detention program.

(2) Program acceptance shall not circumvent the normal booking process for sentenced offenders. All home detention program participants shall be supervised.

(3) (A) All privately operated home detention programs shall be under the jurisdiction of, and subject to the terms and conditions of the contract entered into with, the correctional administrator.

(B) Each contract shall include, but not be limited to, all of the following:

(i) A provision whereby the private agency or entity agrees to operate in compliance with any available standards promulgated by state correctional agencies and bodies, including the Board of Corrections, and all statutory provisions and mandates, state and county, as appropriate and applicable to the operation of home detention programs and the supervision of sentenced offenders in a home detention program.

(ii) A provision that clearly defines areas of respective responsibility and liability of the county and the private agency or entity.

(iii) A provision that requires the private agency or entity to demonstrate evidence of financial responsibility, submitted and approved by the board of supervisors, in amounts and under conditions sufficient to fully indemnify the county for reasonably foreseeable public liability, including legal defense costs, that may arise from, or be proximately caused by, acts or omissions of the contractor. The contract shall provide for annual review by the correctional administrator to ensure compliance with requirements set by the board of supervisors and for adjustment of the financial responsibility requirements if warranted by caseload changes or other factors.

(iv) A provision that requires the private agency or entity to provide evidence of financial responsibility, such as certificates of insurance or copies of insurance policies, prior to commencing any operations pursuant to the contract or at any time requested by the board of supervisors or correctional administrator.

(v) A provision that permits the correctional administrator to immediately terminate the contract with a private agency or entity at any time that the contractor fails to demonstrate evidence of financial responsibility.

(C) All privately operated home detention programs shall comply with all appropriate, applicable ordinances and regulations specified in subdivision (a) of Section 1208.

(D) The board of supervisors, the correctional administrator, and the designee of the correctional administrator shall comply with Section

1090 of the Government Code in the consideration, making, and execution of contracts pursuant to this section.

(E) The failure of the private agency or entity to comply with statutory provisions and requirements or with the standards established by the contract and with the correctional administrator may be sufficient cause to terminate the contract.

(F) Upon the discovery that a private agency or entity with whom there is a contract is not in compliance pursuant to this paragraph, the correctional administrator shall give 60 days' notice to the director of the private agency or entity that the contract may be canceled if the specified deficiencies are not corrected.

(G) Shorter notice may be given or the contract may be canceled without notice whenever a serious threat to public safety is present because the private agency or entity has failed to comply with this section.

(k) For purposes of this section, "evidence of financial responsibility" may include, but is not limited to, certified copies of any of the following:

- (1) A current liability insurance policy.
- (2) A current errors and omissions insurance policy.
- (3) A surety bond.

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 uniformity among counties in how laws related to the use of global positioning systems are implemented, it is necessary that this act take effect immediately.

CHAPTER 489

An act to amend Section 1818 of, and to add Section 216 to, the Family Code, relating to family law.

[Approved by Governor October 4, 2005. Filed with
Secretary of State October 4, 2005.]

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

SECTION 1. Section 216 is added to the Family Code, to read:

216. (a) In the absence of a stipulation by the parties to the contrary, there shall be no ex parte communication between the attorneys for any party to an action and any court-appointed or court-connected evaluator

or mediator, or between a court-appointed or court-connected evaluator or mediator and the court, in any proceedings under this code, except with regard to the scheduling of appointments.

(b) There shall be no ex parte communications between counsel appointed by the court pursuant to Section 3150 and any court-appointed or court-connected evaluator or mediator, except where it is expressly authorized by the court or undertaken pursuant to paragraph (5) of subdivision (c) of Section 3151.

(c) Subdivisions (a) and (b) shall not apply in the following situations:

(1) To allow a mediator or evaluator to address a case involving allegations of domestic violence as set forth in Sections 3113, 3181, and 3192.

(2) To allow a mediator or evaluator to address a case involving allegations of domestic violence as set forth in the California Rules of Court 5.215.

(3) If the mediator or evaluator determines that ex parte communication is needed to inform the court of his or her belief that a restraining order is necessary to prevent an imminent risk to the physical safety of the child or the party.

(d) Nothing in this section shall be construed to limit the responsibilities a mediator or evaluator may have as a mandated reporter pursuant to Section 11165.9 of the Penal Code or the responsibilities a mediator or evaluator may have to warn under *Tarasoff v. Regents of the University of California* (1976) 17 Cal.3d 425, *Hedlund v. Superior Court* (1983) 34 Cal.3d 695, and Section 43.92 of the Civil Code.

(e) The Judicial Council shall, by July 1, 2006, adopt a rule of court to implement this section.

SEC. 2. Section 1818 of the Family Code is amended to read:

1818. (a) All superior court hearings or conferences in proceedings under this part shall be held in private and the court shall exclude all persons except the officers of the court, the parties, their counsel, and witnesses. The court shall not allow ex parte communications, except as authorized by Section 216. All communications, verbal or written, from parties to the judge, commissioner, or counselor in a proceeding under this part shall be deemed to be official information within the meaning of Section 1040 of the Evidence Code.

(b) The files of the family conciliation court shall be closed. The petition, supporting affidavit, conciliation agreement, and any court order made in the matter may be opened to inspection by a party or the party's counsel upon the written authority of the judge of the family conciliation court.

CHAPTER 490

An act to amend Sections 14502, 14504, 14581, 14583, 14585, 14586, 14591, 14601, 14611, 14612, 14613, 14621, 14622, 14623, 14631, 14641, 14642, 14643, 14644, 14645, 14646, 14647, 14648, 14651, 14653, 14654, 14655, 14656, 14657, 14658, 14659, 14660, and 14672 of, and to add Sections 14502.1, 14512.5, 14559.5, and 14612.5 to, the Food and Agricultural Code, relating to fertilizer.

[Approved by Governor October 4, 2005. Filed with
Secretary of State October 4, 2005.]

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

SECTION 1. Section 14502 of the Food and Agricultural Code is amended to read:

14502. The secretary shall enforce this chapter and adopt and enforce such regulations relating to the manufacture, guaranteeing, labeling, and distribution of, the manner of reporting tonnage for, and making inspection tonnage fee payments upon, fertilizing materials as the secretary determines necessary to carry out this chapter. A copy of those regulations shall be mailed promptly upon adoption to each person who is licensed pursuant to this chapter. The failure of any licensee to receive a copy of the regulations is not a defense to a violation of the regulations.

SEC. 2. Section 14502.1 is added to the Food and Agricultural Code, to read:

14502.1. The secretary shall notify every licensee that manufactures, distributes, or sells ammonium nitrate, as defined in Section 14512.5, of their duty to maintain records pursuant to Section 14612.5 and to notify the secretary as to where those records may be obtained by him or her.

SEC. 3. Section 14504 of the Food and Agricultural Code is amended to read:

14504. The secretary shall prepare an annual statement of the operating expenditures and revenue related to this chapter which shall be presented to the board for review as soon as possible following the termination of the fiscal year. A copy of this statement shall be made available to any interested person upon request.

SEC. 4. Section 14512.5 is added to the Food and Agricultural Code, to read:

14512.5. "Ammonium nitrate" means solid ammonium nitrate that is chiefly the ammonium salt of nitric acid, contains not less than 33 percent of nitrogen, one-half of which is in the ammonium form and

one-half of which is in the nitrate form, and is produced, imported, stored, offered for sale, sold, offered for distribution, received, or intended for use as a plant nutrient.

SEC. 5. Section 14559.5 is added to the Food and Agricultural Code, to read:

14559.5. "Secretary" means the Secretary of Food and Agriculture.

SEC. 6. Section 14581 of the Food and Agricultural Code is amended to read:

14581. There is, in the department, a Fertilizer Inspection Advisory Board consisting of nine persons appointed by the secretary, eight of whom shall be licensed under this chapter and subject to the payment of the inspection fee in accordance with this chapter, and one of whom shall be a public member. The members of the board shall receive no compensation, but are entitled to payment of necessary traveling expenses in accordance with the rules of the Department of Personnel Administration. These expenses shall be paid out of appropriations made to the department pursuant to this chapter.

SEC. 7. Section 14583 of the Food and Agricultural Code is amended to read:

14583. The board shall be advisory to the secretary and may make recommendations on all matters pertaining to this chapter, including, but not limited to, the inspection and enforcement program, research and education, the annual budget, necessary fees to provide adequate inspection services, and regulations required to accomplish the purposes of this chapter.

SEC. 8. Section 14585 of the Food and Agricultural Code is amended to read:

14585. The board shall meet at the call of the chairperson or the secretary, or at the request of any five members of the board. The board shall meet at least once a year.

SEC. 9. Section 14586 of the Food and Agricultural Code is amended to read:

14586. The secretary shall accept the recommendations of the advisory board pertaining to subdivision (b) of Section 14611 if he or she finds them to be practicable and in the interests of the fertilizer industry and the public. If the secretary does not accept the recommendations of the advisory board, or any part thereof, the secretary shall provide the board with a written statement within 15 working days of making his or her decision stating the reasons for not accepting the recommendations, or any part thereof.

SEC. 10. Section 14591 of the Food and Agricultural Code is amended to read:

14591. (a) Every person who manufactures or distributes fertilizing materials shall, before he or she engages in the activity, obtain a license from the secretary for each plant and business location which he or she operates. All licenses shall be renewed in January of each odd-numbered year, and shall be valid until December 31 of the following even-numbered year, if issued in January of that same year. However, a person who only distributes or who makes retail sales of packaged agricultural minerals, packaged commercial fertilizers, packaged soil amendments, or packaged auxiliary soil and plant substances, alone or in any combination, which bear the registered label of another licensed person, is not required to obtain the license.

(b) Every person who manufactures or distributes, or intends to manufacture or distribute, ammonium nitrate as defined in Section 14512.5, in this state, shall inform the secretary of that activity or intent when applying for a license. The license obtained by that person shall identify him or her as a manufacturer or distributor of ammonium nitrate.

(c) The license fee shall not exceed two hundred dollars (\$200). The secretary may, based on the findings and recommendations of the board, reduce the license fee to a lower rate that provides sufficient revenue to carry out this chapter.

SEC. 11. Section 14601 of the Food and Agricultural Code is amended to read:

14601. Each differing label, other than weight or package size, such as changes in the guaranteed analysis, derivation statement, or anything that implies a different product, for specialty fertilizer, packaged agricultural mineral, auxiliary soil and plant substance, and packaged soil amendment shall be registered. All registrations shall be renewed in January of an even-numbered year, and shall be valid until December 31 of the following odd-numbered year, if issued in January of that same year. The registration fee shall not exceed two hundred dollars (\$200) per product. The secretary may, based on the findings and recommendations of the board, reduce the registration fee to a lower rate that provides sufficient revenue to carry out this chapter. The secretary may require proof of labeling statements and other claims made for any specialty fertilizer, agricultural mineral, packaged soil amendment, or auxiliary soil and plant substance, before the secretary registers any such product. As evidence of proof, the secretary may rely on experimental data, evaluations, or advice furnished by scientists, including scientists affiliated with the University of California, and may accept or reject additional sources of proof in the evaluation of any fertilizing material. In all cases, experimental proof shall relate to conditions in California under which the product is intended for use.

The secretary, after hearing, may cancel the registration of, or refuse to register, any specialty fertilizer, packaged agricultural mineral, packaged soil amendment, or auxiliary soil and plant substance, which the secretary determines is detrimental or injurious to plants, animals, public safety, or the environment when it is applied as directed, which is known to be of little or no value for the purpose for which it is intended, or for which any false or misleading claim is made or implied. The secretary may cancel the registration of any product of any person who violates this chapter.

The proceedings to determine whether to cancel or refuse registration of any of those products shall be conducted pursuant to Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code. The director shall have all the powers that are granted pursuant to Chapter 5.

SEC. 12. Section 14611 of the Food and Agricultural Code is amended to read:

14611. (a) Any licensee whose name appears on the label who sells or distributes bulk fertilizing materials, as defined in Sections 14517 and 14533, to unlicensed purchasers, shall pay to the secretary an assessment not to exceed two mills (\$0.002) per dollar of sales for all fertilizing materials. Any licensee whose name appears on the label of packaged fertilizing materials, as defined in Sections 14533 and 14551, shall pay to the secretary an assessment not to exceed two mills (\$0.002) per dollar of sales. The secretary may, based on the findings and recommendations of the board, reduce the assessment rate to a lower rate that provides sufficient revenue to carry out this chapter.

(b) In addition to the assessment provided in subdivision (a), the secretary may impose an assessment in an amount not to exceed one mill (\$0.001) per dollar of sales for all sales of fertilizing materials, to provide funding for research and education regarding the use and handling of commercial and organic fertilizers, including, but not limited to, any environmental effects.

SEC. 13. Section 14612 of the Food and Agricultural Code is amended to read:

14612. Each licensee shall maintain in this state, or with the secretary's permission, at another location, an accurate record of all transactions subject to assessment. These records shall be maintained for a period of not less than three years following the transaction and are subject to audit by the secretary.

SEC. 13.5. Section 14612.5 is added to the Food and Agricultural Code, to read:

14612.5. (a) Every licensee that manufactures, distributes, or sells ammonium nitrate, as defined in Section 14512.5, shall maintain in this

state, or with the secretary's permission, at another location, all of the following information with respect to sales of ammonium nitrate:

(1) The names, addresses, and driver's license and telephone numbers of purchasers. The name and address of each purchaser shall be verified against a valid California driver's license, unless the fertilizer is shipped to a wholesale purchaser outside of the state.

(2) The date of each sale.

(3) The total amount of material sold.

(b) The information collected by licensees pursuant to subdivision (a) shall be kept for a period of at least three years and shall be made available only to the secretary or law enforcement officials upon request.

SEC. 14. Section 14613 of the Food and Agricultural Code is amended to read:

14613. The payment required by Section 14611, together with a form containing information prescribed by the secretary, shall be made quarterly within one calendar month after March 31, June 30, September 30, and December 31 of each year, and that form shall be submitted on or before those dates even if no fertilizer materials are sold. For any delinquency in making the payment, or any deficiency in payment, the director shall add a penalty of 15 percent to the delinquent payment. Any delinquency which is more than 90 days past due is a cause for cancellation of the license.

SEC. 15. Section 14621 of the Food and Agricultural Code is amended to read:

14621. The last licensee selling or distributing fertilizing material shall submit a tonnage report, on a form or a computer printout format approved by the secretary, containing information on shipments received or deliveries made during specified periods designated by the secretary.

SEC. 16. Section 14622 of the Food and Agricultural Code is amended to read:

14622. (a) The secretary shall publish, at least annually, a tonnage report. The secretary shall distribute the report and may charge a fee to cover the actual cost of publishing and distributing the report.

(b) Any information furnished to the secretary under this chapter shall not be disclosed in such a way as to divulge the business practices of any licensee.

SEC. 17. Section 14623 of the Food and Agricultural Code is amended to read:

14623. The tonnage report shall be submitted to the secretary semiannually not later than January 31 and July 31 of each year. The secretary shall impose a penalty in the amount of two hundred dollars (\$200) on any person who does not submit the report on or before those dates.

SEC. 18. Section 14631 of the Food and Agricultural Code is amended to read:

14631. Every lot, parcel, or package of fertilizing material distributed into or within this state shall have attached to it, or the shipment shall be physically accompanied by, a label as required by the secretary, by regulation. The secretary may require proof of labeling statements and claims made for any fertilizing material. As evidence of proof, the secretary may rely on experimental data, evaluations, or advice furnished by scientists, including scientists affiliated with the University of California, and may accept or reject additional sources of proof. The secretary may cancel the approval of, or refuse to approve, a fertilizing material label if the secretary determines that adequate proof of label claims do not exist. The secretary, after hearing, may cancel the license of any person who distributes a fertilizing material with a label for which approval has been canceled or a label that has not been approved by the secretary.

SEC. 19. Section 14641 of the Food and Agricultural Code is amended to read:

14641. The secretary shall have free access at reasonable times to all records, premises, or conveyances which are used in the manufacture, transportation, importation, distribution, storage, or application of any fertilizing material.

SEC. 20. Section 14642 of the Food and Agricultural Code is amended to read:

14642. The secretary shall, at the times and to the extent necessary for the enforcement of this chapter, do all of the following:

- (a) Take samples of any substance.
- (b) Make analyses or examinations of any substance.
- (c) Conduct investigations concerning the use, sale, adulteration, or misbranding of any substance.

SEC. 21. Section 14643 of the Food and Agricultural Code is amended to read:

14643. In determining the percentage of component parts of any substance for the purpose of proper labeling, registration, or determining compliance with representations, all analyses shall be made according to a method determined by the secretary.

SEC. 22. Section 14644 of the Food and Agricultural Code is amended to read:

14644. The secretary shall publish, at least annually, the results of examinations or chemical analyses of official samples of commercial fertilizer and agricultural minerals, and any additional information the secretary deems necessary.

SEC. 23. Section 14645 of the Food and Agricultural Code is amended to read:

14645. The secretary may take a sample for analysis from any lot of fertilizing material which is in the possession of any producer, manufacturer, importer, agent, dealer, or user. The sample shall be taken pursuant to regulations adopted by the secretary.

SEC. 24. Section 14646 of the Food and Agricultural Code is amended to read:

14646. The secretary shall establish sampling procedures by regulation.

SEC. 25. Section 14647 of the Food and Agricultural Code is amended to read:

14647. Upon the analysis of a sample of fertilizing material, the secretary shall issue a report showing the findings and indicating that the product has met the guarantee or was found to be deficient. However, the secretary, in determining whether any product is deficient in guarantee or misrepresented, may establish, by regulation, tolerances that provide allowances for variations that occur in the taking, preparation, and analysis of an official sample.

SEC. 26. Section 14648 of the Food and Agricultural Code is amended to read:

14648. In any action, civil or criminal, in any court in this state, a laboratory report from the secretary which states the results of any analysis, reported to be made pursuant to this chapter, shall be prima facie evidence of all of the following:

(a) That the sample which is described in the laboratory report was properly analyzed.

(b) That the sample was taken pursuant to this chapter.

(c) That the substances analyzed contained the component parts which are stated in the laboratory report.

(d) That the sample was taken from the lots, parcels, or packages which are described in the laboratory report.

SEC. 27. Section 14651 of the Food and Agricultural Code is amended to read:

14651. (a) Unless otherwise specified in this chapter, any violation of this chapter, or the regulations adopted pursuant to this chapter, is a misdemeanor, punishable by a fine of not more than five hundred dollars (\$500) for the first violation and not less than five hundred dollars (\$500) for each subsequent violation.

(b) The secretary may, after hearing, refuse to issue or renew, or may suspend or revoke, a license or registration for any violation of this chapter or any regulation that is adopted pursuant to this chapter.

(c) Upon calling a hearing, the director shall hand deliver or mail a notice of the hearing to the licensee or registrant specifying the time and place of the hearing at least 10 days prior to the hearing. The hearing officer may do any of the following:

(1) Administer oaths and take testimony.
(2) Issue subpoenas requiring the attendance of the licensee, registrant, or witnesses, together with books, records, memorandums, papers, and all other documents that may be pertinent to the case.

(3) Compel from the licensee or registrant and any witness the disclosure of all facts known to him or her regarding the case. In no instance shall any employee of Agricultural Commodities and Regulatory Services serve as the hearing officer in any hearing conducted pursuant to this section.

(d) Any person who is denied a license, whose license is not renewed, or whose license is suspended or revoked pursuant to this section may appeal to the secretary.

SEC. 28. Section 14653 of the Food and Agricultural Code is amended to read:

14653. The secretary may seize and hold any lot of fertilizing material which he or she has reasonable cause to believe is in violation of this chapter or the regulations adopted pursuant to this chapter.

SEC. 29. Section 14654 of the Food and Agricultural Code is amended to read:

14654. If the secretary seizes any lot of fertilizing material, he or she shall immediately issue a hold order to the person that has control of that material. The secretary may affix to that lot or package of the material a warning tag which states that the lot is subject to a hold order.

SEC. 30. Section 14655 of the Food and Agricultural Code is amended to read:

14655. (a) Any lot of fertilizing material for which a hold order or notice is issued shall be held by the person having control of the material and shall not be distributed or moved except under the specific directions of the secretary, pending final disposition pursuant to this chapter. This does not prevent the person who has control of the material from inspecting any seized material or from taking a reasonable sample for evidence while in the presence of a person designated by the director.

(b) The movement, distribution, or sale of all or part of any product that has been quarantined by the secretary, unless the movement, distribution, or sale has the prior approval of the secretary, is a misdemeanor punishable by a fine of not more than five hundred dollars (\$500). A second or subsequent violation of this subdivision is a misdemeanor punishable by a fine of not less than one thousand dollars (\$1,000).

SEC. 31. Section 14656 of the Food and Agricultural Code is amended to read:

14656. Upon demand of the person who has control of the seized fertilizing material, and within 10 days of sampling by the secretary, a subsample shall be returned from the state laboratory to the person in control of the fertilizing material.

SEC. 32. Section 14657 of the Food and Agricultural Code is amended to read:

14657. If the seized and held lot, as determined by the secretary's analysis, is not in violation of this chapter, the secretary shall immediately release the seized and held lot and remove the hold order.

SEC. 33. Section 14658 of the Food and Agricultural Code is amended to read:

14658. If the seized and held lot is found to be in violation of this chapter, the secretary shall take either of the following actions:

(a) Continue to hold the lot until such time as the requirements of this chapter have been complied with, at which time the lot shall be released.

(b) Issue orders for the disposal of the lot in a manner specified by the secretary.

SEC. 34. Section 14659 of the Food and Agricultural Code is amended to read:

14659. The person who has control of a seized or held lot that is found to be in violation of this chapter may appeal the result of the analysis to the secretary, in writing, within 15 days of receiving the notice of violation. Upon receipt of that appeal, the secretary shall take a further sample of the lot in question for analysis. The cost of sampling and analysis shall be at the expense of the person who requests the further sample. The findings of the analysis on appeal shall be conclusive.

SEC. 35. Section 14660 of the Food and Agricultural Code is amended to read:

14660. The authority for the issuance of citations is limited to the violations of Sections 14591, 14601, 14631, 14651, and 14655. The secretary shall adopt procedures for the issuance of citations and penalties, upon the recommendation of the board. Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code does not apply to the procedures adopted by the secretary pursuant to this section.

SEC. 36. Section 14672 of the Food and Agricultural Code is amended to read:

14672. Nothing in this chapter requires the secretary to report for prosecution or to institute injunctive proceedings for any minor violation of this chapter whenever the secretary believes that the public interest

would be adequately served by a suitable written notice of warning and compliance with the notice.

SEC. 37. 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 491

An act to amend Sections 2558.46, 42238.146, 56836.11, and 56836.165 of the Education Code, to amend Section 17581.5 of the Government Code, to amend Items 6110-001-0890, 6110-107-0001, 6110-156-0890, 6110-161-0001, 6110-161-0890, 6110-228-0001, 6110-243-0001, and 8860-001-0001 of Section 2.00 of, to amend Section 12.75 of Section 2.00 of, to add Item 6110-493 to Section 2.00 of, and to repeal Item 6110-182-0001 of Section 2.00 of, Chapter 38 of the Statutes of 2005, to amend Sections 20 and 21 of Chapter 39 of the Statutes of 2005, and to amend Sections 30, 31, and 32 of Chapter 73 of the Statutes of 2005, relating to education finance, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 4, 2005. Filed with
Secretary of State October 4, 2005.]

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

SECTION 1. Section 2558.46 of the Education Code is amended to read:

2558.46. (a) (1) For the 2003-04 fiscal year, the revenue limit for each county superintendent of schools determined pursuant to this article shall be reduced by a 1.195 percent deficit factor.

(2) For the 2004-05 fiscal year, the revenue limit for each county superintendent of schools determined pursuant to this article shall be reduced by a 0.323 percent deficit factor.

(3) For the 2003-04 and 2004-05 fiscal years, the revenue limit for each county superintendent of schools determined pursuant to this article shall be further reduced by a 1.826 percent deficit factor.

(4) For the 2005-06 and 2006-07 fiscal years, the revenue limit for each county superintendent of schools determined pursuant to this article shall be further reduced by a 0.898 percent deficit factor.

(b) In computing the revenue limit for each county superintendent of schools for the 2007-08 fiscal year pursuant to this article, the revenue limit shall be determined as if the revenue limit for that county superintendent of schools had been determined for the 2003-04, 2004-05, 2005-06, and 2006-07 fiscal years without being reduced by the deficit factors specified in this section.

SEC. 2. Section 42238.146 of the Education Code is amended to read:

42238.146. (a) (1) For the 2003-04 fiscal year, the revenue limit for each school district determined pursuant to this article shall be reduced by a 1.198 percent deficit factor.

(2) For the 2004-05 fiscal year, the revenue limit for each school district determined pursuant to this article shall be reduced by a 0.323 percent deficit factor.

(3) For the 2003-04 and 2004-05 fiscal years, the revenue limit for each school district determined pursuant to this article shall be further reduced by a 1.826 percent deficit factor.

(4) For the 2005-06 and 2006-07 fiscal years, the revenue limit for each school district determined pursuant to this article shall be reduced by a 0.892 percent deficit factor.

(b) In computing the revenue limit for each school district for the 2007-08 fiscal year pursuant to this article, the revenue limit shall be determined as if the revenue limit for that school district had been determined for the 2003-04, 2004-05, 2005-06, and 2006-07 fiscal years without being reduced by the deficit factors specified in this section.

SEC. 3. Section 56836.11 of the Education Code is amended to read:

56836.11. (a) For the purpose of computing the equalization adjustment for special education local plan areas for the 1998-99 fiscal year, the Superintendent shall make the following computations to determine the statewide target amount per unit of average daily attendance for special education local plan areas:

(1) Total the amount of funding computed for each special education local plan area exclusive of the amount of funding computed for the special education local plan area identified as the Los Angeles County Juvenile Court and Community School/Division of Alternative Education Special Education Local Plan Area, pursuant to Section 56836.09 for the 1997-98 fiscal year.

(2) Total the number of units of average daily attendance reported for each special education local plan area for the 1997-98 fiscal year, exclusive of average daily attendance for absences excused pursuant to

subdivision (b) of Section 46010 as that section read on July 1, 1996, and exclusive of the units of average daily attendance computed for the special education local plan area identified as the Los Angeles County Juvenile Court and Community School/Division of Alternative Education Special Education Local Plan Area.

(3) Divide the sum computed in paragraph (1) by the sum computed in paragraph (2) to determine the statewide target amount for the 1997-98 fiscal year.

(4) Add the amount computed in paragraph (3) to the inflation adjustment computed pursuant to subdivision (d) of Section 56836.08 for the 1998-99 fiscal year to determine the statewide target amount for the 1998-99 fiscal year.

(b) Commencing with the 1999-2000 fiscal year to the 2004-05 fiscal year, inclusive, to determine the statewide target amount per unit of average daily attendance for special education local plan areas, the Superintendent shall multiply the statewide target amount per unit of average daily attendance computed for the prior fiscal year pursuant to this section by one plus the inflation factor computed pursuant to subdivision (b) of Section 42238.1 for the fiscal year in which the computation is made.

(c) Commencing with the 2005-06 fiscal year and each fiscal year thereafter, to determine the statewide target amount per unit of average daily attendance for special education local plan areas for the purpose of computing the incidence multiplier pursuant to Section 56836.155, the Superintendent shall add the statewide target amount per unit of average daily attendance computed for the prior fiscal year for this purpose to the amount computed in paragraph (2) of subdivision (d) or paragraph (2) of subdivision (e), as appropriate.

(d) For the 2005-06 fiscal year, the Superintendent shall make the following computation to determine the statewide target amount per unit of average daily attendance to determine the inflation adjustment pursuant to paragraph (2) of subdivision (d) of Section 56836.08 and growth pursuant to subdivision (c) of Section 56836.15, as follows:

(1) The 2004-05 fiscal year statewide target amount per unit of average daily attendance less the sum of the 2004-05 fiscal year total amount of federal funds apportioned pursuant to Schedule (1) in Item 6110-161-0890 of Section 2.00 of the Budget Act of 2004 for the purposes of special education for individuals with exceptional needs enrolled in kindergarten and grades 1 to 12, inclusive, divided by the total average daily attendance computed for the 2004-05 fiscal year.

(2) Multiply the amount computed in paragraph (1) by the inflation factor computed pursuant to subdivision (b) of Section 42238.1 for the fiscal year in which the computation is made.

(3) Add the amounts computed in paragraphs (1) and (2).

(e) Commencing with the 2006-07 fiscal year and each fiscal year thereafter, the Superintendent shall make the following computation to determine the statewide target amount per unit of average daily attendance for special education local plan areas for the purpose of computing the inflation adjustment pursuant to paragraph (2) of subdivision (d) of Section 56836.08 and growth pursuant to subdivision (c) of Section 56836.15:

(1) The statewide target amount per unit of average daily attendance computed for the prior fiscal year pursuant to this section.

(2) Multiply the amount computed in paragraph (1) by the inflation factor computed pursuant to subdivision (b) of Section 42238.1 for the fiscal year in which the computation is made.

(3) Add the amounts computed in paragraphs (1) and (2).

SEC. 4. Section 56836.165 of the Education Code is amended to read:

56836.165. (a) For the 2004-05 fiscal year and each fiscal year thereafter, the Superintendent shall calculate for each special education local plan area an amount based on (1) the number of children and youth residing in foster family homes, small family homes, and foster family agencies, (2) the licensed capacity of group homes licensed by the State Department of Social Services, and (3) the number of children and youth ages 3 to 21 years, inclusive, referred by the State Department of Developmental Services who are residing in skilled nursing facilities or intermediate care facilities licensed by the State Department of Health Services and the number of children and youth, ages 3 to 21 years, inclusive, referred by the State Department of Developmental Services who are residing in community care facilities licensed by the State Department of Social Services.

(b) The department shall assign each facility described in paragraphs (1), (2), and (3) of subdivision (a) a severity rating. The severity ratings shall be on a scale from 1 to 14. Foster family homes and small family homes shall be assigned a severity rating of 1. Foster family agencies shall be assigned a severity rating of 2. Facilities described in paragraph (2) of subdivision (a) shall be assigned the same severity rating as its State Department of Social Services rate classification level. For facilities described in paragraph (3) of subdivision (a), skilled nursing facilities shall be assigned a severity rating of 14, intermediate care facilities shall be assigned a severity rating of 11, and community care facilities shall be assigned a severity rating of 8.

(c) (1) The department shall establish a "bed allowance" for each severity level. For the 2004-05 fiscal year, the bed allowance shall be calculated as described in paragraph (2). For the 2005-06 fiscal year and

each fiscal year thereafter, the department shall increase the bed allowance by the inflation adjustment computed pursuant to Section 42238.1. The department shall not establish a bed allowance for any facility defined in paragraphs (2) and (3) of subdivision (a) if it is not licensed by the State Department of Social Services or the State Department of Health Services.

(2) (A) The bed allowance for severity level 1 shall be five hundred two dollars (\$502).

(B) The bed allowance for severity level 2 shall be six hundred ten dollars (\$610).

(C) The bed allowance for severity level 3 shall be one thousand four hundred thirty-four dollars (\$1,434).

(D) The bed allowance for severity level 4 shall be one thousand six hundred forty-nine dollars (\$1,649).

(E) The bed allowance for severity level 5 shall be one thousand eight hundred sixty-five dollars (\$1,865).

(F) The bed allowance for severity level 6 shall be two thousand eighty dollars (\$2,080).

(G) The bed allowance for severity level 7 shall be two thousand two hundred ninety-five dollars (\$2,295).

(H) The bed allowance for severity level 8 shall be two thousand five hundred ten dollars (\$2,510).

(I) The bed allowance for severity level 9 shall be five thousand four hundred fifty-one dollars (\$5,451).

(J) The bed allowance for severity level 10 shall be five thousand eight hundred eighty-one dollars (\$5,881).

(K) The bed allowance for severity level 11 shall be nine thousand four hundred sixty-seven dollars (\$9,467).

(L) The bed allowance for severity level 12 shall be thirteen thousand four hundred eighty-three dollars (\$13,483).

(M) The bed allowance for severity level 13 shall be fourteen thousand three hundred forty-three dollars (\$14,343).

(N) The bed allowance for severity level 14 shall be twenty thousand eighty-one dollars (\$20,081).

(d) (1) For each fiscal year, the department shall calculate an out-of-home care funding amount for each special education local plan area as the sum of amounts computed pursuant to paragraphs (2), (3), and (4). The State Department of Social Services and the State Department of Developmental Services shall provide the State Department of Education with the residential counts identified in paragraphs (2), (3), and (4).

(2) The number of children and youth residing on April 1 in foster family homes, small family homes, and foster family agencies located

in each special education local plan area times the appropriate bed allowance.

(3) The capacity on April 1 of each group home licensed by the State Department of Social Services located in each special education local plan area times the appropriate bed allowance.

(4) The number on April 1 of children and youth (A) ages 3 through 21 referred by the State Department of Developmental Services who are residing in skilled nursing facilities and intermediate care facilities licensed by the State Department of Health Services located in each special education local plan area times the appropriate bed allowance, and (B) ages 3 to 21 years, inclusive, referred by the State Department of Developmental Services who are residing in community care facilities licensed by the State Department of Social Services located in each special education local plan area times the appropriate bed allowance.

(e) In determining the amount of the first principal apportionment for a fiscal year pursuant to Section 41332, the Superintendent shall continue to apportion funds from Section A of the State School Fund to each special education local plan area equal to the amount apportioned at the advance apportionment pursuant to Section 41330 for that fiscal year.

SEC. 5. Section 17581.5 of the Government Code is amended to read:

17581.5. (a) A school district may not be required to implement or give effect to the statutes, or portion thereof, identified in subdivision (b) during any fiscal year and for the period immediately following that fiscal year for which the Budget Act has not been enacted for the subsequent fiscal year if all of the following apply:

(1) The statute or portion thereof, has been determined by the Legislature, the commission, or any court to mandate a new program or higher level of service requiring reimbursement of school districts pursuant to Section 6 of Article XIII B of the California Constitution.

(2) The statute, or portion thereof, or the test claim number utilized by the commission, has been specifically identified by the Legislature in the Budget Act for the fiscal year as being one for which reimbursement is not provided for that fiscal year. For purposes of this paragraph, a mandate shall be considered to have been specifically identified by the Legislature only if it has been included within the schedule of reimbursable mandates shown in the Budget Act and it is specifically identified in the language of a provision of the item providing the appropriation for mandate reimbursements.

(b) This section applies only to the following mandates:

(1) The School Bus Safety I (CSM-4433) and II (97-TC-22) mandates (Chapter 642 of the Statutes of 1992; Chapter 831 of the Statutes of 1994; and Chapter 739 of the Statutes of 1997).

(2) The School Crimes Reporting II mandate (97-TC-03; and Chapter 759 of the Statutes of 1992 and Chapter 410 of the Statutes of 1995).

(3) Investment reports (96-358-02; and Chapter 783 of the Statutes of 1995 and Chapters 156 and 749 of the Statutes of 1996).

(4) County treasury oversight committees (96-365-03; and Chapter 784 of the Statutes of 1995 and Chapter 156 of the Statutes of 1996).

(5) Grand jury proceedings mandate (98-TC-27; and Chapter 1170 of the Statutes of 1996, Chapter 443 of the Statutes of 1997, and Chapter 230 of the Statutes of 1998).

SEC. 6. Item 6110-001-0890 of Section 2.00 of Chapter 38 of the Statutes of 2005 is amended to read:

6110-001-0890—For support of Department of Education, for payment to Item 6110-001-0001, payable from the Federal Trust Fund..... 149,485,000
Provisions:

1. The funds appropriated in this item include Federal Vocational Education Act funds for the 2004-05 fiscal year to be transferred to community colleges by means of interagency agreements. These funds shall be used by community colleges for the administration of vocational education programs.
2. Of the funds appropriated in this item, \$96,000 is available to the Advisory Commission on Special Education for the in-state travel expenses of the commissioners and the secretary to the commission.
3. Of the funds appropriated in this item, \$401,000 is available for programs for homeless youth and adults pursuant to the federal McKinney-Vento Homeless Assistance Act. The State Department of Education shall consult with the State Departments of Economic Opportunity, Mental Health, Housing and Community Development, and Economic Development in operating this program.
4. Of the funds appropriated in this item, up to \$364,000 shall be used to provide in-service training for special and regular educators and related persons, including, but not limited to, parents, administrators, and organizations serving severely disabled children. These funds are also to provide up to four positions for this purpose.
5. Of the funds appropriated in this item, \$318,000 shall be used to provide training in culturally nonbiased assessment and specialized language skills to special education teachers.
6. Of the amount appropriated in this item, \$1,265,000 shall be used for the administration of the federal charter schools program. These activities include monitoring of grant recipients, and increased review and technical assistance support for federal charter school

grant applicants and recipients. For the 2005-06 fiscal year, one Education Program Consultant position shall support fiscal issues pertaining to charter schools.

7. (a) Of the funds appropriated in this item, \$9,898,000 is from the Child Care and Development Block Grant Fund and is available for support of Child Care Services.
- (b) Of the amount appropriated in this item, \$530,000 is for 5.5 positions within the State Department of Education (SDE) to address compliance monitoring and overpayments, which may contribute to early detection of fraud. The SDE shall provide information to the Legislature and Department of Finance each year that quantifies provider-by-provider level data, including instances and amounts of overpayments and fraud, as documented by the SDE's compliance monitoring efforts for the prior fiscal year.
- (c) As a condition of receiving the resources specified in subdivision (b), it is expected that every alternative payment agency will be audited each year using sufficient sampling of provider records of the following: (i) family fee determinations, (ii) income eligibility, (iii) rate limits, and (iv) basis for hours of care, to determine compliance rates, any instances of is allocation of resources, and the amount of funds expected to be recovered from instances of both potential fraud and overpayment when no intent to defraud is suspected. This information will be contained in a separate report for each provider, with a single statewide summary report annually submitted to the Governor and Legislature no later than April 15.
8. Of the funds appropriated in this item, \$1,805,000 shall be used for administration of the Enhancing Education Through Technology Grant Program. Of this amount:
 - (a) \$408,000 is available only for contracted technical support and evaluation services.
9. Of the funds appropriated in this item, \$10,140,000 is for dispute resolution services, including mediation and fair hearing services, provided through contract for the Special Education Program.
10. Of the amount provided in this item, \$881,000 is provided for staff for the Special Education Focused Monitoring Pilot Program to be established by the State Department of Education for the purpose of monitoring local educational agency compliance with state and federal laws and regulations governing special education.
11. Of the funds appropriated in this item, \$125,000 shall be allocated for increased travel costs associated with program reviews conducted by the Special Education Division Focused Monitoring and Technical

Assistance Units. Expenditure of these funds is subject to Department of Finance approval of an expenditure plan. The expenditure plan shall include the proposed travel costs associated with focused monitoring and technical assistance provided by the State Department of Education. It shall also include the estimated type and number of reviews to be conducted, and shall provide an estimated average cost per type of review. Annual renewal of this funding is subject to Department of Finance approval of an annual focused monitoring final expenditure report. The report shall be submitted on or before September 30, 2005. It shall provide the total number of reviews conducted each fiscal year, the amount of staff and personnel days and hours associated with each category of review, the travel costs associated with the type and number of reviews conducted, and an average cost per type of review.

12. Of the funds appropriated in this item, \$120,000 shall be used solely for the administration of the federal advance placement examination fee payment grant program for low-income pupils.
13. Of the funds appropriated in this item, \$243,000 shall be available for the preparation, analysis, and production of the annual federal accountability reports, as required by the Carl D. Perkins Vocational Technical Education Act.
14. Of the funds appropriated in this item, \$303,000 shall be allocated by the State Department of Education to the California State University, San Bernardino, Center for the Study of Correctional Education, for special education monitoring of and technical assistance for the California Youth Authority pursuant to Chapter 536 of the Statutes of 2001.
15. Of the funds appropriated in this item, not less than \$798,000 shall be available for costs associated with the administration of the High Priority Schools Grant Program pursuant to Article 3.5 (commencing with Section 52055.600) of Chapter 6.1 of Part 28 of the Education Code and the Immediate Intervention/Underperforming Schools Program pursuant to Article 3 (commencing with Section 52053) of Chapter 6.1 of Part 28 of the Education Code.
16. Of the funds appropriated in this item, \$419,000 shall be available pursuant to Chapter 1020 of the Statutes of 2002 for the development and implementation of corrective action plans and sanctions pursuant to federal law.
17. Of the funds appropriated in this item, \$1,414,000 is for administration of the Reading First Program. Of this amount, \$873,000 is to redirect 6.0 staff to assist in program administration, and \$500,000 is for the State Department of Education to contract for annual evaluations of program effectiveness.

19. Of the appropriated funds in this item, \$668,000 is for the department to continue developing a comprehensive strategy to address data reporting requirements associated with the No Child Left Behind Act of 2001 (P.L. 107-110), and to support 5.0 positions to assist with this task.
20. Of the funds appropriated in this item, \$600,000 is provided for the second year of a three-year evaluation of the High Priority Schools Grant Program pursuant to Chapter 42 of the Statutes of 2002.
21. Of the funds appropriated in this item, \$844,000 is to support state operations related to the development of a longitudinal database for the requirements of the No Child Left Behind Act of 2001 (P.L. 107-110). Of this funding, \$366,122 is for the development of a Request for Proposals and is contingent upon Department of Finance approval following approval of a Feasibility Study Report.
23. Of the amount appropriated in this item, \$400,000 is available to fund 3.0 positions (2.75 PYs) and associated costs for administering the English Language Development materials program specified in Provision 2 of Item 6110-189-0001. The positions are available on a two-year limited-term basis ending June 30, 2006.
24. Of the amount appropriated in this item, \$267,000 shall be used to develop an Internet-based electronic clearinghouse system to improve the availability of parental information documents that are translated into languages other than English. The purpose of this system is to improve the availability of these documents at the local level and reduce the local costs of providing these documents by eliminating duplication of effort in translating standard documents. The system shall include an interactive Web portal located on the State Department of Education's Web site, which shall allow local education agencies to submit, locate, and access locally translated parental documents and may include documents that the department is responsible for translating. The funding shall also be used to fund one position to manage the development and maintenance of the Internet clearinghouse site. The addition of an electronic clearinghouse for locally translated documents to the State Department of Education's Web site shall not constitute a new information technology project or increase in funding for an information technology project for purposes of project reporting and oversight.
25. Of the amount appropriated in this item, \$832,000 (\$600,000 reimbursements and \$232,000 federal special education funds) shall be used to fund six positions and implement the provisions of Chapter 914 of the Statutes of 2004 for increased monitoring of nonpublic, nonsectarian schools.

26. Of the amount appropriated in this item, \$963,000 in federal special education funds shall be used to augment funding for State Special Schools transportation.
27. Of the funds appropriated in this item, \$350,000 shall be for the department to contract for a teacher data system feasibility study. The feasibility study shall: (a) inventory the teacher data elements (name, code, and definition) currently collected by state agencies and county offices of education, (b) identify existing redundancies (two or more agencies collecting the same data) and inefficiencies (agencies collecting data without a specific, meaningful purpose), (c) identify state agencies' and county offices' existing teacher data needs for meeting state and federal compliance and reporting requirements, (d) identify the most cost-effective approach for converting the existing data systems into an integrated, comprehensive, longitudinally linked teacher information system that can yield high-quality program evaluations, and (e) estimate the additional one-time and ongoing costs associated with the new system. In developing the associated request for proposals and selecting the vendor, the department shall convene a working group that includes the Department of Finance, the Legislative Analyst's Office, and other interested parties. The study shall be submitted to the Governor and Legislature by March 31, 2006.
29. Of the funds appropriated in this item, \$443,000 is for 3.0 positions within the State Department of Education for increased monitoring associated with Chapter 493 of the Statutes of 2004.
30. Of the funds appropriated in this item, \$2,000,000 from federal Title funds shall be available for the department to contract for an independent evaluation to determine whether California has met the assessment requirements of the federal No Child Left Behind Act. The expenditure of these funds shall be contingent on approval of an expenditure plan and request for proposal by the State Board of Education and the Department of Finance.
31. (a) Prior to expenditure of the funds pursuant to subdivision (b), the State Department of Education (SDE) shall build upon preexisting, high-quality translations available from school districts, county offices of education, and other entities that have translated relevant documents, including those identified by the advisory group.
(b) Of the funds appropriated in this item, \$450,000 is available to the SDE for the cost of translating into languages other than English state prototype documents that it currently provides to school districts to help them comply with parental notification requirements under state and federal law. The SDE shall be

required to contract with appropriate translators or translator services to translate these documents. The SDE shall post all documents translated as a result of the appropriation referenced in this provision on its existing Internet-based electronic clearinghouse system of state- and locally translated parental notification documents.

- (c) The SDE shall convene a translations advisory group comprised of the following representatives: the Department of Finance, the SDE, the Legislative Analyst’s Office, legislative staff, the Office of the Secretary for Education, relevant organizations, local educational agencies, and limited-English-speaking parents of children in the public K-12 educational system. The purposes of the advisory group shall be the following: (1) to assess and identify gaps in the types of documents being translated and the languages covered by translations, (2) to prioritize vital documents that should be translated, as well as languages of greatest need for translation, and (3) to provide feedback and input to the department, including procedures for translations, quality, dissemination, and outreach. The advisory group shall include no more than ten individuals, with no more than one person from each state level entity.

SEC. 7. Item 6110-104-0001 of Section 2.00 of Chapter 38 of the Statutes of 2005 is amended to read:

6110-104-0001—For local assistance, Department of Education (Proposition 98), Program 10.10.011- School Apportionments—Remedial Supplemental Instruction Programs, for transfer to Section A of the State School Fund, for supplemental instruction and remedial programs.....		291,431,000
Schedule:		
(1) 10.10.011.008-School Apportionments, for Supplemental Instruction, Remedial, Grades 7-12 for the purposes of Section 37252 of the Education Code.....	165,222,600	
(2) 10.10.011.009-School Apportionments, for Supplemental Instruction, Retained, or Recommended for Retention, Grades 2-9, for the purposes of Section 37252.2 of the Education Code, as applicable.....	39,908,400	

- (3) 10.10.011.010–School Apportionments, for Supplemental Instruction, Low STAR or at-risk, Grades 2-6, for the purposes of Section 37252.8 of the Education Code, as applicable..... 15,534,000
- (4) 10.10.011.011–School Apportionments, for Supplemental Instruction, core academic, Grades K-12, for the purposes of Section 37253 of the Education Code.... 70,766,000

Provisions:

- 1. Notwithstanding any other provision of law, for the 2005-06 fiscal year the Superintendent of Public Instruction shall allocate a minimum of \$7,871 for supplemental summer school programs in each school district for which the prior fiscal year enrollment was less than 500 and that, in the 2005-06 fiscal year, offers at least 1,500 hours of supplemental summer school instruction. A small school district, as described above, that offers less than 1,500 hours of supplemental summer school offerings shall receive a proportionate reduction in its allocation. For the purpose of this provision, supplemental summer school programs shall be defined as programs authorized under paragraph (2) of subdivision (f) of Section 42239 of the Education Code as it read on July 1, 1999.
- 2. Notwithstanding any other provision of law, for the 2005-06 fiscal year, the maximum reimbursement to a school district or charter school for the program listed in Schedule (4) shall not exceed 5 percent of the district or charter school’s enrollment multiplied by 120 hours, multiplied by the hourly rate for the 2005-06 fiscal year.
- 4. Notwithstanding any other provision of law, the rate of reimbursement shall be \$3.73 per hour of supplemental instruction.
- 5. Notwithstanding any other provision of law, if the funds in this item are insufficient to fund otherwise valid claims, the superintendent shall adjust the rates to conform to available funds.
- 6. Of the funds appropriated in this item, \$11,826,428 is for the purpose of providing a cost-of-living adjustment of 4.23 percent. Additionally, \$1,915,222 is for the purpose of providing for increases in average

daily attendance at a rate of 0.69 percent for supplemental instruction and remedial programs, in lieu of the amount that would otherwise be provided pursuant to any other provision of law.

- 7.5. The funding appropriated in this item shall be considered offsetting revenues within the meaning of subdivision (e) of Section 17556 of the Government Code for any reimbursable mandated cost claim for implementing Section 37252.2 of the Education Code. Local educational agencies accepting funding from this item shall reduce their estimated and actual mandate reimbursement claims by the amount of funding provided to them from this item.
8. Notwithstanding any other provision of law, an additional \$90,117,000 in expenditures for this item has been deferred until the 2006-07 fiscal year.

SEC. 8. Item 6110-107-0001 of Section 2.00 of Chapter 38 of the statutes of 2005 is amended to read:

6110-107-0001—For local assistance, Department of Education (Proposition 98), Program 10.10-County Offices of Education Fiscal Oversight.....	10,549,000
Schedule:	
(1) 10.10.002-COE Oversight.....	5,268,000
(2) 10.10.005-FCMAT.....	2,729,000
(3) 10.10.012-FCMAT: CSIS.....	250,000
(4) 10.10.013-Audit Appeal Panel.....	55,000
(5) 10.10.015-Interim Reporting.....	1,050,000
(6) 10.10.016-Staff Development.....	1,197,000
Provisions:	
1. The funds appropriated in Schedule (1) of this item are for the purposes provided in paragraph (1) of subdivision (a) of Section 29 of Chapter 1213 of the Statutes of 1991 and subsequent legislation.	
2. Funds contained in Schedule (1) may be used for activities, including, but not limited to, conducting reviews, examinations, and audits of districts and providing written notifications of the results at least annually by county offices of education on the fiscal solvency of the districts with disapproved budgets, qualified or negative certifications, or, pursuant to Section 42127.6 of the Education Code, districts facing fiscal uncertainty. Written notifications of the results of these reviews, audits, and examinations shall be provided at least annually to the district governing board, the Superintendent of Public Instruction, the Director of Finance, and the Office of the Secretary for Education.	
3.5. The funding appropriated in this item shall be considered offsetting revenues within the meaning of subdivision (e) of Section 17556 of the Government Code for any reimbursable mandated cost claim for school district and county office of education fiscal accountability reporting. Local educational agencies accepting funding from this item shall reduce their estimated and actual mandate reimbursement claims by the amount of funding provided to them from this item.	
4. Of the funds appropriated in Schedule (2) of this item:	

- (a) \$2,061,000 shall be allocated by the Controller directly to a county office of education, selected pursuant to subdivision (a) of Section 42127.8 of the Education Code to oversee Fiscal Crisis and Management Assistance Team (FCMAT) responsibilities with respect to these funds, to meet the costs of participation under Section 42127.8 of the Education Code.
 - (b) \$250,000 shall be available to develop and implement the activities of regional teams of fiscal experts to assist districts in fiscal distress.
 - (c) \$418,000 shall be allocated to FCMAT for the purpose of providing, through computer technology, financial and demographic information that is interactive and immediately accessible to all local education agencies to assist them in their decision-making process. To ensure a completely integrated system, this computer information should be developed in collaboration with the State Department of Education, and should be compatible with the hardware and software of the State Department of Education, so that this information may also assist state-level policymakers in making comparable standardized financial information available to the local education agencies and the public.
- 5. Of the funds appropriated in Schedule (3) of this item, \$250,000 shall be available to the FCMAT to pay for project management services for CSIS. These funds shall be used to supplement and not supplant other CSIS funds available for project management services.
 - 6. Of the funds appropriated in Schedule (5) of this item, \$150,000 shall be available for no more than a 25 percent state reimbursement to county offices of education for fiscal oversight of school districts with audit exceptions, districts with qualified or negative interim reports, districts that may be unable to meet financial obligations for the current or subsequent fiscal years, or districts with disapproved budgets.
 - 7. Up to \$900,000 of the funds appropriated in Schedule (5) may also be used to fully reimburse county office of education activities for extraordinary costs of audits, examinations, or reviews of district budgets in cases where fraud, misappropriation of funds or other illegal

fiscal practices require COE review, pursuant to Section 2 of Chapter 620 of the Statutes of 2001. The State Board of Education may request any county superintendent of schools to initiate such an audit, examination, or review for any charter school or all-charter district for which the board has oversight responsibility. Allocation of the funds shall be administered by FC-MAT on a reimbursement basis. All reimbursements shall be subject to the approval of both the Department of Finance and the State Department of Education.

8. The amount appropriated in Schedule (5) of this item shall remain available for expenditure for the 2005-06 and 2006-07 fiscal years. Any unexpended balance as of September 1, 2006, shall be available through July 30, 2007, for the following, in order of descending priority:
 - (a) Any review or audit jointly requested by the State Department of Education and the Department of Finance, to be conducted by a county superintendent of schools in cases where fraud, misappropriation of funds, or other illegal fiscal practices are suspected.
 - (b) Staff development pursuant to Provision 11.
 - (c) Regional assistance teams developed pursuant to Provision 4(b) of this item.
9. Notwithstanding Section 26.00, the funds appropriated in this item shall be allocated in accordance with the above schedule unless a revision to the allocations contained herein has been approved by the Department of Finance. The Department of Finance may not authorize any such revision sooner than 30 days after notification in writing of the necessity therefor to the chairperson of the committee in each house that considers appropriations and the Chairperson of the Joint Legislative Budget Committee, or not sooner than whatever lesser time the chairperson of the joint committee, or his or her designee, may in each instance determine.
10. The funds appropriated in Schedule (4) of this item are for the additional staff and resources needed for FC-MAT to ensure that timely resolution of audit findings is achieved pursuant to the directives of Education Code Section 41344.

11. Of the funds appropriated in Schedule (6) of this item, \$854,000 is for the purpose of providing staff development to local education agency school finance and business personnel, as provided in Section 42127.8 of the Education Code. The funds appropriated in Schedule (6) shall be allocated by the Controller directly to a county office of education selected pursuant to subdivision (a) of Section 42127.8 of the Education Code to oversee FCMAT's responsibilities with respect to these funds. \$343,000 of the funds appropriated in Schedule (6) is for the purpose of providing training that shall be developed and facilitated pursuant to Section 42127.8 of the Education Code to increase school district and school-level capacity to implement and manage site-based budgeting and decisionmaking governance structures.
12. Notwithstanding any other provision of law, funds appropriated in Schedules (1), (2), (4), (5), and (6), of this item to a county office of education, selected pursuant to subdivision (a) of Section 42127.8 of the Education Code to oversee FCMAT responsibilities, shall be allocated by the State Controller directly to that county office of education as soon as possible but no later than 60 days after the enactment of the Budget Act. Funds appropriated in this item shall not be subject to grant allocation or review processes on the part of the State Department of Education nor the Superintendent of Public Instruction. The county office of education that receives these funds shall annually provide a report detailing past year expenditures, identifying the local education agencies (LEA) assisted with these funds and a summary of progress for each. Additionally, the report shall identify a plan for the proposed uses of the allocations in this item, identifying estimated expenditures for each LEA anticipated to be served. This report shall be submitted to the Department of Education and to the Department of Finance by October 1, 2005.

SEC. 9. Item 6110-156-0890 of Section 2.00 of Chapter 38 of the Statutes of 2005 is amended to read:

6110-156-0890—For local assistance, Department of Education, Program 10.50.010.001-Adult Education, payable from the Federal Trust..... 79,212,000

Provisions:

1. Under any grant awarded by the State Department of Education under this item to a qualifying community-based organization to provide adult basic education in English as a Second Language and English as a Second Language-Citizenship classes, the department shall make an initial payment to the organization of 25 percent of the amount of the grant. In order to qualify for an advance payment, a community-based organization shall submit an expenditure plan and shall guarantee that appropriate standards of educational quality and fiscal accountability are maintained. In addition, reimbursement of claims shall be distributed on a quarterly basis. The State Department of Education shall withhold 10 percent of the final payment of a grant as described in this provision until all claims for that community-based organization have been submitted for final payment.
2. (a) Notwithstanding any other provision of law, all nonlocal educational agencies (Non-LEA) receiving greater than \$300,000 pursuant to this item shall submit an annual organizational audit, as specified, to the State Department of Education, Office of External Audits.

All audits shall be performed by one of the following: (1) a certified public accountant possessing a valid license to practice within California; (2) a member of the State Department of Education’s staff of auditors; or (3) in-house auditors, if the entity receiving funds pursuant to this item is a public agency, and if the public agency has internal staff that performs auditing functions and meets the tests of independence found in Standards for Audits of Governmental Organization, Programs, Activities and Functions issued by the Comptroller General of the United States.

The audit shall be in accordance with State Department of Education audit guidelines and Office of Management and Budget, Circular No. A-133, Audits of Institutions of Higher Education and Other Non-Profit Institutions.

Non-LEA entities receiving funds pursuant to this item shall submit the annual audit no later than six months from the end of the agency fiscal year. If, for any reason, the contract is terminated during the contract period, the auditor shall cover the period from the beginning of the contract through the date of termination.

Non-LEA entities receiving funds pursuant to this item shall be held liable for all State Department of Education costs incurred

in obtaining an independent audit if the contractor fails to produce or submit an acceptable audit.

- (b) Notwithstanding any other provision of law, the State Department of Education shall annually submit to the Governor, Joint Legislative Budget Committee, and Joint Legislative Audit Committee limited scope audit reports of all subrecipients it is responsible for monitoring that receive between \$25,000 and \$300,000 of federal awards, and that do not have an organization-wide audit performed. These limited scope audits shall be conducted in accordance with the State Department of Education audit guidelines and Office of Management and Budget, Circular No. A-133. The State Department of Education may charge audit costs to applicable federal awards, as authorized by OMB, Circular No. A-133 Section 230(b)(2).

The limited scope audits shall include agreed-upon procedures engagements conducted in accordance with either AICPA generally accepted auditing standards or attestation standards, and address one or more of the following types of compliance requirements: allowed or unallowed activities; allowable costs and cost principles; eligibility; matching; level of effort; earmarking; and reporting.

The State Department of Education shall contract for the limited scope audits with a certified public accountant possessing a valid license to practice within the state or with an independent auditor.

- 3. On or before March 1, 2006, the State Department of Education shall report to the appropriate subcommittees of the Assembly Budget Committee and the Senate Budget and Fiscal Review Committee on the following aspects of Title II of the federal Workforce Investment Act: (a) the makeup of those adult education providers that applied for competitive grants under Title II and those that obtained grants, by size, geographic location, and type (school districts, community colleges, community-based organizations, other local entities); (b) the extent to which participating programs were able to meet planned performance targets; and (c) a breakdown of the types of courses (ESL, ESL-Citizenship, ABE, ASE) included in the performance targets of participating agencies. It is the intent of the Legislature that the Legislature and State Department of Education utilize the information provided pursuant to this provision to (a) evaluate whether any changes need to be made to improve the implementation of the accountability-based funding system under Title II and (b) evaluate the feasibility of any future expansion of the accountability-based funding system using state funds.

- 4. The State Department of Education shall continue to ensure that outcome measures for Department of Mental Health and Department of Developmental Services clients are set at a level where these clients will continue to be eligible for adult education services in the 2005-06 fiscal year and beyond to the full extent authorized under federal law. The State Department of Education shall also consult with the Department of Mental Health, Department of Developmental Services, and Department of Finance for this purpose.
- 5. Of the funds appropriated in this item, \$3,625,000 is a one-time carry-over from prior years.

SEC. 10. Item 6110-161-0001 of Section 2.00 of Chapter 38 of the Statutes of 2005 is amended to read:

6110-161-0001—For local assistance, Department of Education (Proposition 98), Program 10.60-Special Education Programs for Exceptional Children..... 2,890,022,000
Schedule:

- (1) 10.60.050.003-Special education instruction..... 2,826,428,000
- (2) 10.60.050.080-Early Education Program for Individuals with Exceptional Needs..... 77,989,000
- (3) Reimbursements for Early Education Program, Part C..... -14,395,000

Provisions:

- 1. Funds appropriated by this item are for transfer by the Controller to Section A of the State School Fund, in lieu of the amount that otherwise would be appropriated for transfer from the General Fund in the State Treasury to Section A of the State School Fund for the 2005-06 fiscal year pursuant to Sections 14002 and 41301 of the Education Code, for apportionment pursuant to Part 30 (commencing with Section 56000) of the Education Code, superseding all prior law.
- 2. Of the funds appropriated in Schedule (1) of this item, \$11,448,000, plus any COLA, shall be available for the purchase, repair, and inventory maintenance of specialized books, materials, and equipment for pupils with low-incidence disabilities, as defined in Section 56026.5 of the Education Code.
- 3. Of the funds appropriated in Schedule (1) of this item, \$8,842,000, plus any COLA, shall be available for the

purposes of vocational training and job placement for special education pupils through Project Workability I pursuant to Article 3 (commencing with Section 56470) of Chapter 4.5 of Part 30 of the Education Code. As a condition of receiving these funds, each local educational agency shall certify that the amount of nonfederal resources, exclusive of funds received pursuant to this provision, devoted to the provision of vocational education for special education pupils shall be maintained at or above the level provided in the 1984-85 fiscal year. The Superintendent of Public Instruction may waive this requirement for local educational agencies that demonstrate that the requirement would impose a severe hardship.

4. Of the funds appropriated in Schedule (1) of this item, \$4,612,000, plus any COLA, shall be available for regional occupational centers and programs that serve pupils having disabilities, and \$77,055,000, plus any COLA, shall be available for regionalized program specialist services, \$1,807,000, plus any COLA, for small special education local plan areas (SELPAs) pursuant to Section 56836.24 of the Education Code.
5. Of the funds appropriated in Schedule (1), \$1,000,000 is provided for extraordinary costs associated with single placements in nonpublic, nonsectarian schools, pursuant to Section 56836.21 of the Education Code.
6. Of the funds appropriated in Schedule (1), a total of \$178,180,000, plus any COLA, is available to fund the out-of-home care funding formula authorized in Chapter 914 of the Statutes of 2004.
7. Of the amount appropriated in Schedule (2) of this item, \$514,000, plus any COLA, shall be available for infant program growth units (ages birth-two years). Funds for infant units shall be allocated pursuant to Provision 11 of this item, with the following average number of pupils per unit:
 - (a) For special classes and centers—16.
 - (b) For resource specialist programs—24.
 - (c) For designated instructional services—16.
8. Notwithstanding any other provision of law, early education programs for infants and toddlers shall be offered for 200 days. Funds appropriated in Schedule (2) shall be allocated by the State Department of Education

for the 2005-06 fiscal year to those programs receiving allocations for instructional units pursuant to Section 56432 of the Education Code for the Early Education Program for Individuals with Exceptional Needs operated pursuant to Chapter 4.4 (commencing with Section 56425) of Part 30 of the Education Code, based on computing 200-day entitlements. Notwithstanding any other provision of law, funds in Schedule (2) shall be used only for the purposes specified in Provisions 10 and 11 of this item.

9. Notwithstanding any other provision of law, state funds appropriated in Schedule (2) of this item in excess of the amount necessary to fund the deficated entitlements pursuant to Section 56432 of the Education Code and Provision 10 of this item shall be available for allocation by the State Department of Education to local educational agencies for the operation of programs serving solely low-incidence infants and toddlers pursuant to Title 14 (commencing with Section 95000) of the Government Code. These funds shall be allocated to each local educational agency for each solely low-incidence child through age two in excess of the number of solely low-incidence children through age two served by the local educational agency during the 1992-93 fiscal year and reported on the April 1993 pupil count. These funds shall only be allocated if the amount of reimbursement received from the State Department of Developmental Services is insufficient to fully fund the costs of operating the Early Intervention Program, as authorized by Title 14 (commencing with Section 95000) of the Government Code.
10. The State Department of Education, through coordination with the SELPAs, shall ensure local interagency coordination and collaboration in the provision of early intervention services, including local training activities, child-find activities, public awareness, and the family resource center activities.
11. Funds appropriated in this item, unless otherwise specified, are available for the sole purpose of funding 2005-06 special education program costs and shall not be used to fund any prior year adjustments, claims or costs.

12. Of the amount provided in Schedule (1), \$162,000, plus any COLA, shall be available to fully fund the declining enrollment of necessary small SELPAs pursuant to Chapter 551 of the Statutes of 2001.
13. Pursuant to Section 56427 of the Education Code, of the funds appropriated in Schedule (1) of this item, up to \$2,324,000 may be used to provide funding for infant programs, and may be used for those programs that do not qualify for funding pursuant to Section 56432 of the Education Code.
14. Of the funds appropriated in Schedule (1) of this item, \$29,478,000 shall be allocated to local educational agencies for the purposes of Project Workability I.
15. Of the funds appropriated in Schedule (1) of this item, \$1,700,000 shall be used to provide specialized services to pupils with low-incidence disabilities, as defined in Section 56026.5 of the Education Code.
16. Of the funds appropriated in Schedule (1) of this item, up to \$1,117,000 shall be used for a personnel development program. This program shall include state-sponsored staff development for special education personnel to have the necessary content knowledge and skills to serve children with disabilities. This funding may include training and services targeting special education teachers and related service personnel that teach core academic or multiple subjects to meet the applicable special education requirements of the Individuals with Disabilities Education Improvement Act of 2004.
17. Of the funds appropriated in Schedule (1) of this item, up to \$200,000 shall be used for research and training in cross-cultural assessments.
18. Of the amount specified in Schedule (1) of this item, \$31,000,000 shall be used to provide mental health services required by an individual education plan pursuant to the federal Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400 et seq.) and pursuant to Chapter 493 of the Statutes of 2004.
19. Of the amount provided in Schedule (1), \$121,199,000 is provided for a COLA at a rate of 4.23 percent.
20. Of the amount provided in Schedule (2), \$3,165,000 is provided for a COLA at a rate of 4.23 percent.
21. Of the amount specified in Schedule (1) of this item, \$58,377,000 shall be allocated to each SELPA based

upon an equal amount per ADA and added to each SELPA's base funding as determined pursuant to Chapter 854, Statutes of 1997, consistent with paragraphs (1) to (4), inclusive, of subdivision (b) of Section 56836.158 of the Education Code.

22. Of the amount appropriated in this item, \$1,480,000 is available for the state's share of costs in the settlement of *Emma C. v. Delaine Eastin, et al.* (N.D. Cal. No. C96-4179TEH). The State Department of Education shall report by January 1, 2006, to the fiscal committees of both houses of the Legislature, the Department of Finance, and the Legislative Analyst's Office on the planned use of the additional special education funds provided to the Ravenswood Elementary School District pursuant to this settlement. The report shall also provide the State Department of Education's best estimate of when this supplemental funding will no longer be required by the court. The State Department of Education shall comply with the requirements of Section 948 of the Government Code in any further request for funds to satisfy this settlement.
23. Of the funds appropriated in this item, \$2,500,000 shall be allocated directly to special education local plan areas for a personnel development program that meets the highly qualified teacher requirements and ensures that all personnel necessary to carry out this part are appropriately and adequately prepared, subject to the requirements of paragraph (14) of subdivision (a) of Section 612 of the Individuals with Disabilities Education Act of 2004 (IDEA), and Section 2122 of the Elementary and Secondary Education Act of 1965. The local in-service programs shall include a parent training component and may include a staff training component, and may include a special education teacher component for special education service personnel and paraprofessionals, consistent with state certification and licensing requirements. Use of these funds shall be described in the local plans. These funds may be used to provide training in alternative dispute resolution and the local mediation of disputes. All programs are to include evaluation components.

24. Of the amount appropriated in Schedule (1), \$52,610,000 is available for the 2005-06 fiscal year in accordance with both of the following:
- (a) Any amount needed to augment the amounts appropriated in Schedules (1) or (2) to ensure full funding for the 2005–06 fiscal year.
 - (b) Once the amount needed to satisfy (a) is determined, the remaining funds shall be allocated on a one-time basis to SELPAs. These funds shall be distributed based on the average daily attendance of each SELPA consistent with paragraphs (1) to (4), inclusive, of subdivision (b) of Section 56836.158 of the Education Code. Local educational agencies shall use these funds for one-time purposes, including, but not limited to, the following: to assist students with disabilities pass the California High School Exit Examination, instructional materials, or other one-time expenditures for individuals with exceptional needs. First priority for the use of these funds shall be to provide services to pupils with disabilities who are required to pass the California High School Exit Examination in order to receive a diploma in 2006 and who have failed one or both parts of that examination.

SEC. 11. Item 6110-161-0890 of Section 2.00 of Chapter 38 of Statutes of 2005 is amended to read:

6110-161-0890—For local assistance, Department of Education, payable from the Federal Trust Fund, Program 10.60-Special Education Programs for Exceptional Children.....	1,149,044,000
Schedule:	
(1) 10.60.050.012-Local Agency Entitlements, IDEA Special Education.....	970,398,000
(2) 10.60.050.013-State Agency Entitlements, IDEA Special Education.....	2,152,000
(3) 10.60.050.015-IDEA, Local Entitlements, Preschool Program.....	59,240,000
(4) 10.60.050.021-IDEA, State Level Activities.....	73,220,000

- (5) 10.60.050.030-P.L. 99-457, Preschool Grant Program..... 39,161,000
- (6) 10.60.050.031-IDEA, State Improvement Grant, Special Education..... 2,079,000
- (7) 10.60.050.032-IDEA, Family Empowerment Centers..... 2,794,000

Provisions:

1. If the funds for Part B of the federal Individuals with Disabilities Education Act that are actually received by the state exceed \$1,132,573,000, at least 95 percent of the funds received in excess of that amount shall be allocated for local entitlements and to state agencies with approved local plans. Up to 5 percent of the amount received in excess of \$1,132,573,000 may be used for state administrative expenses upon approval of the Department of Finance. If the funds for Part B of the federal Individuals with Disabilities Education Act that are actually received by the state are less than \$1,132,573,000, the reduction shall be taken in other state level activities.
2. The funds appropriated in Schedule (2) shall be distributed to state-operated programs serving disabled children from 3 to 21 years of age, inclusive. In accordance with federal law, the funds appropriated in Schedules (1) and (2) shall be distributed to local and state agencies on the basis of the federal Individuals with Disabilities Education Act permanent formula.
4. Of the funds appropriated in Schedule (4) of this item, up to \$300,000 shall be used to develop and test procedures, materials, and training for alternative dispute resolution in special education.
5. Of the funds appropriated by Schedule (5) for the Preschool Grant Program, \$1,228,000 shall be used for in-service training and shall include a parent training component and may, in addition, include a staff training program. These funds may be used to provide training in alternative dispute resolution and the local mediation of disputes. This program shall include state-sponsored and local components.
6. Of the funds appropriated in this item, \$1,420,000 is available for local assistance grants for the Quality Assurance and Focused Monitoring Pilot Program to monitor local educational agency compliance with state and federal laws and regulations governing special education. This funding level is to be used to continue the facilitated reviews and, to the extent consistent with the key performance indicators developed by the State Department of Education, these activities focus on local educational agencies identified by the United States Department of Education's Office of Special Education Programs.

7. The funds appropriated in Schedule (7) shall be used for the purposes of Family Empowerment Centers on Disabilities pursuant to Chapter 690 of the Statutes of 2001.
8. Notwithstanding the notification requirements listed in subdivision (d) of Section 26.00, the Department of Finance is authorized to approve intraschedule transfers of funds within this item submitted by the State Department of Education for the purposes of ensuring that special education funding provided in this item is appropriated in accordance with the statutory funding formula required by federal IDEA and the special education funding formula required pursuant to Chapter 7.2 (commencing with Section 56836) of Part 30 of the Education Code, without waiting 30 days, but shall provide a notice to the Legislature each time a transfer occurs.
9. Of the funds appropriated in Schedule (4) of this item, \$69,000,000 shall be used exclusively to support mental health services that are provided during the 2005-06 fiscal year by county mental health agencies pursuant to Chapter 26.5 (commencing with Section 7570) of Division 7 of the Government Code and that are included within an individualized education program pursuant to the federal Individuals with Disabilities Education Act. Each county office of education receiving these funds shall contract, on behalf of special education local planning areas in their county, with the county mental health agency to provide specified mental health services. This funding shall be considered offsetting revenues within the meaning of subdivision (e) of Section 17556 of the Government Code for any reimbursable mandated cost claim for provision of the mental health services provided in 2005-06. Amounts allocated to each county office of education shall reflect the share of the \$69,000,000 in federal special education funds provided to that county in 2004-05 for mental health services provided pursuant to Chapter 26.5 (commencing with Section 7570) of Division 7 of the Government Code.
10. Of the amount appropriated in Schedule (1), \$58,377,000 represents the increase in the local assistance portion of the federal grant in 2005-06. These funds have been passed through to be used by each SELPA for discretionary purposes consistent with the federal Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400 et seq.).

SEC. 12. Item 6110-182-0001 of Section 2.00 of Chapter 38 of the Statutes of 2005 is repealed.

SEC. 13. Item 6110-228-0001 of Section 2.00 of Chapter 38 of the Statutes of 2005 is amended to read:

6110-228-0001—For local assistance, Department of Education (Proposition 98), for transfer to Section A of the State School Fund for allocation by the Controller, School Safety.....	52,537,000
Schedule:	
(1) 20.60.020.011-School Safety Block	
Grants.....	52,537,000

Provisions:

1. Of the funds appropriated in Schedule (1), \$52,537,000 is available to fund block grants for middle and junior high schools and high schools that serve grades 8 to 12, inclusive, pursuant to Article 3.6 (commencing with Section 32228) and Article 3.8 (commencing with Section 32239.5) of Chapter 2 of Part 19 of the Education Code. An additional \$38,720,000 in expenditures for this purpose has been deferred to the 2006-07 fiscal year.
2. Of the \$38,720,000 deferred from this program, \$1 million shall be made available for county offices of education pursuant to Article 3.6 (commencing with Section 32228) of Chapter 2 of Part 19 of the Education Code.
3. Of the funds appropriated in this item, \$345,000 is for the purpose of providing an adjustment for increases in average daily attendance at a rate of 0.69 percent. Additionally, \$2,132,000 is for the purpose of providing a cost-of-living adjustment at a rate of 4.23 percent.
4. The funds appropriated in this item shall be considered offsetting revenues within the meaning of subdivision (e) of Section 17556 of the Government Code for any reimbursable mandated cost claim for the comprehensive school safety plans activities of the emergency procedures mandate pursuant to Article 5 (commencing with Section 32280) of Chapter 2.5 of Part 19 of the Education Code. Local education agencies accepting funding from this item shall reduce their estimated and actual mandate reimbursement claims by the amount of funding provided to them from this item.

SEC. 14. Item 6110-243-0001 of Section 2.00 of Chapter 38 of the Statutes of 2005 is amended to read:

6110-243-0001—For local assistance, Department of Education (Proposition 98), for transfer by the Controller to Section A of the State School Fund for allocation by the Superintendent of Public Instruction for the unscheduled Pupil Retention Block Grant pursuant to Article 2 of Chapter 3.2 (commencing with Section 41505) of the Education Code.....	86,957,000

Provisions:

- 1. Of the funds appropriated in this item, \$571,778 is for the purpose of providing an adjustment for increases in average daily attendance at a rate of 0.69 percent. Additionally, \$3,529,562 is for the purpose of providing a cost-of-living adjustment at a rate of 4.23 percent.

SEC. 15. Item 6110-493 is added to Section 2.00 of Chapter 38 of the Statutes of 2005, to read:

6110-493—Reappropriation (Proposition 98), Department of Education.

Notwithstanding any other provision of law, the following specified balances are reappropriated from the following citations, for the purposes specified, and shall be available for encumbrance and expenditure until June 30, 2006:

Provisions:

- (1) \$22,800,000, or the lesser or greater amount necessary to meet the federal maintenance-of-effort requirements of the 2003-04 fiscal year, of the remaining General Fund balance of the amount appropriated in Item 6110-161-0001 of Section 2.00 of the Budget Act of 2003 (Ch. 157, Stats. 2003), shall be allocated on a one-time basis to SELPAs pursuant to paragraphs (1) to (4), inclusive, of subdivision (b) of Section 56836.158 of the Education Code.
- (2) \$3,200,000 of the remaining General Fund balance of the amount appropriated in Item 6110-161-0001 of Section 2.00 of the Budget Act of 2003 (Ch. 157, Stats. 2003), shall be available to cover the cost of legislation making technical adjustments to the types of State Department of Social Services licensed facilities cited in the out-of-home care funding formula authorized in Chapter 914 of the Statutes of 2004.

SEC. 16. Item 8860-001-0001 of Section 2.00 of Chapter 38 of the Statutes of 2005 is amended to read:

8860-001-0001—For support of Department of Finance	33,392,000
Schedule:	
(1) 10-Annual Financial Plan.....	19,139,000
(2) 20-Program and Information System Assessments.....	14,211,000
(3) 30-Supportive Data.....	14,284,000
(4) 40.01-Administration.....	5,742,000
(5) 40.02-Distributed Administration....	-5,742,000
(6) 97.20.001-Unallocated Reduction....	-520,000

(7) Reimbursements..... -13,722,000
Provisions:

1. The funds appropriated in this item for CALSTARS shall be transferred by the Controller, upon order of the Director of Finance, or made available by the Department of Finance as a reimbursement, to other items and departments for CALSTARS-related activities by the Department of Finance.
2. The funds appropriated in this act for purposes of CALSTARS-related data processing costs may be transferred between any items in this act by the Controller upon order of the Director of Finance. Any funds so transferred shall be used only for support of CALSTARS-related data processing costs incurred.
3. Notwithstanding any other provision of law, the Director of Finance may authorize a loan from the General Fund to the Department of Finance for the purpose of meeting operational cashflow obligations for the 2005-06 fiscal year. The loan shall not exceed the estimated amount of uncollected reimbursements for the final quarter of the fiscal year.
4. From the funds appropriated in Schedule 3 for the purpose of evaluating and continuing development and enhancement of the Governor’s Budget Presentation System (GBPS), the following provisions apply:
 - (a) From time to time, but no later than December 1 of each year, the Department of Finance shall update the Legislature on anticipated changes to the GBPS. In addition, the Department of Finance shall (1) no later than the approximate same time the Governor’s Budget is formally presented in electronic or any other Web-based form, provide printed and bound hard copies of the Governor’s Budget and Governor’s Budget Summary as follows: to the Legislative Analyst Office—45 copies, the Office of the Legislative Counsel—six copies, offices of the Members of the Legislature—120 copies, and the fiscal committees of the Legislature—60 copies, and (2) no later than four weeks after the Governor’s Budget is formally presented in electronic or any other Web-based form, 135 printed and bound hard copies of the Governor’s Budget and Governor’s Budget

Summary shall be provided as follows: two copies to the State Library, to ensure that the State Librarian maintains at least one public copy and one for the permanent research collections, and 133 copies: one copy to each depository public library in the state. Additional copies, either bound or unbound, shall be available for purchase by the public based on the cost of producing the documents requested.

- (b) Notwithstanding any other provision of law, the Department of Finance may amend its existing contract with the Web development firm to augment and continue consulting services until June 30, 2006, for the purpose of providing continuity of services and avoiding delays in producing the Governor's Budget.
- 6. Expenditure of funds in this item for the Budget Information System (BIS) is contingent upon submission of an approved Feasibility Study Report for the BIS project to the Legislature and a 45-day review period.
- 7. The Department of Finance shall evaluate the current mandates reimbursement process and provide alternatives and suggest improvements to the process to the chairperson of the fiscal committees of each house of the Legislature and to the Chairperson of the Joint Legislative Budget Committee not later than March 1, 2006.

SEC. 17. Section 12.75 of Chapter 38 of the Statutes of 2005 is amended to read:

Sec. 12.75. The Superintendent of Public Instruction shall reduce by \$1,110,000 funding for basic aid school districts from the Proposition 98 categorical funds appropriated in this act that would otherwise be allocated to basic aid school districts, in accordance with legislation that takes effect on or before January 1, 2006.

SEC. 18. Section 20 of Chapter 39 of the Statutes of 2005 is amended to read:

Sec. 20. Item 6110-485 of Section 2.00 of the Budget Act of 2005 is amended to read:

6110-485—Reappropriation (Proposition 98), Department of Education. The sum of \$346,497,000 is hereby reappro-

priated from the Proposition 98 Reversion Account, for the following purposes:

0001—General Fund

- (1) \$196,024,000 to the School Facilities Program for the purpose of funding the School Facilities Emergency Repair Account as required by Chapter 899 of the Statutes of 2004.
- (2) \$10,000,000 to the State Department of Education for the purpose of funding CalWORKs Stage 3 child care.
- (3) \$6,385,000 to the State Department of Education, for payment of Sunnyvale Desegregation claims and interest owed through the 1991-92 fiscal year. The funding shall not be provided for payment of claims and interest and shall be reverted to the General Fund if an appropriation is included in a claims bill for this purpose during the 2005-06 Regular Session.
- (4) \$1,050,000 on a one-time basis to the State Department of Education for the purpose of funding a pilot program to provide training for School Business Officers.
- (5) \$354,000 to the State Department of Education, for transfer by the Controller to Section A of the State School Fund, for payment of prior year child nutrition claims of \$335,000 in 2003-04, \$17,000 in 2000-01, and \$2,000 in 1999-00 fiscal years.
- (6) \$2,227,000, on a one-time basis, to the State Department of Education to cover startup costs associated with the new California English Language Development Test contract.
- (7) \$9,000,000 to the State Department of Education, on a one-time basis, for the Charter School Facility Grant Program.
- (8) \$53,757,000 to the Controller to pay for prior year state obligations for K-12 mandate claims and interest.
- (9) \$18,200,000 on a one-time basis to the State Department of Education for providing fruits and vegetables to schools pursuant to legislation enacted during the 2005-06 Regular Session.
- (10) Up to \$49,500,000 to the Superintendent of Public Instruction for purposes of the allocations specified pursuant to Provision 3.

Provisions:

1. The funds specified in Schedule (7) shall be used to provide grants to charter schools that operate in low-income attendance areas for facilities-related expenses pursuant to Section 3 of Chapter 892 of the Statutes of 2001. No charter school receiving funds under this program shall receive funding in excess of 75 percent of annual lease costs through this program or any other source of funding provided in this or any other act.
2. The funds specified in Schedule (8) shall go to the Controller, who shall use the funds to pay for the oldest claims of those no longer subject to audit pursuant to subdivision (a) of Section 17558.5 of the Government Code, including accrued interest. No payments shall be made from the funds on any claims for the Standardized Testing and Reporting (STAR) Program, schoolsite councils, Brown Act reform, School Bus Safety II, or the removal of chemicals.
3. The governing board of a school district that has a school or schools that are ranked in deciles 1 to 3, inclusive, of the 2004 base Academic Performance Index, as defined in Section 52052 of the Education Code, may apply for funding specified in Schedule (10) for one or more such qualifying schools.
 - (a) As a condition of receipt of funds, the district governing board shall adopt a plan for use of the funds within the qualifying schools. The plan must be discussed and adopted at a regularly scheduled governing board meeting.
 - (b) Each applicant district shall receive fifty dollars (\$50) per pupil based upon the number of pupils in qualifying schools within the district.
 - (c) The funds shall be used for the purposes of improving the educational culture and environment at those schools, which may include, but are not limited to, the following specific purposes:
 - (1) Assuring a safe, clean school environment for teaching and learning.
 - (2) Providing support services for students, and teachers.
 - (3) Activities, including differential compensation, focused on the recruitment and retention at those

schools of teachers who meet the definition of a highly qualified teacher under the No Child Left Behind Act of 2001 (20 U.S.C. Sec. 6301 et seq.).

- (4) Activities, including differential compensation, focused on the recruitment and retention at those schools of highly skilled principals.
- (5) Small group instruction.
- (6) Providing time for teachers and principals to collaborate regarding improving academic outcomes for students.
- (d) To the extent that funding is insufficient to fund all eligible applicants, the amount provided shall be prorated to conform to available funds.
- (e) Of the funds specified in Schedule (10), \$3,000,000 shall be available for allocation to a County Office of Education on a competitive basis for the purpose of contracting, on a competitive basis, with an outside entity for the purpose of recruiting highly qualified teachers to qualifying schools in deciles 1 to 3, inclusive, based on the 2004 Academic Performance Index.

SEC. 19. Section 21 of Chapter 39 of the Statutes of 2005 is amended to read:

Sec. 21. Item 6110-495 of Section 2.00 of the Budget Act of 2005 is amended to read:

6110-495—Reversion, Department of Education, Proposition 98. The following amounts shall be reverted to the Proposition 98 Reversion Account by the State Controller within 60 days of enactment of this act:

0001—General Fund

- (1) \$144,000 or whatever greater or lesser amount reflects the unexpended funds from Item 6110-123-0001, Budget Act of 2003 (Ch. 157, Stats. 2003).
- (2) \$1,812,000 or whatever lesser or greater amount reflects unexpended funds from Item 6110-126-0001, Budget Act of 2002 (Ch. 379, Stats. 2002).
- (5) \$50,000 or whatever lesser or greater amount reflects unexpended funds from Item 6110-177-0001, Budget Act of 2003 (Ch. 157, Stats. 2003).

- (6) \$66,000 or whatever lesser or greater amount reflects the unexpended funds from Item 6110-191-0001, Budget Act of 2002 (Ch. 379, Stats. 2002).
- (7) \$127,000 or whatever lesser or greater amount reflects the unexpended funds from Item 6110-191-0001, Budget Act of 2003 (Ch. 157, Stats. 2003).
- (8) \$545,000 or whatever lesser or greater amount reflects the unexpended funds from Item 6110-195-0001, Budget Act of 2003 (Ch. 157, Stats. 2003).
- (9) \$24,396,000 or whatever the greater or lesser amount reflects the unencumbered balance of the amount appropriated for child care and development programs in Item 6110-196-0001, Budget Act of 2003 (Ch. 157, Stats. 2003).
- (10) \$78,000 or whatever lesser or greater amount reflects the unexpended funds from Item 6110-197-0001, Budget Act of 2003 (Ch. 157, Stats. 2003).
- (11) \$1,030,000 or whatever lesser or greater amount reflects unexpended funds from Item 6110-203-0001, Budget Act of 2004 (Ch. 208, Stats. 2004).
- (13) \$451,000 or whatever lesser or greater amount reflects the unexpended funds from Item 6110-211-0001, Budget Act of 2002 (Ch. 379, Stats. 2002).
- (16) \$4,600,000 or whatever greater or lesser amount reflects unexpended funds from Item 6110-134-0001, Budget Act of 2002 (Ch. 379, Stats. 2002).
- (17) \$1,013,000 or whatever greater or lesser amount reflects unexpended funds from Item 6110-229-0001, Budget Act of 2002 (Ch. 379, Stats. 2002).
- (18) \$8,000,000 or whatever greater or lesser amount reflects unexpended funds from paragraph (1) of subdivision (a) of Section 1 of Chapter 101 of the Statutes of 2002.
- (19) \$119,000 or whatever lesser or greater amount reflects unexpended funds from Item 6110-201-0001, Budget Act of 2002 (Ch. 379, Stats. 2002).
- (20) \$701,000 or whatever lesser or greater amount reflects unexpended funds from paragraph (4) of subdivision (a) of Section 50 of Chapter 1167 of the Statutes of 2002.
- (21) \$3,000,000 or whatever greater or lesser amount reflects unexpended funds from Section 11 of Chapter

10 of the Statutes of 2003, First Extraordinary Session.

- (22) \$702,000 or whatever lesser or greater amount reflects unexpended funds from Item 6110-235-0001, Budget Act of 2003 (Ch. 157, Stats. 2003).
- (23) \$1,481,000 or whatever lesser or greater amount reflects the unexpended funds from Item 6110-166-0001, Budget Act of 2002 (Ch. 379, Stats. 2002).
- (24) \$194,000 or whatever lesser or greater amount reflects the unexpended funds from Item 6110-122-0001, Budget Act of 2002 (Ch. 379, Stats. 2002).
- (25) \$398,000 or whatever lesser or greater amount reflects the unexpended funds from Item 6110-122-0001, Budget Act of 2003 (Ch. 157, Stats. 2003).
- (26) \$10,000,000 of the balance in the Child Care Facilities Revolving Fund established pursuant to Section 8278.3 of the Education Code.
- (28) \$1,300,000 from Item 6110-144-0001, Budget Act of 2003 (Ch. 157, Stats. 2003).
- (29) \$8,726,000 or whatever lesser or greater amount reflects the unexpended funds from paragraph (3) of subdivision (a) of Section 50 of Chapter 1167 of the Statutes of 2002.
- (30) \$61,568 or whatever greater or lesser amount reflects unexpended funds from Schedule (42) of Item 6110-485 of the Budget Act of 2001 (Ch. 106, Stats. 2001), as added by Section 48 of Chapter 1 of the Statutes of 2002, Third Extraordinary Session.
- (31) \$650,874 or whatever greater or lesser amount reflects unexpended funds from Schedule (1) of Item 6110-111-0001 of the Budget Act of 2002 (Ch. 379, Stats. 2002).
- (32) \$156,788 or whatever greater or lesser amount reflects unexpended funds from Item 6110-112-0001 of the Budget Act of 2002 (Ch. 379, Stats. 2002).
- (33) \$243,780 or whatever greater or lesser amount reflects unexpended funds from Schedule (5) of Item 6110-113-0001 of the Budget Act of 2002 (Ch. 379, Stats. 2002).
- (34) \$542,174 or whatever greater or lesser amount reflects unexpended funds from Schedule (6) of Item 6110-113-0001 of the Budget Act of 2002 (Ch. 379, Stats. 2002).

- (35) \$292,458 or whatever greater or lesser amount reflects unexpended funds from Item 6110-120-0001 of the Budget Act of 2002 (Ch. 379, Stats. 2002).
- (36) \$77,120 or whatever greater or lesser amount reflects unexpended funds from Schedule (3) of Item 6110-123-0001 of the Budget Act of 2002 (Ch. 379, Stats. 2002).
- (37) \$56,005 or whatever greater or lesser amount reflects unexpended funds from Item 6110-126-0001 of the Budget Act of 2002 (Ch. 379, Stats. 2002).
- (38) \$513,842 or whatever greater or lesser amount reflects unexpended funds from Item 6110-127-0001 of the Budget Act of 2002 (Ch. 379, Stats. 2002).
- (39) \$13,250 or whatever greater or lesser amount reflects unexpended funds from Item 6110-137-0001 of the Budget Act of 2002 (Ch. 379, Stats. 2002).
- (40) \$507 or whatever greater or lesser amount reflects unexpended funds from Item 6110-140-0001 of the Budget Act of 2002 (Ch. 379, Stats. 2002).
- (41) \$2,581 or whatever greater or lesser amount reflects unexpended funds from Schedule (1) of Item 6110-156-0001 of the Budget Act of 2002 (Ch. 379, Stats. 2002).
- (42) \$929,199 or whatever greater or lesser amount reflects unexpended funds from Schedule (1) of Item 6110-161-0001 of the Budget Act of 2002 (Ch. 379, Stats. 2002).
- (43) \$47,985 or whatever greater or lesser amount reflects unexpended funds from Schedule (2) of Item 6110-161-0001 of the Budget Act of 2002 (Ch. 379, Stats. 2002).
- (44) \$10,826 or whatever greater or lesser amount reflects unexpended funds from Item 6110-163-0001 of the Budget Act of 2002 (Ch. 379, Stats. 2002).
- (45) \$24,873 or whatever greater or lesser amount reflects unexpended funds from Item 6110-167-0001 of the Budget Act of 2002 (Ch. 379, Stats. 2002).
- (46) \$5,317 or whatever greater or lesser amount reflects unexpended funds from Item 6110-189-0001 of the Budget Act of 2002 (Ch. 379, Stats. 2002).
- (47) \$499 or whatever greater or lesser amount reflects unexpended funds from Item 6110-191-0001 of the Budget Act of 2002 (Ch. 379, Stats. 2002).

- (48) \$9,438 or whatever greater or lesser amount reflects unexpended funds from Schedule (3) of Item 6110-193-0001 of the Budget Act of 2002 (Ch. 379, Stats. 2002).
- (49) \$14,244 or whatever greater or lesser amount reflects unexpended funds from Schedule (2) of Item 6110-193-0001 of the Budget Act of 2002 (Ch. 379, Stats. 2002).
- (50) \$1,335,625 or whatever greater or lesser amount reflects unexpended funds from Schedule (1) of Item 6110-198-0001 of the Budget Act of 2002 (Ch. 379, Stats. 2002).
- (51) \$2,266,669 or whatever greater or lesser amount reflects unexpended funds from Schedule (3) of Item 6110-198-0001 of the Budget Act of 2002 (Ch. 379, Stats. 2002).
- (52) \$4,352,385 or whatever greater or lesser amount reflects unexpended funds from Schedule (2) of Item 6110-198-0001 of the Budget Act of 2002 (Ch. 379, Stats. 2002).
- (53) \$9,298 or whatever greater or lesser amount reflects unexpended funds from Schedule (1) of Item 6110-226-0001 of the Budget Act of 2002 (Ch. 379, Stats. 2002).
- (54) \$472 or whatever greater or lesser amount reflects unexpended funds from Item 6110-229-0001 of the Budget Act of 2002 (Ch. 379, Stats. 2002).
- (55) \$75,570 or whatever greater or lesser amount reflects unexpended funds from Item 6110-240-0001 of the Budget Act of 2002 (Ch. 379, Stats. 2002).
- (56) \$601 or whatever greater or lesser amount reflects unexpended funds from Schedule (6) of Item 6110-485 of the Budget Act of 2002 (Ch. 379, Stats. 2002).
- (57) \$10,284 or whatever greater or lesser amount reflects unexpended funds from Schedule (5) of Item 6110-485 of the Budget Act of 2002 (Ch. 379, Stats. 2002).
- (58) \$18,060 or whatever greater or lesser amount reflects unexpended funds from subdivision (b) of Section 72 of Chapter 4 of the Statutes of 2003, First Extraordinary Session.
- (59) \$9,386 or whatever greater or lesser amount reflects unexpended funds from paragraph (3) of subdivision

- (a) of Section 1 of Chapter 101 of the Statutes of 2002.
- (60) \$1,292,454 or whatever greater or lesser amount reflects unexpended funds from paragraph (4) of subdivision (a) of Section 1 of Chapter 101 of the Statutes of 2002.
- (61) \$35,220 or whatever greater or lesser amount reflects unexpended funds from Chapter 704 of the Statutes of 2000.
- (62) \$9,332 or whatever greater or lesser amount reflects unexpended funds from appropriations for the 2003-04 fiscal year from Proposition 227 as approved by the voters at the November 3, 1998, statewide general election.
- (63) \$169,776 or whatever greater or lesser amount reflects unexpended funds from Item 6110-120-0001 of the Budget Act of 2003 (Ch. 157, Stats. 2003).
- (64) \$10,904,057 or whatever lesser amount reflects unexpended funds from Schedule (1) of Item 6110-161-0001 of the Budget Act of 2003 (Ch. 157, Stats. 2003).
- (65) \$2,695,943 or whatever greater or lesser amount reflects unexpended funds from Schedule (2) of Item 6110-161-0001 of the Budget Act of 2003 (Ch. 157, Stats. 2003).
- (66) \$2,855 or whatever greater or lesser amount reflects unexpended funds from Schedule (3) of Item 6110-193-0001 of the Budget Act of 2003 (Ch. 157, Stats. 2003).
- (67) \$51,984 or whatever greater or lesser amount reflects unexpended funds from Schedule (1) of Item 6110-240-0001 of the Budget Act of 2003 (Ch. 157, Stats. 2003).
- (68) \$90,111 or whatever greater or lesser amount reflects unexpended funds from Item 6110-243-0001 of the Budget Act of 2003 (Ch. 157, Stats. 2003).
- (69) \$328,112 or whatever greater or lesser amount reflects unexpended funds from Schedule (4) of Item 6110-485 of the Budget Act of 2003 (Ch. 157, Stats. 2003).
- (70) \$222 or whatever greater or lesser amount reflects unexpended funds from Schedule (6) of Item 6110-485 of the Budget Act of 2003 (Ch. 157, Stats. 2003).

- (71) \$223,023 or whatever lesser amount reflects unexpended funds from paragraph (9) of subdivision (a) of Section 83 of Chapter 4 of the Statutes of 2003, First Extraordinary Session.
- (72) \$11,636,352 or whatever greater or lesser amount reflects unexpended funds from paragraph (5) of subdivision (a) of Section 83 of Chapter 4 of the Statutes of 2003, First Extraordinary Session.
- (73) \$2,079,182 or whatever greater or lesser amount reflects unexpended funds from paragraph (5) of subdivision (a) of Section 83 of Chapter 4 of the Statutes of 2003, First Extraordinary Session.
- (74) \$1,535 or whatever greater or lesser amount reflects unexpended funds from paragraph (1) of subdivision (a) of Section 83 of Chapter 4 of the Statutes of 2003, First Extraordinary Session.
- (75) \$5,000,000 or whatever greater or lesser amount reflects unexpended funds from Item 6110-144-0001 of the Budget Act of 2004 (Ch. 208, Stats. 2004).
- (76) \$1,000,000 or whatever greater or lesser amount reflects unexpended funds from Schedule (3) of Item 6110-228-0001 of the Budget Act of 2004 (Ch. 208, Stats. 2004).
- (77) \$400 or whatever greater or lesser amount reflects unexpended funds from Schedule (9) of Item 6110-485 of the Budget Act of 2004 (Ch. 208, Stats. 2004).
- (78) \$3,990,000 or whatever greater or lesser amount reflects unexpended funds from Schedule (17) of Item 6110-485 of the Budget Act of 2004 (Ch. 208, Stats. 2004).
- (79) \$31,000,000 or whatever lesser amount reflects unexpended funds from Item 6110-234-0001 of the Budget Act of 2004 (Ch. 208, Stats. 2004).
- (80) \$22,652,000 or whatever greater or lesser amount reflects unexpended funds from Section 37 of Chapter 71 of the Statutes of 2000.
- (81) \$22,690,000 or whatever greater or lesser amount reflects unexpended funds from Schedule (3) of Item 6110-196-0001 of the Budget Act of 2002 (Ch. 379, Stats. 2002).
- (82) \$50,000,000 or whatever lesser amount reflects unexpended funds from Item 6110-234-0001 of the Budget Act of 2003 (Ch. 157, Stats. 2003).

SEC. 20. Section 30 of Chapter 73 of the Statutes of 2005 is amended to read:

Sec. 30. Notwithstanding any other law, the funds appropriated pursuant to Items 6110-103-0001, 6110-104-0001, 6110-105-0001, 6110-156-0001, 6110-161-0001, 6110-190-0001, 6110-211-0001, and 6110-243-0001 of Section 2.00 of the Budget Act of 2005 (Ch. 38, Stats. 2005) shall be available for liquidation through July 31, 2008, and after that date, all remaining unexpended funds in those items shall revert to the Proposition 98 Reversion Account.

SEC. 21. Section 31 of Chapter 73 of the Statutes of 2005 is amended to read:

Sec. 31. (a) (1) The sum of six hundred five million ninety-four thousand dollars (\$605,094,000) is hereby appropriated from the General Fund in accordance with the following schedule:

(2) Of the amount appropriated in paragraph (1), the following amounts are appropriated for expenditure during the 2006-07 fiscal year.

(A) The sum of six million two hundred twenty-seven thousand dollars (\$6,227,000) to the State Department of Education for apprenticeship programs to be expended consistent with the requirements specified in Item 6110-103-0001 of Section 2.00 of the Budget Act of 2005.

(B) The sum of ninety million one hundred seventeen thousand dollars (\$90,117,000) to the State Department of Education for supplemental instruction to be expended consistent with the requirements specified in Item 6110-104-0001 of Section 2.00 of the Budget Act of 2005. Of the amount appropriated by this subparagraph, fifty-one million sixty-one thousand dollars (\$51,061,000) shall be expended consistent with Schedule (1) of Item 6110-104-0001 of Section 2.00 of the Budget Act of 2005, twelve million three hundred thirty thousand dollars (\$12,330,000) shall be expended consistent with Schedule (2) of that item, four million six hundred ninety thousand dollars (\$4,690,000) shall be expended consistent with Schedule (3) of that item, and twenty-two million thirty-six thousand dollars (\$22,036,000) shall be expended consistent with Schedule (4) of that item.

(D) The sum of thirty-nine million six hundred thirty thousand dollars (\$39,630,000) to the State Department of Education for regional occupational centers and programs to be expended consistent with the requirements specified in Schedule (1) of Item 6110-105-0001 of Section 2.00 of the Budget Act of 2005.

(E) The sum of fifty-two million five hundred eighty-three thousand dollars (\$52,583,000) to the State Department of Education for home-to-school transportation to be expended consistent with the

requirements specified in Schedule (1) of Item 6110-111-0001 of Section 2.00 of the Budget Act of 2005.

(F) The sum of four million two hundred ninety-four thousand dollars (\$4,294,000) to the State Department of Education for the Gifted and Talented Pupil Program to be expended consistent with the requirements specified in Item 6110-124-0001 of Section 2.00 of the Budget Act of 2005.

(G) The sum of forty-five million eight hundred ninety-six thousand dollars (\$45,896,000) to the State Department of Education for adult education to be expended consistent with the requirements specified in Schedule (1) of Item 6110-156-0001 of Section 2.00 of the Budget Act of 2005.

(H) The sum of four million seven hundred fifty-one thousand dollars (\$4,751,000) to the State Department of Education for community day schools to be expended consistent with the requirements specified in Item 6110-190-0001 of Section 2.00 of the Budget Act of 2005.

(I) The sum of five million nine hundred forty-seven thousand dollars (\$5,947,000) to the State Department of Education for categorical block grants for charter schools to be expended consistent with the requirements specified in Item 6110-211-0001 of Section 2.00 of the Budget Act of 2005.

(J) The sum of thirty-eight million seven hundred twenty thousand dollars (\$38,720,000) to the State Department of Education for the School Safety Block Grant to be expended consistent with the requirements specified in Schedule (1) of Item 6110-228-0001 of Section 2.00 of the Budget Act of 2005.

(K) The sum of one hundred million one hundred eighteen thousand dollars (\$100,118,000) to the State Department of Education for Targeted Instructional Improvement Grant Program to be expended consistent with the requirements specified in Item 6110-246-0001 of Section 2.00 of the Budget Act of 2005.

(L) The sum of two hundred million dollars (\$200,000,000) to the Board of Governors of the California Community Colleges for apportionments, to be expended in accordance with the requirements specified in Schedule (1) of Item 6870-101-0001 of Section 2.00 of the Budget Act of 2005.

(b) (1) Of the amount appropriated in paragraph (1) of subdivision (a), the sum of sixteen million eight hundred eleven thousand dollars (\$16,811,000) is appropriated to the Controller to pay for prior year state obligations for K-12 and community college mandate claims and interest. The Controller shall use funds to pay for the oldest claims of those no longer subject to audit pursuant to subdivision (a) of Section 17558.5 of the Government Code, including accrued interest. No payments shall be

made from the funds on any claims for the Standardized Testing and Reporting (STAR) Program, schoolsite councils, Brown Act reform, School Bus Safety II, or the removal of chemicals. The Controller shall provide reimbursement of claims and interest in accordance with the following schedule:

(A) The sum of six million eight hundred eleven thousand dollars (\$6,811,000) for reimbursement of claims filed by school districts and county offices of education.

(B) The sum of ten million dollars (\$10,000,000) for reimbursement of claims filed by community college districts.

(2) For purposes of making the computations required by Section 8 of Article XVI of the California Constitution, six million eight hundred eleven thousand dollars (\$6,811,000) of the appropriation made by paragraph (1) shall be deemed to be "General Fund" revenues appropriated to school districts, as defined in subdivision (c) of Section 41202 of the Education Code, and ten million dollars (\$10,000,000) of the appropriation made by paragraph (1) shall be deemed to be "General Fund" revenues appropriated to community college districts as defined in subdivision (d) of Section 41202 of the Education Code, for the 1995-96 fiscal year, and included within the "total allocations to school districts and community college districts from General Fund proceeds of taxes appropriated pursuant to Article XIII B," as defined in subdivision (e) of Section 41202 of the Education Code, for the 1995-96 fiscal year.

(c) For the purposes of making the computations required by Section 8 of Article XVI of the California Constitution, the appropriations made by subparagraphs (A) to (K), inclusive, of paragraph (2) of subdivision (a) shall be deemed to be "General Fund revenues appropriated for school districts," as defined in subdivision (c) of Section 41202 of the Education Code, for the 2006-07 fiscal year, and included within the "total allocations to school districts and community college districts from General Fund proceeds of taxes appropriated pursuant to Article XIII B," as defined in subdivision (e) of Section 41202 of the Education Code, for the 2006-07 fiscal year.

(d) For the purposes of making the computations required by Section 8 of Article XVI of the California Constitution, the appropriation made by subparagraph (L) of paragraph (2) of subdivision (a) shall be deemed to be "General Fund revenues appropriated for community college districts," as defined in subdivision (d) of Section 41202 of the Education Code, for the 2006-07 fiscal year, and included within the "total allocations to school districts and community college districts from General Fund proceeds of taxes appropriated pursuant to Article XIII

B,” as defined in subdivision (e) of Section 41202 of the Education Code, for the 2006-07 fiscal year.

SEC. 22. Section 32 of Chapter 73 of the Statutes of 2005 is amended to read:

Sec. 32. Notwithstanding paragraph (1) of subdivision (d) of Section 41207 of the Education Code, the funds appropriated pursuant to subdivision (b) of Section 31 of this act shall be deemed to be in partial satisfaction of the outstanding balance of the Proposition 98 minimum funding obligation for the 1995-96 fiscal year determined pursuant to Section 41207 of the Education Code and shall be in lieu of sixteen million eight hundred eleven thousand dollars (\$16,811,000) of the amount that would otherwise be appropriated pursuant to subdivision (d) of that section for the 2006-07 fiscal year.

SEC. 23. (a) Up to \$21,025,000 of the funds previously appropriated for Internet connectivity and network infrastructure for schools offering kindergarten and grades 1 to 12, inclusive, and county offices of education from the following appropriations shall be available for expenditure by the Imperial County Office of Education consortium to continue management and operation of the high-speed network during the 2005-06 fiscal year:

(1) Item 6440-001-0001, Schedule (a), Provision 44, Chapter 52 of the Statutes of 2000.

(2) Item 6440-001-0001, Schedule (1), Provision 24, Chapter 106 of the Statutes of 2001.

(3) Item 6440-001-0001, Schedule (1), Provision 24, Chapter 379 of the Statutes of 2002.

(4) Item 6440-001-0001, Schedule (1), Provision 22, Chapter 157 of the Statutes 2003.

(5) Item 6110-182-0001, Chapter 208 of the Statutes of 2004.

(b) Of the unexpended funds listed in subdivision (a), the Imperial County Office of Education consortium may use up to \$1,221,000 to administer and support the program. The program shall be governed pursuant to legislation enacted for this purpose on or before January 1, 2006, during the 2005-06 Regular Session.

(c) The Joint Legislative Audit Committee shall conduct an audit of the K-12 High Speed Network. This audit shall identify any prior-year funds that remain available for the project and determine whether the state owns the network or any portion thereof, that would affect the future development and usage of the network. This audit shall also include an assessment of all of the following:

(1) The quality of the oversight of the project.

(2) The reasonableness of the existing cost allocation methodology employed by the California Research and Education Network.

(3) The appropriateness of the contracts entered into by state agencies transferring funds to the California Research and Education Network.

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 to make the necessary statutory changes to implement the Budget Act of 2005 at the earliest time possible, it is necessary that this act take effect immediately.

CHAPTER 492

An act to amend Section 13276 of the Welfare and Institutions Code, relating to public social services.

[Approved by Governor October 4, 2005. Filed with
Secretary of State October 4, 2005.]

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

SECTION 1. Section 13276 of the Welfare and Institutions Code is amended to read:

13276. (a) After setting aside the necessary state administrative funds, the department shall allocate all social services funds derived from the federal Refugee Act of 1980 (Public Law 96-212), as amended, that are required to be used for employment-related and English language training to each eligible county, in the same proportion that refugees on aid in each eligible county bears to the total refugees on aid in all eligible counties. The department shall assign differential weights for refugees based on the length of time that they have resided in the United States, as follows:

(1) For refugees who have resided in this country one year or less, the department shall use a weight of 1.50 for the purposes of calculating the allocation in this subdivision.

(2) For refugees who have resided in this country two years or less, but more than one year, the department shall use a weight of 1.25 for the purposes of calculating the allocation in this subdivision.

(3) For refugees who have resided in this country five years or less, but more than two years, the department shall use a weight of 1.00 for the purposes of calculating the allocation in this subdivision.

(b) After setting aside the necessary state administrative funds, the department shall allocate all federal targeted assistance received by the

department to the counties designated by the federal government as eligible in the same way funds are allocated by the federal government in the final targeted assistance formula allocations to states.

(c) For the purposes of this section, “eligible county” means a county or city and county designated as impacted using a formula to be developed by the department based upon the refugee arrivals in the county during the preceding 60-month period for which the department has data.

CHAPTER 493

An act to amend Section 15438.6 of the Government Code, relating to public health, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 4, 2005. Filed with
Secretary of State October 4, 2005.]

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

SECTION 1. Section 15438.6 of the Government Code is amended to read:

15438.6. (a) This section shall be known, and may be cited, as the Cedillo-Alarcon Community Clinic Investment Act of 2000.

(b) The Legislature finds and declares all of the following:

(1) Primary care clinics require capital improvements in order to continuously perform their vital role. Many primary care clinics are currently at capacity and in order to increase access to their services and allow them to expand to cover the growing need for health care for the vulnerable populations in California, these capital funds are necessary.

(2) Primary care clinics are the health care safety net for the most vulnerable populations in California: uninsured, underinsured, indigent, and those in shortage designation areas. Primary care clinics provide health care regardless of the ability to pay for services.

(3) Approximately 6.6 million Californians lack health insurance, a number that increases by 50,000 per month.

(4) Primary care clinics have been historically and woefully underfunded.

(5) Primary care clinics are the most cost-effective means of serving California’s vulnerable populations.

(6) The failure to adequately fund primary care clinics has resulted in significant costs to the state in the form of unnecessary emergency

room visits. Also, the lack of preventive care results in significant costs when patients become severely ill.

(c) The authority may award grants to any eligible clinic, as defined in subdivision (a) of Section 1204 and subdivision (c) of Section 1206 of the Health and Safety Code, for purposes of financing capital outlay projects, as defined in subdivision (f) of Section 15432.

(d) The authority, in consultation with representatives of primary care clinics and other appropriate parties, shall develop selection criteria and a process for awarding grants under this section. The authority may take into account at least the following factors when selecting recipients and determining amount of grants:

(1) The percentage of total expenditures attributable to uncompensated care provided by an applicant.

(2) The extent to which the grant will contribute toward expansion of health care access by indigent, underserved, and uninsured populations.

(3) The need for the grant based on an applicant's total net assets, relative to net assets of other applicants. For purposes of this section, "total net assets" means the amount of total assets minus total liabilities, as disclosed in an audited financial statement prepared according to United States Generally Accepted Accounting Principles, and shall include unrestricted net assets, temporarily restricted net assets, and permanently restricted net assets.

(4) The geographic location of the applicant, in order to maximize broad geographic distribution of funding.

(5) Demonstration by the applicant of project readiness and feasibility to the authority's satisfaction.

(6) The total amount of funds appropriated and available for purposes of this section.

(e) No grant to any clinic facility shall exceed two hundred fifty thousand dollars (\$250,000).

(f) In no event shall a grant to finance a project exceed the total cost of the project, as determined by the clinic and approved by the authority. Grants shall be awarded only to clinics that have certified to the authority that all requirements established by the authority for grantees have been met.

(g) All projects that are awarded grants shall be completed within a reasonable period of time, to be determined by the authority. No funds shall be released by the authority until the applicant demonstrates project readiness to the authority's satisfaction. If the authority determines that the clinic 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. Certification of project completion

shall be submitted to the authority by any clinic receiving a grant under this section.

(h) Any clinic receiving a grant under this section shall commit to using the health facility for the purposes for which the grant was awarded for the duration of the expected life of the project.

(i) Upon disbursement of all grant funds, the authority shall report to the Joint Legislative Budget Committee on the recipients of grants, the total amount of each grant, and the purpose for which each grant was awarded.

(j) It is the intent of the Legislature that the California Health Facilities Financing Authority be reimbursed for the costs of the administration of the implementation of this section from funds appropriated for the purposes of this section.

SEC. 2. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order that critically needed primary health care services may be provided to all Californians, it is necessary that this act take effect immediately.

CHAPTER 494

An act to amend Section 129885 of, and to add and repeal Section 129875.2 of, the Health and Safety Code, relating to health facilities.

[Approved by Governor October 4, 2005. Filed with
Secretary of State October 4, 2005.]

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

SECTION 1. Section 129875.2 is added to the Health and Safety Code, to read:

129875.2. (a) The office shall establish a plan review project for multistory hospital buildings. The purpose of the plan review project shall be to simplify the office's review and inspection process and to expedite completion of repair and maintenance.

(b) Under a plan review project, construction or alteration projects for multistory hospital buildings shall be exempt from plan review and inspection by the office prior to construction if the facility demonstrates to the office, by written description of the project, that all of the following conditions are met:

(1) The construction or alteration is limited to repairing existing systems or keeping up the course of normal or routine maintenance.

(2) The repair to existing systems or normal or routine maintenance either restores the facility to the same operational status or improves operational status from the facility's operating condition immediately prior to the event, occurrence, or condition that necessitated the alteration.

(3) The repair to existing systems or normal or routine maintenance is not ordinarily within the standard of practice of a licensed architect or registered engineer.

(4) The repair to existing systems or normal or routine maintenance does not degrade the status or condition of the fire and life safety system from the status of the system immediately prior to the event, occurrence, or condition that necessitated the alteration.

(c) Upon completion of construction or alteration of any building subject to this section, and prior to use of the repaired system or other subject of the construction or alteration, the office shall inspect and approve the work. The office may require an interim inspection for code compliance when walls, ceilings, or other materials or finishes will cover the final work.

(d) Upon compliance with subdivision (b), the office shall approve the written description of the project and issue a building permit.

(e) The office shall prepare a comprehensive report of the plan review project by March 1, 2008. The report shall include a comprehensive review of the plan review project and shall assess whether the purpose of the plan review project has been achieved and whether the construction or alteration projects submitted under this section have resulted in any significant potential danger to the safety of hospital patients and workers or the public. The report shall be submitted to the health policy committees of the Senate and Assembly.

(f) 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. Section 129885 of the Health and Safety Code is amended to read:

129885. (a) A city or county, as applicable, shall have plan review and building inspection responsibilities for the construction or alteration of buildings described in paragraph (1) of subdivision (b) of Section 129725. The building standards for the construction or alteration of buildings specified in paragraph (1) of subdivision (b) of Section 129725 established or applied by a city or county, shall not be more restrictive or comprehensive than comparable building standards established, or otherwise applied, to clinics licensed pursuant to Chapter 1 (commencing with Section 1200) of Division 2. For chronic dialysis and surgical

services buildings, construction or alteration shall include conversion of a building to a purpose specified in paragraph (1) of subdivision (b) of Section 129725.

(b) Upon the initial submittal to a city or county by the governing authority or owner of a hospital for plan review and building inspection services for buildings described in paragraph (1) of subdivision (b) of Section 129725 for chronic dialysis and surgical services, the city or county shall reply in writing to the hospital as to whether or not the plan review by the city or county will include a certification as to whether or not the clinic project submitted for plan review meets the clinic standards propounded by the office in the California Building Standards Code.

If the city or county indicates that its review will include this certification, it shall do all of the following:

(1) Apply the applicable clinic provisions of the latest edition of the California Building Standards Code.

(2) Certify in writing to the applicant within 30 days of completion of construction whether or not the standards have been met.

(c) If, upon initial submittal, the city or county indicates that its plan review will not include this certification, the governing authority or owner shall submit the plans to the Office of Statewide Health Planning and Development and the office shall review the plans for certification to determine whether or not the clinic project meets the standards propounded by the office in the California Building Standards Code.

(d) When the office performs the certification review, the office shall charge a fee in an amount not to exceed its actual cost.

(e) Notwithstanding subdivision (a), the governing authority of a hospital may request the Office of Statewide Health Planning and Development to perform plan review and building inspection services for buildings described in paragraph (1) of subdivision (b) of Section 129725 and Section 129730. The office shall perform these services upon request and shall charge an amount equal to its standard fee for the construction and alteration of hospital buildings. The construction or alteration of these buildings shall conform to the applicable provisions of the latest edition of the California Building Standards Code for purposes of the plan review and building inspection of the office pursuant to this subdivision. The office shall issue the building permit and certificate of occupancy for these facilities.

(f) A building described in paragraph (1) of subdivision (b) of Section 129725 that is subject to the plan review and building inspection of the office pursuant to subdivision (e), may be designated by the governing authority or owner of the hospital as a "hospital building" as long as the building remains under the jurisdiction of the office. This hospital building shall be reviewed and inspected according to the standards and

requirements of the Alfred E. Alquist Hospital Facilities Seismic Safety Act of 1983 (Chapter 1 (commencing with Section 129675)).

(g) When a building is accepted for review by the office pursuant to subdivision (e), the governing authority of the hospital shall not request the city or county, as applicable, to conduct plan review and building inspection for any subsequent alteration of the same building, unless written notification is submitted to the office by the governing authority or owner of the hospital.

CHAPTER 495

An act to amend Section 2891.1 of the Public Utilities Code, relating to telecommunications.

[Approved by Governor October 4, 2005. Filed with
Secretary of State October 4, 2005.]

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

SECTION 1. Section 2891.1 of the Public Utilities Code is amended to read:

2891.1. (a) Notwithstanding Section 2891, a telephone corporation selling or licensing lists of residential subscribers shall not include the telephone number of any subscriber assigned an unlisted or unpublished access number. A subscriber may waive all or part of the protection provided by this subdivision through written notice to the telephone corporation.

(b) Notwithstanding Section 2891, a provider of mobile telephony services, or any direct or indirect affiliate or agent of a provider, providing the name and dialing number of a subscriber for inclusion in any directory of any form, or selling the contents of any directory database, or any portion or segment thereof, shall not include the dialing number of any subscriber without first obtaining the express consent of that subscriber. The express consent shall meet all of the following requirements:

(1) It shall be one of the following:

(A) A separate document that is signed and dated by the subscriber, and that is not attached to any other document.

(B) An affirmative response made on a separate field on an Internet Web site where there is no default. The provider of mobile telephony services shall send a confirmation notice to the subscriber's electronic

mail address, or to a subscriber's postal mail address if the subscriber does not have an electronic mail account.

(2) It shall be unambiguous, legible, and conspicuously disclose that, by opting in, the subscriber is consenting to have the subscriber's dialing number sold or licensed as part of a list of subscribers and the subscriber's dialing number may be included in a publicly available directory.

(3) If, under the subscriber's calling plan, the subscriber may be billed for receiving unsolicited calls or text messaging from a telemarketer, the provider's form shall include an unambiguous and legible disclosure statement that, by consenting to have the subscriber's dialing number sold or licensed as part of a list of subscribers or included in a publicly available directory, the subscriber may incur additional charges for receiving unsolicited calls or text messages.

(c) Nothing in this section prohibits a subscriber of mobile telephony services from voluntarily entering into an agreement for the placement of his or her name and mobile telephony dialing number in any advertising program if the agreement satisfies the express consent requirements of this section.

(d) A subscriber who provides express prior consent pursuant to subdivision (b) may revoke that consent at any time. A provider of mobile telephony services shall comply with the subscriber's request to opt out within a reasonable period of time, not to exceed 60 days.

(e) A subscriber shall not be charged for making the choice to not have their name and mobile telephony dialing number be listed in a publicly available directory assistance database.

(f) This section does not apply to the provision of telephone numbers to the following parties for the purposes indicated:

(1) To a collection agency, to the extent disclosures made by the agency are supervised by the commission, exclusively for the collection of unpaid debts.

(2) (A) To any law enforcement agency, fire protection agency, public health agency, public environmental health agency, city or county emergency services planning agency, or private for-profit agency operating under contract with, and at the direction of, one or more of these agencies, for the exclusive purpose of responding to a 911 call or communicating an imminent threat to life or property.

(B) Any information or records provided to a private for-profit agency pursuant to this subdivision shall be held in confidence by that agency and by any individual employed by or associated with that agency. This information or these records shall not be open to examination for any purpose not directly connected with the administration of the services specified in subdivision (e) of Section 2872 or this paragraph.

(3) To a lawful process issued under state or federal law.

(4) To a telephone corporation providing service between service areas for the provision to the subscriber of telephone service between service areas, or to third parties for the limited purpose of providing billing services.

(5) To a telephone corporation to effectuate a customer's request to transfer the customer's assigned telephone number from the customer's existing provider of telecommunications services to a new provider of telecommunications services.

(6) To the commission pursuant to its jurisdiction and control over telephone and telegraph corporations.

(g) Every deliberate violation of this section is grounds for a civil suit by the aggrieved subscriber against the organization or corporation and its employees responsible for the violation.

(h) For purposes of this section, "unpublished or unlisted access number" means a telephone, telex, teletex, facsimile, computer modem, or any other code number that is assigned to a subscriber by a telephone or telegraph corporation for the receipt of communications initiated by other telephone or telegraph customers and that the subscriber has requested that the telephone or telegraph corporation keep in confidence.

(i) No telephone corporation, nor any official or employee thereof, shall be subject to criminal or civil liability for the release of customer information as authorized by this section.

CHAPTER 496

An act to amend Section 65915 of the Government Code, relating to housing.

[Approved by Governor October 4, 2005. Filed with
Secretary of State October 4, 2005.]

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

SECTION 1. It is the intent of the Legislature that local governments encourage, to the maximum extent practicable, the location of housing developed pursuant to Section 65915 of the Government Code in urban areas with adequate infrastructure to serve the housing.

SEC. 2. Section 65915 of the Government Code is amended to read:
65915. (a) When an applicant seeks a density bonus for a housing development within, or for the donation of land for housing within, the jurisdiction of a city, county, or city and county, that local government

shall provide the applicant incentives or concessions for the production of housing units and child care facilities as prescribed in this section. All cities, counties, or cities and counties shall adopt an ordinance that specifies how compliance with this section will be implemented.

(b) (1) A city, county, or city and county shall grant one density bonus, the amount of which shall be as specified in subdivision (g), and incentives or concessions, as described in subdivision (d), when an applicant for a housing development seeks and agrees to construct a housing development, excluding any units permitted by the density bonus awarded pursuant to this section, that will contain at least any one of the following:

(A) Ten percent of the total units of a housing development for lower income households, as defined in Section 50079.5 of the Health and Safety Code.

(B) Five percent of the total units of a housing development for very low income households, as defined in Section 50105 of the Health and Safety Code.

(C) A senior citizen housing development as defined in Sections 51.3 and 51.12 of the Civil Code, or mobilehome park that limits residency based on age requirements for housing for older persons pursuant to Section 798.76 or 799.5 of the Civil Code.

(D) Ten percent of the total dwelling units in a common interest development as defined in Section 1351 of the Civil Code for persons and families of moderate income, as defined in Section 50093 of the Health and Safety Code, provided that all units in the development are offered to the public for purchase.

(2) For purposes of calculating the amount of the density bonus pursuant to subdivision (f), the applicant who requests a density bonus pursuant to this subdivision shall elect whether the bonus shall be awarded on the basis of subparagraph (A), (B), (C), or (D) of paragraph (1).

(c) (1) An applicant shall agree to, and the city, county, or city and county shall ensure, continued affordability of all low- and very low income units that qualified the applicant for the award of the density bonus for 30 years or a longer period of time if required by the construction or mortgage financing assistance program, mortgage insurance program, or rental subsidy program. Rents for the lower income density bonus units shall be set at an affordable rent as defined in Section 50053 of the Health and Safety Code. Owner-occupied units shall be available at an affordable housing cost as defined in Section 50052.5 of the Health and Safety Code.

(2) An applicant shall agree to, and the city, county, or city and county shall ensure that, the initial occupant of the moderate-income units that

are directly related to the receipt of the density bonus in the common interest development, as defined in Section 1351 of the Civil Code, are persons and families of moderate income, as defined in Section 50093 of the Health and Safety Code, and that the units are offered at an affordable housing cost, as that cost is defined in Section 50052.5 of the Health and Safety Code. The local government shall enforce an equity-sharing agreement, unless it is in conflict with the requirements of another public funding source or law. The following apply to the equity-sharing agreement:

(A) Upon resale, the seller of the unit shall retain the value of any improvements, the downpayment, and the seller's proportionate share of appreciation. The local government shall recapture any initial subsidy and its proportionate share of appreciation, which shall then be used within three years for any of the purposes described in subdivision (e) of Section 33334.2 of the Health and Safety Code that promote homeownership.

(B) For purposes of this subdivision, the local government's initial subsidy shall be equal to the fair market value of the home at the time of initial sale minus the initial sale price to the moderate-income household, plus the amount of any downpayment assistance or mortgage assistance. If upon resale the market value is lower than the initial market value, then the value at the time of the resale shall be used as the initial market value.

(C) For purposes of this subdivision, the local government's proportionate share of appreciation shall be equal to the ratio of the initial subsidy to the fair market value of the home at the time of initial sale.

(d) (1) An applicant for a density bonus pursuant to subdivision (b) may submit to a city, county, or city and county a proposal for the specific incentives or concessions that the applicant requests pursuant to this section, and may request a meeting with the city, county, or city and county. The city, county, or city and county shall grant the concession or incentive requested by the applicant unless the city, county, or city and county makes a written finding, based upon substantial evidence, of either of the following:

(A) The concession or incentive is not required in order to provide for affordable housing costs, as defined in Section 50052.5 of the Health and Safety Code, or for rents for the targeted units to be set as specified in subdivision (c).

(B) The concession or incentive would have a specific adverse impact, as defined in paragraph (2) of subdivision (d) of Section 65589.5, upon public health and safety or the physical environment or on any real property that is listed in the California Register of Historical Resources and for which there is no feasible method to satisfactorily mitigate or

avoid the specific adverse impact without rendering the development unaffordable to low- and moderate-income households.

(2) The applicant shall receive the following number of incentives or concessions:

(A) One incentive or concession for projects that include at least 10 percent of the total units for lower income households, at least 5 percent for very low income households, or at least 10 percent for persons and families of moderate income in a common interest development.

(B) Two incentives or concessions for projects that include at least 20 percent of the total units for lower income households, at least 10 percent for very low income households, or at least 20 percent for persons and families of moderate income in a common interest development.

(C) Three incentives or concessions for projects that include at least 30 percent of the total units for lower income households, at least 15 percent for very low income households, or at least 30 percent for persons and families of moderate income in a common interest development.

(3) The applicant may initiate judicial proceedings if the city, county, or city and county refuses to grant a requested density bonus, incentive, or concession. If a court finds that the refusal to grant a requested density bonus, incentive, or concession is in violation of this section, the court shall award the plaintiff reasonable attorney's fees and costs of suit. Nothing in this subdivision shall be interpreted to require a local government to grant an incentive or concession that has a specific, adverse impact, as defined in paragraph (2) of subdivision (d) of Section 65589.5, upon health, safety, or the physical environment, and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact. Nothing in this subdivision shall be interpreted to require a local government to grant an incentive or concession that would have an adverse impact on any real property that is listed in the California Register of Historical Resources. The city, county, or city and county shall establish procedures for carrying out this section, that shall include legislative body approval of the means of compliance with this section. The city, county, or city and county shall also establish procedures for waiving or modifying development and zoning standards that would otherwise inhibit the utilization of the density bonus on specific sites. These procedures shall include, but not be limited to, such items as minimum lot size, side yard setbacks, and placement of public works improvements.

(e) In no case may a city, county, or city and county apply any development standard that will have the effect of precluding the construction of a development meeting the criteria of subdivision (b) at the densities or with the concessions or incentives permitted by this section. An applicant may submit to a city, county, or city and county a

proposal for the waiver or reduction of development standards and may request a meeting with the city, county, or city and county. If a court finds that the refusal to grant a waiver or reduction of development standards is in violation of this section, the court shall award the plaintiff reasonable attorney’s fees and costs of suit. Nothing in this subdivision shall be interpreted to require a local government to waive or reduce development standards if the waiver or reduction would have a specific, adverse impact, as defined in paragraph (2) of subdivision (d) of Section 65589.5, upon health, safety, or the physical environment, and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact. Nothing in this subdivision shall be interpreted to require a local government to waive or reduce development standards that would have an adverse impact on any real property that is listed in the California Register of Historical Resources.

(f) The applicant shall show that the waiver or modification is necessary to make the housing units economically feasible.

(g) For the purposes of this chapter, “density bonus” means a density increase over the otherwise maximum allowable residential density under the applicable zoning ordinance and land use element of the general plan as of the date of application by the applicant to the city, county, or city and county. The applicant may elect to accept a lesser percentage of density bonus. The amount of density bonus to which the applicant is entitled shall vary according to the amount by which the percentage of affordable housing units exceeds the percentage established in subdivision (b).

(1) For housing developments meeting the criteria of subparagraph (A) of paragraph (1) of subdivision (b), the density bonus shall be calculated as follows:

Percentage Low-Income Units	Percentage Density Bonus
10	20
11	21.5
12	23
13	24.5
14	26
15	27.5
17	30.5
18	32
19	33.5
20	35

(2) For housing developments meeting the criteria of subparagraph (B) of paragraph (1) of subdivision (b), the density bonus shall be calculated as follows:

Percentage Very Low Income Units	Percentage Density Bonus
5	20
6	22.5
7	25
8	27.5
9	30
10	32.5
11	35

(3) For housing developments meeting the criteria of subparagraph (C) of paragraph (1) of subdivision (b), the density bonus shall be 20 percent.

(4) For housing developments meeting the criteria of subparagraph (D) of paragraph (1) of subdivision (b), the density bonus shall be calculated as follows:

Percentage Moderate-Income Units	Percentage Density Bonus
10	5
11	6
12	7
13	8
14	9
15	10
16	11
17	12
18	13
19	14
20	15
21	16
22	17
23	18
24	19
25	20
26	21
27	22
28	23
29	24
30	25
31	26

Percentage Moderate-Income Units	Percentage Density Bonus
32	27
33	28
34	29
35	30
36	31
37	32
38	33
39	34
40	35

(5) All density calculations resulting in fractional units shall be rounded up to the next whole number. The granting of a density bonus shall not be interpreted, in and of itself, to require a general plan amendment, local coastal plan amendment, zoning change, or other discretionary approval. As used in subdivision (b), “total units” or “total dwelling units” does not include units permitted by a density bonus awarded pursuant to this section or any local law granting a greater density bonus. The density bonus provided by this section shall apply to housing developments consisting of five or more dwelling units.

(h) (1) When an applicant for a tentative subdivision map, parcel map, or other residential development approval donates land to a city, county, or city and county as provided for in this subdivision, the applicant shall be entitled to a 15-percent increase above the otherwise maximum allowable residential density under the applicable zoning ordinance and land use element of the general plan for the entire development, as follows:

Percentage Very Low Income	Percentage Density Bonus
10	15
11	16
12	17
13	18
14	19
15	20
16	21
17	22
18	23
19	24
20	25
21	26
22	27
23	28

Percentage Very Low Income	Percentage Density Bonus
24	29
25	30
26	31
27	32
28	33
29	34
30	35

(2) This increase shall be in addition to any increase in density mandated by subdivision (b), up to a maximum combined mandated density increase of 35 percent if an applicant seeks both the increase required pursuant to this subdivision and subdivision (b). All density calculations resulting in fractional units shall be rounded up to the next whole number. Nothing in this subdivision shall be construed to enlarge or diminish the authority of a city, county, or city and county to require a developer to donate land as a condition of development. An applicant shall be eligible for the increased density bonus described in this subdivision if all of the following conditions are met:

(A) The applicant donates and transfers the land no later than the date of approval of the final subdivision map, parcel map, or residential development application.

(B) The developable acreage and zoning classification of the land being transferred are sufficient to permit construction of units affordable to very low income households in an amount not less than 10 percent of the number of residential units of the proposed development.

(C) The transferred land is at least one acre in size or of sufficient size to permit development of at least 40 units, has the appropriate general plan designation, is appropriately zoned for development as affordable housing, and is or will be served by adequate public facilities and infrastructure. The land shall have appropriate zoning and development standards to make the development of the affordable units feasible. No later than the date of approval of the final subdivision map, parcel map, or of the residential development, the transferred land shall have all of the permits and approvals, other than building permits, necessary for the development of the very low income housing units on the transferred land, except that the local government may subject the proposed development to subsequent design review to the extent authorized by subdivision (i) of Section 65583.2 if the design is not reviewed by the local government prior to the time of transfer.

(D) The transferred land and the affordable units shall be subject to a deed restriction ensuring continued affordability of the units consistent

with paragraphs (1) and (2) of subdivision (c), which shall be recorded on the property at the time of dedication.

(E) The land is transferred to the local agency or to a housing developer approved by the local agency. The local agency may require the applicant to identify and transfer the land to the developer.

(F) The transferred land shall be within the boundary of the proposed development or, if the local agency agrees, within one-quarter mile of the boundary of the proposed development.

(i) (1) When an applicant proposes to construct a housing development that conforms to the requirements of subdivision (b) and includes a child care facility that will be located on the premises of, as part of, or adjacent to, the project, the city, county, or city and county shall grant either of the following:

(A) An additional density bonus that is an amount of square feet of residential space that is equal to or greater than the amount of square feet in the child care facility.

(B) An additional concession or incentive that contributes significantly to the economic feasibility of the construction of the child care facility.

(2) The city, county, or city and county shall require, as a condition of approving the housing development, that the following occur:

(A) The child care facility shall remain in operation for a period of time that is as long as or longer than the period of time during which the density bonus units are required to remain affordable pursuant to subdivision (c).

(B) Of the children who attend the child care facility, the children of very low income households, lower income households, or families of moderate income shall equal a percentage that is equal to or greater than the percentage of dwelling units that are required for very low income households, lower income households, or families of moderate income pursuant to subdivision (b).

(3) Notwithstanding any requirement of this subdivision, a city, county, or a city and county shall not be required to provide a density bonus or concession for a child care facility if it finds, based upon substantial evidence, that the community has adequate child care facilities.

(4) "Child care facility," as used in this section, means a child day care facility other than a family day care home, including, but not limited to, infant centers, preschools, extended day care facilities, and schoolage child care centers.

(j) "Housing development," as used in this section, means one or more groups of projects for residential units constructed in the planned development of a city, county, or city and county. For the purposes of this section, "housing development" also includes a subdivision or

common interest development, as defined in Section 1351 of the Civil Code, approved by a city, county, or city and county and consists of residential units or unimproved residential lots and either a project to substantially rehabilitate and convert an existing commercial building to residential use or the substantial rehabilitation of an existing multifamily dwelling, as defined in subdivision (d) of Section 65863.4, where the result of the rehabilitation would be a net increase in available residential units. For the purpose of calculating a density bonus, the residential units do not have to be based upon individual subdivision maps or parcels. The density bonus shall be permitted in geographic areas of the housing development other than the areas where the units for the lower income households are located.

(k) The granting of a concession or incentive shall not be interpreted, in and of itself, to require a general plan amendment, local coastal plan amendment, zoning change, or other discretionary approval. This provision is declaratory of existing law.

(l) For the purposes of this chapter, concession or incentive means any of the following:

(1) A reduction in site development standards or a modification of zoning code requirements or architectural design requirements that exceed the minimum building standards approved by the California Building Standards Commission as provided in Part 2.5 (commencing with Section 18901) of Division 13 of the Health and Safety Code, including, but not limited to, a reduction in setback and square footage requirements and in the ratio of vehicular parking spaces that would otherwise be required that results in identifiable, financially sufficient, and actual cost reductions.

(2) Approval of mixed use zoning in conjunction with the housing project if commercial, office, industrial, or other land uses will reduce the cost of the housing development and if the commercial, office, industrial, or other land uses are compatible with the housing project and the existing or planned development in the area where the proposed housing project will be located.

(3) Other regulatory incentives or concessions proposed by the developer or the city, county, or city and county that result in identifiable, financially sufficient, and actual cost reductions.

This subdivision does not limit or require the provision of direct financial incentives for the housing development, including the provision of publicly owned land, by the city, county, or city and county, or the waiver of fees or dedication requirements.

(m) Nothing in this section shall be construed to supersede or in any way alter or lessen the effect or application of the California Coastal Act

(Division 20 (commencing with Section 30000) of the Public Resources Code.

(n) Nothing in this section shall be construed to prohibit a city, county, or city and county from granting a density bonus greater than what is described in this section for a development that meets the requirements of this section or from granting a proportionately lower density bonus than what is required by this section for developments that do not meet the requirements of this section.

(o) For purposes of this section, the following definitions shall apply:

(1) "Development standard" includes site or construction conditions that apply to a residential development pursuant to any ordinance, general plan element, specific plan, charter amendment, or other local condition, law, policy, resolution, or regulation.

(2) "Maximum allowable residential density" means the density allowed under the zoning ordinance, or if a range of density is permitted, means the maximum allowable density for the specific zoning range applicable to the project.

(p) (1) Upon the request of the developer, no city, county, or city and county shall require a vehicular parking ratio, inclusive of handicapped and guest parking, of a development meeting the criteria of subdivision (b), that exceeds the following ratios:

(A) Zero to one bedrooms: one onsite parking space.

(B) Two to three bedrooms: two onsite parking spaces.

(C) Four and more bedrooms: two and one-half parking spaces.

(2) If the total number of parking spaces required for a development is other than a whole number, the number shall be rounded up to the next whole number. For purposes of this subdivision, a development may provide "onsite parking" through tandem parking or uncovered parking, but not through onstreet parking.

(3) This subdivision shall apply to a development that meets the requirements of subdivision (b) but only at the request of the applicant. An applicant may request additional parking incentives or concessions beyond those provided in this section, subject to subdivision (d).

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act, within the meaning of Section 17556 of the Government Code.

CHAPTER 497

An act to amend Section 30063 of the Government Code, and to amend Sections 14171, 14173, and 14175 of, to amend and renumber Section 14174.3 of, and to repeal Sections 14172 and 14174 of, the Penal Code, relating to local law enforcement, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 4, 2005. Filed with
Secretary of State October 4, 2005.]

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

SECTION 1. Section 30063 of the Government Code is amended to read:

30063. (a) The Supplemental Law Enforcement Services Fund (SLESF) in each county or city is to be expended exclusively as required by this chapter. Moneys in that fund shall not be transferred to, or intermingled with, the moneys in any other fund in the county or city treasury, except that moneys may be transferred from the SLESF to the county's or city's general fund to the extent necessary to facilitate the appropriation and expenditure of those transferred moneys in the manner required by this chapter.

(b) Moneys in an SLESF may only be invested in safe and conservative investments in accordance with those standards of prudent investment applicable to the investment of trust moneys. The treasurer of the county and each city shall provide a monthly SLESF investment report to either the police chief or the county sheriff and district attorney, as applicable.

(c) Each year, at least 30 days prior to the date of the duly noticed public hearing required pursuant to paragraph (1) of subdivision (c) of Section 30061, the county auditor and city treasurer shall detail and summarize allocations from the county's or city's SLESF, as applicable, in a written, public report filed with the Supplemental Law Enforcement Oversight Committee (SLEOC), the county board of supervisors, or the city council, as applicable, for the entirety of the immediately preceding fiscal year, and the county sheriff or police chief, as applicable.

(d) A summary of the annual reports required in subdivision (c) shall be submitted in a standardized format to be developed by the Controller, in conjunction with the California District Attorney's Association, California Police Chief's Association, California State Sheriff's Association, California Peace Officer's Association, California County Auditor's Association, and California Municipal Treasurer's Association,

by each SLEOC to the Controller on or before October 15, 2001, and each year thereafter. The Controller shall make a copy of the summarized reports available to the Governor, the Legislature, and the Legislative Analyst's Office.

(e) A county, a city, or a city and county that fails to submit the data required pursuant to subdivision (d) of this section or to report as required pursuant to clause (i) of subparagraph (E) of paragraph (4) of subdivision (b) of Section 30061 shall not continue to expend funds allocated pursuant to subdivision (b) of Section 30061 or interest earned pursuant to subdivision (b) of this section until that data and that report are submitted as required by this chapter.

(f) Notwithstanding subdivision (e), if the SLEOC fails to transmit the data to the Controller required pursuant to subdivision (d), the local law enforcement agency may submit its expenditure data directly to the Controller no later than 15 days after the date specified in subdivision (d). If the local law enforcement agency has complied with other requirements in this chapter, it may continue to expend funds allocated and interest earned pursuant to this chapter.

SEC. 2. Section 14171 of the Penal Code is amended to read:

14171. (a) Each of the Counties of Fresno, Kern, Kings, Madera, Merced, San Joaquin, Stanislaus, and Tulare may develop within its respective jurisdiction a Central Valley Rural Crime Prevention Program, which shall be administered by the county district attorney's office of each respective county under a joint powers agreement with the corresponding county sheriff's office entered into pursuant to Chapter 5 (commencing with Section 6500) of Division 7 of Title 1 of the Government Code.

(b) The parties to each agreement shall form a regional task force that shall be known as the Central Valley Rural Crime Task Force, that includes the respective county office of the county agricultural commissioner, the county district attorney, the county sheriff, and interested property owner groups or associations. The task force shall be an interactive team working together to develop crime prevention, problem solving, and crime control techniques, to encourage timely reporting of crimes, and to evaluate the results of these activities. The task force shall operate from a joint facility in order to facilitate investigative coordination. The task force shall also consult with experts from the United States military, the California Military Department, the Department of Justice, other law enforcement entities, and various other state and private organizations as deemed necessary to maximize the effectiveness of this program. Media and community support shall be solicited to promote this program. Each of the designated counties shall

adopt rules and regulations for the implementation and administration of this program.

(1) In order to receive funds for this program, each designated county shall agree to participate in a regional task force, to be known as the Central Valley Rural Crime Task Force, and shall appoint a representative to that task force.

(2) The Central Valley Rural Crime Task Force shall develop rural crime prevention programs containing a system for reporting rural crimes that enables the swift recovery of stolen goods and the apprehension of criminal suspects for prosecution. The task force shall develop computer software and use communication technology to implement the reporting system, although the task force is not limited to the use of these means to achieve the stated goals.

(3) The Central Valley Rural Crime Task Force shall develop a uniform procedure for all participating counties to collect, and each participating county shall collect, data on agricultural crimes. The task force shall also establish a central database for the collection and maintenance of data on agricultural crimes and designate one participating county to maintain the database. State funds the counties receive to operate their rural crime prevention programs may be used to implement the requirements of this paragraph. This paragraph does not prohibit counties from using their own funds to implement the paragraph's provisions, however, it is the Legislature's intent that this paragraph shall not be construed as creating a state-mandated local program.

(c) The staff for each program shall consist of the personnel designated by the district attorney and sheriff for each county in accordance with the joint powers agreement.

SEC. 3. Section 14172 of the Penal Code is repealed.

SEC. 4. Section 14173 of the Penal Code is amended to read:

14173. It is the intent of the Legislature that any funds appropriated to the Central Valley Rural Crime Prevention Program be distributed according to the following schedule:

Fresno	23%
Kern	17%
Kings	8.5%
Madera	5.5%
Merced	8.5%
San Joaquin	8.5%
Stanislaus	8.5%
Tulare	20.5%

SEC. 5. Section 14174 of the Penal Code is repealed.

SEC. 6. Section 14174.3 of the Penal Code is amended and renumbered to read:

14174. Funds appropriated for the purposes of this title shall be allocated based on the counties' compliance with paragraph (3) of subdivision (b) of Section 14171.

SEC. 7. Section 14175 of the Penal Code is amended to read:

14175. This title shall become inoperative on July 1, 2009, and is repealed as of January 1, 2010, unless a later enacted statute, which is enacted before January 1, 2010, deletes or extends that date.

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 assure the continued operation of the program and promote agricultural and rural crime prevention, it is necessary that this act take effect immediately.

CHAPTER 498

An act to add and repeal Article 5 (commencing with Section 89090) of Chapter 1 of Part 55 of, and to add and repeal Article 4 (commencing with Section 92630) of Chapter 6 of Part 57 of, the Education Code, relating to public postsecondary education.

[Approved by Governor October 4, 2005. Filed with
Secretary of State October 4, 2005.]

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

SECTION 1. Article 5 (commencing with Section 89090) is added to Chapter 1 of Part 55 of the Education Code, to read:

Article 5. Alumni

89090. (a) The trustees, alumni associations, and auxiliary organizations may distribute the names, addresses, and electronic mail addresses of alumni of the California State University to a business as described in subdivision (b), in order to accomplish any or all of the following:

(1) To provide those persons with informational materials relating to the university and its programs and activities.

(2) To provide those persons, the trustees, the alumni associations, and the auxiliary organizations with commercial opportunities that provide a benefit to those persons, or to the trustees, alumni associations, or auxiliary organizations.

(3) To promote and support the educational mission of the university, the trustees, the alumni associations, or the auxiliary organizations.

(b) The disclosures authorized in subdivision (a) shall be permitted only if all of the following requirements are met:

(1) (A) The trustees, the alumni associations, or the auxiliary organizations have a written agreement with a business, as defined in subdivision (a) of Section 1798.80 of the Civil Code, that maintains control over this data that requires the business to maintain the confidentiality of the names, addresses, and electronic mail addresses of the alumni, that requires that the California State University retain the right to approve or reject any purpose for which the private information is to be used by the business, and to review and approve the text of mailings sent to alumni pursuant to this section, and that prohibits the business from using the information for any purposes other than those described in subdivision (a). The text of a mailing intended to be sent to alumni pursuant to this section shall not be approved by the trustees, the affected alumni association, or the affected auxiliary organization unless and until the mailing conspicuously identifies the university, the alumni association, or the auxiliary organization as associated with the business described in the mailing.

(B) If an affinity partner, as defined in Section 4054.6 of the Financial Code, sends any message to any electronic mail address obtained pursuant to this section, that message shall include at least both of the following:

- (i) The identity of the sender of the message.
- (ii) A cost-free means for the recipient to notify the sender not to electronically transmit any further message to the recipient.

(2) The trustees, an alumni association, or an auxiliary organization shall not disclose to, or share alumni nonpublic personal information with, a business, as defined in paragraph (1) unless the institution, association, or organization has clearly and conspicuously notified the alumnus, pursuant to subdivision (c), that the nonpublic personal information may be disclosed to the business and that the alumnus has not directed that the nonpublic personal information not be disclosed.

(3) The disclosure of alumni names, addresses, and electronic mail addresses does not include the names, addresses, and electronic mail addresses of alumni who, pursuant to subdivision (c) or in another manner, have directed the trustees, an alumni association, or an auxiliary organization not to disclose their names, addresses, or electronic mail addresses.

(4) No information regarding either of the following is disclosed:

(A) Any current students of the California State University.

(B) Any alumnus who, as a student at a campus of the California State University, indicated that, pursuant to the Family Educational Rights and Privacy Act, he or she did not wish his or her name, address, and electronic mail address to be disclosed.

(c) (1) The trustees, the affected alumni association, or the affected auxiliary organization shall satisfy the notice requirements of subdivision (b) if it uses the form set forth in paragraph (2). The form set forth in this subdivision or a form that complies with subparagraphs (A) to (J), inclusive, of this paragraph shall be provided by the trustees, the alumni association, or the auxiliary organization to the alumnus as required in this subdivision, and shall describe the nature of the information the alumnus would receive should the alumnus choose not to opt out, so that the alumnus may make a decision and provide direction to the trustees, the alumni association, or the auxiliary organization regarding the sharing of his or her name, address, and electronic mail address:

(A) The form uses the title "IMPORTANT PRIVACY CHOICE" and the header, if applicable, as follows: "Restrict Information Sharing With Affinity Partners."

(B) The titles and headers in the form are clearly and conspicuously displayed, and no text in the form is smaller than 10-point type.

(C) The form is a separate document, except as provided by subparagraph (B) of paragraph (3).

(D) The choice or choices provided in the form are stated separately, and may be selected by checking a box.

(E) The form is designed to call attention to the nature and significance of the information in the document.

(F) The form presents information in clear and concise sentences, paragraphs, and sections.

(G) The form uses short explanatory sentences (an average of 15 to 20 words) or bullet lists whenever possible.

(H) The form avoids multiple negatives, legal terminology, and highly technical terminology whenever possible.

(I) The form avoids explanations that are imprecise and readily subject to different interpretations.

(J) The form is not more than one page.

(2) The form reads as follows:

IMPORTANT PRIVACY CHOICE

You have the right to control whether we share your name, address, and electronic mail address with our affinity partners (companies that we partner with to offer products or services to our

alumni). Please read the following information carefully before you make your choice below:

Your Rights

You have the following rights to restrict the sharing of your name, address, and electronic mail address with our affinity partners. This form does not prohibit us from sharing your information when we are required to do so by law. This includes sending you information about the alumni association, the university, or other products or services.

Your Choice

Restrict Information Sharing With Affinity Partners:

Unless you say "NO," we may share your name, address, and electronic mail address with our affinity partners. Our affinity partners may send you offers to purchase various products or services that we may have agreed they can offer in partnership with us.

() NO, please do not share my name, address, and electronic mail address with your affinity partners.

Time Sensitive Reply

You may decide at any time that you do not want us to share your information with our affinity partners. Your choice marked here will remain unless you state otherwise. However, if we do not hear from you, we may share your name, address, and electronic mail address with our affinity partners.

If you decide that you do not want to receive information from our partners, you may do one of the following:

- (1) Call this toll-free telephone number: (xxx-xxx-xxxx).
- (2) Reply electronically by contacting us through the following Internet option: xxxxxxxxxxxx.com.
- (3) Fill out, sign, and send back this form to us at the following address (you may want to make a copy for your records).

XXXXXXXXXXXXXXXXXX

XXXXXXXXXXXXXXXXXX

XXXXXXXXXXXXXXXXXX

Name:

Address:

Signature:

(3) (A)The trustees, the affected alumni association, or the affected auxiliary organization shall not be in violation of this subdivision solely because they include in the form one or more brief examples or explanations of the purpose or purposes for which, or the context within which, names, addresses, and electronic mail addresses will be shared, as long as those examples meet the clarity and readability standards set forth in paragraph (1).

(B) The form shall be provided to alumni in each of the following communications:

(i) The solicitation to students, upon their graduation, from the trustees or the alumni association, encouraging students to join the alumni association or to avail themselves of the services or benefits of the association, shall include the form.

(ii) The alumni association magazine or newsletter, or both, shall include the form on an annual or more frequent basis.

(iii) The Web site for the alumni association shall include a link to the form.

(iv) A one-time mailing to all alumni on the university mailing list as of January 1, 2006.

(v) An annual electronic communication to those alumni for whom electronic mail addresses are available.

(4) The trustees, the affected alumni associations, or the affected auxiliary organizations shall provide at least two alternative cost-free means for alumni to communicate their privacy choices, such as calling a toll-free telephone number or using electronic means. The trustees, the alumni association, or the auxiliary organization shall clearly and conspicuously disclose in the form required by this subdivision the information necessary to direct the alumnus on how to communicate his or her choice, including the toll-free telephone or facsimile number or Web site address that may be used, if those means of communication are offered.

(5) (A) An alumnus may direct at any time that his or her name, address, and electronic mail address not be disclosed. The trustees, the affected alumni association, or the affected auxiliary organization shall comply with the direction of an alumnus concerning the sharing of his or her name, address, and electronic mail address within 45 days of receipt by the trustees, the alumni association, or the auxiliary organization. When an alumnus directs that his or her name, address, and electronic mail address not be disclosed, that direction is in effect until otherwise stated by the alumnus.

(B) Nothing in this subdivision shall prohibit the disclosure of the name, address, and electronic mail address of an alumnus as allowed by other applicable provisions of state law.

(6) The trustees, or the affected alumni association or the affected auxiliary organization, may provide a joint notice from the trustees or from one or more alumni associations, as identified in the notice, so long as the notice is accurate with respect to the trustees and the alumni association or associations or auxiliary organization or organizations participating in the joint notice.

(d) As used in this section, “auxiliary organization” has the same meaning as is set forth in Section 89901.

(e) This section shall not be construed to authorize the release of any social security numbers.

89090.5. This article 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. 2. Article 4 (commencing with Section 92630) is added to Chapter 6 of Part 57 of the Education Code, to read:

Article 4. Alumni

92630. (a) The regents and alumni associations may distribute the names, addresses, and electronic mail addresses of alumni of the University of California or the Hastings College of the Law to a business as described in subdivision (b) in order to accomplish any or all of the following:

(1) To provide those persons with informational materials relating to the university or college and its programs and activities.

(2) To provide those persons, the regents, the board of directors, and the alumni associations with commercial opportunities that provide a benefit to those persons, or to the regents, the board of directors, or the alumni associations.

(3) To promote and support the educational mission of the university, the regents, the board of directors, or the alumni associations.

(b) The disclosures authorized in subdivision (a) shall be permitted only if all of the following requirements are met:

(1)(A) The regents, the board of directors, or the alumni associations have a written agreement with a business, as defined in subdivision (a) of Section 1798.80 of the Civil Code that maintains control over this data that requires the business to maintain the confidentiality of the names, addresses, and electronic mail addresses of the alumni, that requires that the University of California or the Hastings College of the Law retain the right to approve or reject any purpose for which the private information is to be used by the business and to review and approve the text of mailings sent to alumni pursuant to this section, and that prohibits the business from using the information for any purposes other than those described in subdivision (a). The text of a mailing intended to be sent to alumni pursuant to this section shall not be approved by the regents or the affected alumni association unless and until the mailing conspicuously identifies the university or the alumni association as associated with the business described in the mailing.

(B) If an affinity partner, as defined in Section 4054.6 of the Financial Code, sends any message to any electronic mail address obtained pursuant to this section, that message shall include at least both of the following:

- (i) The identity of the sender of the message.
- (ii) A cost-free means for the recipient to notify the sender not to electronically transmit any further message to the recipient.

(2) The regents, the board of directors, or an alumni association shall not disclose to, or share a consumer's nonpublic personal information with, a business, as defined in paragraph (1), unless the institution, association, or organization has clearly and conspicuously notified the consumer pursuant to subdivision (c), that the nonpublic personal information may be disclosed to the business and that the alumnus has not directed that the nonpublic personal information not be disclosed.

(3) The disclosure of alumni names, addresses, and electronic mail addresses does not include the names, addresses, and electronic mail addresses of alumni who, pursuant to subdivision (c) or in another manner, have directed the regents, the board of directors, or an alumni association not to disclose their names, addresses, or electronic mail addresses.

(4) No information regarding either of the following is disclosed:

(A) Any current students of the University of California or the Hastings College of the Law.

(B) Any alumnus who, as a student of a campus of the University of California or the Hastings College of the Law, indicated that, pursuant to the Family Educational Rights and Privacy Act, he or she did not wish his or her name, address, and electronic mail address to be disclosed.

(c) (1) The regents, the board of directors, or the affected alumni association shall satisfy the notice requirements of subdivision (b) if it uses the form set forth in paragraph (2). The form set forth in this subdivision or a form that complies with subparagraphs (A) to (J), inclusive, of this paragraph shall be provided by the regents, the board of directors, or the alumni association to the alumnus as required in this subdivision, and shall describe the nature of the information the alumnus would receive should the alumnus choose not to opt out, so that the alumnus may make a decision and provide direction to the regents and the alumni association regarding the sharing of his or her name, address, and electronic mail address:

(A) The form uses the title "IMPORTANT PRIVACY CHOICE" and the header, if applicable, as follows: "Restrict Information Sharing With Affinity Partners."

(B) The titles and headers in the form are clearly and conspicuously displayed, and no text in the form is smaller than 10-point type.

(C) The form is a separate document, except as provided by subparagraph (B) of paragraph (3).

(D) The choice or choices provided in the form are stated separately, and may be selected by checking a box.

(E) The form is designed to call attention to the nature and significance of the information in the document.

(F) The form presents information in clear and concise sentences, paragraphs, and sections.

(G) The form uses short explanatory sentences (an average of 15 to 20 words) or bullet lists whenever possible.

(H) The form avoids multiple negatives, legal terminology, and highly technical terminology whenever possible.

(I) The form avoids explanations that are imprecise and readily subject to different interpretations.

(J) The form is not more than one page.

(2) The form reads as follows:

IMPORTANT PRIVACY CHOICE

You have the right to control whether we share your name, address, and electronic mail address with our affinity partners (companies that we partner with to offer products or services to our alumni). Please read the following information carefully before you make your choice below:

Your Rights

You have the following rights to restrict the sharing of your name, address, and electronic mail address with our affinity partners. This form does not prohibit us from sharing your information when we are required to do so by law. This includes sending you information about the alumni association, the university, or other products or services.

Your Choice

Restrict Information Sharing With Affinity Partners:

Unless you say "NO," we may share your name, address, and electronic mail address with our affinity partners. Our affinity partners may send you offers to purchase various products or services that we may have agreed they can offer in partnership with us.

() NO, please do not share my name, address, and electronic mail address with your affinity partners.

Time Sensitive Reply

You may decide at any time that you do not want us to share your information with our partners. Your choice marked here will remain unless you state otherwise. However, if we do not hear from you, we may share your name, address, and electronic mail address with our affinity partners.

If you decide that you do not want to receive information from our partners, you may do one of the following:

- (1) Call this toll-free telephone number: (xxx-xxx-xxxx).
- (2) Reply electronically by contacting us through the following Internet option: xxxxxxxxxxxx.com.
- (3) Fill out, sign, and send back this form to us at the following address (you may want to make a copy for your records).

XXXXXXXXXXXXXXXXXXXX

XXXXXXXXXXXXXXXXXXXX

XXXXXXXXXXXXXXXXXXXX

Name:

Address:

Signature:

(3) (A) The regents, the board of directors, or the affected alumni association shall not be in violation of this subdivision solely because they include in the form one or more brief examples or explanations of the purpose or purposes for which, or the context within which, names, addresses, and electronic mail addresses will be shared, as long as those examples meet the clarity and readability standards set forth in paragraph (1).

(B) The form shall be provided to alumni in each of the following communications:

(i) The solicitation to students, upon their graduation, from the regents, the board of directors, or the alumni association, encouraging students to join the alumni association or to avail themselves of the services or benefits of the association, shall include the form.

(ii) The alumni association magazine or newsletter, or both, shall include the form on an annual or more frequent basis.

(iii) The Web site for the alumni association shall include a link to the form.

(iv) A one-time mailing to all alumni on the university or college mailing list as of January 1, 2006.

(v) An annual electronic communication to those alumni for whom electronic mail addresses are available.

(4) The regents, the board of directors, or the affected alumni associations shall provide at least two alternative cost-free means for alumni to communicate their privacy choice, such as calling a toll-free telephone number, or using electronic means. The regents, the board of directors, or the alumni association shall clearly and conspicuously disclose in the form required by this subdivision the information necessary to direct the alumnus on how to communicate his or her choices, including the toll-free telephone or facsimile number or Web

site address that may be used, if those means of communication are offered.

(5) (A) An alumnus may direct at any time that his or her name, address, and electronic mail address not be disclosed. The regents, the board of directors, or the affected alumni association shall comply with the direction of an alumnus concerning the sharing of his or her name, address, and electronic mail address within 45 days of receipt by the regents, the board of directors, or the alumni association. When an alumnus directs that his or her name, address, or electronic mail address not be disclosed, that direction is in effect until otherwise stated by the alumnus.

(B) Nothing in this subdivision shall prohibit the disclosure of the name, address, or electronic mail address of an alumnus as allowed by other applicable provisions of state law.

(6) The regents, the board of directors, or the affected alumni association may provide a joint notice from the regents, from the board of directors, or from one or more alumni associations, as identified in the notice, so long as the notice is accurate with respect to the regents or the board of directors and the alumni association or associations participating in the joint notice.

(d) This section shall not be construed to authorize the release of any social security numbers.

92630.5. This article shall apply to the University of California only to the extent that the regents act, by resolution, to make it applicable. This article shall apply to the Hastings College of the Law only to the extent that the Board of Directors of the Hastings College of the Law acts, by resolution, to make it applicable.

92630.9. This article 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.

CHAPTER 499

An act to add Sections 3517.63, 19829.5, and 19829.6 to the Government Code, relating to employment relations.

[Approved by Governor October 4, 2005. Filed with
Secretary of State October 4, 2005.]

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

SECTION 1. Section 3517.63 is added to the Government Code, to read:

3517.63. (a) Any side letter, appendix, or other addendum to a properly ratified memorandum of understanding that requires the expenditure of two hundred fifty thousand dollars (\$250,000) or more related to salary and benefits and that is not already contained in the original memorandum of understanding or the Budget Act, shall be provided by the Department of Personnel Administration to the Joint Legislative Budget Committee. The Joint Legislative Budget Committee shall determine within 30 days after receiving the side letter, appendix, or other addendum if it presents substantial additions that are not reasonably within the parameters of the original memorandum of understanding and thereby requires legislative action to ratify the side letter, appendix, or other addendum.

(b) A side letter, appendix, or other addendum to a properly ratified memorandum of understanding that does not require the expenditure of funds shall be expressly identified by the Department of Personnel Administration if that side letter, appendix, or other addendum is to be incorporated in a subsequent memorandum of understanding submitted to the Legislature for approval.

SEC. 2. Section 19829.5 is added to the Government Code, to read:

19829.5. (a) The Department of Personnel Administration shall provide a memorandum of understanding pursuant to Section 3517.5 to the Legislative Analyst who shall have 10 calendar days from the date the tentative agreement is received to issue a fiscal analysis to the Legislature. The Legislative Analyst may prioritize the preparation of a fiscal analysis or report under this subdivision among other workload, including the submission of multiple memoranda of understanding. The memorandum of understanding shall not be subject to legislative determination until either the Legislative Analyst has presented a fiscal analysis of the memorandum of understanding or until 10 calendar days has elapsed since the memorandum was received by the Legislative Analyst.

(b) Each memorandum of understanding submitted by the department to the Legislative Analyst shall include the department's analysis of costs and savings.

SEC. 3. Section 19829.6 is added to the Government Code, to read:

19829.6. The Department of Personnel Administration shall post, in a clear and conspicuous manner on the department's Web site, each memorandum of understanding that has been submitted to the Legislature for determination pursuant to Section 3517.5 and that has been ratified

by the affected union membership. The memorandum of understanding of the agreement reached between the Governor and the recognized employee organization shall be posted on the department's Web site in its entirety, with a declaration that the memorandum has been submitted to the office of the Legislative Analyst and the Legislature, including the date of that submission. The department shall include on its Web site posting a summary of the memorandum of understanding that is the same summary provided to the Legislature by the department.

CHAPTER 500

An act to amend Section 1776 of the Labor Code, relating to public works.

[Approved by Governor October 4, 2005. Filed with
Secretary of State October 4, 2005.]

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

SECTION 1. Section 1776 of the Labor Code is amended to read:

1776. (a) Each contractor and subcontractor shall keep accurate payroll records, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by him or her in connection with the public work. Each payroll record shall contain or be verified by a written declaration that it is made under penalty of perjury, stating both of the following:

(1) The information contained in the payroll record is true and correct.
(2) The employer has complied with the requirements of Sections 1771, 1811, and 1815 for any work performed by his or her employees on the public works project.

(b) The payroll records enumerated under subdivision (a) shall be certified and shall be available for inspection at all reasonable hours at the principal office of the contractor on the following basis:

(1) A certified copy of an employee's payroll record shall be made available for inspection or furnished to the employee or his or her authorized representative on request.

(2) A certified copy of all payroll records enumerated in subdivision (a) shall be made available for inspection or furnished upon request to a representative of the body awarding the contract, the Division of Labor

Standards Enforcement, and the Division of Apprenticeship Standards of the Department of Industrial Relations.

(3) A certified copy of all payroll records enumerated in subdivision (a) shall be made available upon request by the public for inspection or for copies thereof. However, a request by the public shall be made through either the body awarding the contract, the Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement. If the requested payroll records have not been provided pursuant to paragraph (2), the requesting party shall, prior to being provided the records, reimburse the costs of preparation by the contractor, subcontractors, and the entity through which the request was made. The public may not be given access to the records at the principal office of the contractor.

(c) The certified payroll records shall be on forms provided by the Division of Labor Standards Enforcement or shall contain the same information as the forms provided by the division. The payroll records may consist of printouts of payroll data that are maintained as computer records, if the printouts contain the same information as the forms provided by the division and the printouts are verified in the manner specified in subdivision (a).

(d) A contractor or subcontractor shall file a certified copy of the records enumerated in subdivision (a) with the entity that requested the records within 10 days after receipt of a written request.

(e) Any copy of records made available for inspection as copies and furnished upon request to the public or any public agency by the awarding body, the Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement shall be marked or obliterated to prevent disclosure of an individual's name, address, and social security number. The name and address of the contractor awarded the contract or the subcontractor performing the contract shall not be marked or obliterated. Any copy of records made available for inspection by, or furnished to, a joint labor-management committee established pursuant to the federal Labor Management Cooperation Act of 1978 (29 U.S.C. Sec. 175a) shall be marked or obliterated only to prevent disclosure of an individual's name and social security number. A joint labor management committee may maintain an action in a court of competent jurisdiction against an employer who fails to comply with Section 1774. The court may award restitution to an employee for unpaid wages and may award the joint labor management committee reasonable attorney's fees and costs incurred in maintaining the action. An action under this subdivision may not be based on the employer's misclassification of the craft of a worker on its certified payroll records. Nothing in this subdivision limits any other available remedies for a violation of this chapter.

(f) The contractor shall inform the body awarding the contract of the location of the records enumerated under subdivision (a), including the street address, city, and county, and shall, within five working days, provide a notice of a change of location and address.

(g) The contractor or subcontractor has 10 days in which to comply subsequent to receipt of a written notice requesting the records enumerated in subdivision (a). In the event that the contractor or subcontractor fails to comply within the 10-day period, he or she shall, as a penalty to the state or political subdivision on whose behalf the contract is made or awarded, forfeit twenty-five dollars (\$25) for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Upon the request of the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement, these penalties shall be withheld from progress payments then due. A contractor is not subject to a penalty assessment pursuant to this section due to the failure of a subcontractor to comply with this section.

(h) The body awarding the contract shall cause to be inserted in the contract stipulations to effectuate this section.

(i) The director shall adopt rules consistent with the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code) and the Information Practices Act of 1977 (Title 1.8 (commencing with Section 1798) of Part 4 of Division 3 of the Civil Code) governing the release of these records, including the establishment of reasonable fees to be charged for reproducing copies of records required by this section.

CHAPTER 501

An act to amend Sections 65863.11 and 65863.13 of the Government Code, to amend Sections 33760 and 34312 of the Health and Safety Code, and to amend Sections 12206, 17058, and 23610.5 of the Revenue and Taxation Code, relating to housing.

[Approved by Governor October 4, 2005. Filed with
Secretary of State October 4, 2005.]

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

SECTION 1. Section 65863.11 of the Government Code, as amended by Chapter 110 of the Statutes of 2004, 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 50105 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. 2. Section 65863.13 of the Government Code, as amended by Chapter 110 of the Statutes of 2004, is amended to read:

65863.13. (a) An owner shall not be required to provide a notice as required by Section 65863.10 or 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 assisted housing developments described in paragraph (3) of subdivision (a) of Section 65863.10, a new regulatory agreement, consistent with this section, is recorded that restricts the rents and incomes of the previously restricted units, except as provided in paragraph (7), (8), or (9), to an equal or greater level of affordability than previously required so that the units 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 rental assistance upon the effective date of prepayment and subsequently become unassisted by any form of rental assistance, rents shall not exceed 30 percent of 60 percent of the area median income. If any form of rental assistance is or becomes available, the owner shall apply for and accept, if awarded, the rental assistance. Rent and occupancy levels shall then be set in accordance with federal regulations for the rental assistance program.

(8) For units that do not have project-based rental 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 rental 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 rental assistance is or becomes available, the owner shall apply for and accept, if awarded, the rental assistance. Rent and occupancy levels shall then be set in accordance with federal regulations governing the rental assistance program.

(9) If, upon the recordation of the new regulatory agreement, any unit governed by regulatory agreement is occupied by a household whose income exceeds the applicable limit, the rent for that household shall

not exceed 30 percent of that household's adjusted income, provided that household's rent shall not be increased by more than 10 percent annually.

(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. 3. Section 33760 of the Health and Safety Code is amended to read:

33760. (a) Within its territorial jurisdiction, an agency may determine the location and character of any residential construction to be financed under this chapter and may make mortgage or construction loans to participating parties through qualified mortgage lenders, or purchase mortgage or construction loans without premium made by qualified mortgage lenders to participating parties, or make loans to qualified mortgage lenders, for financing any of the following:

- (1) Residential construction within a redevelopment project area.
- (2) Residential construction of residences in which the dwelling units are committed, for the period during which the loan is outstanding, for occupancy by persons or families who are eligible for financial assistance specifically provided by a governmental agency for the benefit of occupants of the residence.

- (3) To the extent required by Section 103A of Title 26 of the United States Code, as amended, to maintain the exemption from federal income taxes of interest on bonds or notes issued by the agency under this chapter, residences located within targeted areas, as defined by Section 103(b)(12)(A) of Title 26 of the United States Code. Any loans to qualified mortgage lenders shall be made under terms and conditions which, in addition to other provisions as determined by the agency, shall require the qualified mortgage lender to use all of the net proceeds thereof, directly or indirectly, for the making of mortgage loans or

construction loans in an appropriate principal amount equal to the amount of the net proceeds. Those mortgage loans may, but need not, be insured.

(b) (1) Not less than 20 percent (15 percent in target areas) of the units in any residential project financed pursuant to this section on or after January 1, 1986, shall be occupied by, or made available to, individuals of low and moderate income, as defined by Section 103(b)(12)(C) of Title 26 of the United States Code. If the sponsor elects to establish a base rent for units reserved for lower income households, the base rents shall be adjusted for household size, as determined pursuant to Section 8 of the United States Housing Act of 1937 (42 U.S.C. Sec. 1437f), or its successor, for a family of one person in the case of a studio unit, two persons in the case of a one-bedroom unit, three persons in the case of a two-bedroom unit, four persons in the case of a three-bedroom unit, and five persons in the case of a four-bedroom unit.

(2) Not less than one-half of the units described in paragraph (1) shall be occupied by, or made available to, very low income households, as defined by Section 50105. The rental payments for those units paid by the persons occupying the units (excluding any supplemental rental assistance from the state, the federal government, or any other public agency to those persons or on behalf of those units) shall not exceed the amount derived by multiplying 30 percent times 50 percent of the median adjusted gross income for the area, adjusted for family size, as determined pursuant to Section 8 of the United States Housing Act of 1937 (42 U.S.C. Sec. 1437f), or its successor, for a family of one person in the case of a studio unit, two persons in the case of a one-bedroom unit, three persons in the case of a two-bedroom unit, four persons in the case of a three-bedroom unit, and five persons in the case of a four-bedroom unit.

(c) Units required to be reserved for occupancy as provided in subdivision (b) and financed with the proceeds of bonds issued on or after January 1, 1986, shall remain occupied by, or made available to, those persons until the bonds are retired.

(d) (1) When issuing tax-exempt bonds for purposes of this section, the regulatory agreement entered into by the agency shall require that following the expiration or termination of the qualified project period, except in the event of foreclosure and redemption of the bonds, deed in lieu of foreclosure, eminent domain, or action of a federal agency preventing enforcement, units required to be reserved for occupancy for low- or very low income households and financed with proceeds of bonds issued on or after January 1, 2006, shall remain available to any eligible household occupying a reserved unit at the date of expiration or termination, at a rent not greater than the amount set forth by the

regulatory agreement prior to the date or expiration or termination, until the earliest of any of the following occur:

(A) The household's income exceeds 140 percent of the maximum eligible income specified in the regulatory agreement for reserved units.

(B) The household voluntarily moves or is evicted for "good cause." "Good cause" for the purposes of this section, means the nonpayment of rent or allegation of facts necessary to prove major, or repeated minor, violations of material provisions of the occupancy agreement which detrimentally affect the health and safety of other persons or the structure, the fiscal integrity of the development, or the purposes or special programs of the development.

(C) Thirty years after the date of the commencement of the qualified project period.

(D) The sponsor pays the relocation assistance and benefits to tenants as provided in subdivision (b) of Section 7264 of the Government Code.

(2) As used in this subdivision, "qualified project period" shall have the meaning specified in, and shall be determined in accordance with the provisions of, subsection (d) of Section 142 of the Internal Revenue Code of 1986, as amended, and United States Treasury regulations and rulings promulgated pursuant thereto.

(e) This section shall become operative January 1, 1996.

SEC. 4. Section 34312 of the Health and Safety Code is amended to read:

34312. Within its area of operation, an authority may undertake any of the following:

(a) Prepare, carry out, acquire, lease, and operate housing projects for persons of low income, as authorized by this chapter, and housing developments for persons of low income, as authorized by Part 3 (commencing with Section 50900) of Division 31.

(b) Provide for the construction, reconstruction, improvement, alteration, or repair of all or part of any housing project.

(c) Provide leased housing to persons of low income.

(d) (1) Provide financing for the acquisition, construction, rehabilitation, refinancing, or development of dwelling accommodations for persons of low income, and for other persons when acting pursuant to the authorization contained in Part 13 (commencing with Section 37910) of this division or Part 3 (commencing with Section 50900) of Division 31, subject only to the limitations on income of borrowers or residents prescribed by the statutory provisions under which the authority is acting. With respect to financing activities conducted pursuant to Part 3 (commencing with Section 50900) or Part 4 (commencing with Section 51600) of Division 31, the authority shall obtain certification as a qualified mortgage lender pursuant to Section 50094.

(2) When issuing tax-exempt bonds for purposes of this section, the regulatory agreement entered into by the agency shall require that following the expiration or termination of the qualified project period, except in the event of foreclosure and redemption of the bonds, deed in lieu of foreclosure, eminent domain, or action of a federal agency preventing enforcement, units required to be reserved for occupancy for low- or very low income households and financed with proceeds of bonds issued on or after January 1, 2006, shall remain available to any eligible household occupying a reserved unit at the date of expiration or termination, at a rent not greater than the amount set forth by the regulatory agreement prior to the date of expiration or termination, until the earliest of any of the following occur:

(A) The household's income exceeds 140 percent of the maximum eligible income specified in the regulatory agreement for reserved units.

(B) The household voluntarily moves or is evicted for "good cause." "Good cause" for the purposes of this section, means the nonpayment of rent or allegation of facts necessary to prove major, or repeated minor, violations of material provisions of the occupancy agreement which detrimentally affect the health and safety of other persons or the structure, the fiscal integrity of the development, or the purposes or special programs of the development.

(C) Thirty years after the date of the commencement of the qualified project period.

(D) The sponsor pays the relocation assistance and benefits to tenants as provided in subdivision (b) of Section 7264 of the Government Code.

(3) As used in this subdivision, "qualified project period" shall have the meaning specified in, and shall be determined in accordance with the provisions of, subsection (d) of Section 142 of the Internal Revenue Code of 1986, as amended, and United States Treasury regulations and rulings promulgated pursuant thereto.

(e) Provide counseling, referral, and advisory services to persons and families of low or moderate income in connection with the purchase, rental, occupancy, maintenance, or repair of housing.

(f) Provide the security which the authority deems necessary for the protection of a project and its inhabitants.

(g) Assist housing projects pursuant to Section 34312.3.

(h) Acquire, plan, undertake, construct, improve, develop, maintain, and operate land on which mobilehomes or a mobilehome park are, or may be, located, so long as not less than 20 percent of the mobilehomes are designated for occupancy by, or are occupied by, persons of low income. For purposes of this subdivision, "mobilehome" has the meaning specified in Section 18008, and "mobilehome park" has the meaning specified in Section 18214.

SEC. 5. Section 12206 of the Revenue and Taxation Code is amended to read:

12206. (a) (1) There shall be allowed as a credit against the “tax” (as defined by Section 12201) a state low-income housing tax credit in an amount equal to the amount determined in subdivision (c), computed in accordance with Section 42 of the Internal Revenue Code, except as otherwise provided in this section.

(2) “Taxpayer,” for purposes of this section, means the sole owner in the case of a “C” corporation, the partners in the case of a partnership, and the shareholders in the case of an “S” corporation.

(3) “Housing sponsor,” for purposes of this section, means the sole owner in the case of a “C” corporation, the partnership in the case of a partnership, and the “S” corporation in the case of an “S” corporation.

(b) (1) The amount of the credit allocated to any housing sponsor shall be authorized by the California Tax Credit Allocation Committee, or any successor thereof, based on a project’s need for the credit for economic feasibility in accordance with the requirements of this section.

(A) The low-income housing project shall be located in California and shall meet either of the following requirements:

(i) The project’s housing sponsor shall have been allocated by the California Tax Credit Allocation Committee a credit for federal income tax purposes under Section 42 of the Internal Revenue Code.

(ii) It shall qualify for a credit under Section 42(h)(4)(B) of the Internal Revenue Code.

(B) The California Tax Credit Allocation Committee shall not require fees for the credit under this section in addition to those fees required for applications for the tax credit pursuant to Section 42 of the Internal Revenue Code. The committee may require a fee if the application for the credit under this section is submitted in a calendar year after the year the application is submitted for the federal tax credit.

(2) (A) The California Tax Credit Allocation Committee shall certify to the housing sponsor the amount of tax credit under this section allocated to the housing sponsor for each credit period.

(B) In the case of a partnership or an “S” corporation, the housing sponsor shall provide a copy of the California Tax Credit Allocation Committee certification to the taxpayer.

(C) The taxpayer shall attach a copy of the certification to any return upon which a tax credit is claimed under this section.

(D) In the case of a failure to attach a copy of the certification for the year to the return in which a tax credit is claimed under this section, no credit under this section shall be allowed for that year until a copy of that certification is provided.

(E) All elections made by the taxpayer pursuant to Section 42 of the Internal Revenue Code shall apply to this section.

(F) No credit shall be allocated under this section to buildings located in a difficult development area or a qualified census tract as defined in Section 42 of the Internal Revenue Code for which the eligible basis of a new building or the rehabilitation expenditure of an existing building is 130 percent of that amount pursuant to Section 42(d)(5)(C) of the Internal Revenue Code, unless the committee reduces the amount of federal credit, with the approval of the applicant, so that the combined amount of federal and state credit shall not exceed the total credit allowable pursuant to this section and Section 42(b) of the Internal Revenue Code, computed without regard to Section 42(d)(5)(C) of the Internal Revenue Code.

(c) Section 42(b) of the Internal Revenue Code shall be modified as follows:

(1) In the case of any qualified low-income building that receives an allocation after 1989 and is a new building not federally subsidized, the term “applicable percentage” means the following:

(A) For each of the first three years, the percentage prescribed by the Secretary of the Treasury for new buildings that are not federally subsidized for the taxable year, determined in accordance with the requirements of Section 42(b)(2) of the Internal Revenue Code, in lieu of the percentage prescribed in Section 42(b)(1)(A) of the Internal Revenue Code.

(B) For the fourth year, the difference between 30 percent and the sum of the applicable percentages for the first three years.

(2) In the case of any qualified low-income building that receives an allocation after 1989 and that is a new building that is federally subsidized or that is an existing building that is “at risk of conversion,” the term “applicable percentage” means the following:

(A) For each of the first three years, the percentage prescribed by the Secretary of the Treasury for new buildings that are federally subsidized for the taxable year.

(B) For the fourth year, the difference between 13 percent and the sum of the applicable percentages for the first three years.

(3) For purposes of this section, the term “at risk of conversion,” with respect to an existing property means a property that satisfies all of the following criteria:

(A) The property is a multifamily rental housing development in which at least 50 percent of the units receive governmental assistance pursuant to any of the following:

(i) New construction, substantial rehabilitation, moderate rehabilitation, property disposition, and loan management set-aside

programs, or any other program providing project-based assistance pursuant to Section 8 of the United States Housing Act of 1937, Section 1437f of Title 42 of the United States Code, as amended.

(ii) The Below-Market-Interest-Rate Program pursuant to Section 221(d)(3) of the National Housing Act, Sections 1715l(d)(3) and (5) of Title 12 of the United States Code.

(iii) Section 236 of the National Housing Act, Section 1715z-1 of Title 12 of the United States Code.

(iv) Programs for rent supplement assistance pursuant to Section 101 of the Housing and Urban Development Act of 1965, Section 1701s of Title 12 of the United States Code, as amended.

(v) Programs pursuant to Section 515 of the Housing Act of 1949, Section 1485 of Title 42 of the United States Code, as amended.

(vi) The low-income housing credit program set forth in Section 42 of the Internal Revenue Code, provided that the property is not eligible to receive an allocation of tax exempt private activity mortgage revenue bonds from the California Debt Limit Allocation Committee.

(B) The restrictions on rent and income levels will terminate or the federal insured mortgage on the property is eligible for prepayment anytime in the five calendar years after the year of application to the California Tax Credit Allocation Committee.

(C) The entity acquiring the property enters into a regulatory agreement that requires the property to be operated in accordance with the requirements of this section for a period equal to the greater of 55 years or the life of the property.

(D) The property satisfies the requirements of Section 42(e) of the Internal Revenue Code regarding rehabilitation expenditures, except that the provisions of Section 42(e)(3)(A)(ii)(I) shall not apply.

(d) The term “qualified low-income housing project” as defined in Section 42(c)(2) of the Internal Revenue Code is modified by adding the following requirements:

(1) The taxpayer shall be entitled to receive a cash distribution from the operations of the project, after funding required reserves, which, at the election of the taxpayer, is equal to:

(A) An amount not to exceed 8 percent of the lesser of:

(i) The owner equity which shall include the amount of the capital contributions actually paid to the housing sponsor and shall not include any amounts until they are paid on an investor note.

(ii) Twenty percent of the adjusted basis of the building as of the close of the first taxable year of the credit period.

(B) The amount of the cashflow from those units in the building that are not low-income units. For purposes of computing cashflow under this subparagraph, operating costs shall be allocated to the low-income

units using the “floor space fraction,” as defined in Section 42 of the Internal Revenue Code.

(C) Any amount allowed to be distributed under subparagraph (A) that is not available for distribution during the first five years of the compliance period may accumulate and be distributed any time during the first 15 years of the compliance period but not thereafter.

(2) The limitation on return shall apply in the aggregate to the partners if the housing sponsor is a partnership and in the aggregate to the shareholders if the housing sponsor is an S corporation.

(3) The housing sponsor shall apply any cash available for distribution in excess of the amount eligible to be distributed under paragraph (1) to reduce the rent on rent-restricted units or to increase the number of rent-restricted units subject to the tests of Section 42(g)(1) of the Internal Revenue Code.

(e) The provisions of Section 42(f) of the Internal Revenue Code shall be modified as follows:

(1) The term “credit period” as defined in Section 42(f)(1) of the Internal Revenue Code is modified by substituting “four taxable years” for “10 taxable years.”

(2) The special rule for the first taxable year of the credit period under Section 42(f)(2) of the Internal Revenue Code shall not apply to the tax credit under this section.

(3) Section 42(f)(3) of the Internal Revenue Code is modified to read:

If, as of the close of any taxable year in the compliance period, after the first year of the credit period, the qualified basis of any building exceeds the qualified basis of that building as of the close of the first year of the credit period, the housing sponsor, to the extent of its tax credit allocation, shall be eligible for a credit on the excess in an amount equal to the applicable percentage determined pursuant to subdivision (c) for the four-year period beginning with the later of the taxable years in which the increase in qualified basis occurs.

(f) The provisions of Section 42(h) of the Internal Revenue Code shall be modified as follows:

(1) Section 42(h)(2) of the Internal Revenue Code shall not be applicable and instead the following provisions shall be applicable:

The total amount for the four-year credit period of the housing credit dollars allocated in a calendar year to any building shall reduce the aggregate housing credit dollar amount of the California Tax Credit Allocation Committee for the calendar year in which the allocation is made.

(2) Paragraphs (3), (4), (5), (6)(E)(i)(II), (6)(F), (6)(G), (6)(I), (7), and (8) of Section 42(h) of the Internal Revenue Code shall not be applicable.

(g) The aggregate housing credit dollar amount that may be allocated annually by the California Tax Credit Allocation Committee pursuant to this section, Section 17058, and Section 23610.5 shall be an amount equal to the sum of all the following:

(1) Seventy million dollars (\$70,000,000) for the 2001 calendar year, and, for the 2002 calendar year and each calendar year thereafter, seventy million dollars (\$70,000,000) increased by the percentage, if any, by which the Consumer Price Index for the preceding calendar year exceeds the Consumer Price Index for the 2001 calendar year. For the purposes of this paragraph, the term "Consumer Price Index" means the last Consumer Price Index for all urban consumers published by the federal Department of Labor.

(2) The unused housing credit ceiling, if any, for the preceding calendar years.

(3) The amount of housing credit ceiling returned in the calendar year. For purposes of this paragraph, the amount of housing credit dollar amount returned in the calendar year equals the housing credit dollar amount previously allocated to any project that does not become a qualified low-income housing project within the period required by this section or to any project with respect to which an allocation is canceled by mutual consent of the California Tax Credit Allocation Committee and the allocation recipient.

(h) The term "compliance period" as defined in Section 42(i)(1) of the Internal Revenue Code is modified to mean, with respect to any building, the period of 30 consecutive taxable years beginning with the first taxable year of the credit period with respect thereto.

(i) (1) Section 42(j) of the Internal Revenue Code shall not be applicable and the provisions in paragraph (2) shall be substituted in its place.

(2) The requirements of this section shall be set forth in a regulatory agreement between the California Tax Credit Allocation Committee and the housing sponsor, which agreement shall be subordinated, when required, to any lien or encumbrance of any banks or other institutional lenders to the project. The regulatory agreement entered into pursuant to subdivision (f) of Section 50199.14 of the Health and Safety Code, shall apply, providing the agreement includes all of the following provisions:

(A) A term not less than the compliance period.

(B) A requirement that the agreement be filed in the official records of the county in which the qualified low-income housing project is located.

(C) A provision stating which state and local agencies can enforce the regulatory agreement in the event the housing sponsor fails to satisfy any of the requirements of this section.

(D) A provision that the regulatory agreement shall be deemed a contract enforceable by tenants as third-party beneficiaries thereto and which allows individuals, whether prospective, present, or former occupants of the building, who meet the income limitation applicable to the building, the right to enforce the regulatory agreement in any state court.

(E) A provision incorporating the requirements of Section 42 of the Internal Revenue Code as modified by this section.

(F) A requirement that the housing sponsor notify the California Tax Credit Allocation Committee or its designee and the local agency that can enforce the regulatory agreement if there is a determination by the Internal Revenue Service that the project is not in compliance with Section 42(g) of the Internal Revenue Code.

(G) A requirement that the housing sponsor, as security for the performance of the housing sponsor's obligations under the regulatory agreement, assign the housing sponsor's interest in rents that it receives from the project, provided that until there is a default under the regulatory agreement, the housing sponsor is entitled to collect and retain the rents.

(H) The remedies available in the event of a default under the regulatory agreement that is not cured within a reasonable cure period, include, but are not limited to, allowing any of the parties designated to enforce the regulatory agreement to collect all rents with respect to the project; taking possession of the project and operating the project in accordance with the regulatory agreement until the enforcer determines the housing sponsor is in a position to operate the project in accordance with the regulatory agreement; applying to any court for specific performance; securing the appointment of a receiver to operate the project; or any other relief as may be appropriate.

(j) (1) The committee shall allocate the housing credit on a regular basis consisting of two or more periods in each calendar year during which applications may be filed and considered. The committee shall establish application filing deadlines, the maximum percentage of federal and state low-income housing tax credit ceiling which may be allocated by the committee in that period, and the approximate date on which allocations shall be made. If the enactment of federal or state law, the adoption of rules or regulations, or other similar events prevent the use of two allocation periods, the committee may reduce the number of periods and adjust the filing deadlines, maximum percentage of credit allocated, and the allocation dates.

(2) The committee shall adopt a qualified allocation plan, as provided in Section 42(m)(1) of the Internal Revenue Code. In adopting this plan, the committee shall comply with the provisions of Sections 42(m)(1)(B) and 42(m)(1)(C) of the Internal Revenue Code.

(3) Notwithstanding Section 42(m) of the Internal Revenue Code, the California Tax Credit Allocation Committee shall allocate housing credits in accordance with the qualified allocation plan and regulations, which shall include the following provisions:

(A) All housing sponsors, as defined by paragraph (3) of subdivision (a), shall demonstrate at the time the application is filed with the committee that the project meets the following threshold requirements:

(i) The housing sponsor shall demonstrate there is a need and demand for low-income housing in the community or region for which it is proposed.

(ii) The project's proposed financing, including tax credit proceeds, shall be sufficient to complete the project and that the proposed operating income shall be adequate to operate the project for the extended use period.

(iii) The project shall have enforceable financing commitments, either construction or permanent financing, for at least 50 percent of the total estimated financing of the project.

(iv) The housing sponsor shall have and maintain control of the site for the project.

(v) The housing sponsor shall demonstrate that the project complies with all applicable local land use and zoning ordinances.

(vi) The housing sponsor shall demonstrate that the project development team has the experience and the financial capacity to ensure project completion and operation for the extended use period.

(vii) The housing sponsor shall demonstrate the amount of tax credit that is necessary for the financial feasibility of the project and its viability as a qualified low-income housing project throughout the extended use period, taking into account operating expenses, a supportable debt service, reserves, funds set aside for rental subsidies, and required equity, and a development fee that does not exceed a specified percentage of the eligible basis of the project prior to inclusion of the development fee in the eligible basis, as determined by the committee.

(B) The committee shall give a preference to those projects satisfying all of the threshold requirements of subparagraph (A) if both of the following apply:

(i) The project serves the lowest income tenants at rents affordable to those tenants.

(ii) The project is obligated to serve qualified tenants for the longest period.

(C) In addition to the provisions of subparagraphs (A) and (B), the committee shall use the following criteria in allocating housing credits:

(i) Projects serving large families in which a substantial number, as defined by the committee, of all residential units is comprised of low-income units with three and more bedrooms.

(ii) Projects providing single room occupancy units serving very low income tenants.

(iii) Existing projects that are “at risk of conversion,” as defined by paragraph (3) of subdivision (c).

(iv) Projects for which a public agency provides direct or indirect long-term financial support for at least 15 percent of the total project development costs or projects for which the owner’s equity constitutes at least 30 percent of the total project development costs.

(v) Projects that provide tenant amenities not generally available to residents of low-income housing projects.

(4) For purposes of allocating credits pursuant to this section, the committee shall not give preference to any project by virtue of the date of submission of its application except to break a tie when two or more of the projects have an equal rating.

(k) Section 42(l) of the Internal Revenue Code shall be modified as follows:

The term “secretary” shall be replaced by the term “California Franchise Tax Board.”

(l) In the case where the state credit allowed under this section exceeds the “tax,” the excess may be carried over to reduce the “tax” in the following year, and succeeding years if necessary, until the credit has been exhausted.

(m) The provisions of Section 11407(a) of Public Law 101-508, relating to the effective date of the extension of the low-income housing credit, shall apply to calendar years after 1993.

(n) The provisions of Section 11407(c) of Public Law 101-508, relating to election to accelerate credit, shall not apply.

(o) This section shall remain in effect for as long as Section 42 of the Internal Revenue Code, relating to low-income housing credits, remains in effect.

SEC. 6. Section 17058 of the Revenue and Taxation Code is amended to read:

17058. (a) (1) There shall be allowed as a credit against the amount of net tax (as defined in Section 17039) a state low-income housing credit in an amount equal to the amount determined in subdivision (c), computed in accordance with the provisions of Section 42 of the Internal Revenue Code, except as otherwise provided in this section.

(2) "Taxpayer" for purposes of this section means the sole owner in the case of an individual, the partners in the case of a partnership, and the shareholders in the case of an "S" corporation.

(3) "Housing sponsor" for purposes of this section means the sole owner in the case of an individual, the partnership in the case of a partnership, and the "S" corporation in the case of an "S" corporation.

(b) (1) The amount of the credit allocated to any housing sponsor shall be authorized by the California Tax Credit Allocation Committee, or any successor thereof, based on a project's need for the credit for economic feasibility in accordance with the requirements of this section.

(A) The low-income housing project shall be located in California and shall meet either of the following requirements:

(i) The project's housing sponsor shall have been allocated by the California Tax Credit Allocation Committee a credit for federal income tax purposes under Section 42 of the Internal Revenue Code.

(ii) It shall qualify for a credit under Section 42(h)(4)(B) of the Internal Revenue Code.

(B) The California Tax Credit Allocation Committee shall not require fees for the credit under this section in addition to those fees required for applications for the tax credit pursuant to Section 42 of the Internal Revenue Code. The committee may require a fee if the application for the credit under this section is submitted in a calendar year after the year the application is submitted for the federal tax credit.

(2) (A) The California Tax Credit Allocation Committee shall certify to the housing sponsor the amount of tax credit under this section allocated to the housing sponsor for each credit period.

(B) In the case of a partnership or an "S" corporation, the housing sponsor shall provide a copy of the California Tax Credit Allocation Committee certification to the taxpayer.

(C) The taxpayer shall, upon request, provide a copy of the certification to the Franchise Tax Board.

(D) All elections made by the taxpayer pursuant to Section 42 of the Internal Revenue Code shall apply to this section.

(E) For buildings located in designated difficult development areas or qualified census tracts as defined in Section 42(d)(5)(C) of the Internal Revenue Code, credits may be allocated under this section in the amounts prescribed in subdivision (c), provided that the amount of credit allocated under Section 42 of the Internal Revenue Code is computed on 100 percent of the qualified basis of the building.

(c) Section 42(b) of the Internal Revenue Code shall be modified as follows:

(1) In the case of any qualified low-income building placed in service by the housing sponsor during 1987, the term "applicable percentage"

means 9 percent for each of the first three years and 3 percent for the fourth year for new buildings (whether or not the building is federally subsidized) and for existing buildings.

(2) In the case of any qualified low-income building that receives an allocation after 1989 and is a new building not federally subsidized, the term “applicable percentage” means the following:

(A) For each of the first three years, the percentage prescribed by the Secretary of the Treasury for new buildings that are not federally subsidized for the taxable year, determined in accordance with the requirements of Section 42(b)(2) of the Internal Revenue Code, in lieu of the percentage prescribed in Section 42(b)(1)(A) of the Internal Revenue Code.

(B) For the fourth year, the difference between 30 percent and the sum of the applicable percentages for the first three years.

(3) In the case of any qualified low-income building that receives an allocation after 1989 and that is a new building that is federally subsidized or that is an existing building that is “at risk of conversion,” the term “applicable percentage” means the following:

(A) For each of the first three years, the percentage prescribed by the Secretary of the Treasury for new buildings that are federally subsidized for the taxable year.

(B) For the fourth year, the difference between 13 percent and the sum of the applicable percentages for the first three years.

(4) For purposes of this section, the term “at risk of conversion,” with respect to an existing property means a property that satisfies all of the following criteria:

(A) The property is a multifamily rental housing development in which at least 50 percent of the units receive governmental assistance pursuant to any of the following:

(i) New construction, substantial rehabilitation, moderate rehabilitation, property disposition, and loan management set-aside programs, or any other program providing project-based assistance pursuant to Section 8 of the United States Housing Act of 1937, Section 1437f of Title 42 of the United States Code, as amended.

(ii) The Below-Market-Interest-Rate Program pursuant to Section 221(d)(3) of the National Housing Act, Sections 1715l(d)(3) and (5) of Title 12 of the United States Code.

(iii) Section 236 of the National Housing Act, Section 1715z-1 of Title 12 of the United States Code.

(iv) Programs for rent supplement assistance pursuant to Section 101 of the Housing and Urban Development Act of 1965, Section 1701s of Title 12 of the United States Code, as amended.

(v) Programs pursuant to Section 515 of the Housing Act of 1949, Section 1485 of Title 42 of the United States Code, as amended.

(vi) The low-income housing credit program set forth in Section 42 of the Internal Revenue Code, provided that the property is not eligible to receive an allocation of tax exempt private activity mortgage revenue bonds from the California Debt Limit Allocation Committee.

(B) The restrictions on rent and income levels will terminate or the federal insured mortgage on the property is eligible for prepayment anytime in the five calendar years after the year of application to the California Tax Credit Allocation Committee.

(C) The entity acquiring the property enters into a regulatory agreement that requires the property to be operated in accordance with the requirements of this section for a period equal to the greater of 55 years or the life of the property.

(D) The property satisfies the requirements of Section 42(e) of the Internal Revenue Code regarding rehabilitation expenditures, except that the provisions of Section 42(e)(3)(A)(ii)(I) shall not apply.

(d) The term “qualified low-income housing project” as defined in Section 42(c)(2) of the Internal Revenue Code is modified by adding the following requirements:

(1) The taxpayer shall be entitled to receive a cash distribution from the operations of the project, after funding required reserves, that, at the election of the taxpayer, is equal to:

(A) An amount not to exceed 8 percent of the lesser of:

(i) The owner equity that shall include the amount of the capital contributions actually paid to the housing sponsor and shall not include any amounts until they are paid on an investor note.

(ii) Twenty percent of the adjusted basis of the building as of the close of the first taxable year of the credit period.

(B) The amount of the cashflow from those units in the building that are not low-income units. For purposes of computing cashflow under this subparagraph, operating costs shall be allocated to the low-income units using the “floor space fraction,” as defined in Section 42 of the Internal Revenue Code.

(C) Any amount allowed to be distributed under subparagraph (A) that is not available for distribution during the first five years of the compliance period may be accumulated and distributed any time during the first 15 years of the compliance period but not thereafter.

(2) The limitation on return shall apply in the aggregate to the partners if the housing sponsor is a partnership and in the aggregate to the shareholders if the housing sponsor is an “S” corporation.

(3) The housing sponsor shall apply any cash available for distribution in excess of the amount eligible to be distributed under paragraph (1) to

reduce the rent on rent-restricted units or to increase the number of rent-restricted units subject to the tests of Section 42(g)(1) of the Internal Revenue Code.

(e) The provisions of Section 42(f) of the Internal Revenue Code shall be modified as follows:

(1) The term “credit period” as defined in Section 42(f)(1) of the Internal Revenue Code is modified by substituting “four taxable years” for “10 taxable years.”

(2) The special rule for the first taxable year of the credit period under Section 42(f)(2) of the Internal Revenue Code shall not apply to the tax credit under this section.

(3) Section 42(f)(3) of the Internal Revenue Code is modified to read:

If, as of the close of any taxable year in the compliance period, after the first year of the credit period, the qualified basis of any building exceeds the qualified basis of that building as of the close of the first year of the credit period, the housing sponsor, to the extent of its tax credit allocation, shall be eligible for a credit on the excess in an amount equal to the applicable percentage determined pursuant to subdivision (c) for the four-year period beginning with the taxable year in which the increase in qualified basis occurs.

(f) The provisions of Section 42(h) of the Internal Revenue Code shall be modified as follows:

(1) Section 42(h)(2) of the Internal Revenue Code shall not be applicable and instead the following provisions shall be applicable:

The total amount for the four-year period of the housing credit dollars allocated in a calendar year to any building shall reduce the aggregate housing credit dollar amount of the California Tax Credit Allocation Committee for the calendar year in which the allocation is made.

(2) Paragraphs (3), (4), (5), (6)(E)(i)(II), (6)(F), (6)(G), (6)(I), (7), and (8) of Section 42(h) of the Internal Revenue Code shall not be applicable to this section.

(g) The aggregate housing credit dollar amount which may be allocated annually by the California Tax Credit Allocation Committee pursuant to this section, Section 12206, and Section 23610.5 shall be an amount equal to the sum of all the following:

(1) Seventy million dollars (\$70,000,000) for the 2001 calendar year, and, for the 2002 calendar year and each calendar year thereafter, seventy million dollars (\$70,000,000) increased by the percentage, if any, by which the Consumer Price Index for the preceding calendar year exceeds the Consumer Price Index for the 2001 calendar year. For the purposes of this paragraph, the term “Consumer Price Index” means the last Consumer Price Index for all urban consumers published by the federal Department of Labor.

(2) The unused housing credit ceiling, if any, for the preceding calendar years.

(3) The amount of housing credit ceiling returned in the calendar year. For purposes of this paragraph, the amount of housing credit dollar amount returned in the calendar year equals the housing credit dollar amount previously allocated to any project that does not become a qualified low-income housing project within the period required by this section or to any project with respect to which an allocation is canceled by mutual consent of the California Tax Credit Allocation Committee and the allocation recipient.

(h) The term "compliance period" as defined in Section 42(i)(1) of the Internal Revenue Code is modified to mean, with respect to any building, the period of 30 consecutive taxable years beginning with the first taxable year of the credit period with respect thereto.

(i) Section 42(j) of the Internal Revenue Code shall not be applicable and the following requirements of this section shall be set forth in a regulatory agreement between the California Tax Credit Allocation Committee and the housing sponsor, which agreement shall be subordinated, when required, to any lien or encumbrance of any banks or other institutional lenders to the project. The regulatory agreement entered into pursuant to subdivision (f) of Section 50199.14 of the Health and Safety Code shall apply, providing the agreement includes all of the following provisions:

(1) A term not less than the compliance period.

(2) A requirement that the agreement be filed in the official records of the county in which the qualified low-income housing project is located.

(3) A provision stating which state and local agencies can enforce the regulatory agreement in the event the housing sponsor fails to satisfy any of the requirements of this section.

(4) A provision that the regulatory agreement shall be deemed a contract enforceable by tenants as third-party beneficiaries thereto and which allows individuals, whether prospective, present, or former occupants of the building, who meet the income limitation applicable to the building, the right to enforce the regulatory agreement in any state court.

(5) A provision incorporating the requirements of Section 42 of the Internal Revenue Code as modified by this section.

(6) A requirement that the housing sponsor notify the California Tax Credit Allocation Committee or its designee if there is a determination by the Internal Revenue Service that the project is not in compliance with Section 42(g) of the Internal Revenue Code.

(7) A requirement that the housing sponsor, as security for the performance of the housing sponsor's obligations under the regulatory agreement, assign the housing sponsor's interest in rents that it receives from the project, provided that until there is a default under the regulatory agreement, the housing sponsor is entitled to collect and retain the rents.

(8) The remedies available in the event of a default under the regulatory agreement that is not cured within a reasonable cure period, include, but are not limited to, allowing any of the parties designated to enforce the regulatory agreement to collect all rents with respect to the project; taking possession of the project and operating the project in accordance with the regulatory agreement until the enforcer determines the housing sponsor is in a position to operate the project in accordance with the regulatory agreement; applying to any court for specific performance; securing the appointment of a receiver to operate the project; or any other relief as may be appropriate.

(j) (1) The committee shall allocate the housing credit on a regular basis consisting of two or more periods in each calendar year during which applications may be filed and considered. The committee shall establish application filing deadlines, the maximum percentage of federal and state low-income housing tax credit ceiling that may be allocated by the committee in that period, and the approximate date on which allocations shall be made. If the enactment of federal or state law, the adoption of rules or regulations or other similar events prevent the use of two allocation periods, the committee may reduce the number of periods and adjust the filing deadlines, maximum percentage of credit allocated, and the allocation dates.

(2) The committee shall adopt a qualified allocation plan, as provided in Section 42(m)(1) of the Internal Revenue Code. In adopting this plan, the committee shall comply with the provisions of Sections 42(m)(1)(B) and 42(m)(1)(C) of the Internal Revenue Code.

(3) Notwithstanding Section 42(m) of the Internal Revenue Code, the California Tax Credit Allocation Committee shall allocate housing credits in accordance with the qualified allocation plan and regulations, which shall include the following provisions:

(A) All housing sponsors, as defined by paragraph (3) of subdivision (a), shall demonstrate at the time the application is filed with the committee that the project meets the following threshold requirements:

(i) The housing sponsor shall demonstrate there is a need and demand for low-income housing in the community or region for which it is proposed.

(ii) The project's proposed financing, including tax credit proceeds, shall be sufficient to complete the project and that the proposed operating

income shall be adequate to operate the project for the extended use period.

(iii) The project shall have enforceable financing commitments, either construction or permanent financing, for at least 50 percent of the total estimated financing of the project.

(iv) The housing sponsor shall have and maintain control of the site for the project.

(v) The housing sponsor shall demonstrate that the project complies with all applicable local land use and zoning ordinances.

(vi) The housing sponsor shall demonstrate that the project development team has the experience and the financial capacity to ensure project completion and operation for the extended use period.

(vii) The housing sponsor shall demonstrate the amount of tax credit that is necessary for the financial feasibility of the project and its viability as a qualified low-income housing project throughout the extended use period, taking into account operating expenses, a supportable debt service, reserves, funds set aside for rental subsidies, and required equity, and a development fee that does not exceed a specified percentage of the eligible basis of the project prior to inclusion of the development fee in the eligible basis, as determined by the committee.

(B) The committee shall give a preference to those projects satisfying all of the threshold requirements of subparagraph (A) if both of the following apply:

(i) The project serves the lowest income tenants at rents affordable to those tenants.

(ii) The project is obligated to serve qualified tenants for the longest period.

(C) In addition to the provisions of subparagraphs (A) and (B), the committee shall use the following criteria in allocating housing credits:

(i) Projects serving large families in which a substantial number, as defined by the committee of all residential units is comprised of low-income units with three and more bedrooms.

(ii) Projects providing single room occupancy units serving very low income tenants.

(iii) Existing projects that are “at risk of conversion,” as defined by paragraph (4) of subdivision (c).

(iv) Projects for which a public agency provides direct or indirect long-term financial support for at least 15 percent of the total project development costs or projects for which the owner’s equity constitutes at least 30 percent of the total project development costs.

(v) Projects that provide tenant amenities not generally available to residents of low-income housing projects.

(4) For purposes of allocating credits pursuant to this section, the committee shall not give preference to any project by virtue of the date of submission of its application.

(k) Section 42(l) of the Internal Revenue Code shall be modified as follows:

The term “secretary” shall be replaced by the term “California Franchise Tax Board.”

(l) In the case where the credit allowed under this section exceeds the net tax, the excess credit may be carried over to reduce the net tax in the following year, and succeeding taxable years, if necessary, until the credit has been exhausted.

(m) A project that received an allocation of a 1989 federal housing credit dollar amount shall be eligible to receive an allocation of a 1990 state housing credit dollar amount, subject to all of the following conditions:

(1) The project was not placed in service prior to 1990.

(2) To the extent the amendments made to this section by the Statutes of 1990 conflict with any provisions existing in this section prior to those amendments, the prior provisions of law shall prevail.

(3) Notwithstanding paragraph (2), a project applying for an allocation under this subdivision shall be subject to the requirements of paragraph (3) of subdivision (j).

(n) The credit period with respect to an allocation of credit in 1989 by the California Tax Credit Allocation Committee of which any amount is attributable to unallocated credit from 1987 or 1988 shall not begin until after December 31, 1989.

(o) The provisions of Section 11407(a) of Public Law 101-508, relating to the effective date of the extension of the low-income housing credit, shall apply to calendar years after 1989.

(p) The provisions of Section 11407(c) of Public Law 101-508, relating to election to accelerate credit, shall not apply.

(q) Any unused credit may continue to be carried forward, as provided in subdivision (l), until the credit has been exhausted.

This section shall remain in effect on and after December 1, 1990, for as long as Section 42 of the Internal Revenue Code, relating to low-income housing credits, remains in effect.

(r) The amendments to this section by the act adding this subdivision shall apply only to taxable years beginning on or after January 1, 1994.

SEC. 7. Section 23610.5 of the Revenue and Taxation Code is amended to read:

23610.5. (a) (1) There shall be allowed as a credit against the “tax” (as defined by Section 23036) a state low-income housing tax credit in an amount equal to the amount determined in subdivision (c), computed

in accordance with Section 42 of the Internal Revenue Code of 1986, except as otherwise provided in this section.

(2) "Taxpayer," for purposes of this section, means the sole owner in the case of a "C" corporation, the partners in the case of a partnership, and the shareholders in the case of an "S" corporation.

(3) "Housing sponsor," for purposes of this section, means the sole owner in the case of a "C" corporation, the partnership in the case of a partnership, and the "S" corporation in the case of an "S" corporation.

(b) (1) The amount of the credit allocated to any housing sponsor shall be authorized by the California Tax Credit Allocation Committee, or any successor thereof, based on a project's need for the credit for economic feasibility in accordance with the requirements of this section.

(A) The low-income housing project shall be located in California and shall meet either of the following requirements:

(i) The project's housing sponsor has been allocated by the California Tax Credit Allocation Committee a credit for federal income tax purposes under Section 42 of the Internal Revenue Code.

(ii) It qualifies for a credit under Section 42(h)(4)(B) of the Internal Revenue Code.

(B) The California Tax Credit Allocation Committee shall not require fees for the credit under this section in addition to those fees required for applications for the tax credit pursuant to Section 42 of the Internal Revenue Code. The committee may require a fee if the application for the credit under this section is submitted in a calendar year after the year the application is submitted for the federal tax credit.

(2) (A) The California Tax Credit Allocation Committee shall certify to the housing sponsor the amount of tax credit under this section allocated to the housing sponsor for each credit period.

(B) In the case of a partnership or an "S" corporation, the housing sponsor shall provide a copy of the California Tax Credit Allocation Committee certification to the taxpayer.

(C) The taxpayer shall, upon request, provide a copy of the certification to the Franchise Tax Board.

(D) All elections made by the taxpayer pursuant to Section 42 of the Internal Revenue Code shall apply to this section.

(E) For buildings located in designated difficult development areas or qualified census tracts as defined in Section 42(d)(5)(C) of the Internal Revenue Code, credits may be allocated under this section in the amounts prescribed in subdivision (c), provided that the amount of credit allocated under Section 42 of the Internal Revenue Code is computed on 100 percent of the qualified basis of the building.

(c) Section 42(b) of the Internal Revenue Code shall be modified as follows:

(1) In the case of any qualified low-income building placed in service by the housing sponsor during 1987, the term “applicable percentage” means 9 percent for each of the first three years and 3 percent for the fourth year for new buildings (whether or not the building is federally subsidized) and for existing buildings.

(2) In the case of any qualified low-income building that receives an allocation after 1989 and is a new building not federally subsidized, the term “applicable percentage” means the following:

(A) For each of the first three years, the percentage prescribed by the Secretary of the Treasury for new buildings that are not federally subsidized for the taxable year, determined in accordance with the requirements of Section 42(b)(2) of the Internal Revenue Code, in lieu of the percentage prescribed in Section 42(b)(1)(A).

(B) For the fourth year, the difference between 30 percent and the sum of the applicable percentages for the first three years.

(3) In the case of any qualified low-income building that receives an allocation after 1989 and that is a new building that is federally subsidized or that is an existing building that is “at risk of conversion,” the term “applicable percentage” means the following:

(A) For each of the first three years, the percentage prescribed by the Secretary of the Treasury for new buildings that are federally subsidized for the taxable year.

(B) For the fourth year, the difference between 13 percent and the sum of the applicable percentages for the first three years.

(4) For purposes of this section, the term “at risk of conversion,” with respect to an existing property means a property that satisfies all of the following criteria:

(A) The property is a multifamily rental housing development in which at least 50 percent of the units receive governmental assistance pursuant to any of the following:

(i) New construction, substantial rehabilitation, moderate rehabilitation, property disposition, and loan management set-aside programs, or any other program providing project-based assistance pursuant to Section 8 of the United States Housing Act of 1937, Section 1437f of Title 42 of the United States Code, as amended.

(ii) The Below-Market-Interest-Rate Program pursuant to Section 221(d)(3) of the National Housing Act, Sections 1715l(d)(3) and (5) of Title 12 of the United States Code.

(iii) Section 236 of the National Housing Act, Section 1715z-1 of Title 12 of the United States Code.

(iv) Programs for rent supplement assistance pursuant to Section 101 of the Housing and Urban Development Act of 1965, Section 1701s of Title 12 of the United States Code, as amended.

(v) Programs pursuant to Section 515 of the Housing Act of 1949, Section 1485 of Title 42 of the United States Code, as amended.

(vi) The low-income housing credit program set forth in Section 42 of the Internal Revenue Code, provided that the property is not eligible to receive an allocation of tax exempt private activity mortgage revenue bonds from the California Debt Limit Allocation Committee.

(B) The restrictions on rent and income levels will terminate or the federally insured mortgage on the property is eligible for prepayment anytime in the five calendar years after the year of application to the California Tax Credit Allocation Committee.

(C) The entity acquiring the property enters into a regulatory agreement that requires the property to be operated in accordance with the requirements of this section for a period equal to the greater of 55 years or the life of the property.

(D) The property satisfies the requirements of Section 42(e) of the Internal Revenue Code regarding rehabilitation expenditures, except that the provisions of Section 42(e)(3)(A)(ii)(I) shall not apply.

(d) The term “qualified low-income housing project” as defined in Section 42(c)(2) of the Internal Revenue Code is modified by adding the following requirements:

(1) The taxpayer shall be entitled to receive a cash distribution from the operations of the project, after funding required reserves, which, at the election of the taxpayer, shall be equal to:

(A) An amount not to exceed 8 percent of the lesser of:

(i) The owner equity, which shall include the amount of the capital contributions actually paid to the housing sponsor and shall not include any amounts until they are paid on an investor note.

(ii) Twenty percent of the adjusted basis of the building as of the close of the first taxable year of the credit period.

(B) The amount of the cashflow from those units in the building that are not low-income units. For purposes of computing cashflow under this subparagraph, operating costs shall be allocated to the low-income units using the “floor space fraction,” as defined in Section 42 of the Internal Revenue Code.

(C) Any amount allowed to be distributed under subparagraph (A) that is not available for distribution during the first five years of the compliance period may accumulate and be distributed at any time during the first 15 years of the compliance period but not thereafter.

(2) The limitation on return shall apply in the aggregate to the partners if the housing sponsor is a partnership and in the aggregate to the shareholders if the housing sponsor is an “S” corporation.

(3) The housing sponsor shall apply any cash available for distribution in excess of the amount eligible to be distributed under paragraph (1) to

reduce the rent on rent-restricted units or to increase the number of rent-restricted units subject to the tests of Section 42(g)(1) of the Internal Revenue Code.

(e) The provisions of Section 42(f) of the Internal Revenue Code shall be modified as follows:

(1) The term “credit period” as defined in Section 42(f)(1) of the Internal Revenue Code is modified by substituting “four taxable years” for “10 taxable years.”

(2) The special rule for the first taxable year of the credit period under Section 42(f)(2) of the Internal Revenue Code shall not apply to the tax credit under this section.

(3) Section 42(f)(3) of the Internal Revenue Code is modified to read:

If, as of the close of any taxable year in the compliance period, after the first year of the credit period, the qualified basis of any building exceeds the qualified basis of that building as of the close of the first year of the credit period, the housing sponsor, to the extent of its tax credit allocation, shall be eligible for a credit on the excess in an amount equal to the applicable percentage determined pursuant to subdivision (c) for the four-year period beginning with the later of the taxable years in which the increase in qualified basis occurs.

(f) The provisions of Section 42(h) of the Internal Revenue Code shall be modified as follows:

(1) Section 42(h)(2) of the Internal Revenue Code shall not be applicable and instead the following provisions shall be applicable:

The total amount for the four-year credit period of the housing credit dollars allocated in a calendar year to any building shall reduce the aggregate housing credit dollar amount of the California Tax Credit Allocation Committee for the calendar year in which the allocation is made.

(2) Paragraphs (3), (4), (5), (6)(E)(i)(II), (6)(F), (6)(G), (6)(I), (7), and (8) of Section 42(h) of the Internal Revenue Code shall not be applicable.

(g) The aggregate housing credit dollar amount that may be allocated annually by the California Tax Credit Allocation Committee pursuant to this section, Section 12206, and Section 17058 shall be an amount equal to the sum of all the following:

(1) Seventy million dollars (\$70,000,000) for the 2001 calendar year, and, for the 2002 calendar year and each calendar year thereafter, seventy million dollars (\$70,000,000) increased by the percentage, if any, by which the Consumer Price Index for the preceding calendar year exceeds the Consumer Price Index for the 2001 calendar year. For the purposes of this paragraph, the term “Consumer Price Index” means the last

Consumer Price Index for all urban consumers published by the federal Department of Labor.

(2) The unused housing credit ceiling, if any, for the preceding calendar years.

(3) The amount of housing credit ceiling returned in the calendar year. For purposes of this paragraph, the amount of housing credit dollar amount returned in the calendar year equals the housing credit dollar amount previously allocated to any project that does not become a qualified low-income housing project within the period required by this section or to any project with respect to which an allocation is canceled by mutual consent of the California Tax Credit Allocation Committee and the allocation recipient.

(h) The term "compliance period" as defined in Section 42(i)(1) of the Internal Revenue Code is modified to mean, with respect to any building, the period of 30 consecutive taxable years beginning with the first taxable year of the credit period with respect thereto.

(i) Section 42(j) of the Internal Revenue Code shall not be applicable and the following shall be substituted in its place:

The requirements of this section shall be set forth in a regulatory agreement between the California Tax Credit Allocation Committee and the housing sponsor, and this agreement shall be subordinated, when required, to any lien or encumbrance of any banks or other institutional lenders to the project. The regulatory agreement entered into pursuant to subdivision (f) of Section 50199.14 of the Health and Safety Code shall apply, provided that the agreement includes all of the following provisions:

(1) A term not less than the compliance period.

(2) A requirement that the agreement be filed in the official records of the county in which the qualified low-income housing project is located.

(3) A provision stating which state and local agencies can enforce the regulatory agreement in the event the housing sponsor fails to satisfy any of the requirements of this section.

(4) A provision that the regulatory agreement shall be deemed a contract enforceable by tenants as third-party beneficiaries thereto, and that allows individuals, whether prospective, present, or former occupants of the building, who meet the income limitation applicable to the building the right to enforce the regulatory agreement in any state court.

(5) A provision incorporating the requirements of Section 42 of the Internal Revenue Code as modified by this section.

(6) A requirement that the housing sponsor notify the California Tax Credit Allocation Committee or its designee if there is a determination

by the Internal Revenue Service that the project is not in compliance with Section 42(g) of the Internal Revenue Code.

(7) A requirement that the housing sponsor, as security for the performance of the housing sponsor's obligations under the regulatory agreement, assign the housing sponsor's interest in rents that it receives from the project, provided that until there is a default under the regulatory agreement, the housing sponsor is entitled to collect and retain the rents.

(8) A provision that the remedies available in the event of a default under the regulatory agreement that is not cured within a reasonable cure period include, but are not limited to, allowing any of the parties designated to enforce the regulatory agreement to collect all rents with respect to the project; taking possession of the project and operating the project in accordance with the regulatory agreement until the enforcer determines the housing sponsor is in a position to operate the project in accordance with the regulatory agreement; applying to any court for specific performance; securing the appointment of a receiver to operate the project; or any other relief as may be appropriate.

(j) (1) The committee shall allocate the housing credit on a regular basis consisting of two or more periods in each calendar year during which applications may be filed and considered. The committee shall establish application filing deadlines, the maximum percentage of federal and state low-income housing tax credit ceiling that may be allocated by the committee in that period, and the approximate date on which allocations shall be made. If the enactment of federal or state law, the adoption of rules or regulations, or other similar events prevent the use of two allocation periods, the committee may reduce the number of periods and adjust the filing deadlines, maximum percentage of credit allocated, and allocation dates.

(2) The committee shall adopt a qualified allocation plan, as provided in Section 42(m)(1) of the Internal Revenue Code. In adopting this plan, the committee shall comply with the provisions of Sections 42(m)(1)(B) and 42(m)(1)(C) of the Internal Revenue Code.

(3) Notwithstanding Section 42(m) of the Internal Revenue Code, the California Tax Credit Allocation Committee shall allocate housing credits in accordance with the qualified allocation plan and regulations, which shall include the following provisions:

(A) All housing sponsors, as defined by paragraph (3) of subdivision (a), shall demonstrate at the time the application is filed with the committee that the project meets the following threshold requirements:

(i) The housing sponsor shall demonstrate that there is a need for low-income housing in the community or region for which it is proposed.

(ii) The project's proposed financing, including tax credit proceeds, shall be sufficient to complete the project and shall be adequate to operate the project for the extended use period.

(iii) The project shall have enforceable financing commitments, either construction or permanent financing, for at least 50 percent of the total estimated financing of the project.

(iv) The housing sponsor shall have and maintain control of the site for the project.

(v) The housing sponsor shall demonstrate that the project complies with all applicable local land use and zoning ordinances.

(vi) The housing sponsor shall demonstrate that the project development team has the experience and the financial capacity to ensure project completion and operation for the extended use period.

(vii) The housing sponsor shall demonstrate the amount of tax credit that is necessary for the financial feasibility of the project and its viability as a qualified low-income housing project throughout the extended use period, taking into account operating expenses, a supportable debt service, reserves, funds set aside for rental subsidies, and required equity, and a development fee that does not exceed a specified percentage of the eligible basis of the project prior to inclusion of the development fee in the eligible basis, as determined by the committee.

(B) The committee shall give a preference to those projects satisfying all of the threshold requirements of subparagraph (A) if both of the following apply:

(i) The project serves the lowest income tenants at rents affordable to those tenants.

(ii) The project is obligated to serve qualified tenants for the longest period.

(C) In addition to the provisions of subparagraphs (A) and (B), the committee shall use the following criteria in allocating housing credits:

(i) Projects serving large families in which a substantial number, as defined by the committee, of all residential units are low-income units with three and more bedrooms.

(ii) Projects providing single-room occupancy units serving very low income tenants.

(iii) Existing projects that are "at risk of conversion," as defined by paragraph (4) of subdivision (c).

(iv) Projects for which a public agency provides direct or indirect long-term financial support for at least 15 percent of the total project development costs or projects for which the owner's equity constitutes at least 30 percent of the total project development costs.

(v) Projects that provide tenant amenities not generally available to residents of low-income housing projects.

(4) For purposes of allocating credits pursuant to this section, the committee shall not give preference to any project by virtue of the date of submission of its application except to break a tie when two or more of the projects have an equal rating.

(5) Not less than 20 percent of the low-income housing tax credits available annually under this section, Section 12206, and Section 17058 shall be set aside for allocation to rural areas as defined in Section 50199.21 of the Health and Safety Code. Any amount of credit set aside for rural areas remaining on or after October 31 of any calendar year shall be available for allocation to any eligible project. No amount of credit set aside for rural areas shall be considered available for any eligible project so long as there are eligible rural applications pending on October 31.

(k) Section 42(l) of the Internal Revenue Code shall be modified as follows:

The term "secretary" shall be replaced by the term "California Franchise Tax Board."

(l) In the case where the state credit allowed under this section exceeds the "tax," the excess may be carried over to reduce the "tax" in the following year, and succeeding years if necessary, until the credit has been exhausted.

(m) A project that received an allocation of a 1989 federal housing credit dollar amount shall be eligible to receive an allocation of a 1990 state housing credit dollar amount, subject to all of the following conditions:

(1) The project was not placed in service prior to 1990.

(2) To the extent the amendments made to this section by the Statutes of 1990 conflict with any provisions existing in this section prior to those amendments, the prior provisions of law shall prevail.

(3) Notwithstanding paragraph (2), a project applying for an allocation under this subdivision shall be subject to the requirements of paragraph (3) of subdivision (j).

(n) The credit period with respect to an allocation of credit in 1989 by the California Tax Credit Allocation Committee of which any amount is attributable to unallocated credit from 1987 or 1988 shall not begin until after December 31, 1989.

(o) The provisions of Section 11407(a) of Public Law 101-508, relating to the effective date of the extension of the low-income housing credit, shall apply to calendar years after 1989.

(p) The provisions of Section 11407(c) of Public Law 101-508, relating to election to accelerate credit, shall not apply.

(q) (1) A corporation may elect to assign any portion of any credit allowed under this section to one or more affiliated corporations for each

taxable year in which the credit is allowed. For purposes of this subdivision, “affiliated corporation” has the meaning provided in subdivision (b) of Section 25110, as that section was amended by Chapter 881 of the Statutes of 1993, as of the last day of the taxable year in which the credit is allowed, except that “100 percent” is substituted for “more than 50 percent” wherever it appears in the section, as that section was amended by Chapter 881 of the Statutes of 1993, and “voting common stock” is substituted for “voting stock” wherever it appears in the section, as that section was amended by Chapter 881 of the Statutes of 1993.

(2) The election provided in paragraph (1):

(A) May be based on any method selected by the corporation that originally receives the credit.

(B) Shall be irrevocable for the taxable year the credit is allowed, once made.

(C) May be changed for any subsequent taxable year if the election to make the assignment is expressly shown on each of the returns of the affiliated corporations that assign and receive the credits.

(r) Any unused credit may continue to be carried forward, as provided in subdivision (k), until the credit has been exhausted.

This section shall remain in effect on or after December 1, 1990, for as long as Section 42 of the Internal Revenue Code, relating to low-income housing credits, remains in effect.

(s) The amendments to this section made by the act adding this subdivision shall apply only to taxable years beginning on or after January 1, 1994, except that paragraph (1) of subdivision (q), as amended, shall apply to taxable years beginning on or after January 1, 1993.

CHAPTER 502

An act to amend Section 52616.19 of, to add Section 52617 to, and to repeal Section 52616.23 of, the Education Code, relating to adult education, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 4, 2005. Filed with
Secretary of State October 4, 2005.]

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

SECTION 1. Section 52616.19 of the Education Code is amended to read:

52616.19. (a) Commencing with the 1993–94 fiscal year, and each fiscal year thereafter, the only funding available for purposes of Sections 52616, 52616.16, 52616.17, and 52616.18 shall be the following:

(1) Funds that would have been apportioned for purposes of Section 52616, as that section read on June 30, 1993.

(2) Funds that would have been apportioned for purposes of concurrently enrolled average daily attendance pursuant to Section 42238.5, as that section read on June 30, 1993.

(3) Funds that would have been available for purposes of adult elementary and secondary independent study average daily attendance pursuant to Section 46300.1, as that section read on June 30, 1993.

(b) In the 1993–94 fiscal year, up to four million two hundred fifty thousand dollars (\$4,250,000) shall be available for the start up of new adult education programs pursuant to Section 52616.18. In the 1994–95 fiscal year, up to eight million five hundred thousand dollars (\$8,500,000) shall be available for the startup of new adult education programs and the continuation of programs started and funded in the 1993–94 fiscal year. Four million two hundred fifty thousand dollars (\$4,250,000) of that amount shall only be available for new adult education programs if there is no deficit applied pursuant to subdivision (c). It is the intent of the Legislature that, commencing in the 1995–96 fiscal year, those adult education programs started and funded in the 1993–94 and 1994–95 fiscal years shall continue to be funded.

(c) If the funds available pursuant to subdivision (a) are not sufficient to fully fund Sections 52616, 52616.16, 52616.17, and 52616.18, the Superintendent of Public Instruction shall reduce the adult education apportionment for each district that received funding pursuant to Section 52616.16.

(d) If the funds available pursuant to subdivision (a) exceed the amount needed to fund the purposes specified in Sections 52616, 52616.16, 52616.17, 52616.18, and 52617, the Superintendent shall allocate those excess funds on a one-time basis to a school district operating adult education programs that have exceeded its number of units of authorized adult education average daily attendance in proportion to the excess units of average daily attendance served by each school district for that fiscal year. The Superintendent may not allocate an amount of funds to a school district pursuant to this subdivision that exceeds the total number of units of authorized adult education average daily attendance served by the school district multiplied by the appropriate funding rate per unit of average daily attendance.

SEC. 2. Section 52616.23 of the Education Code is repealed.

SEC. 3. Section 52617 is added to the Education Code, to read:

52617. (a) (1) Commencing in the 2006–07 fiscal year, and in each fiscal year thereafter, the Superintendent shall, after making adjustments pursuant to subdivision (d) of Section 52616.17, and based on data reported to the department by local educational agencies on or before July 15 of each fiscal year, adjust the allocation of apportionments for adult education average daily attendance as follows:

(A) For a school district operating an adult education program with fewer than 100 units of authorized adult education average daily attendance, as determined pursuant to Section 52616.17, in the two prior fiscal years, and which served or exceeded its adult education average daily attendance authorized limit in the two prior fiscal years, the Superintendent shall grant to the school district up to 30 additional units of authorized adult education average daily attendance made available after he or she performs the adjustments pursuant to subparagraph (C) upon the request of the district. A school district that receives additional units may not exceed 100 total units. If available units are insufficient to provide for this adjustment, the school district shall receive a prorated amount, relative to the units of authorized adult education average daily attendance of the school district.

(B) For a school district operating an adult education program with 100 or more units of authorized adult education average daily attendance, as determined pursuant to Section 52616.17, in the two prior fiscal years, and which served or exceeded its units of authorized adult education average daily attendance for the school district in the two prior fiscal years, the school district shall receive a prorated amount of units available, as specified in paragraph (2), after the Superintendent performs the adjustment required by subparagraphs (A) and (C), relative to the adult education average daily attendance authorized limit of the school district.

(C) For a school district operating an adult education program that failed to serve its units of authorized adult education average daily attendance for the school district in the two prior fiscal years, the units of authorized adult education average daily attendance of the school district shall be reduced by an amount equal to one-half of the lowest level of unearned adult education average daily attendance in either of the two prior fiscal years. The Superintendent shall notify a school district that its units of authorized adult education average daily attendance for the school district are reduced pursuant to this paragraph.

(2) The Superintendent may not perform adjustments pursuant to paragraph (1) that result in a total statewide apportionment of units of authorized adult education average daily attendance that exceeds the amount funded in the annual Budget Act.

(3) (A) A school district that receives additional units of authorized adult education average daily attendance pursuant to paragraph (1) shall provide a number of career technical education courses that is equal to the percentage of average daily attendance of adults attending those courses in the prior three fiscal years without regard to units of authorized adult education average daily attendance added pursuant to paragraph (1).

(B) A school district shall use funds derived from an adjustment performed pursuant to paragraph (1) for the purpose of providing access to, or direct instruction in, career technical education courses.

(C) "Career technical education courses" means those included within the career and technical education curriculum framework developed pursuant to Section 51226.1.

(b) (1) The following school districts are not eligible for an increase in the additional units of authorized adult education average daily attendance, as specified in Section 52616.17, or for additional units of authorized adult education average daily attendance pursuant to subdivision (a), for the 2005–06 fiscal year:

- (A) Alhambra Unified School District.
- (B) Azusa Unified School District.
- (C) Banning Unified School District.
- (D) East Side Union High School District.
- (E) El Monte Union High School District.
- (F) Grant Joint Union High School District.
- (G) Madera Unified School District.
- (H) Montebello Unified School District.
- (I) Perris Union High School District.
- (J) Santa Maria Joint Union High School District.
- (K) Ventura Unified School District.

(2) The following school districts are not eligible for an increase in the additional units of authorized adult education average daily attendance, as specified in Section 52616.17, or for additional units of authorized adult education average daily attendance pursuant to subdivision (a), for the 2005–06 and 2006–07 fiscal years:

- (A) Amador County Unified School District.
- (B) Dublin Unified School District.
- (C) Manteca Unified School District.
- (D) Martinez Unified School District.
- (E) Novato Unified School District.
- (F) Oakdale Joint Unified School District.
- (G) Pittsburg Unified School District.
- (H) Salinas Union High School District.
- (I) Baldwin Park Unified School District.

(3) (A) Notwithstanding paragraph (1) or (2), for the 2005–06 and 2006–07 fiscal years, a school district specified by paragraph (1) or (2) is eligible for an increase in the units of authorized adult education average daily attendance equal to one-half of one percent of the units of authorized adult education average daily attendance of the school district for the sole purpose of the creation of new average daily attendance within a new or existing nursing preparation program.

(B) A school district that receives an increase pursuant to subparagraph (A) shall maintain at least the amount of nursing preparation average daily attendance that is equal to the average daily attendance generated by the school district in nursing preparation programs for the prior three fiscal years to be eligible for the increase specified in subparagraph (A).

(4) It is the intent of the Legislature that this subdivision resolves disputed claims for adult education average daily attendance made for the 1990–91 and 1991–92 fiscal years.

SEC. 4. Due to the unique circumstances concerning disputed claims for adult education average daily attendance made by the school districts specified by Section 3 of this act, the Legislature finds and declares that a general statute cannot be made applicable within the meaning of Section 16 of Article IV of the California Constitution.

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

In order to implement funding formulas for authorized adult education average daily attendance prescribed by this act in the 2005–06 fiscal year, it is necessary that this act take effect immediately.

CHAPTER 503

An act to amend Section 14132.01 of the Welfare and Institutions Code, relating to Medi-Cal.

[Approved by Governor October 4, 2005. Filed with
Secretary of State October 4, 2005.]

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

SECTION 1. Section 14132.01 of the Welfare and Institutions Code is amended to read:

14132.01. (a) Notwithstanding any other provision of law, a community clinic or free clinic licensed pursuant to subdivision (a) of

Section 1204 of the Health and Safety Code or an intermittent clinic operating pursuant to subdivision (h) of Section 1206 of the Health and Safety Code, that has a valid license pursuant to Article 13 (commencing with Section 4180) of Chapter 9 of Division 2 of the Business and Professions Code shall bill and be reimbursed, as described in this section, for drugs and supplies covered under the Medi-Cal program and Family PACT Waiver Program.

(b) (1) A clinic described in subdivision (a) shall bill the Medi-Cal program and Family PACT Waiver Program for drugs and supplies covered under those programs at the lesser of cost or the clinic's usual charge made to the general public.

(2) For purposes of this section, "cost" means an aggregate amount equivalent to the sum of the actual acquisition cost of a drug or supply plus a clinic dispensing fee not to exceed twelve dollars (\$12) per billing unit as identified in either the Family PACT Policies, Procedures, and Billing Instructions Manual, or the Medi-Cal Inpatient/Outpatient Provider Manual governing outpatient clinic billing for drugs and supplies, as applicable. For purposes of this section, "cost" for a take-home drug that is dispensed for use by the patient within a specific timeframe of five or less days from the date medically indicated means actual acquisition cost for that drug plus a clinic dispensing fee, not to exceed seventeen dollars (\$17) per prescription. Reimbursement shall be at the lesser of the amount billed or the Medi-Cal reimbursement rate, and shall not exceed the net cost of these drugs or supplies when provided by retail pharmacies under the Medi-Cal program.

(c) A clinic described in subdivision (a) that furnishes services free of charge, or at a nominal charge, as defined in subsection (a) of Section 413.13 of Title 42 of the Code of Federal Regulations, or that can demonstrate to the department, upon request, that it serves primarily low-income patients, and its customary practice is to charge patients on the basis of their ability to pay, shall not be subject to reimbursement reductions based on its usual charge to the general public.

(d) Federally qualified health centers and rural health clinics that are clinics as described in subdivision (a) may bill and be reimbursed as described in this section, upon electing to be reimbursed for pharmaceutical goods and services on a fee-for-service basis, as permitted by subdivision (k) of Section 14132.100.

(e) A clinic that otherwise meets the qualifications set forth in subdivision (a), that is eligible to, but that has elected not to, utilize drugs purchased under the 340B Discount Drug Program for its Medi-Cal patients, shall provide notification to the Health Resources and Services Administration's Office of Pharmacy Affairs that it is utilizing non-340B

drugs for its Medi-Cal patients in the manner and to the extent required by federal law.

CHAPTER 504

An act to amend Section 12305.1 of the Welfare and Institutions Code, relating to human services, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 4, 2005. Filed with
Secretary of State October 4, 2005.]

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

SECTION 1. Section 12305.1 of the Welfare and Institutions Code is amended to read:

12305.1. (a) Any aged, blind, or disabled individual who is receiving Medi-Cal personal care services pursuant to subdivision (p) of Section 14132.95, and who would otherwise be deemed a categorically needy recipient pursuant to Section 12305, is eligible to receive a supplementary payment under this article to be used towards the purchase of personal care services. Additionally, any aged, blind, or disabled individual who is receiving services pursuant to Section 14132.951, and who would otherwise be deemed a categorically needy recipient pursuant to Section 12305 is eligible to receive a supplementary payment under this article to be used towards the purchase of services under Section 14132.951.

(b) A supplementary payment pursuant to this section shall be the difference between the following amounts:

(1) A beneficiary's excess income as determined under Section 12304.5.

(2) The beneficiary's nonexempt income as determined pursuant to Section 14005.7, in excess of the income levels for maintenance need pursuant to Section 14005.12.

(c) Notwithstanding subdivisions (a) and (b), no supplementary payment shall be made pursuant to this section unless the amount specified in paragraph (2) of subdivision (b) is larger than the amount specified in paragraph (1) of subdivision (b).

(d) In the event of a final judicial determination by any court of appellate jurisdiction or a final determination by the Administrator of the federal Centers for Medicare and Medicaid Services that supplemental payments to medically needy persons not receiving services pursuant to subdivision (p) of Section 14132.95 or Section 14132.951 must be made,

then this section and subdivision (p) of Section 14132.95 shall cease to be operative on the first day of the month that begins after the expiration of a period of 30 days subsequent to a notification in writing by the Director of Finance to the chairperson of the committee in each house that considers appropriations, the chairpersons of the committees and the appropriate subcommittees in each house that consider the State Budget, and the Chairperson of the Joint Legislative Budget Committee.

(e) (1) Notwithstanding 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, until emergency regulations are filed with the Secretary of State, the department may implement this section through all-county letters or similar instructions from the director. The department shall adopt emergency regulations implementing this section no later than September 30, 2006, unless notification of a delay is made to the Chair of the Joint Legislative Budget Committee prior to that date. The notification shall include the reason for the delay, the current status of the emergency regulations, a date by which the emergency regulations shall be adopted, and a statement of need to continue use of all-county letters or similar instructions. Under no circumstances shall the adoption of emergency regulations be delayed, or the use of all-county letters or similar instructions be extended, beyond June 30, 2007.

(2) The adoption of regulations implementing this section shall be deemed an emergency and necessary for the immediate preservation of the public peace, health, safety, or general welfare. The emergency regulations authorized by this section shall be exempt from review by the Office of Administrative Law. The emergency regulations authorized by this section shall be submitted to the Office of Administrative Law for filing with the Secretary of State and shall remain in effect for no more than 180 days, by which time final regulations shall be promulgated.

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 the necessary statutory changes to implement the Budget Act of 2005 at the earliest possible time, it is necessary that this act take effect immediately.

CHAPTER 505

An act to amend Sections 19440.5, 19540, 19590, and 19602 of, and to add Sections 19411.1 and 19618.2 to, the Business and Professions Code, relating to horse racing.

[Approved by Governor October 4, 2005. Filed with
Secretary of State October 4, 2005.]

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

SECTION 1 Section 19411.1 is added to the Business and Professions Code, to read:

19411.1. "Handle" means the aggregate contributions to parimutuel pools.

SEC. 2 Section 19440.5 of the Business and Professions Code is amended to read:

19440.5. An annual audit shall be conducted of the financial books and records of the horsemen's organizations, including any subsidiaries of the horsemen's organizations, by a nationally recognized accounting firm as follows:

(a) With respect to pension funds received by those organizations pursuant to Sections 19533, 19613, and 19613.1, the audit shall be conducted within 90 days of the close of the fund's business year. The audit shall cover the period of time since the last audit, and a copy thereof shall be filed with the board, and the Senate and Assembly Committees on Governmental Organization.

(b) With respect to administrative funds and welfare funds received pursuant to Sections 19533, 19606.5, 19613, and 19641, the audit shall be conducted within 90 days of the close of the fund's business year. The audit shall cover the period of time since the last audit, and a copy thereof shall be filed with the board, and the Senate and Assembly Committees on Governmental Organization.

(c) The horsemen's organizations shall bear the cost of the audit.

SEC. 3 Section 19540 of the Business and Professions Code is amended to read:

19540. In order to encourage and develop the racing of all horses in California, regardless of breed, whenever a fair conducts a program of horse races on which there is parimutuel wagering, the fair, so far as practicable, shall provide a program of racing that includes thoroughbred racing, quarter horse racing, Arabian racing, and Appaloosa racing, if a sufficient number of horses is available to provide competition in one or more races.

SEC. 4 Section 19590 of the Business and Professions Code, as amended by Section 7 of Chapter 198 of the Statutes of 2001, is amended to read:

19590. The board shall adopt rules governing, permitting, and regulating parimutuel wagering on horse races under the system known as the parimutuel method of wagering. Parimutuel wagering shall be conducted only by a person or persons licensed under this chapter to conduct a horse racing meeting, and only within the enclosure and on the dates for which horse racing has been authorized by the board. Wagering instructions concerning funds held in an advance deposit wagering account shall be deemed to be issued within the licensee's enclosure.

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. 5 Section 19602 of the Business and Professions Code is amended to read:

19602. (a) Notwithstanding any other provision of law, any racing association located in this state may authorize betting systems located outside of this state to accept wagers on a race or races conducted or disseminated by that association and may transmit live audiovisual signals of the race or races and their results to those betting systems, except that any authorization is subject to the consent of the host association and applicable federal laws, including, but not limited to, Chapter 57 (commencing with Section 3001) of Title 15 of the United States Code.

(b) (1) Except as provided in paragraph (2), any racing association described in subdivision (a), when it authorizes betting systems located outside of this state to accept wagers on a race, shall pay a license fee to the state in an amount equal to 8 percent of the total amount received by the association from the out-of-state betting system. In addition, with respect to thoroughbred racing only, 3 percent of the amount remaining after the payment of the license fee shall be deposited with the official registering agency pursuant to subdivision (a) of Section 19617.2, and shall thereafter be distributed in accordance with subdivisions (b), (c), and (d) of Section 19617.2. The remaining amount received by the association shall be distributed to the association that conducts the racing meeting and to horsemen participating in that racing meeting as follows: 50 percent to the association as commissions, and 50 percent to the horsemen as purses. All rents, costs, and fees shall be deducted pursuant to a contract between the association that conducts the racing meeting and the horsemen participating in the racing meeting. Notwithstanding any other provision of law, racing associations may form a partnership,

joint venture, or any other affiliation in order to negotiate terms and conditions of agreements with out-of-state betting systems.

(2) A thoroughbred association that hosts the series of races known as the "Breeder's Cup" shall not be required to pay to the state the license fees required pursuant to paragraph (1). Amounts received by the association from out-of-state betting systems as wagers on Breeder's Cup races shall be distributed as follows: 50 percent as commissions to the association that conducts the racing meeting, and 50 percent as purses to the horsemen participating in the meeting.

(c) With the permission of the board, wagers accepted by betting systems located outside of this state may be, but are not required to be, included in the parimutuel pool of the association that conducts the racing meeting in this state. If the wagers accepted by betting systems located outside of this state are included in the parimutuel pool of the association that conducts the racing meeting in this state, the betting system located outside of this state shall, if permissible under applicable law, deduct from the total amount handled in each conventional and exotic parimutuel pool the same total percentages deducted pursuant to Article 9.5 (commencing with Section 19610) by the association that conducts the racing meeting in this state. If the laws of the jurisdiction in which the betting system is located do not permit the betting system to deduct the same percentages as are deducted by the association that conducts the racing meeting, the board may, nonetheless, permit the inclusion of those out-of-state wagers in the association's parimutuel pool if the board determines it to be in the public interest of this state to do so.

(d) If wagers accepted by an association conducting a racing meeting within the state and wagers accepted by a betting system located outside of the state are combined in one parimutuel pool and the association and the betting system both deduct the same total percentages as set forth in subdivision (c), the breakage shall be allocated between the association and the betting system on the basis of a calculation for distribution approved by the board.

(e) If wagers accepted by an association conducting a racing meeting within the state are combined in one parimutuel pool with wagers accepted by a betting system located outside the state and the association and the betting system deduct different percentages from the amount handled in the parimutuel pool, the precise calculation and distribution of payments on winning tickets and breakage between the association and the betting system shall be on the basis of a calculation for distribution approved by the board.

(f) Breakage allocated pursuant to this section to an association conducting a racing meeting within this state shall be distributed in the same manner as would be breakage arising from wagers at the association

in the absence of a combined parimutuel pool. This section does not apply to the disposition of breakage allocated to the betting system located outside of the state.

(g) If wagers accepted by a betting system located outside of this state are included in the parimutuel pool of an association conducting a racing meeting in this state, funds in the parimutuel pool attributable to unclaimed tickets relating to wagers accepted by the association conducting a racing meeting within the state shall be distributed in the same manner as unclaimed tickets relating to wagers accepted by that association in the absence of a combined parimutuel pool. Funds in the parimutuel pool attributable to unclaimed tickets related to wagers accepted by the betting system located outside of this state shall be allocated to that betting system, and this section does not otherwise apply to the disposition of those funds at that location outside of the state.

SEC. 6. Section 19618.2 is added to the Business and Professions Code, to read:

19618.2. Subdivisions (a) and (b) of Section 19618 shall not apply to any payment by a licensed quarter horse racing association in the southern zone, to horsemen participating in its race meeting.

CHAPTER 506

An act to amend Sections 3613, 3624.5, 3627, 3628, 3633.1, 3635, 3640, 3640.1, 3640.5, 4024, 4039, 4040, 4059, 4059.5, 4060, 4061, 4076, 4142, 4170, 4174, and 4175 of, to add Sections 5588.1, 5588.2, 5588.3, and 5588.4 to, to repeal Section 5589 of, and to repeal and add Section 5588 of, the Business and Professions Code, and to amend Sections 11150, 11165, and 11210 of the Health and Safety Code, relating to professions and vocations, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 4, 2005. Filed with
Secretary of State October 4, 2005.]

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

SECTION 1. Section 3613 of the Business and Professions Code is amended to read:

3613. The following definitions apply for the purposes of this chapter:

(a) "Bureau" means the Bureau of Naturopathic Medicine within the Department of Consumer Affairs.

(b) “Naturopathic childbirth attendance” means the specialty practice of natural childbirth by a naturopathic doctor that includes the management of normal pregnancy, normal labor and delivery, and the normal postpartum period, including normal newborn care.

(c) “Naturopathic medicine” means a distinct and comprehensive system of primary health care practiced by a naturopathic doctor for the diagnosis, treatment, and prevention of human health conditions, injuries, and disease.

(d) “Naturopathic doctor” means a person who holds an active license issued pursuant to this chapter.

(e) “Naturopathy” means a noninvasive system of health practice that employs natural health modalities, substances, and education to promote health.

(f) “Drug” means any substance defined as a drug by Section 11014 of the Health and Safety Code.

SEC. 2. Section 3624.5 of the Business and Professions Code is amended to read:

3624.5. (a) This chapter does not apply to a practitioner licensed as a naturopathic doctor in another state or country who meets both of the following requirements:

(1) The practitioner is in consultation with a licensed practitioner of this state, or is an invited guest of any of the following for the purpose of professional education through lectures, clinics, or demonstrations:

(A) The California Medical Association.

(B) The California Podiatric Medical Association.

(C) The California Naturopathic Doctors Association.

(D) A component county society of subparagraph (A), (B), or (C).

(2) The practitioner does not open an office, appoint a place to meet patients, receive calls from patients, give orders, or have ultimate authority over the care or primary diagnosis of a patient.

SEC. 2.1. Section 3627 of the Business and Professions Code is amended to read:

3627. (a) The bureau shall establish a naturopathic formulary advisory committee to determine a naturopathic formulary based upon a review of naturopathic medical education and training.

(b) The naturopathic formulary advisory committee shall be composed of an equal number of representatives from the clinical and academic settings of physicians and surgeons, pharmacists, and naturopathic doctors.

(c) The naturopathic formulary advisory committee shall review naturopathic education, training, and practice and make specific recommendations regarding the prescribing, ordering, and furnishing

authority of a naturopathic doctor and the required supervision and protocols for those functions.

(d) The bureau shall make recommendations to the Legislature not later than January 1, 2007, regarding the prescribing and furnishing authority of a naturopathic doctor and the required supervision and protocols, including those for the utilization of intravenous and ocular routes of prescription drug administration. The naturopathic formulary advisory committee and the bureau shall consult with physicians and surgeons, pharmacists, and licensed naturopathic doctors in developing the findings and recommendations submitted to the Legislature.

SEC. 2.2. Section 3628 of the Business and Professions Code is amended to read:

3628. (a) The bureau shall establish a naturopathic childbirth attendance advisory committee to issue recommendations concerning the practice of naturopathic childbirth attendance based upon a review of naturopathic medical education and training.

(b) The naturopathic childbirth attendance advisory committee shall be composed of an equal number of representatives from the clinical and academic settings of physicians and surgeons, midwives, and naturopathic doctors.

(c) The naturopathic childbirth attendance advisory committee shall review naturopathic education, training, and practice and make specific recommendations to the Legislature regarding the practice of naturopathic childbirth attendance.

(d) The bureau shall make recommendations to the Legislature not later than January 1, 2007. The naturopathic childbirth attendance advisory committee and the bureau shall consult with physicians and surgeons, midwives, and licensed naturopathic doctors in developing the findings and recommendations submitted to the Legislature.

SEC. 3. Section 3633.1 of the Business and Professions Code is amended to read:

3633.1. The bureau may grant a license to an applicant who meets the requirements of Section 3630, but who graduated prior to 1986, pre-NPLEX, and passed a state or Canadian Province naturopathic licensing examination. Applications under this section shall be received no later than December 31, 2007.

SEC. 4. Section 3635 of the Business and Professions Code is amended to read:

3635. (a) In addition to any other qualifications and requirements for licensure renewal, the bureau shall require the satisfactory completion of 60 hours of approved continuing education biennially. This requirement is waived for the initial license renewal. The continuing education shall meet the following requirements:

(1) At least 20 hours shall be in pharmacotherapeutics.
(2) No more than 15 hours may be in naturopathic medical journals or osteopathic or allopathic medical journals, or audio or videotaped presentations, slides, programmed instruction, or computer-assisted instruction or preceptorships.

(3) No more than 20 hours may be in any single topic.

(4) No more than 15 hours of the continuing education requirements for the specialty certificate in naturopathic childbirth attendance shall apply to the 60 hours of continuing education requirement.

(b) The continuing education requirements of this section may be met through continuing education courses approved by the California Naturopathic Doctors Association, the American Association of Naturopathic Physicians, the Medical Board of California, the California State Board of Pharmacy, the State Board of Chiropractic Examiners, or other courses approved by the bureau.

SEC. 5. Section 3640 of the Business and Professions Code is amended to read:

3640. (a) A naturopathic doctor may order and perform physical and laboratory examinations for diagnostic purposes, including, but not limited to, phlebotomy, clinical laboratory tests, speculum examinations, orificial examinations, and physiological function tests.

(b) A naturopathic doctor may order diagnostic imaging studies, including X-ray, ultrasound, mammogram, bone densitometry, and others, consistent with naturopathic training as determined by the bureau, but shall refer the studies to an appropriately licensed health care professional to conduct the study and interpret the results.

(c) A naturopathic doctor may dispense, administer, order, and prescribe or perform the following:

(1) Food, extracts of food, nutraceuticals, vitamins, amino acids, minerals, enzymes, botanicals and their extracts, botanical medicines, homeopathic medicines, all dietary supplements and nonprescription drugs as defined by the federal Food, Drug, and Cosmetic Act, consistent with the routes of administration identified in subdivision (d).

(2) Hot or cold hydrotherapy; naturopathic physical medicine inclusive of the manual use of massage, stretching, resistance, or joint play examination but exclusive of small amplitude movement at or beyond the end range of normal joint motion; electromagnetic energy; colon hydrotherapy; and therapeutic exercise.

(3) Devices, including, but not limited to, therapeutic devices, barrier contraception, and durable medical equipment.

(4) Health education and health counseling.

(5) Repair and care incidental to superficial lacerations and abrasions, except suturing.

(6) Removal of foreign bodies located in the superficial tissues.

(d) A naturopathic doctor may utilize routes of administration that include oral, nasal, auricular, ocular, rectal, vaginal, transdermal, intradermal, subcutaneous, intravenous, and intramuscular.

(e) The bureau may establish regulations regarding ocular or intravenous routes of administration that are consistent with the education and training of a naturopathic doctor.

(f) Nothing in this section shall exempt a naturopathic doctor from meeting applicable licensure requirements for the performance of clinical laboratory tests.

(g) The authority to use all routes for furnishing prescription drugs as described in Section 3640.5 shall be consistent with the oversight and supervision requirements of Section 2836.1.

SEC. 5.1. Section 3640.1 of the Business and Professions Code is amended to read:

3640.1. The bureau shall make recommendations to the Legislature not later than January 1, 2007, regarding the potential development of scope and supervision requirements of a naturopathic doctor for the performance of minor office procedures. The bureau shall consult with physicians and surgeons and licensed naturopathic doctors in developing the findings and recommendations submitted to the Legislature.

SEC. 6. Section 3640.5 of the Business and Professions Code is amended to read:

3640.5. Nothing in this chapter or any other provision of law shall be construed to prohibit a naturopathic doctor from furnishing or ordering drugs when all of the following apply:

(a) The drugs are furnished or ordered by a naturopathic doctor in accordance with standardized procedures or protocols developed by the naturopathic doctor and his or her supervising physician and surgeon.

(b) The naturopathic doctor is functioning pursuant to standardized procedure, as defined by subdivisions (a), (b), (d), (e), (h), and (i) of Section 2836.1 and paragraph (1) of subdivision (c) of Section 2836.1, or protocol. The standardized procedure or protocol shall be developed and approved by the supervising physician and surgeon, the naturopathic doctor, and, where applicable, the facility administrator or his or her designee.

(c) The standardized procedure or protocol covering the furnishing of drugs shall specify which naturopathic doctors may furnish or order drugs, which drugs may be furnished or ordered under what circumstances, the extent of physician and surgeon supervision, the method of periodic review of the naturopathic doctor's competence, including peer review, and review of the provisions of the standardized procedure.

(d) The furnishing or ordering of drugs by a naturopathic doctor occurs under physician and surgeon supervision. Physician and surgeon supervision shall not be construed to require the physical presence of the physician, but does include all of the following:

- (1) Collaboration on the development of the standardized procedure.
- (2) Approval of the standardized procedure.
- (3) Availability by telephonic contact at the time of patient examination by the naturopathic doctor.

(e) For purposes of this section, a physician and surgeon shall not supervise more than four naturopathic doctors at one time.

(f) Drugs furnished or ordered by a naturopathic doctor may include Schedule III through Schedule V controlled substances under the California Uniform Controlled Substances Act (Division 10 (commencing with Section 11000) of the Health and Safety Code) and shall be further limited to those drugs agreed upon by the naturopathic doctor and physician and surgeon as specified in the standardized procedure. When Schedule III controlled substances, as defined in Section 11056 of the Health and Safety Code, are furnished or ordered by a naturopathic doctor, the controlled substances shall be furnished or ordered in accordance with a patient-specific protocol approved by the treating or supervising physician. A copy of the section of the naturopathic doctor's standardized procedure relating to controlled substances shall be provided upon request, to a licensed pharmacist who dispenses drugs, when there is uncertainty about the naturopathic doctor furnishing the order.

(g) The bureau has certified that the naturopathic doctor has satisfactorily completed adequate coursework in pharmacology covering the drugs to be furnished or ordered under this section. The bureau shall establish the requirements for satisfactory completion of this subdivision.

(h) Use of the term "furnishing" in this section, in health facilities defined in subdivisions (b), (c), (d), (e), and (i) of Section 1250 of the Health and Safety Code, shall include both of the following:

- (1) Ordering a drug in accordance with the standardized procedure.
 - (2) Transmitting an order of a supervising physician and surgeon.
- (i) For purposes of this section, "drug order" or "order" means an order for medication which is dispensed to or for an ultimate user, issued by a naturopathic doctor as an individual practitioner, within the meaning of Section 1306.02 of Title 21 of the Code of Federal Regulations.

(j) Notwithstanding any other provision of law, the following apply:

(1) A drug order issued pursuant to this section shall be treated in the same manner as a prescription of the supervising physician.

(2) All references to prescription in this code and the Health and Safety Code shall include drug orders issued by naturopathic doctors.

(3) The signature of a naturopathic doctor on a drug order issued in accordance with this section shall be deemed to be the signature of a prescriber for purposes of this code and the Health and Safety Code.

SEC. 7. Section 4024 of the Business and Professions Code is amended to read:

4024. (a) Except as provided in subdivision (b), “dispense” means the furnishing of drugs or devices upon a prescription from a physician, dentist, optometrist, podiatrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7, or upon an order to furnish drugs or transmit a prescription from a certified nurse-midwife, nurse practitioner, physician assistant, naturopathic doctor pursuant to Section 3640.5, or pharmacist acting within the scope of his or her practice.

(b) “Dispense” also means and refers to the furnishing of drugs or devices directly to a patient by a physician, dentist, optometrist, podiatrist, or veterinarian, or by a certified nurse-midwife, nurse practitioner, naturopathic doctor, or physician assistant acting within the scope of his or her practice.

SEC. 8. Section 4039 of the Business and Professions Code is amended to read:

4039. “Physicians,” “dentists,” “optometrists,” “pharmacists,” “podiatrists,” “veterinarians,” “veterinary surgeons,” “registered nurses,” “naturopathic doctors,” and “physician’s assistants” are persons authorized by a currently valid and unrevoked license to practice their respective professions in this state. “Physician” means and includes any person holding a valid and unrevoked physician’s and surgeon’s certificate or certificate to practice medicine and surgery, issued by the Medical Board of California or the Osteopathic Medical Board of California, and includes an unlicensed person lawfully practicing medicine pursuant to Section 2065, when acting within the scope of that section.

SEC. 9. Section 4040 of the Business and Professions Code is amended to read:

4040. (a) “Prescription” means an oral, written, or electronic transmission order that is both of the following:

(1) Given individually for the person or persons for whom ordered that includes all of the following:

(A) The name or names and address of the patient or patients.

(B) The name and quantity of the drug or device prescribed and the directions for use.

(C) The date of issue.

(D) Either rubber stamped, typed, or printed by hand or typeset, the name, address, and telephone number of the prescriber, his or her license

classification, and his or her federal registry number, if a controlled substance is prescribed.

(E) A legible, clear notice of the condition for which the drug is being prescribed, if requested by the patient or patients.

(F) If in writing, signed by the prescriber issuing the order, or the certified nurse-midwife, nurse practitioner, physician assistant, or naturopathic doctor who issues a drug order pursuant to Section 2746.51, 2836.1, 3502.1, or 3640.5, respectively, or the pharmacist who issues a drug order pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052.

(2) Issued by a physician, dentist, optometrist, podiatrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7 or, if a drug order is issued pursuant to Section 2746.51, 2836.1, 3502.1, or 3460.5, by a certified nurse-midwife, nurse practitioner, physician assistant, or naturopathic doctor licensed in this state, or pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052 by a pharmacist licensed in this state.

(b) Notwithstanding subdivision (a), a written order of the prescriber for a dangerous drug, except for any Schedule II controlled substance, that contains at least the name and signature of the prescriber, the name and address of the patient in a manner consistent with paragraph (3) of subdivision (b) of Section 11164 of the Health and Safety Code, the name and quantity of the drug prescribed, directions for use, and the date of issue may be treated as a prescription by the dispensing pharmacist as long as any additional information required by subdivision (a) is readily retrievable in the pharmacy. In the event of a conflict between this subdivision and Section 11164 of the Health and Safety Code, Section 11164 of the Health and Safety Code shall prevail.

(c) "Electronic transmission prescription" includes both image and data prescriptions. "Electronic image transmission prescription" means any prescription order for which a facsimile of the order is received by a pharmacy from a licensed prescriber. "Electronic data transmission prescription" means any prescription order, other than an electronic image transmission prescription, that is electronically transmitted from a licensed prescriber to a pharmacy.

(d) The use of commonly used abbreviations shall not invalidate an otherwise valid prescription.

(e) Nothing in the amendments made to this section (formerly Section 4036) at the 1969 Regular Session of the Legislature shall be construed as expanding or limiting the right that a chiropractor, while acting within the scope of his or her license, may have to prescribe a device.

SEC. 10. Section 4059 of the Business and Professions Code is amended to read:

4059. (a) A person may not furnish any dangerous drug, except upon the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7. A person may not furnish any dangerous device, except upon the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7.

(b) This section does not apply to the furnishing of any dangerous drug or dangerous device by a manufacturer, wholesaler, or pharmacy to each other or to a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7, or to a laboratory under sales and purchase records that correctly give the date, the names and addresses of the supplier and the buyer, the drug or device, and its quantity. This section does not apply to the furnishing of any dangerous device by a manufacturer, wholesaler, or pharmacy to a physical therapist acting within the scope of his or her license under sales and purchase records that correctly provide the date the device is provided, the names and addresses of the supplier and the buyer, a description of the device, and the quantity supplied.

(c) A pharmacist, or a person exempted pursuant to Section 4054, may distribute dangerous drugs and dangerous devices directly to dialysis patients pursuant to regulations adopted by the board. The board shall adopt any regulations as are necessary to ensure the safe distribution of these drugs and devices to dialysis patients without interruption thereof. A person who violates a regulation adopted pursuant to this subdivision shall be liable upon order of the board to surrender his or her personal license. These penalties shall be in addition to penalties that may be imposed pursuant to Section 4301. If the board finds any dialysis drugs or devices distributed pursuant to this subdivision to be ineffective or unsafe for the intended use, the board may institute immediate recall of any or all of the drugs or devices distributed to individual patients.

(d) Home dialysis patients who receive any drugs or devices pursuant to subdivision (c) shall have completed a full course of home training given by a dialysis center licensed by the State Department of Health Services. The physician prescribing the dialysis products shall submit proof satisfactory to the manufacturer or wholesaler that the patient has completed the program.

(e) A pharmacist may furnish a dangerous drug authorized for use pursuant to Section 2620.3 to a physical therapist. A record containing the date, name and address of the buyer, and name and quantity of the drug shall be maintained. This subdivision shall not be construed to authorize the furnishing of a controlled substance.

(f) A pharmacist may furnish electroneuromyographic needle electrodes or hypodermic needles used for the purpose of placing wire electrodes for kinesiological electromyographic testing to physical therapists who are certified by the Physical Therapy Examining Committee of California to perform tissue penetration in accordance with Section 2620.5.

(g) Nothing in this section shall be construed as permitting a licensed physical therapist to dispense or furnish a dangerous device without a prescription of a physician, dentist, podiatrist, optometrist, or veterinarian.

(h) A veterinary food-animal drug retailer shall dispense, furnish, transfer, or sell veterinary food-animal drugs only to another veterinary food-animal drug retailer, a pharmacy, a veterinarian, or to a veterinarian's client pursuant to a prescription from the veterinarian for food-producing animals.

SEC. 11. Section 4059.5 of the Business and Professions Code, as added by Section 11.5 of Chapter 857 of the Statutes of 2004, is amended to read:

4059.5. (a) Except as otherwise provided in this chapter, dangerous drugs or dangerous devices may only be ordered by an entity licensed by the board and shall be delivered to the licensed premises and signed for and received by a pharmacist. Where a licensee is permitted to operate through a designated representative, the designated representative may sign for and receive the delivery.

(b) A dangerous drug or dangerous device transferred, sold, or delivered to a person within this state shall be transferred, sold, or delivered only to an entity licensed by the board, to a manufacturer, or to an ultimate user or the ultimate user's agent.

(c) Notwithstanding subdivisions (a) and (b), deliveries to a hospital pharmacy may be made to a central receiving location within the hospital. However, the dangerous drugs or dangerous devices shall be delivered to the licensed pharmacy premises within one working day following receipt by the hospital, and the pharmacist on duty at that time shall immediately inventory the dangerous drugs or dangerous devices.

(d) Notwithstanding any other provision of law, a dangerous drug or dangerous device may be ordered by and provided to a manufacturer, physician, dentist, podiatrist, optometrist, veterinarian, naturopathic doctor pursuant to Section 3640.7, or laboratory, or a physical therapist acting within the scope of his or her license. A person or entity receiving delivery of a dangerous drug or dangerous device, or a duly authorized representative of the person or entity, shall sign for the receipt of the dangerous drug or dangerous device.

(e) A dangerous drug or dangerous device shall not be transferred, sold, or delivered to a person outside this state, whether foreign or

domestic, unless the transferor, seller, or deliverer does so in compliance with the laws of this state and of the United States and of the state or country to which the dangerous drugs or dangerous devices are to be transferred, sold, or delivered. Compliance with the laws of this state and the United States and of the state or country to which the dangerous drugs or dangerous devices are to be delivered shall include, but not be limited to, determining that the recipient of the dangerous drugs or dangerous devices is authorized by law to receive the dangerous drugs or dangerous devices.

(f) Notwithstanding subdivision (a), a pharmacy may take delivery of dangerous drugs and dangerous devices when the pharmacy is closed and no pharmacist is on duty if all of the following requirements are met:

(1) The drugs are placed in a secure storage facility in the same building as the pharmacy.

(2) Only the pharmacist-in-charge or a pharmacist designated by the pharmacist-in-charge has access to the secure storage facility after dangerous drugs or dangerous devices have been delivered.

(3) The secure storage facility has a means of indicating whether it has been entered after dangerous drugs or dangerous devices have been delivered.

(4) The pharmacy maintains written policies and procedures for the delivery of dangerous drugs and dangerous devices to a secure storage facility.

(5) The agent delivering dangerous drugs and dangerous devices pursuant to this subdivision leaves documents indicating the name and amount of each dangerous drug or dangerous device delivered in the secure storage facility.

The pharmacy shall be responsible for the dangerous drugs and dangerous devices delivered to the secure storage facility. The pharmacy shall also be responsible for obtaining and maintaining records relating to the delivery of dangerous drugs and dangerous devices to a secure storage facility.

(g) This section shall become operative on January 1, 2006.

SEC. 12. Section 4060 of the Business and Professions Code is amended to read:

4060. No person shall possess any controlled substance, except that furnished to a person upon the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7, or furnished pursuant to a drug order issued by a certified nurse-midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, a physician assistant pursuant to Section 3502.1, a naturopathic doctor pursuant to Section 3640.5, or a pharmacist pursuant

to either subparagraph (D) of paragraph (4) of, or clause (iv) of subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052. This section shall not apply to the possession of any controlled substance by a manufacturer, wholesaler, pharmacy, pharmacist, physician, podiatrist, dentist, optometrist, veterinarian, naturopathic doctor, certified nurse-midwife, nurse practitioner, or physician assistant, when in stock in containers correctly labeled with the name and address of the supplier or producer.

Nothing in this section authorizes a certified nurse-midwife, a nurse practitioner, a physician assistant, or a naturopathic doctor, to order his or her own stock of dangerous drugs and devices.

SEC. 13. Section 4061 of the Business and Professions Code is amended to read:

4061. (a) No manufacturer's sales representative shall distribute any dangerous drug or dangerous device as a complimentary sample without the written request of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7. However, a certified nurse-midwife who functions pursuant to a standardized procedure or protocol described in Section 2746.51, a nurse practitioner who functions pursuant to a standardized procedure described in Section 2836.1, or protocol, a physician assistant who functions pursuant to a protocol described in Section 3502.1, or a naturopathic doctor who functions pursuant to a standardized procedure or protocol described in Section 3640.5, may sign for the request and receipt of complimentary samples of a dangerous drug or dangerous device that has been identified in the standardized procedure, protocol, or practice agreement. Standardized procedures, protocols, and practice agreements shall include specific approval by a physician. A review process, consistent with the requirements of Section 2725, 3502.1, or 3640.5, of the complimentary samples requested and received by a nurse practitioner, certified nurse-midwife, physician assistant, or naturopathic doctor, shall be defined within the standardized procedure, protocol, or practice agreement.

(b) Each written request shall contain the names and addresses of the supplier and the requester, the name and quantity of the specific dangerous drug desired, the name of the certified nurse-midwife, nurse practitioner, physician assistant, or naturopathic doctor, if applicable, receiving the samples pursuant to this section, the date of receipt, and the name and quantity of the dangerous drugs or dangerous devices provided. These records shall be preserved by the supplier with the records required by Section 4059.

(c) Nothing in this section is intended to expand the scope of practice of a certified nurse-midwife, nurse practitioner, physician assistant, or naturopathic doctor.

SEC. 14. Section 4076 of the Business and Professions Code is amended to read:

4076. (a) A pharmacist shall not dispense any prescription except in a container that meets the requirements of state and federal law and is correctly labeled with all of the following:

(1) Except where the prescriber or the certified nurse-midwife who functions pursuant to a standardized procedure or protocol described in Section 2746.51, the nurse practitioner who functions pursuant to a standardized procedure described in Section 2836.1, or protocol, the physician assistant who functions pursuant to Section 3502.1, the naturopathic doctor who functions pursuant to a standardized procedure or protocol described in Section 3640.5, or the pharmacist who functions pursuant to a policy, procedure, or protocol pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052 orders otherwise, either the manufacturer's trade name of the drug or the generic name and the name of the manufacturer. Commonly used abbreviations may be used. Preparations containing two or more active ingredients may be identified by the manufacturer's trade name or the commonly used name or the principal active ingredients.

(2) The directions for the use of the drug.

(3) The name of the patient or patients.

(4) The name of the prescriber or, if applicable, the name of the certified nurse-midwife who functions pursuant to a standardized procedure or protocol described in Section 2746.51, the nurse practitioner who functions pursuant to a standardized procedure described in Section 2836.1, or protocol, the physician assistant who functions pursuant to Section 3502.1, the naturopathic doctor who functions pursuant to a standardized procedure or protocol described in Section 3640.5, or the pharmacist who functions pursuant to a policy, procedure, or protocol pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052.

(5) The date of issue.

(6) The name and address of the pharmacy, and prescription number or other means of identifying the prescription.

(7) The strength of the drug or drugs dispensed.

(8) The quantity of the drug or drugs dispensed.

(9) The expiration date of the effectiveness of the drug dispensed.

(10) The condition for which the drug was prescribed if requested by the patient and the condition is indicated on the prescription.

(11) (A) Commencing January 1, 2006, the physical description of the dispensed medication, including its color, shape, and any identification code that appears on the tablets or capsules, except as follows:

(i) Prescriptions dispensed by a veterinarian.

(ii) An exemption from the requirements of this paragraph shall be granted to a new drug for the first 120 days that the drug is on the market and for the 90 days during which the national reference file has no description on file.

(iii) Dispensed medications for which no physical description exists in any commercially available database.

(B) This paragraph applies to outpatient pharmacies only.

(C) The information required by this paragraph may be printed on an auxiliary label that is affixed to the prescription container.

(D) This paragraph shall not become operative if the board, prior to January 1, 2006, adopts regulations that mandate the same labeling requirements set forth in this paragraph.

(b) If a pharmacist dispenses a prescribed drug by means of a unit dose medication system, as defined by administrative regulation, for a patient in a skilled nursing, intermediate care, or other health care facility, the requirements of this section will be satisfied if the unit dose medication system contains the aforementioned information or the information is otherwise readily available at the time of drug administration.

(c) If a pharmacist dispenses a dangerous drug or device in a facility licensed pursuant to Section 1250 of the Health and Safety Code, it is not necessary to include on individual unit dose containers for a specific patient, the name of the certified nurse-midwife who functions pursuant to a standardized procedure or protocol described in Section 2746.51, the nurse practitioner who functions pursuant to a standardized procedure described in Section 2836.1, or protocol, the physician assistant who functions pursuant to Section 3502.1, the naturopathic doctor who functions pursuant to a standardized procedure or protocol described in Section 3640.5, or the pharmacist who functions pursuant to a policy, procedure, or protocol pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052.

(d) If a pharmacist dispenses a prescription drug for use in a facility licensed pursuant to Section 1250 of the Health and Safety Code, it is not necessary to include the information required in paragraph (11) of subdivision (a) when the prescription drug is administered to a patient by a person licensed under the Medical Practice Act (Chapter 5 (commencing with Section 2000)), the Nursing Practice Act (Chapter 6

(commencing with Section 2700)), or the Vocational Nursing Practice Act (Chapter 6.5 (commencing with Section 2840)), who is acting within his or her scope of practice.

SEC. 15. Section 4142 of the Business and Professions Code is amended to read:

4142. Except as otherwise provided by this article, no hypodermic needle or syringe shall be sold at retail except upon the prescription of a physician, dentist, veterinarian, podiatrist, or naturopathic doctor pursuant to Section 3640.7.

SEC. 16. Section 4170 of the Business and Professions Code is amended to read:

4170. (a) No prescriber shall dispense drugs or dangerous devices to patients in his or her office or place of practice unless all of the following conditions are met:

(1) The dangerous drugs or dangerous devices are dispensed to the prescriber's own patient, and the drugs or dangerous devices are not furnished by a nurse or physician attendant.

(2) The dangerous drugs or dangerous devices are necessary in the treatment of the condition for which the prescriber is attending the patient.

(3) The prescriber does not keep a pharmacy, open shop, or drugstore, advertised or otherwise, for the retailing of dangerous drugs, dangerous devices, or poisons.

(4) The prescriber fulfills all of the labeling requirements imposed upon pharmacists by Section 4076, all of the recordkeeping requirements of this chapter, and all of the packaging requirements of good pharmaceutical practice, including the use of childproof containers.

(5) The prescriber does not use a dispensing device unless he or she personally owns the device and the contents of the device, and personally dispenses the dangerous drugs or dangerous devices to the patient packaged, labeled, and recorded in accordance with paragraph (4).

(6) The prescriber, prior to dispensing, offers to give a written prescription to the patient that the patient may elect to have filled by the prescriber or by any pharmacy.

(7) The prescriber provides the patient with written disclosure that the patient has a choice between obtaining the prescription from the dispensing prescriber or obtaining the prescription at a pharmacy of the patient's choice.

(8) A certified nurse-midwife who functions pursuant to a standardized procedure or protocol described in Section 2746.51, a nurse practitioner who functions pursuant to a standardized procedure described in Section 2836.1, or protocol, a physician assistant who functions pursuant to Section 3502.1, or a naturopathic doctor who functions pursuant to Section 3640.5, may hand to a patient of the supervising physician and

surgeon a properly labeled prescription drug prepackaged by a physician and surgeon, a manufacturer as defined in this chapter, or a pharmacist.

(b) The Medical Board of California, the State Board of Optometry, the Bureau of Naturopathic Medicine, the Dental Board of California, the Osteopathic Medical Board of California, the Board of Registered Nursing, the Veterinary Medical Board, and the Physician Assistant Committee shall have authority with the California State Board of Pharmacy to ensure compliance with this section, and those boards are specifically charged with the enforcement of this chapter with respect to their respective licensees.

(c) "Prescriber," as used in this section, means a person, who holds a physician's and surgeon's certificate, a license to practice optometry, a license to practice naturopathic medicine, a license to practice dentistry, a license to practice veterinary medicine, or a certificate to practice podiatry, and who is duly registered by the Medical Board of California, the State Board of Optometry, the Bureau of Naturopathic Medicine, the Dental Board of California, the Veterinary Medical Board, or the Board of Osteopathic Examiners of this state.

SEC. 17. Section 4174 of the Business and Professions Code is amended to read:

4174. Notwithstanding any other provision of law, a pharmacist may dispense drugs or devices upon the drug order of a nurse practitioner functioning pursuant to Section 2836.1 or a certified nurse-midwife functioning pursuant to Section 2746.51, a drug order of a physician assistant functioning pursuant to Section 3502.1 or a naturopathic doctor functioning pursuant to Section 3640.5, or the order of a pharmacist acting under Section 4052.

SEC. 18. Section 4175 of the Business and Professions Code is amended to read:

4175. (a) The California State Board of Pharmacy shall promptly forward to the appropriate licensing entity, including the Medical Board of California, the Veterinary Medical Board, the Dental Board of California, the State Board of Optometry, the Osteopathic Medical Board of California, the Board of Registered Nursing, the Bureau of Naturopathic Medicine, or the Physician Assistant Committee, all complaints received related to dangerous drugs or dangerous devices dispensed by a prescriber, certified nurse-midwife, nurse practitioner, naturopathic doctor, or physician assistant pursuant to Section 4170.

(b) All complaints involving serious bodily injury due to dangerous drugs or dangerous devices dispensed by prescribers, certified nurse-midwives, nurse practitioners, naturopathic doctors, or physician assistants pursuant to Section 4170 shall be handled by the Medical Board of California, the Dental Board of California, the State Board of

Optometry, the Osteopathic Medical Board of California, the Bureau of Naturopathic Medicine, the Board of Registered Nursing, the Veterinary Medical Board, or the Physician Assistant Committee as a case of greatest potential harm to a patient.

SEC. 19. Section 5588 of the Business and Professions Code is repealed.

SEC. 20. Section 5588 is added to the Business and Professions Code, to read:

5588. (a) A licensee shall report to the board in writing within 30 days of the date the licensee has knowledge of any civil action judgment, settlement, arbitration award, or administrative action resulting in a judgment, settlement, or arbitration award against the licensee in any action alleging fraud, deceit, negligence, incompetence, or recklessness by the licensee in the practice of architecture if the amount or value of the judgment, settlement, or arbitration award is five thousand dollars (\$5,000) or greater.

(b) The report required by subdivision (a) shall be signed by the licensee and shall set forth the facts that constitute the reportable event. If the reportable event involves the action of an administrative agency or court, the report shall set forth all of the following:

- (1) The title of the matter.
- (2) The court or agency name.
- (3) The docket number.
- (4) The claim or file number.
- (5) The date on which the reportable event occurred.

(c) A licensee shall promptly respond to oral or written inquiries from the board concerning the reportable events, including inquiries made by the board in conjunction with license renewal.

(d) Failure of a licensee to report to the board in the time and manner required by this section shall be grounds for disciplinary action.

SEC. 21. Section 5588.1 is added to the Business and Professions Code, to read:

5588.1. (a) Within 30 days of payment of all or any portion of a civil action judgment, settlement, or arbitration award described in Section 5588 against a licensee of the board in which the amount or value of the judgment, settlement, or arbitration award is five thousand dollars (\$5,000) or greater, any insurer providing professional liability insurance to that licensee or architectural entity shall report to the board all of the following:

- (1) The name of the licensee.
- (2) The claim or file number.
- (3) The amount or value of the judgment, settlement, or arbitration award.

- (4) The amount paid by the insurer.
- (5) The identity of the payee.
- (b) Within 30 days of payment of all or any portion of any civil action judgment, settlement, or arbitration award described in Section 5588 against a licensee of the board in which the amount or value of the judgment, settlement, or arbitration award is five thousand dollars (\$5,000) or greater, any state or local governmental agency that self insures that licensee shall report to the board all of the following:
 - (1) The name of the licensee.
 - (2) The claim or file number.
 - (3) The amount or value of the judgment, settlement, or arbitration award.
 - (4) The amount paid.
 - (5) The identity of the payee.

SEC. 22. Section 5588.2 is added to the Business and Professions Code, to read:

5588.2. The requirements of Section 5588 and 5588.1 shall apply if a party to the civil action, settlement, arbitration award, or administrative action is or was a sole proprietorship, partnership, firm, corporation, or state or local governmental agency in which a licensee is or was an owner, partner, member, officer, or employee and is or was a licensee in responsible control of that portion of the project that was the subject of the civil judgment, settlement, arbitration award, or administrative action.

SEC. 23. Section 5588.3 is added to the Business and Professions Code, to read:

5588.3. Notwithstanding any other provision of law, a licensee shall not be considered to have violated a confidential settlement agreement or other confidential agreement by providing a report to the board as required by this article.

SEC. 24. Section 5588.4 is added to the Business and Professions Code, to read:

5588.4. The board may adopt regulations to further define the reporting requirements of Sections 5588 and 5588.1.

SEC. 25. Section 5589 of the Business and Professions Code is repealed.

SEC. 26. Section 11150 of the Health and Safety Code is amended to read:

11150. No person other than a physician, dentist, podiatrist, or veterinarian, or naturopathic doctor acting pursuant to Section 3640.7 of the Business and Professions Code, or pharmacist acting within the scope of a project authorized under Article 1 (commencing with Section 128125) of Chapter 3 of Part 3 of Division 107 or within the scope of

either subparagraph (D) of paragraph (4) of, or clause (iv) of subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052 of the Business and Professions Code, a registered nurse acting within the scope of a project authorized under Article 1 (commencing with Section 128125) of Chapter 3 of Part 3 of Division 107, a certified nurse-midwife acting within the scope of Section 2746.51 of the Business and Professions Code, a nurse practitioner acting within the scope of Section 2836.1 of the Business and Professions Code, a physician assistant acting within the scope of a project authorized under Article 1 (commencing with Section 128125) of Chapter 3 of Part 3 of Division 107 or Section 3502.1 of the Business and Professions Code, a naturopathic doctor acting within the scope of Section 3640.5 of the Business and Professions Code, or an optometrist acting within the scope of Section 3041 of the Business and Professions Code, or an out-of-state prescriber acting pursuant to Section 4005 of the Business and Professions Code shall write or issue a prescription.

SEC. 27. Section 11165 of the Health and Safety Code is amended to read:

11165. (a) To assist law enforcement and regulatory agencies in their efforts to control the diversion and resultant abuse of Schedule II and Schedule III controlled substances, and for statistical analysis, education, and research, the Department of Justice shall, contingent upon the availability of adequate funds from the Contingent Fund of the Medical Board of California, the Pharmacy Board Contingent Fund, the State Dentistry Fund, the Board of Registered Nursing Fund, and the Osteopathic Medical Board of California Contingent Fund, maintain the Controlled Substance Utilization Review and Evaluation System (CURES) for the electronic monitoring of the prescribing and dispensing of Schedule II and Schedule III controlled substances by all practitioners authorized to prescribe or dispense these controlled substances.

(b) The reporting of Schedule III controlled substance prescriptions to CURES shall be contingent upon the availability of adequate funds from the Department of Justice. The Department of Justice may seek and use grant funds to pay the costs incurred from the reporting of controlled substance prescriptions to CURES. Funds shall not be appropriated from the Contingent Fund of the Medical Board of California, the Pharmacy Board Contingent Fund, the State Dentistry Fund, the Board of Registered Nursing Fund, the Naturopathic Doctor's Fund, or the Osteopathic Medical Board of California Contingent Fund to pay the costs of reporting Schedule III controlled substance prescriptions to CURES.

(c) CURES shall operate under existing provisions of law to safeguard the privacy and confidentiality of patients. Data obtained from CURES

shall only be provided to appropriate state, local, and federal persons or public agencies for disciplinary, civil, or criminal purposes and to other agencies or entities, as determined by the Department of Justice, for the purpose of educating practitioners and others in lieu of disciplinary, civil, or criminal actions. Data may be provided to public or private entities, as approved by the Department of Justice, for educational, peer review, statistical, or research purposes, provided that patient information, including any information that may identify the patient, is not compromised. Further, data disclosed to any individual or agency as described in this subdivision shall not be disclosed, sold, or transferred to any third party.

(d) For each prescription for a Schedule II or Schedule III controlled substance, the dispensing pharmacy shall provide the following information to the Department of Justice in a frequency and format specified by the Department of Justice:

- (1) Full name, address, gender, and date of birth of the patient.
 - (2) The prescriber's category of licensure and license number; federal controlled substance registration number; and the state medical license number of any prescriber using the federal controlled substance registration number of a government-exempt facility.
 - (3) Pharmacy prescription number, license number, and federal controlled substance registration number.
 - (4) NDC (National Drug Code) number of the controlled substance dispensed.
 - (5) Quantity of the controlled substance dispensed.
 - (6) ICD-9 (diagnosis code), if available.
 - (7) Date of issue of the prescription.
 - (8) Date of dispensing of the prescription.
- (e) This section shall become operative on January 1, 2005.

SEC. 28. Section 11210 of the Health and Safety Code is amended to read:

11210. A physician, surgeon, dentist, veterinarian, naturopathic doctor acting pursuant to Section 3640.7 of the Business and Professions Code, or podiatrist, or pharmacist acting within the scope of a project authorized under Article 1 (commencing with Section 128125) of Chapter 3 of Part 3 of Division 107, or registered nurse acting within the scope of a project authorized under Article 1 (commencing with Section 128125) of Chapter 3 of Part 3 of Division 107, or physician assistant acting within the scope of a project authorized under Article 1 (commencing with Section 128125) of Chapter 3 of Part 3 of Division 107, or naturopathic doctor acting within the scope of Section 3640.5 of the Business and Professions Code, or an optometrist acting within the scope of Section 3041 of the Business and Professions Code may

prescribe for, furnish to, or administer controlled substances to his or her patient when the patient is suffering from a disease, ailment, injury, or infirmities attendant upon old age, other than addiction to a controlled substance.

The physician, surgeon, dentist, veterinarian, naturopathic doctor acting pursuant to Section 3640.7 of the Business and Professions Code, or podiatrist, or pharmacist acting within the scope of a project authorized under Article 1 (commencing with Section 128125) of Chapter 3 of Part 3 of Division 107, or registered nurse acting within the scope of a project authorized under Article 1 (commencing with Section 128125) of Chapter 3 of Part 3 of Division 107, or physician assistant acting within the scope of a project authorized under Article 1 (commencing with Section 128125) of Chapter 3 of Part 3 of Division 107, or naturopathic doctor acting within the scope of Section 3640.5 of the Business and Professions Code, or an optometrist acting within the scope of Section 3041 of the Business and Professions Code shall prescribe, furnish, or administer controlled substances only when in good faith he or she believes the disease, ailment, injury, or infirmity requires the treatment.

The physician, surgeon, dentist, veterinarian, or naturopathic doctor acting pursuant to Section 3640.7 of the Business and Professions Code, or podiatrist, or pharmacist acting within the scope of a project authorized under Article 1 (commencing with Section 128125) of Chapter 3 of Part 3 of Division 107, or registered nurse acting within the scope of a project authorized under Article 1 (commencing with Section 128125) of Chapter 3 of Part 3 of Division 107, or physician assistant acting within the scope of a project authorized under Article 1 (commencing with Section 128125) of Chapter 3 of Part 3 of Division 107, or a naturopathic doctor acting within the scope of Section 3640.5 of the Business and Professions Code, or an optometrist acting within the scope of Section 3041 of the Business and Professions Code shall prescribe, furnish, or administer controlled substances only in the quantity and for the length of time as are reasonably necessary.

SEC. 29. 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. 30. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of

Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to make needed changes to licensing and regulatory provisions relative to professions and vocations as soon as possible, it is necessary that this act take effect immediately.

CHAPTER 507

An act to amend Section 1265 of, and to add Section 1265.3 to, the Health and Safety Code, relating to health facilities.

[Approved by Governor October 4, 2005. Filed with
Secretary of State October 4, 2005.]

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

SECTION 1. Section 1265 of the Health and Safety Code is amended to read:

1265. Any person, political subdivision of the state, or governmental agency desiring a license for a health facility, approval for a special service under this chapter, or approval to manage a health facility currently licensed as a health facility, as defined in subdivision (a), (b), (c), (d), or (f) of Section 1250, that has not filed an application for a license to operate that facility shall file with the department a verified application on forms prescribed and furnished by the department, containing all of the following:

- (a) The name of the applicant and, if an individual, whether the applicant has attained the age of 18 years.
- (b) The type of facility or health facility.
- (c) The location thereof.
- (d) The name of the person in charge thereof.
- (e) Evidence satisfactory to the department that the applicant is of reputable and responsible character. If the applicant is a firm, association, organization, partnership, business trust, corporation, or company, like evidence shall be submitted as to the members or shareholders thereof, and the person in charge of the health facility for which application for license is made. If the applicant is a political subdivision of the state or other governmental agency, like evidence shall be submitted as to the person in charge of the health facility for which application for license is made.

(f) Evidence satisfactory to the department of the ability of the applicant to comply with this chapter and of rules and regulations promulgated under this chapter by the department.

(g) Evidence satisfactory to the department that the applicant to operate a skilled nursing facility or intermediate care facility possesses financial resources sufficient to operate the facility for a period of at least 45 days. A management company shall not be required to submit this information.

(h) Each applicant for a license to operate a skilled nursing facility or intermediate care facility shall disclose to the department evidence of the right to possession of the facility at the time the application will be granted, which may be satisfied by the submission of a copy of applicable portions of a lease agreement or deed of trust. The names and addresses of any persons or organizations listed as owner of record in the real estate, including the buildings and the grounds appurtenant to the buildings, shall be disclosed to the department.

(i) Any other information as may be required by the department for the proper administration and enforcement of this chapter.

(j) Upon submission of an application to the department by an intermediate care facility/developmentally disabled habilitative or an intermediate care facility/developmentally disabled-nursing, the application shall include a statement of need signed by the chairperson of the area board pursuant to Chapter 4 (commencing with Section 4570) of Division 4.5 of the Welfare and Institutions Code. In the event the area board has not provided the statement of need within 30 days of receipt of the request from the applicant, the department may process the application for license without the statement.

(k) The information required pursuant to this section, other than individuals' social security numbers, shall be made available to the public upon request, and shall be included in the department's public file regarding the facility.

(l) With respect to a facility licensed as a health facility, as defined in subdivision (a), (b), or (f) of Section 1250, for purposes of this section, "manage" means to assume operational control of the facility.

SEC. 2. Section 1265.3 is added to the Health and Safety Code, to read:

1265.3. (a) For any individual or entity that seeks approval to operate or manage a health facility licensed pursuant to subdivision (a), (b), or (f) of Section 1250 and is subject to Section 1265, the department shall consider the following:

(1) To determine whether the applicant is of reputable and responsible character, the department shall consider any available information that the applicant has demonstrated a pattern and practice of violations of

state or federal laws and regulations. The department shall give particular consideration to those violations that affect the applicant's ability to deliver safe patient care.

(2) To determine whether the applicant has the ability to comply with this chapter and the rules and regulations adopted under this chapter, the department shall consider evidence that shall include all of the following:

(A) If any, prior history of operating in this state any other facility licensed pursuant to Section 1250, and the applicant's history of substantial compliance with the requirements imposed under that license, applicable federal laws and regulations, and requirements governing the operators of those facilities.

(B) If any, prior history of operating in any other state any facility authorized to receive Medicare Program reimbursement or Medicaid Program reimbursement, and the applicant's history of substantial compliance with that state's requirements, and applicable federal laws, regulations, and requirements.

(C) If any, prior history of providing health services as a licensed health professional or an individual or entity contracting with a health care service plan or insurer, and the applicant's history of substantial compliance with state requirements, and applicable federal law, regulations, and requirements.

(b) The department may also require the entity described in subdivision (a) to furnish other information or documents for the proper administration and enforcement of the licensing laws.

CHAPTER 508

An act to amend Sections 1324.20, 1324.22, 1324.27, and 1324.28 of the Health and Safety Code, and to amend Sections 5902, 5912, 14105.06, 14126.02, and 14126.033 of the Welfare and Institutions Code, relating to skilled nursing facilities, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 4, 2005. Filed with
Secretary of State October 4, 2005.]

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

SECTION 1. Section 1324.20 of the Health and Safety Code is amended to read:

1324.20. For purposes of this article, the following definitions shall apply:

(a) "Continuing care retirement community" means a provider of a continuum of services, including independent living services, assisted living services as defined in paragraph (5) of subdivision (a) of Section 1771, and skilled nursing care, on a single campus, that is subject to Section 1791, or a provider of such a continuum of services on a single campus that has not received a Letter of Exemption pursuant to subdivision (b) of Section 1771.3.

(b) "Exempt facility" means a skilled nursing facility that is part of a continuing care retirement community, a skilled nursing facility operated by the state or another public entity, a unit that provides pediatric subacute services in a skilled nursing facility, a skilled nursing facility that is certified by the State Department of Mental Health for a special treatment program and is an institution for mental disease as defined in Section 1396d(j) of Title 42 of the United States Code, or a skilled nursing facility that is a distinct part of a facility that is licensed as a general acute care hospital.

(c) (1) "Net revenue" means gross resident revenue for routine nursing services and ancillary services provided to all residents by a skilled nursing facility, less Medicare revenue for routine and ancillary services including Medicare revenue for services provided to residents covered under a Medicare managed care plan, less payer discounts and applicable contractual allowances as permitted under federal law and regulation.

(2) "Net revenue" does not mean charitable contributions and bad debt.

(d) "Payer discounts and contractual allowances" means the difference between the facility's resident charges for routine or ancillary services and the actual amount paid.

(e) "Skilled nursing facility" means a licensed facility as defined in subdivision (c) of Section 1250.

SEC. 2. Section 1324.22 of the Health and Safety Code is amended to read:

1324.22. (a) The quality assurance fee, as calculated pursuant to Section 1324.21, shall be paid by the provider to the department for deposit in the State Treasury on a monthly basis on or before the last day of the month following the month for which the fee is imposed, except as provided in subdivision (e) of Section 1324.21.

(b) On or before the last day of each calendar quarter, each skilled nursing facility shall file a report with the department, in a prescribed form, showing the facility's total resident days for the preceding quarter and payments made. If it is determined that a lesser amount was paid to the department, the facility shall pay the amount owed in the preceding quarter to the department with the report. Any amount determined to

have been paid in excess to the department during the previous quarter shall be credited to the amount owed in the following quarter.

(c) On or before August 31 of each year, each skilled nursing facility subject to an assessment pursuant to Section 1324.21 shall report to the department, in a prescribed form, the facility's total resident days and total payments made for the preceding state fiscal year. If it is determined that a lesser amount was paid to the department during the previous year, the facility shall pay the amount owed to the department with the report.

(d) A newly licensed skilled nursing facility, as defined by the department, shall complete all requirements of subdivision (a) for any portion of the year in which it commences operations and of subdivision (b) for any portion of the quarter in which it commences operations.

(e) When a skilled nursing facility fails to pay all or part of the quality assurance fee within 60 days of the date that payment is due, the department may deduct the unpaid assessment and interest owed from any Medi-Cal reimbursement payments to the facility until the full amount is recovered. Any deduction shall be made only after written notice to the facility and may be taken over a period of time taking into account the financial condition of the facility.

(f) Should all or any part of the quality assurance fee remain unpaid, the department may take either or both of the following actions:

- (1) Assess a penalty equal to 50 percent of the unpaid fee amount.
- (2) Delay license renewal.

(g) In accordance with the provisions of the Medicaid state plan, the payment of the quality assurance fee shall be considered as an allowable cost for Medi-Cal reimbursement purposes.

(h) The assessment process pursuant to this section shall become operative not later than 60 days from receipt of federal approval of the quality assurance fee, unless extended by the department. The department may assess fees and collect payment in accordance with subdivision (e) of Section 1324.21 in order to provide retroactive payments for any rate increase authorized under this article.

SEC. 3. Section 1324.27 of the Health and Safety Code is amended to read:

1324.27. (a) (1) The department shall request approval from the federal Centers for Medicare and Medicaid Services for the implementation of this article. In making this request, the department shall seek specific approval from the federal Centers for Medicare and Medicaid Services to exempt facilities identified in subdivision (b) of Section 1324.20, including the submission of a request for waiver of broad-based requirement, waiver of uniform fee requirement, or both, pursuant to paragraphs (1) and (2) of subdivision (e) of Section 433.68 of Title 42 of the Code of Federal Regulations.

(2) The director may alter the methodology specified in this article, to the extent necessary to meet the requirements of federal law or regulations or to obtain federal approval. The Director of Health Services may also add new categories of exempt facilities or apply a nonuniform fee to the skilled nursing facilities subject to the fee in order to meet requirements of federal law or regulations. The Director of Health Services may apply a zero fee to one or more exempt categories of facilities, if necessary to obtain federal approval.

(3) If after seeking federal approval, federal approval is not obtained, this article shall not be implemented.

(b) The department shall make retrospective adjustments, as necessary, to the amounts calculated pursuant to Section 1324.21 in order to assure that the aggregate quality assurance fee for any particular state fiscal year does not exceed 6 percent of the aggregate annual net revenue of facilities subject to the fee.

SEC. 4. Section 1324.28 of the Health and Safety Code is amended to read:

1324.28. (a) This article shall be implemented as long as both of the following conditions are met:

(1) The state receives federal approval of the quality assurance fee from the federal Centers for Medicare and Medicaid Services.

(2) Legislation is enacted in the 2004 legislative session making an appropriation from the General Fund and from the Federal Trust Fund to fund a rate increase for skilled nursing facilities, as defined under subdivision (c) of Section 1250, for the 2004–05 rate year in an amount consistent with the Medi-Cal rates that specific facilities would have received under the rate methodology in effect as of July 31, 2004, plus the proportional costs as projected by Medi-Cal for new state or federal mandates.

(b) This article shall remain operative only as long as all of the following conditions are met:

(1) The federal Centers for Medicare and Medicaid Services continues to allow the use of the provider assessment provided in this article.

(2) The Medi-Cal Long Term Care Reimbursement Act, Article 3.8 (commencing with Section 14126) of Chapter 7 of Part 3 of Division 9 of the Welfare and Institutions Code, as added during the 2003–04 Regular Session by the act adding this section, is enacted and implemented on or before July 31, 2005, or as extended as provided in that article, and remains in effect thereafter.

(3) The state has continued its maintenance of effort for the level of state funding of nursing facility reimbursement for rate year 2005–06, and for every subsequent rate year continuing through the 2007–08 rate year, in an amount not less than the amount that specific facilities would

have received under the rate methodology in effect on July 31, 2004, plus Medi-Cal's projected proportional costs for new state or federal mandates, not including the quality assurance fee.

(4) The full amount of the quality assurance fee assessed and collected pursuant to this article remains available for the purposes specified in Section 1324.25 and for related purposes.

(c) If all of the conditions in subdivision (a) are met, this article is implemented, and subsequently, any one of the conditions in subdivision (b) is not met, on and after the date that the department makes that determination, this article shall not be implemented, notwithstanding that the condition or conditions subsequently may be met.

(d) Notwithstanding subdivisions (a), (b), and (c), in the event of a final judicial determination made by any state or federal court that is not appealed, or by a court of appellate jurisdiction that is not further appealed, in any action by any party, or a final determination by the administrator of the federal Centers for Medicare and Medicaid Services, that federal financial participation is not available with respect to any payment made under the methodology implemented pursuant to this article because the methodology is invalid, unlawful, or contrary to any provision of federal law or regulations, or of state law, this section shall become inoperative.

SEC. 5. Section 5902 of the Welfare and Institutions Code is amended to read:

5902. (a) In the 1991–92 fiscal year, funding sufficient to cover the cost of the basic level of care in institutions for mental disease at the rate established by the State Department of Health Services shall be made available to the department for skilled nursing facilities, plus the rate established for special treatment programs. The department may authorize a county to administer institutions for mental disease services if the county with the consent of the affected providers makes a request to administer services and an allocation is made to the county for these services. The department shall continue to contract with these providers for the services necessary for the operation of the institutions for mental disease.

(b) In the 1992–93 fiscal year, the department shall consider county-specific requests to continue to provide administrative services relative to institutions for mental disease facilities when no viable alternatives are found to exist.

(c) (1) By October 1, 1991, the department, in consultation with the California Conference of Local Mental Health Directors and the California Association of Health Facilities, shall develop and publish a county-specific allocation of institutions for mental disease funds which will take effect on July 1, 1992.

(2) By November 1, 1991, counties shall notify the providers of any intended change in service levels to be effective on July 1, 1992.

(3) By April 1, 1992, counties and providers shall have entered into contracts for basic institutions for mental disease services at the rate described in subdivision (e) for the 1992–93 fiscal year at the level expressed on or before November 1, 1991, except that a county shall be permitted additional time, until June 1, 1992, to complete the processing of the contract, when any of the following conditions are met:

(A) The county and the affected provider have agreed on all substantive institutions for mental disease contract issues by April 1, 1992.

(B) Negotiations are in process with the county on April 1, 1992, and the affected provider has agreed in writing to the extension.

(C) The service level committed to on November 1, 1991, exceeds the affected provider's bed capacity.

(D) The county can document that the affected provider has refused to enter into negotiations by April 1, 1992, or has substantially delayed negotiations.

(4) If a county and a provider are unable to reach agreement on substantive contract issues by June 1, 1992, the department may, upon request of either the affected county or the provider, mediate the disputed issues.

(5) Where contracts for service at the level committed to on November 1, 1991, have not been completed by April 1, 1992, and additional time is not permitted pursuant to the exceptions specified in paragraph (3) the funds allocated to those counties shall revert for reallocation in a manner that shall promote equity of funding among counties. With respect to counties with exceptions permitted pursuant to paragraph (3), funds shall not revert unless contracts are not completed by June 1, 1992. In no event shall funds revert under this section if there is no harm to the provider as a result of the county contract not being completed. During the 1992–93 fiscal year, funds reverted under this paragraph shall be used to purchase institution for mental disease/skilled nursing/special treatment program services in existing facilities.

(6) Nothing in this section shall apply to negotiations regarding supplemental payments beyond the rate specified in subdivision (e).

(d) On or before April 1, 1992, counties may complete contracts with facilities for the direct purchase of services in the 1992–93 fiscal year. Those counties for which facility contracts have not been completed by that date shall be deemed to continue to accept financial responsibility for those patients during the subsequent fiscal year at the rate specified in subdivision (a).

(e) As long as contracts with institutions for mental disease providers require the facilities to maintain skilled nursing facility licensure and certification, reimbursement for basic services shall be at the rate established by the State Department of Health Services. Except as provided in this section, reimbursement rates for services in institutions for mental diseases shall be the same as the rates in effect on July 31, 2004. Effective July 1, 2005, through June 30, 2008, the reimbursement rate for institutions for mental disease shall increase by 6.5 percent annually. Effective July 1, 2008, the reimbursement rate for institutions for mental disease shall increase by 4.7 percent annually.

(f) (1) Providers that agree to contract with the county for services under an alternative mental health program pursuant to Section 5768 that does not require skilled nursing facility licensure shall retain return rights to licensure as skilled nursing facilities.

(2) Providers participating in an alternative program that elect to return to skilled nursing facility licensure shall only be required to meet those requirements under which they previously operated as a skilled nursing facility.

(g) In the 1993–94 fiscal year and thereafter, the department shall consider requests to continue administrative services related to institutions for mental disease facilities from counties with a population of 150,000 or less based on the most recent available estimates of population data as determined by the Population Research Unit of the Department of Finance.

SEC. 6. Section 5912 of the Welfare and Institutions Code is amended to read:

5912. As long as contracts require institutions for mental disease to continue to be licensed and certified as skilled nursing facilities by the State Department of Health Services, they shall be reimbursed for basic services at the rate established by the State Department of Health Services. Except as provided in this section, reimbursement rates for services in institutions for mental diseases shall be the same as the rates in effect on July 31, 2004. Effective July 1, 2005, through June 30, 2008, the reimbursement rate for institutions for mental disease shall increase by 6.5 percent annually. Effective July 1, 2008, the reimbursement rate for institutions for mental disease shall increase by 4.7 percent annually.

SEC. 7. Section 14105.06 of the Welfare and Institutions Code is amended to read:

14105.06. (a) Notwithstanding Section 14105 and any other provision of law, the Medi-Cal reimbursement rates in effect on August 1, 2003, shall remain in effect through July 31, 2005, for the following providers:

(1) Freestanding nursing facilities licensed as either of the following:

(A) An intermediate care facility pursuant to subdivision (d) of Section 1250 of the Health and Safety Code.

(B) An intermediate care facility for the developmentally disabled pursuant to subdivision (e), (g), or (h) of Section 1250 of the Health and Safety Code.

(2) A skilled nursing facility that is a distinct part of a general acute care hospital. For purposes of this paragraph, "distinct part" shall have the same meaning as defined in Section 72041 of Title 22 of the California Code of Regulations.

(3) A subacute care program, as described in Section 14132.25 or subacute care unit, as described in Sections 51215.5 and 51215.8 of Title 22 of the California Code of Regulations.

(4) An adult day health care center.

(b) (1) The director may adopt regulations as are necessary to implement subdivision (a). These regulations shall be adopted as emergency regulations in accordance with the rulemaking provisions of the Administrative Procedure Act, Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. For purposes of this section, the adoption of regulations shall be deemed an emergency and necessary for the immediate preservation of the public peace, health, and safety or general welfare.

(2) As an alternative to paragraph (1), and Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, the director may implement this article by means of a provider bulletin, or similar instructions, without taking regulatory action.

(c) The director shall implement subdivision (a) in a manner that is consistent with federal medicaid law and regulations. The director shall seek any necessary federal approvals for the implementation of this section. This section shall be implemented only to the extent that federal approval is obtained.

(d) The provisions of subdivision (a) shall apply to a skilled nursing facility, as defined in subdivision (c) of Section 1250 of the Health and Safety Code, only until the first day of the month following federal approval to implement both the skilled nursing quality assurance fee imposed by Article 7.6 (commencing with Section 1324.20) of Chapter 2 of Division 2 of the Health and Safety Code and the rate methodology developed pursuant to Article 3.8 (commencing with Section 14126) of Chapter 7 of Part 3 of Division 9.

SEC. 8. Section 14126.02 of the Welfare and Institutions Code is amended to read:

14126.02. (a) It is the intent of the Legislature to devise a Medi-Cal long-term care reimbursement methodology that more effectively ensures individual access to appropriate long-term care services, promotes quality

resident care, advances decent wages and benefits for nursing home workers, supports provider compliance with all applicable state and federal requirements, and encourages administrative efficiency.

(b) The department shall implement a facility-specific ratesetting system, subject to federal approval and the availability of federal funds, that reflects the costs and staffing levels associated with quality of care for residents in nursing facilities, as defined in subdivision (c) of Section 1250 of the Health and Safety Code, except that the ratesetting system shall not apply to a unit that provides pediatric subacute services in a skilled nursing facility, or to a skilled nursing facility that is designated as an institution for mental diseases, as defined in Section 1396d(i) of Title 42 of the United States Code. The facility-specific ratesetting system shall be effective commencing on August 1, 2005, and shall be implemented commencing on the first day of the month following federal approval. The department may retroactively increase and make payment of rates to facilities.

(c) In implementing this section, the department may contract as necessary, on a bid or nonbid basis, for professional consulting services from nationally recognized higher education and research institutions, or other qualified individuals and entities not associated with a skilled nursing facility, with demonstrated expertise in long-term care reimbursement systems. The ratesetting system specified in subdivision (b) shall be developed with all possible expedience. This subdivision establishes an accelerated process for issuing contracts pursuant to this section and contracts entered into pursuant to this subdivision shall be exempt from the requirements of Chapter 1 (commencing with Section 10100) and Chapter 2 (commencing with Section 10290) of Part 2 of Division 2 of the Public Contract Code.

(d) The department shall implement a facility-specific ratesetting system by August 1, 2004, subject to federal approval and availability of federal or other funds, that reflects the costs and staffing levels associated with quality of care for residents in hospital-based nursing facilities.

SEC. 9. Section 14126.033 of the Welfare and Institutions Code is amended to read:

14126.033. (a) This article, including Section 14126.031, shall be funded as follows:

(1) General Fund moneys appropriated for purposes of this article pursuant to Section 6 of the act adding this section shall be used for increasing rates, except as provided in Section 14126.031, for freestanding skilled nursing facilities, and shall be consistent with the approved methodology required to be submitted to the Centers for Medicare and Medicaid Services pursuant to Article 7.6 (commencing

with Section 1324.20) of Chapter 2 of Division 2 of the Health and Safety Code.

(2) (A) Notwithstanding Section 14126.023, for the 2005–06 rate year, the maximum annual increase in the weighted average Medi-Cal rate required for purposes of this article shall not exceed 8 percent of the weighted average Medi-Cal reimbursement rate for the 2004–05 rate year as adjusted for the change in the cost to the facility to comply with the nursing facility quality assurance fee for the 2005–06 rate year, as required under subdivision (b) of Section 1324.21 of the Health and Safety Code, plus the total projected Medi-Cal cost to the facility of complying with new state or federal mandates.

(B) Beginning with the 2006–07 rate year, the maximum annual increase in the weighted average Medi-Cal reimbursement rate required for purposes of this article shall not exceed 5 percent of the weighted average Medi-Cal reimbursement rate for the prior fiscal year, as adjusted for the projected cost of complying with new state or federal mandates.

(C) Beginning with the 2007–08 rate year, the maximum annual increase in the weighted average Medi-Cal reimbursement rate required for purposes of this article shall not exceed 5.5 percent of the weighted average Medi-Cal reimbursement rate for the prior fiscal year, as adjusted for the projected cost of complying with new state or federal mandates.

(D) To the extent that new rates are projected to exceed the adjusted limits calculated pursuant to subparagraph (A) or (B), the department shall adjust the increase to each skilled nursing facility's projected rate for the applicable rate year by an equal percentage.

(b) The rate methodology shall cease to be implemented on and after July 31, 2008.

(c) (1) It is the intent of the Legislature that the implementation of this article result in individual access to appropriate long-term care services, quality resident care, decent wages and benefits for nursing home workers, a stable workforce, provider compliance with all applicable state and federal requirements, and administrative efficiency.

(2) Not later than December 1, 2006, the Bureau of State Audits shall conduct an accountability evaluation of the department's progress toward implementing a facility-specific reimbursement system, including a review of data to ensure that the new system is appropriately reimbursing facilities within specified cost categories and a review of the fiscal impact of the new system on the General Fund.

(3) Not later than January 1, 2007, to the extent information is available for the three years immediately preceding the implementation of this article, the department shall provide baseline information in a report to the Legislature on all of the following:

(A) The number and percent of freestanding skilled nursing facilities that complied with minimum staffing requirements.

(B) The staffing levels prior to the implementation of this article.

(C) The staffing retention rates prior to the implementation of this article.

(D) The numbers and percentage of freestanding skilled nursing facilities with findings of immediate jeopardy, substandard quality of care, or actual harm, as determined by the certification survey of each freestanding skilled nursing facility conducted prior to the implementation of this article.

(E) The number of freestanding skilled nursing facilities that received state citations and the number and class of citations issued during calendar year 2004.

(F) The average wage and benefits for employees prior to the implementation of this article.

(4) Not later than January 1, 2008, the department shall provide a report to the Legislature that does both of the following:

(A) Compares the information required in paragraph (2) to that same information two years after the implementation of this article.

(B) Reports on the extent to which residents who had expressed a preference to return to the community, as provided in Section 1418.81 of the Health and Safety Code, were able to return to the community.

(5) The department may contract for the reports required under this subdivision.

(d) This section shall become inoperative on July 31, 2008, and as of January 1, 2009, is repealed, unless a later enacted statute, that is enacted before January 1, 2009, deletes or extends the dates on which it becomes inoperative and is repealed.

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 for the provisions of this act to take effect at the same time that the quality assurance fee and facility-specific ratesetting system required by AB 1629 (Chapter 875, of the Statutes of 2004) are approved by the federal government and implemented by the Department of Health Services, it is necessary for this act to take effect immediately.

CHAPTER 509

An act to add Section 20118.2 to the Public Contract Code, relating to public contracts.

[Approved by Governor October 4, 2005. Filed with
Secretary of State October 4, 2005.]

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

SECTION 1. Section 20118.2 is added to the Public Contract Code, to read:

20118.2. (a) Due to the highly specialized and unique nature of technology, telecommunications, related equipment, software, and services, because products and materials of that nature are undergoing rapid technological changes, and in order to allow for the introduction of new technological changes into the operations of the school district, it is in the public's best interest to allow a school district to consider, in addition to price, factors such as vendor financing, performance reliability, standardization, life-cycle costs, delivery timetables, support logistics, the broadest possible range of competing products and materials available, fitness of purchase, manufacturer's warranties, and similar factors in the award of contracts for technology, telecommunications, related equipment, software, and services.

(b) This section applies only to a school district's procurement of computers, software, telecommunications equipment, microwave equipment, and other related electronic equipment and apparatus. This section does not apply to contracts for construction or for the procurement of any product that is available in substantial quantities to the general public.

(c) Notwithstanding Section 20118.1, a school district may, after a finding is made by the governing board that a particular procurement qualifies under subdivision (b), authorize the procurement of the product through competitive negotiation as described in subdivision (d).

(d) For purposes of this section, competitive negotiation includes, but is not limited to, all of the following requirements:

(1) A request for proposals shall be prepared and submitted to an adequate number of qualified sources, as determined by the school district, to permit reasonable competition consistent with the nature and requirement of the procurement.

(2) Notice of the request for proposals shall be published at least twice in a newspaper of general circulation, at least 10 days before the date for receipt of the proposals.

(3) The school district shall make every effort to generate the maximum feasible number of proposals from qualified sources and shall make a finding to that effect before proceeding to negotiate if only a single response to the request for proposals is received.

(4) The request for proposals shall identify all significant evaluation factors, including price, and their relative importance.

(5) The school district shall provide reasonable procedures for the technical evaluation of the proposals received, the identification of qualified sources, and the selection for the award of the contract.

(6) Award shall be made to the qualified bidder whose proposal meets the evaluation standards and will be most advantageous to the school district with price and all other factors considered.

(7) If award is not made to the bidder whose proposal contains the lowest price, the school district shall make a finding setting forth the basis for the award.

(e) The school district, at its discretion, may reject all proposals and request new proposals.

(f) Provisions in any contract concerning utilization of small business enterprises, that are in accordance with the request for proposals, shall not be subject to negotiation with the successful proposer.

CHAPTER 510

An act to amend Section 12 of the Ventura County Watershed Protection Act (Chapter 44 of the Statutes of 1944, Fourth Extraordinary Session), relating to the Ventura County Watershed Protection District.

[Approved by Governor October 4, 2005. Filed with
Secretary of State October 4, 2005.]

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

SECTION 1. Section 12 of the Ventura County Watershed Protection Act (Chapter 44 of the Statutes of 1944, Fourth Extraordinary Session) is amended to read:

Sec. 12. The board of supervisors of the district shall have power, in any year to do any of the following:

1. To levy an ad valorem tax upon all taxable property or an assessment upon all taxable real property in the district, or a fee imposed pursuant to Article XIII D of the California Constitution, to pay the costs and expenses of the Ventura County Watershed Protection District and to carry out any of the objects or purposes of this act of common benefit to the district as a whole.

2. To levy an ad valorem tax upon all taxable property or an assessment upon all taxable real property, or a fee imposed pursuant to Article XIII D of the California Constitution, in each or any of the zones, according to

the benefits derived or to be derived by the respective zones, to pay the cost and expenses of carrying out any of the objects or purposes of this act of special benefit to the respective zones, including the constructing, maintaining, operating, extending, repairing, or otherwise improving any or all works or improvements within the respective zones. It is declared that all property within a given zone is equally benefited under this act.

The taxes, assessments, or fees imposed pursuant to Article XIII D of the California Constitution, shall be levied and collected together with, and not separately from, taxes for county purposes, and the revenues derived from the taxes, assessments, or fees shall be paid into the county treasury to the credit of the district, and the board of supervisors shall have the power to control and order the expenditure thereof for those purposes except that no revenues, or portions thereof, derived in any of the several zones from the taxes, assessments, or fees levied under the provisions of subdivision 2 of this section shall be expended for constructing, maintaining, operating, extending, repairing, or otherwise improving any works or improvements located in any other zone except as provided in Section 14. The aggregate taxes, assessments, or fees levied under this act for any one fiscal year shall not exceed thirty-two cents (\$0.32) on each one hundred dollars (\$100) of the assessed valuation of the taxable property in zone 1, shall not exceed forty cents (\$0.40) on each one hundred dollars (\$100) of the assessed valuation of the taxable property in zones 2 and 4, shall not exceed twenty-seven cents (\$0.27) on each one hundred dollars (\$100) of the assessed valuation of the taxable property in any special zone in addition to the aggregate taxes or assessments levied for zone 1, 2, 3, or 4 and exclusive of any tax, assessment, or fee levied to pay the cost and expenses of any project or facility for importing water into the district or to meet any bonded indebtedness of the zones or district and the interest thereon.

CHAPTER 511

An act to amend Section 2890.2 of the Public Utilities Code, relating to telecommunications.

[Approved by Governor October 4, 2005. Filed with
Secretary of State October 4, 2005.]

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

SECTION 1. Section 2890.2 of the Public Utilities Code is amended to read:

2890.2. (a) A provider of mobile telephony services shall provide subscribers with a means by which a subscriber can obtain reasonably current and available information, as determined by the provider, on the subscriber's calling plan or plans and service usage, including roaming usage and charges.

(b) On or before January 1, 2007, a provider of mobile telephony services shall provide subscribers with a means by which a subscriber can obtain reasonably current and available information, as determined by the provider, on the subscriber's text messaging and Internet usage and charges.

(c) Each provider of mobile telephony services shall inform subscribers at the time service is established of the availability of the information described in subdivisions (a) and (b) and how it may be obtained.

(d) For purposes of this section, "mobile telephony services" means commercially available interconnected mobile phone services that provide access to the public switched telephone network (PSTN) via mobile communication devices employing radiowave technology to transmit calls, including cellular radiotelephone, broadband Personal Communications Services (PCS), and digital Specialized Mobile Radio (SMR). "Mobile telephony services" does not include mobile satellite services or mobile data services used exclusively for the delivery of nonvoice information to a mobile device.

CHAPTER 512

An act to amend Sections 22978.4, 22978.7, 22979.2, 22979.7, and 22980.2 of the Business and Professions Code, and to add Section 30361.5 to the Revenue and Taxation Code, relating to cigarettes and tobacco products.

[Approved by Governor October 4, 2005. Filed with
Secretary of State October 4, 2005.]

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

SECTION 1. Section 22978.4 of the Business and Professions Code is amended to read:

22978.4. (a) Except as otherwise provided in paragraph (7), each distributor and each wholesaler shall include the following information on each invoice for the sale of cigarettes or tobacco products:

(1) The name, address, and telephone number of the distributor or wholesaler.

(2) The license number of the distributor or the wholesaler as provided by the board.

(3) The amount of excise taxes due to the board by the distributor on the sale of cigarettes and tobacco products.

(4) The name, address, and license number of the retailer, distributor, or wholesaler to whom cigarettes or tobacco products are sold.

(5) An itemized listing of the cigarettes or tobacco products sold.

(6) The date the cigarette or tobacco products are sold.

(7) Notwithstanding paragraph (3), a distributor that is also a retailer or manufacturer shall include either one of the following on each invoice for the sale of cigarettes or tobacco products:

(A) A statement that reads: "All California cigarette and tobacco product taxes are included in the total amount of this invoice."

(B) The amount of excise taxes due to the board by the distributor on the distribution of cigarettes and tobacco products.

(b) Each invoice for the sale of cigarettes or tobacco products shall be legible and readable.

(c) Failure to comply with the requirements of this section shall be a misdemeanor subject to penalties pursuant to Section 22981.

SEC. 2. Section 22978.7 of the Business and Professions Code is amended to read:

22978.7. In addition to any other civil or criminal penalty provided by law, upon a finding that any distributor or any wholesaler has violated any provision of this division, the board may take the following actions:

(a) In the case of the first offense, the board may revoke or suspend the license or licenses of the distributor or the wholesaler pursuant to the procedures applicable to the revocation of a license set forth in Section 30148 of the Revenue and Taxation Code.

(b) In the case of a second or any subsequent offense, in addition to the action authorized under subdivision (a), the board may impose a civil penalty in an amount not to exceed the greater of either of the following:

(1) Five times the retail value of the seized cigarettes or tobacco products.

(2) Five thousand dollars (\$5,000).

SEC. 3. Section 22979.2 of the Business and Professions Code is amended to read:

22979.2. (a) On or before January 1, 2004, every manufacturer and every importer shall pay to the board an administration fee. The amount

of the administration fee shall be one cent (\$0.01) per package of cigarettes (1) manufactured or imported by the manufacturer or the importer and (2) shipped into this state during the 2001 calendar year as reported to the board. The board shall notify each manufacturer and each importer of the amount due under this section.

(b) This section shall apply to every manufacturer and every importer required to be licensed pursuant to Section 22979. All manufacturers and all importers that may become eligible for licensure on or after December 1, 2003, shall be notified by the board of the appropriate fee due and shall pay that fee within 90 days of notification.

(c) All manufacturers and all importers that begin operations in the state after enactment of this division shall be charged a fee commensurate with their respective market share of (1) cigarettes manufactured or imported by the manufacturer or the importer and (2) sold in this state during the next calendar year as estimated by the board. The fee shall be at an amount not less than that paid pursuant to subdivision (a) by the smallest manufacturer, but may not be more than that paid by the eighth largest manufacturer.

(d) The board shall administer this fee in accordance with the Fee Collection Procedures Law, Part 30 (commencing with Section 55001) of Division 2 of the Revenue and Taxation Code.

SEC. 4. Section 22979.7 of the Business and Professions Code is amended to read:

22979.7. In addition to any other civil or criminal penalty provided by law, upon a finding that a manufacturer or importer has violated any provision of this division, the board may take the following actions:

(a) In the case of the first offense, the board may revoke or suspend the license or licenses of the manufacturer or importer pursuant to the procedures applicable to the revocation of a license set forth in Section 30148 of the Revenue and Taxation Code.

(b) In the case of a second or any subsequent offense, in addition to the action authorized under subdivision (a), the board may impose a civil penalty in an amount not to exceed the greater of either of the following:

(1) Five times the retail value of the seized cigarettes or tobacco products defined as cigarettes under this section.

(2) Five thousand dollars (\$5,000).

SEC. 5. 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 without a license or 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. 6. Section 30361.5 is added to the Revenue and Taxation Code, to read:

30361.5. When an amount represented by a person to a customer as constituting reimbursement for taxes upon the distribution of tobacco products pursuant to this part is computed upon an amount that is not taxable or is in excess of the tax amount and is actually paid by the customer to the person, the amount so paid shall be returned by the person to the customer upon notification by the State Board of Equalization or the customer that an excess has been ascertained. If the person fails or refuses to do so, the amount so paid, if knowingly or mistakenly computed by the person upon an amount that is not subject to the tax imposed by this part or that is in excess of the tax amount, shall be remitted by that person to this state. Those amounts remitted to the state by the person shall be credited by the board to any amounts due and payable from that customer that are subject to this part and that are based on the same activity, and the balance, if any, shall constitute an obligation due from the person to this state.

SEC. 7. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

CHAPTER 513

An act to amend Sections 52055.51, 52055.55, 52055.57, and 52059 of the Education Code, relating to public school accountability, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 4, 2005. Filed with
Secretary of State October 4, 2005.]

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

SECTION 1. Section 52055.51 of the Education Code is amended to read:

52055.51. (a) Instead of the actions specified in subdivision (b) of Section 52055.5, and notwithstanding any other law, the Superintendent, with the approval of the state board, may require the school district to enter into a contract with a school assistance and intervention team no later than 30 days after the public release of the school's growth in API results or the next regularly scheduled meeting of the State Board of Education following the expiration of the 30 days if meeting the 30-day time limit would not provide the State Board of Education with sufficient time to comply with the requirements of the Bagley-Keene Open Meeting Act (Article 9 (commencing with Section 11120) of Chapter 1 of Division 3 of Title 2 of the Government Code). If the State Board of Education approves, the governing board of the school district may retain its legal rights, duties, and responsibilities with respect to that school.

(b) School assistance and intervention team members should possess a high degree of knowledge and skills in the areas of school leadership, curriculum, and instruction aligned to state academic content and performance standards, classroom management and discipline, academic assessment, parent-school relations, and evaluation and research based reform strategies and have proven successful expertise specific to the challenges inherent in state-monitored schools.

(c) The Superintendent shall, once every two years, establish a list of approved school assistance and intervention teams with which a school district may contract. The list shall be based on criteria recommended by the Superintendent and adopted by the state board. After the two-year approval period expires, a team may reapply for approval by demonstrating the effectiveness of the work of the team in state-monitored schools.

(d) A school assistance and intervention team shall provide intensive support and expertise to implement the school reform initiatives in the plan. Decisions about interventions shall be data driven. A school

assistance and intervention team shall work with school staff, site planning teams, administrators, and school district staff to improve pupil literacy and achievement by assessing the degree of implementation of the current action plan, refining and revising the action plan, and making recommendations to maximize the use of fiscal resources and personnel in achieving the goals of the plan. The school district shall provide support and assistance to enhance the work of the team at the targeted schoolsites.

(e) Not later than 60 days after the assignment of a school assistance and intervention team, the team shall complete a report. The report shall include recommendations for corrective actions chosen from a range of interventions, including the reallocation of school district fiscal resources to ensure that appropriate resources are targeted to those specific interventions identified in the recommendations of the team for the targeted schools and other changes deemed appropriate to make progress toward meeting the growth target of the school.

(f) Not later than 90 days after assignment of the school assistance and intervention team, the governing board of the school district shall adopt the initial recommendations of the team at a regularly scheduled meeting of the governing board. A subsequent recommendation proposed by the school assistance and intervention team shall be submitted to the governing board and shall be adopted by the governing board within 30 days of the submission. The governing board may not place the adoption on the consent calendar. A recommendation adopted by the governing board shall be submitted to the Superintendent and the state board.

(g) Following the adoption of the recommendation by the governing board, the governing board may submit an appeal to the Superintendent for relief from one or more of the recommendations. The Superintendent, with approval of the state board, may grant relief from compliance with a recommendation of the school assistance and intervention team.

(h) If a school assistance and intervention team does not fulfill its legal obligations under this section, the governing board of the school district may seek permission from the Superintendent, with the approval of the state board, to contract with a different school assistance and intervention team. Upon a finding that the school assistance and intervention team has not fulfilled its legal obligations under this section, the Superintendent, with the approval of the state board, may remove the school assistance and intervention team from the state list of eligible providers.

(i) No less than three times during the year, the school district and schoolsite shall present the team with data regarding progress toward the goals established by the initial assessment of the team. The data shall be presented to the governing board of the school district at a regularly

scheduled meeting. The team shall, to the extent possible, utilize existing site data. The data shall also be provided to the Superintendent and the state board. Every effort shall be made to report this data in a manner that minimizes the length and complexity of the reporting requirement in order to maximize the focus on improving pupil literacy and achievement.

(j) An action taken pursuant to this section may not increase local costs or require reimbursement as determined by the Commission on State Mandates.

SEC. 2. Section 52055.55 of the Education Code is amended to read:

52055.55. (a) Thirty-six months after the Superintendent assigns a management team, trustee, or a school assistance and intervention team to a schoolsite, if the school makes significant growth on the Academic Performance Index, as determined by the State Board of Education, in two consecutive years, the school shall exit the Immediate Intervention/Underperforming Schools Program and is no longer subject to the requirements of the program.

(b) Thirty-six months after the Superintendent assigns a management team, trustee, or a school assistance and intervention team to a schoolsite, if the management team, trustee, or school assistance and intervention team fails to assist the school in making significant growth on the Academic Performance Index, as determined by the State Board of Education, the Superintendent shall remove the management team, trustee, or school assistance and intervention team from providing services at the schoolsite. Additionally, the Superintendent shall do at least one of the following:

(1) Require the school district to ensure, using available federal funds, that 100 percent of the teachers at the schoolsite are highly qualified, as defined by the state for the purposes of the federal No Child Left Behind Act of 2001 (20 U.S.C. Sec. 6301 et seq.).

(2) Require the school to contract, using available federal funds, with an outside entity to provide supplemental instruction to high-priority pupils and assign a management team, trustee, or school assistance and intervention team that has demonstrated success with other state-monitored schools.

(3) Allow parents of pupils enrolled at the school to apply directly to the state board to establish a charter school at the existing schoolsite.

(4) Close the school.

SEC. 3. Section 52055.57 of the Education Code is amended to read:

52055.57. (a) (1) Any provisions that are applicable to local educational agencies under this section are for the purpose of implementing federal requirements under the federal No Child Left Behind Act of 2001 (20 U.S.C. Sec. 6301 et seq.). The satisfaction of

these criteria by local educational agencies that choose to participate under this article shall be a condition of receiving funds pursuant to this section.

(2) The department shall identify local educational agencies that are in danger of being identified within two years as program improvement local educational agencies under the federal No Child Left Behind Act of 2001 (20 U.S.C. Sec. 6301 et seq.), and shall notify those local educational agencies, in writing, of this status and provide those local educational agencies with research-based criteria to conduct a voluntary self-assessment.

(3) The self-assessment shall identify deficiencies within the operations of the local educational agency, and the programs and services of the local educational agency.

(4) A local educational agency identified pursuant to paragraph (2) is encouraged to revise its local educational agency plan based on the results of the self-assessment.

(5) The program described in this subdivision shall be referred to as the "Early Warning Program."

(b) (1) A local educational agency identified as a program improvement local educational agency under the federal No Child Left Behind Act of 2001 (20 U.S.C. Sec. 6301 et seq.) shall do all of the following:

(A) Conduct a self-assessment using materials and criteria based on current research and provided by the department.

(B) No later than 90 days after a local educational agency becomes identified for program improvement, contract with a county office of education or another external entity after working with the county superintendent of schools, for all of the following purposes:

(i) Verifying the fundamental teaching and learning needs in the schools of that local educational agency as determined by the local educational agency self-analysis, and identifying the specific academic problems of low-achieving pupils, including a determination of why the prior plan of the local educational agency failed to bring about increased pupil academic achievement.

(ii) Ensuring that the local educational agency receives intensive support and expertise to implement local educational agency reform initiatives in the revised local educational agency plan as required by the federal No Child Left Behind Act of 2001 (20 U.S.C. Sec. 6301 et seq.).

(C) Revise and expeditiously implement the local educational agency plan of the local educational agency to reflect the findings of the verified self-assessment.

(D) After working with the county superintendent of schools or an external verifier, contract with an external provider to provide support and implement recommendations to assist the local educational agency in resolving shortcomings identified in the verified self-assessment.

(2) (A) Subject to the availability of funds in the annual Budget Act for this purpose, a local educational agency described in paragraph (1) may annually receive fifty thousand dollars (\$50,000), and ten thousand dollars (\$10,000) for each school that is supported by federal funds pursuant to Title I of the federal No Child Left Behind Act of 2001 (20 U.S.C. Sec. 6301 et seq.) within the local educational agency for the purpose of fulfilling the requirements of this subdivision.

(B) Subject to the availability of funds appropriated in the annual Budget Act for this purpose, a local educational agency identified as a program improvement local educational agency during the 2005–06 fiscal year, shall receive priority for funding based upon the performance of the socioeconomically disadvantaged subgroup of the local educational agency on the Academic Performance Index. Priority for funding shall be provided to the lowest performing local educational agencies that are identified as program improvement local educational agencies. It is the intent of the Legislature that funds apportioned pursuant to this paragraph be used to support activities identified in paragraph (1).

(C) It is the intent of the Legislature that a local educational agency identified as a program improvement local educational agency receive no more than two years of funding pursuant to this paragraph.

(c) (1) A local educational agency that has been identified for corrective action under the federal No Child Left Behind Act of 2001 (20 U.S.C. Sec. 6301 et seq.), shall be subject to one or more of the following sanctions as recommended by the Superintendent and approved by the state board:

(A) Replacing local educational agency personnel who are relevant to the failure to make adequate yearly progress.

(B) Removing schools from the jurisdiction of the local educational agency and establishing alternative arrangements for the governance and supervision of those schools.

(C) Appointing, by the state board, a receiver or trustee, to administer the affairs of the local educational agency in place of the county superintendent of schools and the governing board.

(D) Abolishing or restructuring the local educational agency.

(E) Authorizing pupils to transfer from a school operated by the local educational agency to a higher performing school operated by another local educational agency, and providing those pupils with transportation to those schools, in conjunction with carrying out not less than one additional action described under this paragraph.

(F) Instituting and fully implementing a new curriculum that is based on state academic content and achievement standards, including providing appropriate professional development based on scientifically based research for all relevant staff, that offers substantial promise of improving educational achievement for high-priority pupils.

(G) Deferring programmatic funds or reducing administrative funds.

(2) In addition to the sanctions prescribed by paragraph (1), the Superintendent may recommend, and the state board may approve, the requirement that a local educational agency contract with a district assistance and intervention team to aid a local educational agency.

(3) Subject to the availability of funds in the annual Budget Act for this purpose, if the State Board of Education requires a local educational agency to contract with a district assistance and intervention team pursuant to paragraph (2), the local educational agency may annually receive fifty thousand dollars (\$50,000), plus ten thousand dollars (\$10,000) for each school that is supported by federal funds pursuant to Title I of the federal No Child Left Behind Act of 2001 (20 U.S.C. Sec. 6301 et seq.) within the local educational agency, for no more than two years, for the purpose of contracting with and implementing the recommendations of the district assistance and intervention team.

(4) Not later than January 31, 2006, the Superintendent shall develop and the State Board of Education shall approve, standards and criteria to be applied by a district assistance and intervention team in carrying out their duties. The standards and criteria shall include all of the following areas:

(A) Governance.

(B) Alignment of curriculum, instruction, and assessments to state standards.

(C) Fiscal operations.

(D) Parent and community involvement.

(E) Human resources.

(F) Data systems and achievement monitoring.

(G) Professional development.

(d) A local educational agency that has received a sanction under subdivision (c) and has not exited program improvement under the federal No Child Left Behind Act of 2001 (20 U.S.C. Sec. 6301 et seq.) shall appear before the state board within three years to review the progress of the local educational agency. Upon hearing testimony and reviewing written data from the local educational agency and the district assistance and intervention team or county superintendent of schools, the Superintendent shall recommend, and the state board may approve, an alternative sanction under subdivision (c), or may take any appropriate action.

(e) Subject to the availability of funds in the annual Budget Act for this purpose, a local educational agency that is not identified as a program improvement local educational agency under the federal No Child Left Behind Act of 2001 (20 U.S.C. Sec. 6301 et seq.) may annually receive up to fifteen thousand dollars (\$15,000) per school identified as a program improvement school for the purposes of supporting schools identified as program improvement schools in the local educational agency and determining barriers to improved pupil academic achievement. That local educational agency shall receive no less than forty thousand dollars (\$40,000) and no more than one million five hundred thousand dollars (\$1,500,000) for those purposes. The Superintendent shall compile a list that ranks each local educational agency based on the number of, and percentage of, schools identified as program improvement schools and shall provide this funding to local educational agencies equally from each list until all funds appropriated for this purpose are depleted. These funds shall be provided for no more than three years.

(f) If there are more local educational agencies that qualify to receive funds under subdivisions (b), (c), and (e) than the amount appropriated for these purposes, the Superintendent may redirect funding for the purposes of subdivision (b).

(g) For purposes of this article, “local educational agency” means a school district, county office of education, or charter school that elects to receive its funding directly pursuant to Section 47651, and that provides public educational services to pupils in kindergarten or any of grades 1 to 12, inclusive.

(h) For purposes of this section, a “stakeholder” is, but is not necessarily limited to, any of the following:

(1) A parent of a child attending a school within the jurisdiction of the local educational agency.

(2) A community partner of the local educational agency.

(3) An employee of the local educational agency, as selected by the bargaining unit.

(i) A local educational agency shall not receive funds pursuant to subdivision (b), (c), or (e) if it is initially identified for program improvement or prevention after July 1, 2009.

SEC. 4. Section 52059 of the Education Code is amended to read:

52059. (a) For purposes of complying with the federal No Child Left Behind Act of 2001 (20 U.S.C. Sec. 6301 et seq.), a Statewide System of School Support shall be established by the department to provide a statewide system of intensive and sustained support and technical assistance for school districts, county offices of education, and schools in need of improvement. The system shall consist of regional consortia, which may include county offices of education and school

districts, that work collaboratively with school districts and county offices of education to meet the needs of school districts and schools in need of improvement.

(b) The system shall provide assistance to school districts and schools in need of improvement by:

(1) Reviewing and analyzing all facets of the operation of a school, including the following:

(A) The design and operation of the instructional program offered by the school.

(B) The recruitment, hiring, and retention of principals, teachers, and other staff, including vacancy issues. The system may request the assistance of the Fiscal Crisis and Management Assistance Team to review school district or school recruitment, hiring, and retention practices.

(C) The roles and responsibilities of district and school management personnel.

(2) Assisting the school in developing recommendations for improving pupil performance and school operations.

(3) Assisting schools and school districts in efforts to eliminate misassignments of certificated personnel.

(c) In carrying out this article, the department shall ensure that support is provided in the following order of priority:

(1) To school districts or county offices of education with schools that are subject to corrective action under paragraph (7) of subsection (b) of Section 6316 of Title 20 of the United States Code.

(2) To school districts or county offices of education with schools that are identified as being in need of improvement pursuant to subsection (b) of Section 6316 of Title 20 of the United States Code.

(3) To provide support and assistance to school districts and county offices of education with schools participating under the No Child Left Behind Act of 2001 (20 U.S.C. Sec. 6301 et seq.) that need support and assistance to achieve the purposes of that act.

(4) To provide support and assistance to other school districts and county offices of education with schools participating in a program carried out under this chapter.

(d) For purposes of this article, all references to schools shall include charter schools.

(e) Funds shall be distributed under this article based on the number of schools, the pupil enrollment in those schools, and the number of school districts in each region that have been identified as being in need of improvement pursuant to Section 6316 of Title 20 of the United States Code, or are participating in the programs conducted under this chapter.

SEC. 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 provide funding to local educational agencies for schools identified as program improvement schools under the federal No Child Left Behind Act of 2001 at the earliest possible time, it is necessary that this act take effect immediately.

CHAPTER 514

An act to amend Section 2190.1 of the Business and Professions Code, relating to physicians and surgeons.

[Approved by Governor October 4, 2005. Filed with
Secretary of State October 4, 2005.]

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

SECTION 1. It is the intent of the Legislature to encourage physicians and surgeons, continuing medical education providers located in this state, and the Accreditation Council for Continuing Medical Education to meet the cultural and linguistic concerns of a diverse patient population through appropriate professional development.

SEC. 2. Section 2190.1 of the Business and Professions Code is amended to read:

2190.1. (a) The continuing medical education standards of Section 2190 may be met by educational activities that meet the standards of the Division of Licensing and serve to maintain, develop, or increase the knowledge, skills, and professional performance that a physician and surgeon uses to provide care, or improve the quality of care provided for patients, including, but not limited to, educational activities that meet any of the following criteria:

(1) Have a scientific or clinical content with a direct bearing on the quality or cost-effective provision of patient care, community or public health, or preventive medicine.

(2) Concern quality assurance or improvement, risk management, health facility standards, or the legal aspects of clinical medicine.

(3) Concern bioethics or professional ethics.

(4) Are designed to improve the physician-patient relationship.

(b) (1) On and after July 1, 2006, all continuing medical education courses shall contain curriculum that includes cultural and linguistic competency in the practice of medicine.

(2) Notwithstanding the provisions of paragraph (1), a continuing medical education course dedicated solely to research or other issues that does not include a direct patient care component and a course offered by a continuing medical education provider that is not located in this state are not required to contain curriculum that includes cultural and linguistic competency in the practice of medicine.

(3) Associations that accredit continuing medical education courses shall develop standards before July 1, 2006, for compliance with the requirements of paragraph (1). The associations may develop these standards in conjunction with an advisory group that has expertise in cultural and linguistic competency issues.

(4) A physician and surgeon who completes a continuing education course meeting the standards developed pursuant to paragraph (3) satisfies the continuing education requirement for cultural and linguistic competency.

(c) In order to satisfy the requirements of subdivision (b), continuing medical education courses shall address at least one or a combination of the following:

(1) Cultural competency. For the purposes of this section, “cultural competency” means a set of integrated attitudes, knowledge, and skills that enables a health care professional or organization to care effectively for patients from diverse cultures, groups, and communities. At a minimum, cultural competency is recommended to include the following:

(A) Applying linguistic skills to communicate effectively with the target population.

(B) Utilizing cultural information to establish therapeutic relationships.

(C) Eliciting and incorporating pertinent cultural data in diagnosis and treatment.

(D) Understanding and applying cultural and ethnic data to the process of clinical care.

(2) Linguistic competency. For the purposes of this section, “linguistic competency” means the ability of a physician and surgeon to provide patients who do not speak English or who have limited ability to speak English, direct communication in the patient’s primary language.

(3) A review and explanation of relevant federal and state laws and regulations regarding linguistic access, including, but not limited to, the federal Civil Rights Act (42 U.S.C. Sec. 1981, et seq.), Executive Order 13166 of August 11, 2000, of the President of the United States, and the Dymally-Alatorre Bilingual Services Act (Chapter 17.5 (commencing with Section 7290) of Division 7 of Title 1 of the Government Code).

(d) Notwithstanding subdivision (a), educational activities that are not directed toward the practice of medicine, or are directed primarily toward the business aspects of medical practice, including, but not limited to, medical office management, billing and coding, and marketing shall not be deemed to meet the continuing medical education standards for licensed physicians and surgeons.

(e) Educational activities that meet the content standards set forth in this section and are accredited by the California Medical Association or the Accreditation Council for Continuing Medical Education may be deemed by the Division of Licensing to meet its continuing medical education standards.

CHAPTER 515

An act to add and repeal Section 78016.5 of the Education Code, relating to public postsecondary education.

[Approved by Governor October 4, 2005. Filed with
Secretary of State October 4, 2005.]

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

SECTION 1. Section 78016.5 is added to the Education Code, to read:

78016.5. (a) This section shall be known, and may be cited, as the California Community College Baccalaureate Partnership Act. The California Community College Baccalaureate Partnership Program is hereby established for the following purposes:

(1) To encourage baccalaureate degree-granting institutions to partner with community colleges to offer baccalaureate degree programs that will offer instruction entirely on the participating community college campus.

(2) To bring opportunities to earn baccalaureate degrees to areas with low college-going rates or limited access to baccalaureate degree-granting institutions.

(b) (1) The Office of the Chancellor of the California Community Colleges is authorized to annually award up to two grants, not to exceed fifty thousand dollars (\$50,000) each, to collaboratives formed for the purpose of offering baccalaureate degree programs on the participating community college campus or campuses. For the purposes of this section, a collaborative is composed of at least one community college and at least one baccalaureate degree-granting institution. Pursuant to this

section, the institutions participating in a collaborative may share in a grant of up to fifty thousand dollars (\$50,000).

(2) (A) Priority for the receipt of grant funds under this subdivision shall be given to applicant institutions that:

(i) Are located in areas of the state with the lowest college-going rates and the lowest rates of earning baccalaureate degrees.

(ii) Demonstrate that the baccalaureate degree programs offered by the applicant meet a documented labor market demand.

(iii) Identify the resources necessary to offer those programs.

(B) The funds granted under this subdivision are for one-time startup costs of the collaborative.

(3) The two grants authorized under this section may be awarded under this section in any fiscal year only to the extent that funding for this program is provided in the annual Budget Act. It is the intent of the Legislature to encourage community colleges and baccalaureate degree-granting institutions to use existing resources to establish degree-granting collaboratives within the meaning of this section even during fiscal years when this program is not funded.

(4) It is the intent of the Legislature that no collaborative effort funded under this section may be terminated abruptly, thus leaving its enrolled students without a way to earn a baccalaureate degree. As a condition of an agreement for the receipt of a grant under this section, a collaborative shall ensure that every student who enrolls in the baccalaureate degree program offered by the collaborative prior to an announcement of the termination of the collaborative has an opportunity to complete the coursework necessary to obtain a baccalaureate degree.

(c) On or before April 1, 2012, the Office of the Chancellor of the California Community Colleges shall submit a report to the Legislature and the Department of Finance on the efficacy of the program established by this section.

(d) This section shall become inoperative on July 1, 2014, and, as of January 1, 2015, is repealed, unless a later enacted statute, that becomes operative on or before July 1, 2014, deletes or extends the dates on which it becomes inoperative and is repealed.

CHAPTER 516

An act to add Section 6535 to the Government Code, relating to health care, and declaring the urgency thereof, to take effect immediately.

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

SECTION 1. Section 6535 is added to the Government Code, to read:

6535. Any entity that is established pursuant to a joint powers agreement authorized under this article that is also licensed under Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code, where one of the parties to the joint powers agreement is an entity established pursuant to Section 14018.7, 14087.31, 14087.35, 14087.36, 14087.38, or 14087.9605 of the Welfare and Institutions Code, shall be subject to all of the same provisions, including, but not limited to, governance, public records requirements, open meeting requirements, and conflicts of interest as is the entity established pursuant to Section 14018.7, 14087.31, 14087.35, 14087.36, 14087.38, or 14087.9605 of the Welfare and Institutions Code, as applicable, that is a party to the joint powers agreement.

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 appropriate participation as soon as possible between local initiatives and county governments, it is necessary that this act take effect immediately.

CHAPTER 517

An act to add Section 33318.5 to the Education Code, relating to pupils.

[Approved by Governor October 4, 2005. Filed with
Secretary of State October 4, 2005.]

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

SECTION 1. Section 33318.5 is added to the Education Code, to read:

33318.5. (a) In addition to the dropout rate the department compiles pursuant to the federal No Child Left Behind Act of 2001 (20 U.S.C. Sec. 6301 et seq.), the department shall compile an attrition rate for high school pupils in the state pursuant to the formula specified in subdivision (b).

(b) The attrition rate is the difference between the number of pupils who enrolled in grade 9 in a particular year and the number of pupils who, four years later, receive a diploma of graduation from high school, divided by the number of pupils who enrolled in grade 9 in the particular year.

CHAPTER 518

An act to amend Section 7085 of the Government Code, relating to enterprise zones.

[Approved by Governor October 4, 2005. Filed with
Secretary of State October 4, 2005.]

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

SECTION 1. Section 7085 of the Government Code is amended to read:

7085. (a) Notwithstanding Section 7550.5, 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, including, but not limited to, any efforts made regarding training of unemployed individuals pursuant to Section 7081. The Employment Development Department shall, for the purposes of the report, provide the department with existing data on unemployed individuals receiving training. 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).

CHAPTER 519

An act to amend Sections 7659.9, 8760, 9405, 9407, 9411, 9420, 9432, 30180, 30190, 30283, 32260, 40067, 41060, 43170, 45160, 46160, 50112.7, 55050, 60043, 60250, and 60603 of, to amend, repeal, and add Section 6479.3 of, and to repeal Sections 38203.5 and 38907 of, the

Revenue and Taxation Code, relating to taxation, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 4, 2005. Filed with
Secretary of State October 4, 2005.]

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

SECTION 1. Section 6479.3 of the Revenue and Taxation Code, as amended by Section 68 of Chapter 74 of the Statutes of 2005, is amended to read:

6479.3. (a) Any person whose estimated tax liability under this part averages twenty thousand dollars (\$20,000) or more per month, as determined by the board pursuant to methods of calculation prescribed by the board, shall remit amounts due by an electronic funds transfer under procedures prescribed by the board. Any person who collects use tax on a voluntary basis is not required to remit amounts due by electronic funds transfer.

(b) Any person whose estimated tax liability under this part averages less than twenty thousand dollars (\$20,000) per month or any person who voluntarily collects use tax may elect to remit amounts due by electronic funds transfer with the approval of the board.

(c) Any person remitting amounts due pursuant to subdivision (a) or (b) shall perform electronic funds transfer in compliance with the due dates set forth in Article 1 (commencing with Section 6451) and Article 1.1 (commencing with Section 6470). Payment is deemed complete on the date the electronic funds transfer is initiated, if settlement to the state's demand account occurs on or before the banking day following the date the transfer is initiated. If settlement to the state's demand account does not occur on or before the banking day following the date the transfer is initiated, payment is deemed to occur on the date settlement occurs.

(d) Any person remitting taxes by electronic funds transfer shall, on or before the due date of the remittance, file a return for the preceding reporting period in the form and manner prescribed by the board. Any person who fails to timely file the required return shall pay a penalty of 10 percent of the amount of taxes, exclusive of prepayments, with respect to the period for which the return is required.

(e) (1) Except as provided in paragraph (2), any person required to remit taxes pursuant to this article who remits those taxes by means other than appropriate electronic funds transfer shall pay a penalty of 10 percent of the taxes incorrectly remitted.

(2) A person required to remit prepayments pursuant to this article who remits a prepayment by means other than an appropriate electronic funds transfer shall pay a penalty of 6 percent of the prepayment amount incorrectly remitted.

(f) Except as provided in Sections 6476 and 6477, any person who fails to pay any tax to the state or any amount of tax required to be collected and paid to the state, except amounts of determinations made by the board under Article 2 (commencing with Section 6481) or Article 3 (commencing with Section 6511), within the time required shall pay a penalty of 10 percent of the tax or amount of tax, in addition to the tax or amount of tax, plus interest at the modified adjusted rate per month, or fraction thereof, established pursuant to Section 6591.5, from the date on which the tax or the amount of tax required to be collected became due and payable to the state until the date of payment.

(g) In determining whether a person's estimated tax liability averages twenty thousand dollars (\$20,000) or more per month, the board may consider tax returns filed pursuant to this part and any other information in the board's possession.

(h) Except as provided in subdivision (i), the penalties imposed by subdivisions (d), (e), and (f) shall be limited to a maximum of 10 percent of the taxes due, exclusive of prepayments, for any one return. Any person remitting taxes by electronic funds transfer shall be subject to the penalties under this section and not Section 6591.

(i) The penalties imposed with respect to paragraph (2) of subdivision (e) and Sections 6476 and 6477 shall be limited to a maximum of 6 percent of the prepayment amount.

(j) The board shall promulgate regulations pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code for purposes of implementing this section.

(k) This section shall be operative only until January 1, 2006, and as of that date is repealed.

SEC. 1.5. Section 6479.3 is added to the Revenue and Taxation Code, to read:

6479.3. (a) Any person whose estimated tax liability under this part averages ten thousand dollars (\$10,000) or more per month, as determined by the board pursuant to methods of calculation prescribed by the board, shall remit amounts due by an electronic funds transfer under procedures prescribed by the board. Any person who collects use tax on a voluntary basis is not required to remit amounts due by electronic funds transfer.

(b) Any person whose estimated tax liability under this part averages less than ten thousand dollars (\$10,000) per month or any person who voluntarily collects use tax may elect to remit amounts due by electronic funds transfer with the approval of the board.

(c) Any person remitting amounts due pursuant to subdivision (a) or (b) shall perform electronic funds transfer in compliance with the due dates set forth in Article 1 (commencing with Section 6451) and Article 1.1 (commencing with Section 6470). Payment is deemed complete on the date the electronic funds transfer is initiated, if settlement to the state's demand account occurs on or before the banking day following the date the transfer is initiated. If settlement to the state's demand account does not occur on or before the banking day following the date the transfer is initiated, payment is deemed to occur on the date settlement occurs.

(d) Any person remitting taxes by electronic funds transfer shall, on or before the due date of the remittance, file a return for the preceding reporting period in the form and manner prescribed by the board. Any person who fails to timely file the required return shall pay a penalty of 10 percent of the amount of taxes, exclusive of prepayments, with respect to the period for which the return is required.

(e) (1) Except as provided in paragraph (2), any person required to remit taxes pursuant to this article who remits those taxes by means other than appropriate electronic funds transfer shall pay a penalty of 10 percent of the taxes incorrectly remitted.

(2) A person required to remit prepayments pursuant to this article who remits a prepayment by means other than an appropriate electronic funds transfer shall pay a penalty of 6 percent of the prepayment amount incorrectly remitted.

(f) Except as provided in Sections 6476 and 6477, any person who fails to pay any tax to the state or any amount of tax required to be collected and paid to the state, except amounts of determinations made by the board under Article 2 (commencing with Section 6481) or Article 3 (commencing with Section 6511), within the time required shall pay a penalty of 10 percent of the tax or amount of tax, in addition to the tax or amount of tax, plus interest at the modified adjusted rate per month, or fraction thereof, established pursuant to Section 6591.5, from the date on which the tax or the amount of tax required to be collected became due and payable to the state until the date of payment.

(g) In determining whether a person's estimated tax liability averages ten thousand dollars (\$10,000) or more per month, the board may consider tax returns filed pursuant to this part and any other information in the board's possession.

(h) Except as provided in subdivision (i), the penalties imposed by subdivisions (d), (e), and (f) shall be limited to a maximum of 10 percent of the taxes due, exclusive of prepayments, for any one return. Any person remitting taxes by electronic funds transfer shall be subject to the penalties under this section and not Section 6591.

(i) The penalties imposed with respect to paragraph (2) of subdivision (e) and Sections 6476 and 6477 shall be limited to a maximum of 6 percent of the prepayment amount.

(j) The board shall promulgate regulations pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code for purposes of implementing this section.

(k) This section shall be operative on January 1, 2006.

SEC. 2. Section 7659.9 of the Revenue and Taxation Code is amended to read:

7659.9. (a) Any person whose estimated tax liability under this part averages twenty thousand dollars (\$20,000) or more per month, as determined by the board pursuant to methods of calculation prescribed by the board, shall remit amounts due by an electronic funds transfer under procedures prescribed by the board.

(b) Any person whose estimated tax liability under this part averages less than twenty thousand dollars (\$20,000) per month may elect to remit amounts due by electronic funds transfer with the approval of the board.

(c) Any person remitting amounts due pursuant to subdivision (a) or (b) shall perform an electronic funds transfer in compliance with the due dates set forth in Article 1 (commencing with Section 7651) and Article 1.1 (commencing with Section 7659). Payment is deemed complete on the date the electronic funds transfer is initiated, if settlement to the state's demand account occurs on or before the banking day following the date the transfer is initiated. If settlement to the state's demand account does not occur on or before the banking day following the date the transfer is initiated, payment is deemed to occur on the date settlement occurs.

(d) Any person remitting taxes by electronic funds transfer shall, on or before the due date of the remittance, file a return for the preceding reporting period in the form and manner prescribed by the board. Any person who fails to timely file the required return shall pay a penalty of 10 percent of the amount of taxes, exclusive of prepayments, with respect to the period for which the return is required.

(e) (1) Except as provided in paragraph (2), any person required to remit taxes pursuant to this article who remits those taxes by means other than appropriate electronic funds transfer shall pay a penalty of 10 percent of the taxes incorrectly remitted.

(2) A person required to remit prepayments pursuant to this article who remits a prepayment by means other than an appropriate electronic funds transfer shall pay a penalty of 6 percent of the prepayment incorrectly remitted.

(f) Except as provided by Sections 7659.5 and 7659.6, any person who fails to pay any tax to the state or any amount of tax required to be

paid to the state, except amounts of determinations made by the board under Article 2 (commencing with Section 7660) or Article 2.5 (commencing with Section 7670), within the time required shall pay a penalty of 10 percent of the tax or amount of tax, in addition to the tax or amount of tax, plus interest at the modified adjusted rate per month, or fraction thereof, established pursuant to Section 6591.5, from the date on which the tax or the amount of tax required to be paid became due and payable to the state until the date of payment.

(g) In determining whether a person's estimated tax liability averages twenty thousand dollars (\$20,000) or more per month, the board may consider tax returns filed pursuant to this part and any other information in the board's possession.

(h) Except as provided in subdivision (i), the penalties imposed by subdivisions (d), (e), and (f) shall be limited to a maximum of 10 percent of the taxes due, exclusive of prepayments, for any one return. Any person remitting taxes by electronic funds transfer shall be subject to the penalties under this section and not Section 7655.

(i) The penalties imposed with respect to paragraph (2) of subdivision (e) and Sections 7659.5 and 7659.6 shall be limited to a maximum of 6 percent of the prepayment amount.

(j) The board shall promulgate regulations pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code for purposes of implementing this section.

SEC. 3. Section 8760 of the Revenue and Taxation Code is amended to read:

8760. (a) Any person whose estimated tax liability under this part averages twenty thousand dollars (\$20,000) or more per month, as determined by the board pursuant to methods of calculation prescribed by the board, shall remit amounts due by an electronic funds transfer under procedures prescribed by the board.

(b) Any person whose estimated tax liability under this part averages less than twenty thousand dollars (\$20,000) per month may elect to remit amounts due by electronic funds transfer with the approval of the board.

(c) Any person remitting amounts due pursuant to subdivision (a) or (b) shall perform electronic funds transfer in compliance with the due dates set forth in Article 1 (commencing with Section 8751). Payment is deemed complete on the date the electronic funds transfer is initiated, if settlement to the state's demand account occurs on or before the banking day following the date the transfer is initiated. If settlement to the state's demand account does not occur on or before the banking day following the date the transfer is initiated, payment is deemed to occur on the date settlement occurs.

(d) Any person remitting taxes by electronic funds transfer shall, on or before the due date of the remittance, file a return for the preceding reporting period in the form and manner prescribed by the board. Any person who fails to timely file the required return shall pay a penalty of 10 percent of the amount of taxes with respect to the period for which the return is required.

(e) Any person required to remit taxes pursuant to this article who remits those taxes by means other than appropriate electronic funds transfer shall pay a penalty of 10 percent of the taxes incorrectly remitted.

(f) Any person who fails to pay any tax to the state or any amount of tax required to be collected and paid to the state, except amounts of determinations made by the board under Article 2 (commencing with Section 8776) or Article 3 (commencing with Section 8801), within the time required shall pay a penalty of 10 percent of the tax or amount of tax, in addition to the tax or amount of tax, plus interest at the modified adjusted rate per month, or fraction thereof, established pursuant to Section 6591.5, from the date on which the tax became due and payable to the state until the date of payment.

(g) In determining whether a person's estimated tax liability averages twenty thousand dollars (\$20,000) or more per month, the board may consider tax returns filed pursuant to this part and any other information in the board's possession.

(h) The penalties imposed by subdivisions (d), (e), and (f) shall be limited to a maximum of 10 percent of the taxes due for any one return. Any person remitting taxes by electronic funds transfer shall be subject to the penalties under this section and not Section 8876.

(i) The board shall promulgate regulations pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code for purposes of implementing this section.

SEC. 4. Section 9405 of the Revenue and Taxation Code is amended to read:

9405. This chapter shall be administered in conjunction with the IFTA, the Use Fuel Tax Law (Part 3 (commencing with Section 8601)), and the Diesel Fuel Tax Law (Part 31 (commencing with Section 60001)). Whenever the Use Fuel Tax Law or the Diesel Fuel Tax Law is inconsistent with the IFTA or this chapter, the IFTA or this chapter shall prevail except where prohibited by the California Constitution or United States Constitution.

SEC. 5. Section 9407 of the Revenue and Taxation Code is amended to read:

9407. (a) The IFTA, for the purposes of this chapter, may be used to:

(1) Determine the base state jurisdiction for motor carriers engaged in interstate commerce.

(2) Impose recordkeeping requirements.

(3) Specify audit procedures.

(4) Establish procedures for the exchange of information.

(5) Identify interstate motor carriers.

(6) Define motor vehicles and fuels subject to the provisions of the agreement.

(7) Determine bond requirements.

(8) Specify reporting requirements, due dates of returns, interest and penalty rates, and provisions for failure to file returns.

(9) Specify methods for collection of taxes, interest, and penalties.

(10) Determine methods for the distribution of taxes and interest collected or assessed to the appropriate jurisdictions.

(11) Deny, suspend, or cancel benefits under the agreement to any interstate motor carrier who violates the provisions of the agreement.

(b) The board may adopt regulations to administer the provisions of this chapter.

SEC. 6. Section 9411 of the Revenue and Taxation Code is amended to read:

9411. "IFTA" means the International Fuel Tax Agreement. The International Fuel Tax Agreement consists of the Articles of Agreement, the Procedures Manual, the Audit Manual, as amended from time to time.

SEC. 7. Section 9420 of the Revenue and Taxation Code is amended to read:

9420. Except for trip permits as provided in Sections 8708 and 60122, all interstate users who choose to obtain an IFTA license from the board shall apply for a license and secure decals for their vehicles. Application for the license and decals shall be made annually on forms prescribed by the board. The application shall be under oath and shall contain that information as the board deems necessary. Upon receipt of the application, and upon payment of any required reinstatement fee, the board may issue to the applicant a license and decals.

The decals issued to the interstate user shall be placed on both exterior sides of the vehicle cab. Failure to display the decals in the required location may subject the interstate user to the purchase of a trip permit. The transfer of decals from one interstate user to another interstate user is prohibited. All decals shall remain the property of the state and may be recalled for any violation of the provisions of the IFTA.

A fee to be determined by the board shall be charged for the annual license and a set of two decals issued prior to and during the calendar year that the license and decal is valid. The board may also prescribe

procedures and set a fee for the issuance of a 30-day IFTA temporary license or replacement decals.

SEC. 8. Section 9432 of the Revenue and Taxation Code is amended to read:

9432. The board shall transmit all moneys received by it under this chapter to the Treasurer to be deposited in the State Treasury. The board in accordance with the Treasurer shall set up a reserve account in the State Treasury to disburse those moneys as needed. After distribution payments to other jurisdictions and refunds authorized by the IFTA, the balance remaining in the reserve account shall be transferred, except as provided in Section 9433, to the Motor Vehicle Fuel Account in the Transportation Tax Fund.

SEC. 9. Section 30180 of the Revenue and Taxation Code is amended to read:

30180. Articles 2 (commencing with Section 30201), 3 (commencing with Section 30221), and 4 (commencing with Section 30241) of Chapter 4 and Sections 30185, 30362, and 30366 do not apply to amounts due or paid with respect to purchases made of stamps or meter register settings. The remedies of the state provided in Chapter 5 (commencing with Section 30301) and the provisions of Chapter 6 (commencing with Section 30361), except for Sections 30362 and 30366, apply to amounts due or paid with respect to purchases made of stamps or meter register settings.

SEC. 10. Section 30190 of the Revenue and Taxation Code is amended to read:

30190. (a) Any person whose estimated tax liability under this part averages twenty thousand dollars (\$20,000) or more per month, as determined by the board pursuant to methods of calculation prescribed by the board, shall remit amounts due by an electronic funds transfer under procedures prescribed by the board.

(b) Any person whose estimated tax liability under this part averages less than twenty thousand dollars (\$20,000) per month may elect to remit amounts due by electronic funds transfer with the approval of the board.

(c) Any person remitting amounts due pursuant to subdivision (a) or (b) shall perform electronic funds transfer in compliance with the due dates set forth in Article 1 (commencing with Section 30181). Payment is deemed complete on the date the electronic funds transfer is initiated, if settlement to the state's demand account occurs on or before the banking day following the date the transfer is initiated. If settlement to the state's demand account does not occur on or before the banking day following the date the transfer is initiated, payment is deemed to occur on the date settlement occurs.

(d) Any person remitting taxes by electronic funds transfer shall, on or before the due date of the remittance, file a return for the preceding reporting period in the form and manner prescribed by the board. Any person who fails to timely file the required return shall pay a penalty of 10 percent of the amount of taxes with respect to the period for which the return is required.

(e) Any person required to remit taxes pursuant to this article who remits those taxes by means other than appropriate electronic funds transfer shall pay a penalty of 10 percent of the taxes incorrectly remitted.

(f) Any person who fails to pay any tax to the state or any amount of tax required to be collected and paid to the state, except amounts of determinations made by the board under Article 3 (commencing with Section 30173) or Article 2 (commencing with Section 30201) or Article 3 (commencing with Section 30221), within the time required shall pay a penalty of 10 percent of the tax or amount of tax, in addition to the tax or amount of tax, plus interest at the modified adjusted rate per month, or fraction thereof, established pursuant to Section 6591.5, from the date on which the tax became due and payable to the state until the date of payment.

(g) In determining whether a person's estimated tax liability averages twenty thousand dollars (\$20,000) or more per month, the board may consider tax returns filed pursuant to this part and any other information in the board's possession.

(h) The penalties imposed by subdivisions (d), (e), and (f) shall be limited to a maximum of 10 percent of the taxes due for any one return. Any person remitting taxes by electronic funds transfer shall be subject to the penalties under this section and not Section 30281.

(i) The board shall promulgate regulations pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code for purposes of implementing this section.

SEC. 11. Section 30283 of the Revenue and Taxation Code is amended to read:

30283. If the board finds that a person's failure to make a timely return or payment was due to a disaster, and occurred notwithstanding the exercise of ordinary care and the absence of willful neglect, the person may be relieved of the interest provided by Sections 30171, 30185, 30190, 30223, and 30281.

Any person seeking to be relieved of the interest shall file with the board a statement under penalty of perjury setting forth the facts upon which he or she bases his or her claim for relief.

SEC. 12. Section 32260 of the Revenue and Taxation Code is amended to read:

32260. (a) Any person whose estimated tax liability under this part averages twenty thousand dollars (\$20,000) or more per month, as determined by the board pursuant to methods of calculation prescribed by the board, shall remit amounts due by an electronic funds transfer under procedures prescribed by the board.

(b) Any person whose estimated tax liability under this part averages less than twenty thousand dollars (\$20,000) per month may elect to remit amounts due by electronic funds transfer with the approval of the board.

(c) Any person remitting amounts due pursuant to subdivision (a) or (b) shall perform electronic funds transfer in compliance with the due dates set forth in Article 1 (commencing with Section 32251). Payment is deemed complete on the date the electronic funds transfer is initiated if settlement to the state's demand account occurs on or before the banking day following the date the transfer is initiated. If settlement to the state's demand account does not occur on or before the banking day following the date the transfer is initiated, payment is deemed to occur on the date settlement occurs.

(d) Any person remitting taxes by electronic funds transfer shall, on or before the due date of the remittance, file a return for the preceding reporting period in the form and manner prescribed by the board. Any person who fails to timely file the required return shall pay a penalty of 10 percent of the amount of taxes, with respect to the period for which the return is required.

(e) Any person required to remit taxes pursuant to this article who remits those taxes by means other than appropriate electronic funds transfer shall pay a penalty of 10 percent of the taxes incorrectly remitted.

(f) Any person who fails to pay any tax to the state or any amount of tax required to be collected and paid to the state, except amounts of determinations made by the board under Article 2 (commencing with Section 32271) or Article 3 (commencing with Section 32291), within the time required shall pay a penalty of 10 percent of the tax or amount of tax, in addition to the tax or amount of tax, plus interest at the modified adjusted rate per month, or fraction thereof, established pursuant to Section 6591.5, from the date on which the tax became due and payable to the state until the date of payment.

(g) In determining whether a person's estimated tax liability averages twenty thousand dollars (\$20,000) or more per month, the board may consider tax returns filed pursuant to this part and any other information in the board's possession.

(h) The penalties imposed by subdivisions (d), (e), and (f) shall be limited to a maximum of 10 percent of the taxes due for any one return. Any person remitting taxes by electronic funds transfer shall be subject to the penalties under this section and not Section 32252.

(i) The board shall promulgate regulations pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code for purposes of implementing this section.

SEC. 13. Section 38203.5 of the Revenue and Taxation Code is repealed.

SEC. 14. Section 38907 of the Revenue and Taxation Code is repealed.

SEC. 15. Section 40067 of the Revenue and Taxation Code is amended to read:

40067. (a) Any person whose estimated surcharge liability under this part averages twenty thousand dollars (\$20,000) or more per month, as determined by the board pursuant to methods of calculation prescribed by the board, shall remit amounts due by an electronic funds transfer under procedures prescribed by the board.

(b) Any person whose estimated surcharge liability under this part averages less than twenty thousand dollars (\$20,000) per month may elect to remit amounts due by electronic funds transfer with the approval of the board.

(c) Any person remitting amounts due pursuant to subdivision (a) or (b) shall perform electronic funds transfer in compliance with the due dates set forth in Article 1 (commencing with Section 40051) and Article 2 (commencing with Section 40061). Payment is deemed complete on the date the electronic funds transfer is initiated if settlement to the state's demand account occurs on or before the banking day following the date the transfer is initiated. If settlement to the state's demand account does not occur on or before the banking day following the date the transfer is initiated, payment is deemed to occur on the date settlement occurs.

(d) Any person remitting surcharges by electronic funds transfer shall, on or before the due date of the remittance, file a return for the preceding reporting period in the form and manner prescribed by the board. Any person who fails to timely file the required return shall pay a penalty of 10 percent of the amount of the surcharge with respect to the period for which the return is required.

(e) Any person required to remit surcharges pursuant to this article who remits those surcharges by means other than appropriate electronic funds transfer shall pay a penalty of 10 percent of the surcharges incorrectly remitted.

(f) Any person who fails to pay any surcharge to the state or any amount of surcharge required to be collected and paid to the state, except amounts of determinations made by the board under Article 3 (commencing with Section 40071) or Article 4 (commencing with Section 40081), within the time required shall pay a penalty of 10 percent of the surcharge or amount of surcharge, in addition to the surcharge or amount

of surcharge, plus interest at the modified adjusted rate per month, or fraction thereof, established pursuant to Section 6591.5, from the date on which the surcharge or the amount of surcharge required to be collected became due and payable to the state until the date of payment.

(g) In determining whether a person's estimated surcharge liability averages twenty thousand dollars (\$20,000) or more per month, the board may consider returns filed pursuant to this part and any other information in the board's possession.

(h) The penalties imposed by subdivisions (d), (e), and (f) shall be limited to a maximum of 10 percent of the surcharge due for any one return. Any person remitting surcharges by electronic funds transfer shall be subject to the penalties under this section and not Section 40101.

(i) The board shall promulgate regulations pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code for purposes of implementing this section.

SEC. 16. Section 41060 of the Revenue and Taxation Code is amended to read:

41060. (a) Any person whose estimated surcharge liability under this part averages twenty thousand dollars (\$20,000) or more per month, as determined by the board pursuant to methods of calculation prescribed by the board, shall remit amounts due by an electronic funds transfer under procedures prescribed by the board.

(b) Any person whose estimated surcharge liability under this part averages less than twenty thousand dollars (\$20,000) per month may elect to remit amounts due by electronic funds transfer with the approval of the board.

(c) Any person remitting amounts due pursuant to subdivision (a) or (b) shall perform electronic funds transfer in compliance with the due dates set forth in Article 1 (commencing with Section 41050). Payment is deemed complete on the date the electronic funds transfer is initiated if settlement to the state's demand account occurs on or before the banking day following the date the transfer is initiated. If settlement to the state's demand account does not occur on or before the banking day following the date the transfer is initiated, payment is deemed to occur on the date settlement occurs.

(d) Any person remitting surcharges by electronic funds transfer shall, on or before the due date of the remittance, file a return for the preceding reporting period in the form and manner prescribed by the board. Any person who fails to timely file the required return shall pay a penalty of 10 percent of the amount of the surcharges with respect to the period for which the return is required.

(e) Any person required to remit surcharges pursuant to this article who remits those surcharges by means other than appropriate electronic

funds transfer shall pay a penalty of 10 percent of the surcharges incorrectly remitted.

(f) Any person who fails to pay any surcharge to the state or any amount of surcharge required to be collected and paid to the state, except amounts of determinations made by the board under Article 3 (commencing with Section 41070) or Article 4 (commencing with Section 41080), within the time required shall pay a penalty of 10 percent of the surcharge or amount of surcharge, in addition to the surcharge or amount of surcharge, plus interest at the modified adjusted rate per month, or fraction thereof, established pursuant to Section 6591.5, from the date on which the surcharge or the amount of surcharge required to be collected became due and payable to the state until the date of payment.

(g) In determining whether a person's estimated surcharge liability averages twenty thousand dollars (\$20,000) or more per month, the board may consider returns filed pursuant to this part and any other information in the board's possession.

(h) The penalties imposed by subdivisions (d), (e), and (f) shall be limited to a maximum of 10 percent of the surcharges due for any one return. Any person remitting surcharges by electronic funds transfer shall be subject to the penalties under this section and not Section 41095.

(i) The board shall promulgate regulations pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code for purposes of implementing this section.

SEC. 17. Section 43170 of the Revenue and Taxation Code is amended to read:

43170. (a) Any person whose estimated tax liability under this part averages twenty thousand dollars (\$20,000) or more per month, as determined by the board pursuant to methods of calculation prescribed by the board, shall remit amounts due by an electronic funds transfer under procedures prescribed by the board.

(b) Any person whose estimated tax liability under this part averages less than twenty thousand dollars (\$20,000) per month may elect to remit amounts due by electronic funds transfer with the approval of the board.

(c) Any person remitting amounts due pursuant to subdivision (a) or (b) shall perform electronic funds transfer in compliance with the due dates set forth in Article 1 (commencing with Section 43151). Payment is deemed complete on the date the electronic funds transfer is initiated if settlement to the state's demand account occurs on or before the banking day following the date the transfer is initiated. If settlement to the state's demand account does not occur on or before the banking day following the date the transfer is initiated, payment is deemed to occur on the date settlement occurs.

(d) Any person remitting taxes by electronic funds transfer shall, on or before the due date of the remittance, file a return for the preceding reporting period in the form and manner prescribed by the board. Any person who fails to timely file the required return shall pay a penalty of 10 percent of the amount of taxes, exclusive of prepayments, with respect to the period for which the return is required.

(e) Any person required to remit taxes pursuant to this article who remits those taxes by means other than appropriate electronic funds transfer shall pay a penalty of 10 percent of the taxes incorrectly remitted.

(f) Any person who fails to pay any tax to the state or any amount of tax required to be collected and paid to the state, except amounts of determinations made by the board under Article 2 (commencing with Section 43201), within the time required shall pay a penalty of 10 percent of the tax or amount of tax, in addition to the tax or amount of tax, plus interest at the modified adjusted rate per month, or fraction thereof, established pursuant to Section 6591.5, from the date on which the tax or amount of tax required to be collected became due and payable to the state until the date of payment.

(g) In determining whether a person's estimated tax liability averages twenty thousand dollars (\$20,000) or more per month, the board may consider tax returns filed pursuant to this part and any other information in the board's possession.

(h) The penalties imposed by subdivisions (d), (e), and (f) shall be limited to a maximum of 10 percent of the taxes due for any one return or prepayment. Any person remitting taxes by electronic funds transfer shall be subject to the penalties under this section and not Section 43155.

(i) The board shall promulgate regulations pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code for purposes of implementing this section.

SEC. 18. Section 45160 of the Revenue and Taxation Code is amended to read:

45160. (a) Any person whose estimated fee liability under this part averages twenty thousand dollars (\$20,000) or more per month, as determined by the board pursuant to methods of calculation prescribed by the board, shall remit amounts due by an electronic funds transfer under procedures prescribed by the board.

(b) Any person whose estimated fee liability under this part averages less than twenty thousand dollars (\$20,000) per month may elect to remit amounts due by electronic funds transfer with the approval of the board.

(c) Any person remitting amounts due pursuant to subdivision (a) or (b) shall perform electronic funds transfer in compliance with the due dates set forth in Article 1 (commencing with Section 45151). Payment is deemed complete on the date the electronic funds transfer is initiated

if settlement to the state's demand account occurs on or before the banking day following the date the transfer is initiated. If settlement to the state's demand account does not occur on or before the banking day following the date the transfer is initiated, payment is deemed to occur on the date settlement occurs.

(d) Any person remitting fees by electronic funds transfer shall, on or before the due date of the remittance, file a return for the preceding reporting period in the form and manner prescribed by the board. Any person who fails to timely file the required return shall pay a penalty of 10 percent of the amount of fees with respect to the period for which the return is required.

(e) Any person required to remit fees pursuant to this article who remits those fees by means other than appropriate electronic funds transfer shall pay a penalty of 10 percent of the fees incorrectly remitted.

(f) Any person who fails to pay any fee to the state or any amount of fee required to be collected and paid to the state, except amounts of determinations made by the board under Article 2 (commencing with Section 45201), within the time required shall pay a penalty of 10 percent of the fee or amount of fee, in addition to the fee or amount of fee, plus interest at the modified adjusted rate per month, or fraction thereof, established pursuant to Section 6591.5, from the date on which the fee became due and payable to the state until the date of payment.

(g) In determining whether a person's estimated fee liability averages twenty thousand dollars (\$20,000) or more per month, the board may consider returns filed pursuant to this part and any other information in the board's possession.

(h) The penalties imposed by subdivisions (d), (e), and (f) shall be limited to a maximum of 10 percent of the fees due for any one return. Any person remitting fees by electronic funds transfer shall be subject to the penalties under this section and not Section 45153.

(i) The board shall promulgate regulations pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code for purposes of implementing this section.

SEC. 19. Section 46160 of the Revenue and Taxation Code is amended to read:

46160. (a) Any person whose estimated fee liability under this part averages twenty thousand dollars (\$20,000) or more per month, as determined by the board pursuant to methods of calculation prescribed by the board, shall remit amounts due by an electronic funds transfer under procedures prescribed by the board.

(b) Any person whose estimated fee liability under this part averages less than twenty thousand dollars (\$20,000) per month may elect to remit amounts due by electronic funds transfer with the approval of the board.

(c) Any person remitting amounts due pursuant to subdivision (a) or (b) shall perform electronic funds transfer in compliance with the due dates set forth in Article 1 (commencing with Section 46151). Payment is deemed complete on the date the electronic funds transfer is initiated if settlement to the state's demand account occurs on or before the banking day following the date the transfer is initiated. If settlement to the state's demand account does not occur on or before the banking day following the date the transfer is initiated, payment is deemed to occur on the date settlement occurs.

(d) Any person remitting fees by electronic funds transfer shall, on or before the due date of the remittance, file a return for the preceding reporting period in the form and manner prescribed by the board. Any person who fails to timely file the required return shall pay a penalty of 10 percent of the amount of fees with respect to the period for which the return is required.

(e) Any person required to remit fees pursuant to this article who remits those fees by means other than appropriate electronic funds transfer shall pay a penalty of 10 percent of the fees incorrectly remitted.

(f) Any person who fails to pay any fee to the state or any amount of fee required to be collected and paid to the state, except amounts of determinations made by the board under Article 2 (commencing with Section 46201) or Article 3, (commencing with Section 46251), within the time required shall pay a penalty of 10 percent of the fee or amount of fee, in addition to the fee or amount of fee, plus interest at the modified adjusted rate per month, or fraction thereof, established pursuant to Section 6591.5, from the date on which the fee or the amount of fee required to be collected became due and payable to the state until the date of payment.

(g) In determining whether a person's estimated fee liability averages twenty thousand dollars (\$20,000) or more per month, the board may consider returns filed pursuant to this part and any other information in the board's possession.

(h) The penalties imposed by subdivisions (d), (e), and (f) shall be limited to a maximum of 10 percent of the fees due for any one return. Any person remitting fees by electronic funds transfer shall be subject to the penalties under this section and not Section 46154.

(i) The board shall promulgate regulations pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code for purposes of implementing this section.

SEC. 20. Section 50112.7 of the Revenue and Taxation Code is amended to read:

50112.7. (a) Any person whose estimated fee liability under this part averages twenty thousand dollars (\$20,000) or more per month, as

determined by the board pursuant to methods of calculation prescribed by the board, shall remit amounts due by an electronic funds transfer under procedures prescribed by the board.

(b) Any person whose estimated fee liability under this part averages less than twenty thousand dollars (\$20,000) per month may elect to remit amounts due by electronic funds transfer with the approval of the board.

(c) Any person remitting amounts due pursuant to subdivision (a) or (b) shall perform electronic funds transfer in compliance with the due dates set forth in Article 1 (commencing with Section 50109). Payment is deemed complete on the date the electronic funds transfer is initiated, if settlement to the state's demand account occurs on or before the banking day following the date the transfer is initiated. If settlement to the state's demand account does not occur on or before the banking day following the date the transfer is initiated, payment is deemed to occur on the date settlement occurs.

(d) Any person remitting fees by electronic funds transfer shall, on or before the due date of the remittance, file a return for the preceding reporting period in the form and manner prescribed by the board. Any person who fails to timely file the required return shall pay a penalty of 10 percent of the amount of fees, with respect to the period for which the return is required.

(e) Any person required to remit fees pursuant to this article who remits those fees by means other than appropriate electronic funds transfer shall pay a penalty of 10 percent of the fees incorrectly remitted.

(f) Any person who fails to pay any fee to the state or any amount of fee required to be paid to the state, except amounts of determinations made by the board under Article 2 (commencing with Section 50113) within the time required shall pay a penalty of 10 percent of the fee or amount of fee, in addition to the fee or amount of fee, plus interest at the modified adjusted rate per month, or fraction thereof, established pursuant to Section 6591.5, from the date on which the fee or the amount of fee required to be paid became due and payable to the state until the date of payment.

(g) In determining whether a person's estimated fee liability averages twenty thousand dollars (\$20,000) or more per month, the board may consider returns filed pursuant to this part and any other information in the board's possession.

(h) The penalties imposed by subdivisions (d), (e), and (f) shall be limited to a maximum of 10 percent of the fees due for any one return. Any person remitting fees by electronic funds transfer shall be subject to the penalties under this section and not Section 50112.

(i) The board shall promulgate regulations pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code for purposes of implementing this section.

SEC. 21. Section 55050 of the Revenue and Taxation Code is amended to read:

55050. (a) Any person whose estimated fee liability under this part averages twenty thousand dollars (\$20,000) or more per month, as determined by the board pursuant to methods of calculation prescribed by the board, shall remit amounts due by an electronic funds transfer under procedures prescribed by the board.

(b) Any person whose estimated fee liability under this part averages less than twenty thousand dollars (\$20,000) per month may elect to remit amounts due by electronic funds transfer with the approval of the board.

(c) Any person remitting amounts due pursuant to subdivision (a) or (b) shall perform electronic funds transfer in compliance with the due dates prescribed for the payment of the fee. Payment is deemed complete on the date the electronic funds transfer is initiated if settlement to the state's demand account occurs on or before the banking day following the date the transfer is initiated. If settlement to the state's demand account does not occur on or before the banking day following the date the transfer is initiated, payment is deemed to occur on the date settlement occurs.

(d) Any person remitting fees by electronic funds transfer shall, on or before the due date of the remittance, file a return for the preceding reporting period in the form and manner prescribed by the board. Any person who fails to timely file the required return shall pay a penalty of 10 percent of the amount of fees, exclusive of prepayments, with respect to the period for which the return is required.

(e) Any person required to remit fees pursuant to this article who remits those fees by means other than appropriate electronic funds transfer shall pay a penalty of 10 percent of the fees incorrectly remitted.

(f) Any person who fails to pay any fee to the state or any amount of fee required to be collected and paid to the state, except amounts of determinations made by the board under Article 2 (commencing with Section 55061) within the time required shall pay a penalty of 10 percent of the fee or amount of fee, in addition to the fee or amount of fee, plus interest at the modified adjusted rate per month, or fraction thereof, established pursuant to Section 6591.5, from the date on which the fee or the amount of fee required to be collected became due and payable to the state until the date of payment.

(g) In determining whether a person's estimated fee liability averages twenty thousand dollars (\$20,000) or more per month, the board may

consider returns filed pursuant to this part and any other information in the board's possession.

(h) The penalties imposed by subdivisions (d), (e), and (f) shall be limited to a maximum of 10 percent of the fees due, exclusive of prepayments, for any one return. Any person remitting fees by electronic funds transfer shall be subject to the penalties under this section and not Section 55042.

(i) The board shall promulgate regulations pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code for purposes of implementing this section.

SEC. 22. Section 60043 of the Revenue and Taxation Code is amended to read:

60043. (a) "Government entity" means this state and its political subdivisions except for a political subdivision that is only an exempt bus operator.

(b) Sections 60146 and 60205.5 do not apply to a government entity if both of the following apply:

(1) The diesel fuel is purchased tax-paid from a supplier or retail vendor.

(2) The tax-paid diesel fuel is used solely for the operation of a diesel-powered highway vehicle within this state.

SEC. 23. Section 60250 of the Revenue and Taxation Code is amended to read:

60250. (a) Any person whose estimated tax liability under this part averages twenty thousand dollars (\$20,000) or more per month, as determined by the board pursuant to methods of calculation prescribed by the board, shall remit amounts due by an electronic funds transfer under procedures prescribed by the board.

(b) Any person whose estimated tax liability under this part averages less than twenty thousand dollars (\$20,000) per month may elect to remit amounts due by electronic funds transfer with the approval of the board.

(c) Any person remitting amounts due pursuant to subdivision (a) or (b) shall perform electronic funds transfer in compliance with the due dates set forth in Article 1 (commencing with Section 60201). Payment is deemed complete on the date the electronic funds transfer is initiated if settlement to the state's demand account occurs on or before the banking day following the date the transfer is initiated. If settlement to the state's demand account does not occur on or before the banking day following the date the transfer is initiated, payment is deemed to occur on the date settlement occurs.

(d) Any person remitting taxes by electronic funds transfer shall, on or before the due date of the remittance, file a return for the preceding reporting period in the form and manner prescribed by the board. Any

person who fails to timely file the required return shall pay a penalty of 10 percent of the amount of taxes with respect to the period for which the return is required.

(e) Any person required to remit taxes pursuant to this article who remits those taxes by means other than appropriate electronic funds transfer shall pay a penalty of 10 percent of the taxes incorrectly remitted.

(f) Any person who fails to pay any tax to the state or any amount of tax required to be collected and paid to the state, except amounts of determinations made by the board under Article 2 (commencing with Section 60301) or Article 3 (commencing with Section 60310), within the time required shall pay a penalty of 10 percent of the tax or amount of tax, in addition to the tax or amount of tax, plus interest at the modified adjusted rate per month, or fraction thereof, established pursuant to Section 6591.5, from the date on which the tax became due and payable to the state until the date of payment.

(g) In determining whether a person's estimated tax liability averages twenty thousand dollars (\$20,000) or more per month, the board may consider tax returns filed pursuant to this part and any other information in the board's possession.

(h) The penalties imposed by subdivisions (d), (e), and (f) shall be limited to a maximum of 10 percent of the taxes due for any one return. Any person remitting taxes by electronic funds transfer shall be subject to the penalties under this section and not Section 60207.

(i) The board shall promulgate regulations pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code for purposes of implementing this section.

SEC. 24. Section 60603 of the Revenue and Taxation Code is amended to read:

60603. (a) Officers or employees of the state, upon presenting appropriate credentials and a written notice to the owner, operator, or agent in charge, are authorized to enter any place and to conduct inspections in accordance with paragraphs (1) to (6), inclusive.

(1) Inspections shall be performed in a reasonable manner and at times that are reasonable under the circumstances, taking into consideration the normal business hours of the place to be entered.

(2) Inspections may be at any place at which taxable diesel fuel is or may be produced or stored or at any inspection site where evidence of activities involving evasion may be discovered. These places may include, but are not limited to, any terminal, any diesel fuel storage facility that is not a terminal, any retail diesel fuel facility, or any designated inspection site.

(3) A designated inspection site is any state highway inspection station, weigh station, agricultural inspection station, mobile station, or

other location designated by the state or the Internal Revenue Service to be used as a diesel fuel inspection site. A designated inspection site shall be identified as a diesel fuel inspection site.

(4) Officers or employees may physically inspect, examine, or otherwise search any tank, reservoir, or other container that can or may be used for the production, storage, or transportation of diesel fuel, diesel fuel dyes, or diesel fuel markers. Inspection may also be made of any equipment used for, or in connection with, production, storage, or transportation of diesel fuel, diesel fuel dyes, or diesel fuel markers. This includes any equipment used for the dyeing or marking of diesel fuel. This includes the books and records kept to determine tax liability.

(5) Officers or employees may detain any vehicle, train, or vessel for the purpose of inspecting its fuel tanks and storage tanks. Detainment will be either on the premises under inspection or at a designated inspection site. Detainment may continue for a reasonable period of time as is necessary to determine the amount and composition of the diesel fuel.

(6) Officers or employees may take and remove samples of diesel fuel in reasonable quantities as necessary to determine its composition.

(b) Any person that refuses to allow an inspection may be fined one thousand dollars (\$1,000) for each refusal. This penalty is in addition to any other penalty or tax that may be imposed upon that person or any other person liable for tax or penalty.

SEC. 25. (a) 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 all taxpayers are treated consistently and fairly and to avoid the unintended consequences of a recently enacted provision, it is necessary that this act take effect immediately.

(b) Notwithstanding subdivision (a), Sections 2 to 24, inclusive, of this act shall become operative on January 1, 2006.

CHAPTER 520

An act to amend Section 27395 of the Government Code, relating to local government.

[Approved by Governor October 4, 2005. Filed with
Secretary of State October 4, 2005.]

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

SECTION 1. Section 27395 of the Government Code is amended to read:

27395. (a) No person shall be a computer security auditor or be granted secure access to an electronic recording delivery system if he or she has been convicted of a felony, has been convicted of a misdemeanor related to theft, fraud, or a crime of moral turpitude, or if he or she has pending criminal charges for any of these crimes. A plea of guilty or no contest, a verdict resulting in conviction, or the forfeiture of bail, shall be a conviction within the meaning of this section, irrespective of a subsequent order under Section 1203.4 of the Penal Code.

(b) All persons entrusted with secure access to an electronic recording delivery system shall submit fingerprints to the Attorney General for a criminal records check according to regulations adopted pursuant to Section 27393.

(c) (1) The Attorney General shall submit to the Department of Justice the fingerprint images and related information of persons with secure access to the electronic recording delivery system and computer security auditors for the purpose of obtaining information as to the existence and nature of a record of state or federal convictions and arrests for which the Department of Justice establishes that the applicant was released on bail or on his or her own recognizance pending trial.

(2) The Department of Justice shall respond to the Attorney General for criminal offender record information requests submitted pursuant to this section, with information as delineated in subdivision (I) of Section 11105 of the Penal Code.

(3) The Department of Justice shall forward requests from the Attorney General to the Federal Bureau of Investigation for federal summary criminal history information pursuant to this section.

(4) The Attorney General shall review and compile the information from the Department of Justice and the Federal Bureau of Investigation to determine whether a person is eligible to access an electronic recording delivery system pursuant to this article.

(5) The Attorney General shall request subsequent arrest notification service, pursuant to Section 11105.2 of the Penal Code, for all persons with secure access to the electronic recording delivery system and all computer security auditors.

(d) The Attorney General shall deliver written notification of an individual's ineligibility for access to an electronic recording delivery system to the individual, his or her known employer, the computer security auditor, and the county recorder.

(e) The Department of Justice shall charge a fee sufficient to cover the cost of processing a state or federal criminal offender record information request and any other costs incurred pursuant to this section.

(f) The Attorney General shall define “secure access” by regulation and by agreement with the county recorder in the system certification.

CHAPTER 521

An act to amend Section 6217.8 of the Public Resources Code, relating to public resources.

[Approved by Governor October 5, 2005. Filed with
Secretary of State October 5, 2005.]

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

SECTION 1. Section 6217.8 of the Public Resources Code is amended to read:

6217.8. (a) For purposes of this section, “fund” means the Oil Trust Fund established pursuant to subdivision (b).

(b) The Oil Trust Fund is hereby established in the State Treasury, and the moneys in the fund are hereby appropriated to the commission in accordance with this section.

(c) (1) On or before March 1, 2006, the City of Long Beach shall pay to the State Lands Commission all money, including both principal and interest, in the abandonment reserve fund that the city created in 1999 and that was the subject of the litigation in State of California ex rel. California State Lands Commission v. City of Long Beach (2005) 125 Cal.App.4th 767.

(2) The Controller shall deposit in the fund any funds paid to the commission pursuant to paragraph (1).

(3) Except as provided in paragraph (4), on the last day of each month beginning July 31, 2006, the Controller shall transfer to the fund the amount of two million dollars (\$2,000,000) or 50 percent of remaining oil revenue, as described in subdivision (d) of Section 4 of Chapter 138 of the Statutes of 1964, First Extraordinary Session to the Oil Trust Fund, whichever is less.

(4) Beginning July 1, 2005, and ending December 31, 2005, any contributions to the fund shall be suspended, except those funds described in paragraphs (1) and (2). During that period the Controller shall transfer four million dollars (\$4,000,000) monthly to the General Fund from oil

revenues, as described in subdivision (d) of Section 4 of Chapter 138 of the Statutes of 1964, First Extraordinary Session.

(5) Beginning January 1, 2006, and ending June 30, 2006, the amount contributed to the fund shall be the amount specified in paragraph (3). During that period the Controller shall also transfer two million dollars (\$2,000,000) monthly to the General Fund from oil revenues, as described in subdivision (d) of Section 4 of Chapter 138 of the Statutes of 1964, First Extraordinary Session.

(d) (1) The total amount deposited in the fund shall not exceed three hundred million dollars (\$300,000,000). From the date the balance in the fund totals three hundred million dollars (\$300,000,000), all interest earned thereafter shall be transferred to the General Fund.

(2) All interest earned on the money in the abandonment reserve fund specified in paragraph (1) of subdivision (c) shall be transferred to the fund.

(3) The commission shall expend the money from the fund solely to finance the costs of well abandonment, pipeline removal, facility removal, remediation, and other costs associated with removal of oil and gas facilities from the Long Beach tidelands that are not the responsibility of other parties.

(4) All money remaining in the fund after completion of all activities described in subdivision (3) shall be transferred to the General Fund.

(e) The moneys deposited in the fund are hereby appropriated to the commission commencing when all of the following conditions are met:

(1) The City of Long Beach adopts a resolution declaring that the oil revenue described in subdivision (d) of Section 4 of Chapter 138 of the Statutes of 1964, First Extraordinary Session, is insufficient to fund the costs of activities described in paragraph (3) of subdivision (d) of this section.

(2) The City of Long Beach transmits to the commission a copy of the resolution and all necessary accompanying documentation, including a plan for expenditures for the activities described in paragraph (3) of subdivision (d).

(3) The commission reviews the material provided in paragraph (2) and notifies the Controller within 60 calendar days of receiving the material specified in paragraph (2), that expenditure from the fund may be made so that activities described in paragraph (3) of subdivision (d) can begin. The commission shall provide a schedule for expenditures for disbursement of moneys from the fund to the City of Long Beach. The commission shall submit a copy of the schedule to the Department of Finance and to the fiscal and appropriate policy committees of the Legislature.

(f) On or before January 1, 2007, the commission shall report to the Director of Finance and the chairpersons of the appropriate legislative committees on both the following:

(1) A forecast of when the tidelands oil fields will be abandoned and require environmental mitigation.

(2) An estimate of the likely costs to mitigate the effects of extraction in the tidelands oil fields.

CHAPTER 522

An act to amend Section 14556.30 of the Government Code, and to amend Sections 30914 and 30914.5 of the Streets and Highways Code, relating to transportation.

[Approved by Governor October 5, 2005. Filed with
Secretary of State October 5, 2005.]

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

SECTION 1. Section 14556.30 of the Government Code is amended to read:

14556.30. (a) After receiving an allocation, the lead applicant shall make diligent and timely progress toward completing the work as described in the submitted application. If timely progress is not achieved, the commission may review the status of the project. If the commission finds the lead applicant agency is not pursuing project work diligently, including use of funds under the agency's control committed to the project, the commission may reallocate those funds to another project or projects listed in Article 5 (commencing with Section 14556.40).

(b) If the commission and a lead applicant agency concur that a project is delayed by factors external to the control of the lead applicant agency and the factors are not likely to be removed within a reasonable time, the lead applicant agency may submit an application for an alternate or substitute project if the alternate project is designed to relieve congestion consistent with this act, is within the jurisdiction of the lead applicant agency, and meets all other project approval requirements.

(c) Notwithstanding Section 16304, funds allocated from the fund shall be available for encumbrance for three years after the date of allocation, and encumbered funds shall be available for liquidation for two additional years. Any funds not expended by that time limit shall revert to the fund.

(d) The commission, with respect to any funds that revert to the fund pursuant to subdivision (c), may direct the department to reallocate those funds to the same project if the commission finds that the lead applicant agency is pursuing the project diligently and that the project has been delayed by factors external to the control of the lead applicant agency. In no case may the amount made available for expenditure on a project exceed the amount specified for that project in that article.

SEC. 2. Section 30914 of the Streets and Highways Code is amended to read:

30914. (a) In addition to any other authorized expenditures of toll bridge revenues, the following major projects may be funded from toll revenues of all bridges:

(1) Dumbarton Bridge: Improvement of the western approaches from Route 101 if affected local governments are involved in the planning.

(2) San Mateo-Hayward Bridge and approaches: Widening of the bridge to six lanes, construction of rail transit capital improvements on the bridge structure, and improvements to the Route 92/Route 880 interchange.

(3) Construction of West Grand connector or an alternate project designed to provide comparable benefit by reducing vehicular traffic congestion on the eastern approaches to the San Francisco-Oakland Bay Bridge. Affected local governments shall be involved in the planning.

(4) Not less than 90 percent of the revenues determined by the authority as derived from the toll increase approved in 1988 for class I vehicles on the San Francisco-Oakland Bay Bridge authorized by Section 30917 shall be used exclusively for rail transit capital improvements designed to reduce vehicular traffic congestion on that bridge. This amount shall be calculated as 21 percent of the revenue generated each year by the collection of the base toll at the level established by the 1988 increase on the San Francisco-Oakland Bay Bridge.

(b) Notwithstanding any funding request for the transbay bus terminal pursuant to Section 31015, the Metropolitan Transportation Commission shall allocate toll bridge revenues in an annual amount not to exceed three million dollars (\$3,000,000), plus a 3.5-percent annual increase, to the department or to the Transbay Joint Powers Authority after the department transfers the title of the Transbay Terminal Building to that entity, for operation and maintenance expenditures. This allocation shall be payable from funds transferred by the Bay Area Toll Authority. This transfer of funds is subordinate to any obligations of the authority, now or hereafter existing, having a statutory or first priority lien against the toll bridge revenues. The first annual 3.5-percent increase shall be made on July 1, 2004. The transfer is further subject to annual certification by the department or the Transbay Joint Powers Authority that the total

Transbay Terminal Building operating revenue is insufficient to pay the cost of operation and maintenance without the requested funding.

(c) If the voters approve a toll increase in 2004 pursuant to Section 30921, the authority shall, consistent with the provisions of subdivisions (d) and (f), fund the projects described in this subdivision and in subdivision (d) that shall collectively be known as the Regional Traffic Relief Plan by bonding or transfers to the Metropolitan Transportation Commission. These projects have been determined to reduce congestion or to make improvements to travel in the toll bridge corridors, from toll revenues of all bridges:

(1) BART/MUNI Connection at Embarcadero and Civic Center Stations. Provide direct access from the BART platform to the MUNI platform at the above stations and equip new fare gates that are TransLink ready. Three million dollars (\$3,000,000). The project sponsor is BART.

(2) MUNI Metro Third Street Light Rail Line. Provide funding for the surface and light rail transit and maintenance facility to support MUNI Metro Third Street Light Rail service connecting to Caltrain stations and the E-Line waterfront line. Thirty million dollars (\$30,000,000). The project sponsor is MUNI.

(3) MUNI Waterfront Historic Streetcar Expansion. Provide funding to rehabilitate historic streetcars and construct trackage and terminal facilities to support service from the Caltrain Terminal, the Transbay Terminal, and the Ferry Building, and connecting the Fisherman's Wharf and northern waterfront. Ten million dollars (\$10,000,000). The project sponsor is MUNI.

(4) East to West Bay Commuter Rail Service over the Dumbarton Rail Bridge. Provide funding for the necessary track and station improvements and rolling stock to interconnect the BART and Capitol Corridor at Union City with Caltrain service over the Dumbarton Rail Bridge, and interconnect and provide track improvements for the ACE line with the same Caltrain service at Centerville. Provide a new station at Sun Microsystems in Menlo Park. One hundred thirty-five million dollars (\$135,000,000). The project is jointly sponsored by the San Mateo County Transportation Authority, Capitol Corridor, the Alameda County Congestion Management Agency, and the Alameda County Transportation Improvement Authority.

(5) Vallejo Station. Construct intermodal transportation hub for bus and ferry service, including parking structure, at site of Vallejo's current ferry terminal. Twenty-eight million dollars (\$28,000,000). The project sponsor is the City of Vallejo.

(6) Solano County Express Bus Intermodal Facilities. Provide competitive grant fund source, to be administered by the Metropolitan Transportation Commission. Eligible projects are Curtola Park and Ride,

Benicia Intermodal Facility, Fairfield Transportation Center and Vacaville Intermodal Station. Priority to be given to projects that are fully funded, ready for construction, and serving transit service that operates primarily on existing or fully funded high-occupancy vehicle lanes. Twenty million dollars (\$20,000,000). The project sponsor is Solano Transportation Authority.

(7) Solano County Corridor Improvements near Interstate 80/Interstate 680 Interchange. Provide funding for improved mobility in corridor based on recommendations of joint study conducted by the Department of Transportation and the Solano Transportation Authority. Cost-effective transit infrastructure investment or service identified in the study shall be considered a high priority. One hundred million dollars (\$100,000,000). The project sponsor is Solano Transportation Authority.

(8) Interstate 80: Eastbound High-Occupancy Vehicle (HOV) Lane Extension from Route 4 to Carquinez Bridge. Construct HOV-lane extension. Fifty million dollars (\$50,000,000). The project sponsor is the Department of Transportation.

(9) Richmond Parkway Transit Center. Construct parking structure and associated improvements to expand bus capacity. Sixteen million dollars (\$16,000,000). The project sponsor is Alameda-Contra Costa Transit District, in coordination with West Contra Costa Transportation Advisory Committee, Western Contra Costa Transit Authority, City of Richmond, and the Department of Transportation.

(10) Sonoma-Marin Area Rail Transit District (SMART) Extension to Larkspur or San Quentin. Extend rail line from San Rafael to a ferry terminal at Larkspur or San Quentin. Thirty-five million dollars (\$35,000,000). Up to five million dollars (\$5,000,000) may be used to study, in collaboration with the Water Transit Authority, the potential use of San Quentin property as an intermodal water transit terminal. The project sponsor is SMART.

(11) Greenbrae Interchange/Larkspur Ferry Access Improvements. Provide enhanced regional and local access around the Greenbrae Interchange to reduce traffic congestion and provide multimodal access to the Richmond-San Rafael Bridge and Larkspur Ferry Terminal by constructing a new full service diamond interchange at Wornum Drive south of the Greenbrae Interchange, extending a multiuse pathway from the new interchange at Wornum Drive to East Sir Francis Drake Boulevard and the Cal Park Hill rail right-of-way, adding a new lane to East Sir Francis Drake Boulevard and rehabilitating the Cal Park Hill Rail Tunnel and right-of-way approaches for bicycle and pedestrian access to connect the San Rafael Transit Center with the Larkspur Ferry Terminal. Sixty-five million dollars (\$65,000,000). The project sponsor is Marin County Congestion Management Agency.

(12) Direct High-Occupancy Vehicle (HOV) lane connector from Interstate 680 to the Pleasant Hill or Walnut Creek BART stations or in close proximity to either station or as an extension of the southbound Interstate 680 High-Occupancy Vehicle Lane through the Interstate 680/State Highway Route 4 interchange from North Main in Walnut Creek to Livorna Road. The County Connection shall utilize up to one million dollars (\$1,000,000) of the funds described in this paragraph to develop options and recommendations for providing express bus service on the Interstate 680 High-Occupancy Vehicle Lane south of the Benicia Bridge in order to connect to BART. Upon completion of the plan, the Contra Costa Transportation Authority shall adopt a preferred alternative provided by the County Connection plan for future funding. Following adoption of the preferred alternative, the remaining funds may be expended either to fund the preferred alternative or to extend the high-occupancy vehicle lane as described in this paragraph. Fifteen million dollars (\$15,000,000). The project is sponsored by the Contra Costa Transportation Authority.

(13) Rail Extension to East Contra Costa/E-BART. Extend BART from Pittsburg/Bay Point Station to Byron in East Contra Costa County. Ninety-six million dollars (\$96,000,000). Project funds may only be used if the project is in compliance with adopted BART policies with respect to appropriate land use zoning in vicinity of proposed stations. The project is jointly sponsored by BART and Contra Costa Transportation Authority.

(14) Capitol Corridor Improvements in Interstate 80/Interstate 680 Corridor. Fund track and station improvements, including the Suisun Third Main Track and new Fairfield Station. Twenty-five million dollars (\$25,000,000). The project sponsor is Capitol Corridor Joint Powers Authority and the Solano Transportation Authority.

(15) Central Contra Costa Bay Area Rapid Transit (BART) Crossover. Add new track before Pleasant Hill BART Station to permit BART trains to cross to return track towards San Francisco. Twenty-five million dollars (\$25,000,000). The project sponsor is BART.

(16) Benicia-Martinez Bridge: New Span. Provide partial funding for completion of new five-lane span between Benicia and Martinez to significantly increase capacity in the I-680 corridor. Fifty million dollars (\$50,000,000). The project sponsor is the Bay Area Toll Authority.

(17) Regional Express Bus North. Competitive grant program for bus service in Richmond-San Rafael Bridge, Carquinez, Benicia-Martinez and Antioch Bridge corridors. Provide funding for park and ride lots, infrastructure improvements, and rolling stock. Eligible recipients include Golden Gate Bridge Highway and Transportation District, Vallejo Transit, Napa VINE, Fairfield-Suisun Transit, Western Contra Costa

Transit Authority, Eastern Contra Costa Transit Authority, and Central Contra Costa Transit Authority. The Golden Gate Bridge Highway and Transportation District shall receive a minimum of one million six hundred thousand dollars (\$1,600,000). Napa VINE shall receive a minimum of two million four hundred thousand dollars (\$2,400,000). Twenty million dollars (\$20,000,000). The project sponsor is the Metropolitan Transportation Commission.

(18) TransLink. Integrate the Bay Area's regional smart card technology, TransLink, with operator fare collection equipment and expand system to new transit services. Twenty-two million dollars (\$22,000,000). The project sponsor is the Metropolitan Transportation Commission.

(19) Real-Time Transit Information. Provide a competitive grant program for transit operators for assistance with implementation of high-technology systems to provide real-time transit information to riders at transit stops or via telephone, wireless, or Internet communication. Priority shall be given to projects identified in the commission's connectivity plan adopted pursuant to subdivision (d) of Section 30914.5. Twenty million dollars (\$20,000,000). The funds shall be administered by the Metropolitan Transportation Commission.

(20) Safe Routes to Transit: Plan and construct bicycle and pedestrian access improvements in close proximity to transit facilities. Priority shall be given to those projects that best provide access to regional transit services. Twenty-two million five hundred thousand dollars (\$22,500,000). City Car Share shall receive two million five hundred thousand dollars (\$2,500,000) to expand its program within approximately one-quarter mile of transbay regional transit terminals or stations. The City Car Share project is sponsored by City Car Share and the Safe Routes to Transit project is jointly sponsored by the East Bay Bicycle Coalition and the Transportation and Land Use Coalition. These sponsors must identify a public agency cosponsor for purposes of specific project fund allocations.

(21) BART Tube Seismic Strengthening. Add seismic capacity to existing BART tube connecting the east bay with San Francisco. One hundred forty-three million dollars (\$143,000,000). The project sponsor is BART.

(22) Transbay Terminal/Downtown Caltrain Extension. A new Transbay Terminal at First and Mission Streets in San Francisco providing added capacity for transbay, regional, local, and intercity bus services, the extension of Caltrain rail services into the terminal, and accommodation of a future high-speed passenger rail line to the terminal and eventual rail connection to the east bay. Eligible expenses include project planning, design and engineering, construction of a new terminal

and its associated ramps and tunnels, demolition of existing structures, design and development of a temporary terminal, property and right-of-way acquisitions required for the project, and associated project-related administrative expenses. A bus- and train-ready terminal facility, including purchase and acquisition of necessary rights-of-way for the terminal, ramps, and rail extension, is the first priority for toll funds for the Transbay Terminal/Downtown Caltrain Extension Project. The temporary terminal operation shall not exceed five years. One hundred fifty million dollars (\$150,000,000). The project sponsor is the Transbay Joint Powers Authority.

(23) Oakland Airport Connector. New transit connection to link BART, Capitol Corridor and AC Transit with Oakland Airport. The Port of Oakland shall provide a full funding plan for the connector. Thirty million dollars (\$30,000,000). The project sponsors are the Port of Oakland and BART.

(24) AC Transit Enhanced Bus-Phase 1 on Telegraph Avenue, International Boulevard, and East 14th Street (Berkeley-Oakland-San Leandro). Develop enhanced bus service on these corridors, including bus bulbs, signal prioritization, new buses, and other improvements. Priority of investment shall improve the AC connection to BART on these corridors. Sixty-five million dollars (\$65,000,000). The project sponsor is AC Transit.

(25) Commute Ferry Service for Alameda/Oakland/Harbor Bay. Purchase two vessels for ferry services between Alameda and Oakland areas and San Francisco. Second vessel funds to be released upon demonstration of appropriate terminal locations, new transit-oriented development, adequate parking, and sufficient landside feeder connections to support ridership projections. Twelve million dollars (\$12,000,000). The project sponsor is Water Transit Authority. If the Water Transit Authority demonstrates to the Metropolitan Transportation Commission that it has secured alternative funding for the two vessel purchases described in this paragraph, the funds may be used for terminal improvements.

(26) Commute Ferry Service for Berkeley/Albany. Purchase two vessels for ferry services between the Berkeley/Albany Terminal and San Francisco. Parking access and landside feeder connections must be sufficient to support ridership projections. Twelve million dollars (\$12,000,000). The project sponsor is Water Transit Authority. If the Water Transit Authority demonstrates to the Metropolitan Transportation Commission that it has secured alternative funding for the two vessel purchases described in this paragraph, the funds may be used for terminal improvements. If the Water Transit Authority does not have an entitled terminal site within the Berkeley/Albany catchment area by 2010 that

meets its requirements, the funds described in this paragraph and the operating funds described in paragraph (7) of subdivision (d) shall be transferred to another site in the East Bay. The City of Richmond shall be given first priority to receive this transfer of funds if it has met the planning milestones identified in its special study developed pursuant to paragraph (28).

(27) Commute Ferry Service for South San Francisco. Purchase two vessels for ferry services to the Peninsula. Parking access and landside feeder connections must be sufficient to support ridership projections. Twelve million dollars (\$12,000,000). The project sponsor is Water Transit Authority. If the Water Transit Authority demonstrates to the Metropolitan Transportation Commission that it has secured alternative funding for the two vessel purchases described in this paragraph, the funds may be used for terminal improvements.

(28) Water Transit Facility Improvements, Spare Vessels, and Environmental Review Costs. Provide two backup vessels for water transit services, expand berthing capacity at the Port of San Francisco, and expand environmental studies and design for eligible locations. Forty-eight million dollars (\$48,000,000). The project sponsor is Water Transit Authority. Up to one million dollars (\$1,000,000) of the funds described in this paragraph shall be made available for the Water Transit Authority to study accelerating development and other milestones that would potentially increase ridership at the City of Richmond ferry terminal.

(29) Regional Express Bus Service for San Mateo, Dumbarton, and Bay Bridge Corridors. Expand park and ride lots, improve HOV access, construct ramp improvements, and purchase rolling stock. Twenty-two million dollars (\$22,000,000). The project sponsors are AC Transit and Alameda County Congestion Management Agency.

(30) I-880 North Safety Improvements. Reconfigure various ramps on I-880 and provide appropriate mitigations between 29th Avenue and 16th Avenue. Ten million dollars (\$10,000,000). The project sponsors are Alameda County Congestion Management Agency, City of Oakland, and the Department of Transportation.

(31) BART Warm Springs Extension. Extension of the existing BART system from Fremont to Warm Springs in southern Alameda County. Ninety-five million dollars (\$95,000,000). Up to ten million dollars (\$10,000,000) shall be used for grade separation work in the City of Fremont necessary to extend BART. The project would facilitate a future rail service extension to the Silicon Valley. The project sponsor is BART.

(32) I-580 (Tri Valley) Rapid Transit Corridor Improvements. Provide rail or High-Occupancy Vehicle lane direct connector to Dublin BART and other improvements on I-580 in Alameda County for use by express

buses. Sixty-five million dollars (\$65,000,000). The project sponsor is Alameda County Congestion Management Agency.

(33) Regional Rail Master Plan. Provide planning funds for integrated regional rail study pursuant to subdivision (f) of Section 30914.5. Six million five hundred thousand dollars (\$6,500,000). The project sponsors are Caltrain and BART.

(34) Integrated Fare Structure Program. Provide planning funds for the development of zonal monthly transit passes pursuant to subdivision (e) of Section 30914.5. One million five hundred thousand dollars (\$1,500,000). The project sponsor is the Translink Consortium.

(35) Transit Commuter Benefits Promotion. Marketing program to promote tax-saving opportunities for employers and employees as specified in Section 132(f)(3) or 162(a) of the Internal Revenue Code. Goal is to increase the participation rate of employers offering employees a tax-free benefit to commute to work by transit. The project sponsor is the Metropolitan Transportation Commission. Five million dollars (\$5,000,000).

(36) Caldecott Tunnel Improvements. Provide funds to plan and construct a fourth bore at the Caldecott Tunnel between Contra Costa and Alameda Counties. The fourth bore will be a two-lane bore with a shoulder or shoulders north of the current three bores. The County Connection shall study all feasible alternatives to increase transit capacity in the westbound corridor of State Highway Route 24 between State Highway Route 680 and the Caldecott Tunnel, including the study of the use of an express lane, high-occupancy vehicle lane, and an auxiliary lane. The cost of the study shall not exceed five hundred thousand dollars (\$500,000) and shall be completed not later than January 15, 2006. Fifty million five hundred thousand dollars (\$50,500,000). The project sponsor is the Contra Costa Transportation Authority.

(d) Not more than 38 percent of the revenues generated from the toll increase shall be made available annually for the purpose of providing operating assistance for transit services as set forth in the authority's annual budget resolution. The funds shall be made available to the provider of the transit services subject to the performance measures described in Section 30914.5. If the funds cannot be obligated for operating assistance consistent with the performance measures, these funds shall be obligated for other operations consistent with this chapter.

Except for operating programs that do not have planned funding increases and subject to the 38-percent limit on total operating cost funding in any single year, following the first year of scheduled operations, an escalation factor, not to exceed 1.5 percent per year, shall be added to the operating cost funding through fiscal year 2015–16, to partially offset increased operating costs. The escalation factors shall be

contained in the operating agreements described in Section 30914.5. Subject to the limitations of this paragraph, the Metropolitan Transportation Commission may annually fund the following operating programs as another component of the Regional Traffic Relief Plan:

(1) Golden Gate Express Bus Service over the Richmond Bridge (Route 40). Two million one hundred thousand dollars (\$2,100,000).

(2) Napa Vine Service terminating at the Vallejo Intermodal Terminal. Three hundred ninety thousand dollars (\$390,000).

(3) Regional Express Bus North Pool serving the Carquinez and Benicia Bridge Corridors. Three million four hundred thousand dollars (\$3,400,000).

(4) Regional Express Bus South Pool serving the Bay Bridge, San Mateo Bridge, and Dumbarton Bridge Corridors. Six million five hundred thousand dollars (\$6,500,000).

(5) Dumbarton Rail. Five million five hundred thousand dollars (\$5,500,000).

(6) Water Transit Authority, Alameda/Oakland/Harbor Bay. A portion of the operating funds may be dedicated to landside transit operations. Six million four hundred thousand dollars (\$6,400,000).

(7) Water Transit Authority, Berkeley/Albany. A portion of the operating funds may be dedicated to landside transit operations. Three million two hundred thousand dollars (\$3,200,000).

(8) Water Transit Authority, South San Francisco. A portion of the operating funds may be dedicated to landside operations. Three million dollars (\$3,000,000).

(9) Vallejo Ferry. Two million seven hundred thousand dollars (\$2,700,000).

(10) Owl Bus Service on BART Corridor. One million eight hundred thousand dollars (\$1,800,000).

(11) MUNI Metro Third Street Light Rail Line. Two million five hundred thousand dollars (\$2,500,000) without escalation.

(12) AC Transit Enhanced Bus Service on Telegraph Avenue, International Boulevard, and East 14th Street in Berkeley-Oakland-San Leandro. Three million dollars (\$3,000,000) without escalation.

(13) TransLink, three-year operating program. Twenty million dollars (\$20,000,000) without escalation.

(14) Water Transit Authority, regional planning and operations. Three million dollars (\$3,000,000) without escalation.

(e) For all projects authorized under subdivision (c), the project sponsor shall submit an initial project report to the Metropolitan Transportation Commission before July 1, 2004. This report shall include all information required to describe the project in detail, including the status of any environmental documents relevant to the project, additional

funds required to fully fund the project, the amount, if any, of funds expended to date, and a summary of any impediments to the completion of the project. This report, or an updated report, shall include a detailed financial plan and shall notify the commission if the project sponsor will request toll revenue within the subsequent 12 months. The project sponsor shall update this report as needed or requested by the commission. No funds shall be allocated by the commission for any project authorized by subdivision (c) until the project sponsor submits the initial project report, and the report is reviewed and approved by the commission.

If multiple project sponsors are listed for projects listed in subdivision (c), the commission shall identify a lead sponsor in coordination with all identified sponsors, for purposes of allocating funds. For any projects authorized under subdivision (c), the commission shall have the option of requiring a memorandum of understanding between itself and the project sponsor or sponsors that shall include any specific requirements that must be met prior to the allocation of funds provided under subdivision (c).

(f) The Metropolitan Transportation Commission shall annually assess the status of programs and projects and shall allocate a portion of funding made available under Section 30921 or 30958 for public information and advertising to support the services and projects identified in subdivisions (c) and (d). If an operating program or project cannot achieve its performance objectives described in subdivision (a) of Section 30914.5 or if a program or project cannot be completed or cannot continue due to delivery or financing obstacles making the completion or continuation of the program or project unrealistic, the commission shall consult with the program or the project sponsor. After consulting with the sponsor, the commission shall hold a public hearing concerning the project. After the hearing, the commission may vote to modify the program or the project's scope, decrease its level of funding, or to reassign all of the funds to another or an additional regional transit program or project within the same corridor. If a program or project does not meet the required performance measures, the commission shall give the sponsor a time certain to achieve the performance measures or have its funding reassigned.

(g) If the voters approve a toll increase pursuant to Section 30921, the authority shall within 24 months of the election date, include the projects in a long-range plan that are consistent with the commission's findings required by this section and Section 30914.5. The authority shall update its long-range plan as required to maintain its viability as a strategic plan for funding projects authorized by this section. The authority shall by January 1, 2007, submit its updated long-range plan

to the transportation policy committee of each house of the Legislature for review.

(h) If the voters approve a toll increase pursuant to Section 30921, and if additional funds from this toll increase are available following the funding obligations of subdivisions (c) and (d), the authority may set aside a reserve to fund future rolling stock replacement to enhance the sustainability of the services enumerated in subdivision (d). The authority shall, by January 1, 2020, submit a 20-year toll bridge expenditure plan to the Legislature for adoption. This expenditure plan shall have, as its highest priority, replacement of transit vehicles purchased pursuant to subdivision (c).

SEC. 3. Section 30914.5 of the Streets and Highways Code is amended to read:

30914.5. (a) Prior to the allocation of revenue for transit operating assistance under subdivision (d) of Section 30914, the Metropolitan Transportation Commission shall adopt performance measures related to fare-box recovery, ridership, and other performance measures as needed. The performance measures shall be developed in consultation with the affected transit operators and the commission's advisory council.

(b) The Metropolitan Transportation Commission shall execute an operating agreement with the sponsors of the projects described in subdivision (d) of Section 30914. This agreement shall include, at a minimum, a fully funded operating plan that conforms to and is consistent with the adopted performance measures. The agreement shall also include a schedule of projected fare revenues or other operating revenues to indicate that the service is viable in the near-term and is expected to meet the adopted performance measures in future years. For any individual project sponsor, this operating agreement may include additional requirements, as determined by the commission, to be met prior to the allocation of transit assistance under subdivision (d) of Section 30914.

(c) Prior to the annual allocation of transit operating assistance funds by the Metropolitan Transportation Commission pursuant to subdivision (d) of Section 30914, the Metropolitan Transportation Commission shall conduct, or shall require the sponsoring agency to conduct, an independent audit that contains audited financial information, including an opinion on the status and cost of the project and its compliance with the approved performance measures. Notwithstanding this requirement, each operator shall be given a one-year trial period to operate new service. In the first year of new service, the sponsor shall develop a reporting and accounting structure for the performance measures. Commencing with the third operating year, sponsors shall be subject to the approved performance measures.

(d) The Metropolitan Transportation Commission shall adopt a regional transit connectivity plan by May 1, 2006. The connectivity plan shall be incorporated into the commission's Transit Coordination Implementation Plan pursuant to Section 66516.5 of the Government Code. The connectivity plan shall require operators to comply with the plan utilizing commission authority pursuant to Section 66516.5 of the Government Code. The commission shall consult with the Partnership Transit Coordination Council in developing a plan that identifies and evaluates opportunities for improving transit connectivity and shall include, but not be limited to, the following components:

(1) A network of key transit hubs connecting regional rapid transit services to one another, and to feeder transit services. "Regional rapid transit" means long-haul transit service that crosses county lines, and operates mostly in dedicated rights-of-way, including freeway high-occupancy vehicle lanes, crossing a bridge, or on the bay. The identified transit hubs shall operate either as a timed transfer network or as pulsed hub connections, providing regularly scheduled connections between two or more transit lines.

(2) Physical infrastructure and right-of-way improvements necessary to improve system reliability and connections at transit hubs. Physical infrastructure improvements may include, but are not limited to, improved rail-to-rail transfer facilities, including cross-platform transfers, and intermodal transit improvements that facilitate rail-to-bus, rail-to-ferry, ferry-to-ferry, ferry-to-bus, and bus-to-bus transfers. Capital improvements identified in the plan shall be eligible for funding in the commission's regional transportation plan.

(3) Regional standards and procedures to ensure maximum coordination of schedule connections to minimize transfer times between transit lines at key transit hubs, including, but not limited to, the following:

(A) Policies and procedures for improved fare collection.

(B) Enhanced trip-planning services, including Internet-based programs, telephone information systems, and printed schedules.

(C) Enhanced schedule coordination through the implementation of real-time transit-vehicle location systems that facilitate communication between systems and result in improved timed transfers between routes.

(D) Performance measures and data collection to monitor the performance of the connectivity plan.

The connectivity plan shall focus on, but not be limited to, feeder transit lines connecting to regional rapid transit services, and the connection of regional rapid transit services to one another. The connectivity plan shall be adopted following a Metropolitan Transportation Commission public hearing at least 60 days prior to

adoption. The commission shall adopt performance measures and collect appropriate data to monitor the performance of the connectivity plan. The plan shall be evaluated every three years by the commission as part of the update to its regional transportation plan. No agency shall be eligible to receive funds under this section unless the agency is a participant operator in the commission's regional transit connectivity plan.

The provisions of this subdivision shall only be effective if the voters approve the toll increase as set forth in Section 30921, and the expenditures incurred by the Metropolitan Transportation Commission up to five hundred thousand dollars (\$500,000) that are related to the requirements of this subdivision, including any study, shall be reimbursed from toll revenues identified in paragraph (33) of subdivision (c) of Section 30914.

(e) The TransLink Consortium, per the TransLink Interagency Participation Agreement, shall by July 1, 2007, develop a plan for an integrated fare program covering all regional rapid transit trips funded in full or in part by this section. "Regional rapid transit" means long-haul transit services that cross county lines, and operate mostly in dedicated rights-of-way, including freeway high-occupancy vehicle lanes, crossing a bridge, or on the bay. Interregional rail services, originating or terminating from outside the Bay Area, shall not be considered regional rapid transit. The purpose of the integrated fare program is to encourage greater use of the region's transit network by making it easier and less costly for transit riders whose regular commute involves multizonal travel and may involve the transfer between two or more transit agencies, including regional-to-regional and regional-to-local transfers. The integrated fare program shall include a zonal fare system for the sole purpose of creating a monthly zonal pass (monthly pass), allowing for unlimited or discounted fares for transit riders making a minimum number of monthly transit trips between two or more zones. The number of minimum trips shall be established by the plan. The integrated fare program shall not apply to fare structures that are not purchased on a monthly basis. For the purposes of these zonal fares, geographic zones shall be created in the Bay Area. To the extent practical, zone boundaries for overlapping systems shall be in the same places and shall correspond to the boundaries of the local transit service areas. A regional rapid transit zone may cover more than one local service area, or may subdivide an existing local service area. The monthly pass shall be created in at least the following two forms:

(1) For the use of interzonal regional rapid transit trips without local transit discounts.

(2) For the use of interzonal regional rapid transit trips with local transit discounts. The plan may recommend the elimination of existing transit pass arrangements to simplify the marketing of the monthly pass. The integrated fare program shall establish a monitoring program to evaluate the impact of the integrated fare program on the operating finances of the participating agencies. The integrated fare program shall be adjusted as necessary to ensure that the program does not jeopardize the viability of local or regional rapid transit routes impacted by the program, and to the extent feasible, provide an equitable revenue-sharing arrangement among the participating agencies. This subdivision shall only be effective if the voters approve the toll increase as set forth in Section 30921, and any expenditures related to the implementation of this subdivision incurred by the TransLink Consortium shall be reimbursed by toll revenues designated in paragraph (34) of subdivision (c) of Section 30914.

(f) The Metropolitan Transportation Commission (MTC) shall, by July 1, 2007, adopt a Bay Area Regional Rail Plan (plan) for the development of passenger rail services in the San Francisco Bay Area over the short, medium, and long term. The plan shall formulate strategies to integrate passenger rail systems, improve interfaces with connecting services, expand the regional rapid transit network, and coordinate investments with transit-supportive land use. The plan shall be governed by a steering committee consisting of appointees from the Department of Transportation (Caltrans), the San Francisco Bay Area Rapid Transit District (BART), Caltrain, the National Railroad Passenger Corporation (Amtrak), the Capitol Corridor Joint Powers Authority, the Altamont Commuter Express, the High-Speed Rail Authority, the Metropolitan Transportation Commission (MTC), the Sonoma-Marín Area Rail Transit District (SMART), the Santa Clara Valley Transportation Authority, the Solano Transportation Authority, and the owners of standard gauge rail. Congestion management agencies and other agencies as determined by the steering committee shall be invited as nonvoting members. Under policy guidance from the steering committee and with input from Bay Area transit agencies, Caltrain, and BART shall provide day-to-day management and technical support for the development of this plan. The plan proposals shall be evaluated using performance criteria, including, but not limited to, transit-supportive land use and access, ridership, cost-effectiveness, regional network connectivity, and capital and operating financial stability. Additional performance criteria shall be developed as necessary. The plan shall include, but not be limited to, all of the following:

(1) Identification of issues in connectivity, access, capacity, operations and cost-effectiveness.

(2) Identification of opportunities to enhance rail connectivity and to maximize passenger convenience when transferring between systems.

(3) Recommendation of improvements to the interface with shuttles, buses, other rail systems, and other feeder modes.

(4) Identification of potential impacts on capacity constraints and operations on existing passenger and freight carriers.

(5) Identification of bottlenecks where added capacity could cost-effectively increase performance.

(6) Recommendation of potential efficiency improvements through economies of scale, such as through joint vehicle procurement and maintenance facilities.

(7) Recommendation of strategies to acquire right-of-way and station property to preserve future service options.

(8) Identification of potential capital and operating funding sources for proposed actions.

(9) Identification of locations where the presence of passenger rail could stimulate redevelopment and thereby direct growth to the urban core.

(10) Recommendation of technology appropriate service expansion in specific corridors. Technologies to be considered include conventional rail transit modes, bus rapid transit, and emerging rail technologies. Identify phasing strategies for the implementation of rail services where appropriate.

(11) Examination of how recommendations would integrate with proposed high-speed rail to the Central Valley and southern California. Up to two million five hundred thousand dollars (\$2,500,000) of the funds described in paragraph (33) of subdivision (c) of Section 30914 may be expended by the Metropolitan Transportation Commission and the High-Speed Rail Authority to study Bay Area access to the high-speed rail system. Up to five hundred thousand dollars (\$500,000) of the funds described in paragraph (33) of subdivision (c) of Section 30914 may be expended by the Metropolitan Transportation Commission and the High-Speed Rail Authority to study the feasibility and construction of an intermodal transfer hub at Niles (Shinn Street) Junction. The Metropolitan Transportation Commission and the High-Speed Rail Authority, or its successor, shall collaborate with a steering committee in conducting these studies.

(12) Recommendation of a governance strategy to implement and operate future regional rapid transit services.

This subdivision shall only be effective if the voters approve the toll increase as set forth in Section 30921. Any expenditures incurred by the Metropolitan Transportation Commission or the project sponsors identified in paragraph (33) of subdivision (c) of Section 30914 related

to the requirements of this subdivision, including any study and administration, shall be appropriate charges against toll revenue to be reimbursed from toll revenues.

CHAPTER 523

An act to add Section 14105.485 to the Welfare and Institutions Code, relating to Medi-Cal.

[Approved by Governor October 5, 2005. Filed with
Secretary of State October 5, 2005.]

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

SECTION 1. Section 14105.485 is added to the Welfare and Institutions Code, to read:

14105.485. (a) Commencing July 1, 2006, any provider of custom rehabilitation equipment and custom rehabilitation technology services to a Medi-Cal beneficiary shall have on staff, either as an employee or independent contractor, or have a contractual relationship with, a qualified rehabilitation professional who was directly involved in determining the specific custom rehabilitation equipment needs of the patient and was directly involved with, or closely supervised, the final fitting and delivery of the custom rehabilitation equipment.

(b) Commencing January 1, 2006, a medical provider shall conduct a physical examination of an individual before prescribing a motorized wheelchair or scooter for a Medi-Cal beneficiary. The medical provider shall complete a certificate of medical necessity, developed by the department, that documents the medical condition that necessitates the motorized wheelchair or scooter, and verifies that the patient is capable of using the wheelchair or scooter safely.

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

(1) "Custom rehabilitation equipment" means any item, piece of equipment, or product system, whether modified or customized, that is used to increase, maintain, or improve functional capabilities with respect to mobility and reduce anatomical degradation and complications of individuals with disabilities. Custom rehabilitation equipment includes, but is not limited to, nonstandard manual wheelchairs, power wheelchairs and seating systems, power scooters that are specially configured, ordered, and measured based on patient height, weight, and disability, specialized wheelchair electronics and cushions, custom bath equipment, standers, gait trainers, and specialized strollers.

(2) “Custom rehabilitation technology services” means the application of enabling technology systems designed and assembled to meet the needs of a specific person experiencing any permanent or long-term loss or abnormality of physical or anatomical structure or function with respect to mobility. These services include, but are not limited to, the evaluation of the needs of a patient with a disability, including an assessment of the patient for the purpose of ensuring that the proposed equipment is appropriate, the documentation of medical necessity, the selection, fit, customization, maintenance, assembly, repair, replacement, pick up and delivery, and testing of equipment and parts, and the training of an assistant caregiver and of a patient who will use the equipment or individuals who will assist the client in using the equipment.

(3) “Qualified rehabilitation professional” means an individual to whom any one of the following applies:

(A) The individual is a physical therapist licensed pursuant to the Business and Professions Code, occupational therapist licensed pursuant to the Business and Professions Code, or other qualified health care professional approved by the department.

(B) The individual is a registered member in good standing of the National Registry of Rehabilitation Technology Suppliers (NRRTS), or other credentialing organization recognized by the department.

(C) The individual has successfully passed one of the following credentialing examinations administered by the Rehabilitation Engineering and Assistive Technology Society of North America (RESNA):

- (i) The Assistive Technology Supplier examination.
- (ii) The Assistive Technology Practitioner examination.
- (iii) The Rehabilitation Engineering Technologist examination.

CHAPTER 524

An act to add Section 5008.2 to the Penal Code, relating to hepatitis C.

[Approved by Governor October 5, 2005. Filed with
Secretary of State October 5, 2005.]

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

SECTION 1. Section 5008.2 is added to the Penal Code, to read:
5008.2. (a) During the intake medical examination or intake health screening, or while providing general information during intake, the

department shall provide all inmates with information on hepatitis C, including, but not limited to, methods of hepatitis C transmission and prevention, and information on opportunities for screening and treatment while incarcerated. This subdivision shall be implemented only to the extent that brochures, other printed information, or other media is provided at no charge to the department by public health agencies or any other organization promoting hepatitis C education.

(b) The department shall also provide hepatitis C screening to all inmates who request it, and offer it to inmates that have a history of intravenous drug use or other risk factors for hepatitis C. This testing shall be confidential. The medical copayment authorized in Section 5007.5 shall not be charged for hepatitis C testing, treatment, or any followup testing.

CHAPTER 525

An act to amend Sections 19160, 19161, 19162, 19163, 19163.5, 19165, and 19166 of the Health and Safety Code, relating to building standards.

[Approved by Governor October 5, 2005. Filed with
Secretary of State October 5, 2005.]

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

SECTION 1. Section 19160 of the Health and Safety Code is amended to read:

19160. The Legislature finds and declares that:

(a) Because of the generally acknowledged fact that California will experience moderate to severe earthquakes in the foreseeable future, increased efforts to reduce earthquake hazards should be encouraged and supported.

(b) Tens of thousands of buildings subject to severe earthquake hazards continue to be a serious danger to the life and safety of hundreds of thousands of Californians who live and work in them in the event of an earthquake.

(c) Improvement of safety to life is the primary goal of building reconstruction to reduce earthquake hazards.

(d) In order to make building reconstruction economically feasible for, and to provide improvement of the safety of life in, seismically hazardous buildings, building standards enacted by local government

for building reconstruction may differ from building standards which govern new building construction.

(e) "Soft story" residential buildings are a subset of multistory woodframe structures that may have inadequately braced lower stories that may not be able to resist earthquake motion.

(f) Soft story residential buildings are an important component of the state's housing stock and are in jeopardy of being lost in the event of a major earthquake.

(g) Soft story residential buildings were responsible for 7,700 of the 16,000 housing units rendered uninhabitable by the Loma Prieta earthquake and over 34,000 of the housing units rendered uninhabitable by the Northridge earthquake.

(h) During an earthquake, soft story residential buildings may create dangerous conditions as illustrated in the Northridge Meadows apartment failure that claimed the lives of 16 residents.

(i) The collapse of soft story residential buildings can ignite fires that threaten trapped occupants and neighboring buildings and complicates emergency response.

(j) The Association of Bay Area Governments (ABAG) estimates that soft story residential buildings will be responsible for 66 percent of the uninhabitable housing following an event on the Hayward fault.

(k) The failure of soft story residential buildings is estimated by ABAG to be the source of a disproportionate share of the public shelter population because they tend to be occupied by the very poor, the very old, and the very young.

(l) The Seismic Safety Commission has recommended that legislation be enacted to require state and local building code enforcement agencies to identify potentially hazardous buildings and to adopt mandatory mitigation programs that will significantly reduce unacceptable hazards in buildings by 2020.

(m) The current nationally recognized model code relating to the retrofit of existing buildings is Appendix Chapter A4 of the International Existing Building Code. However, it is not the intent of the Legislature, if other model codes relating to the retrofit of existing buildings are developed, to limit the California Building Standards Commission or a local government, pursuant to Section 19162, to adopting a particular model code.

(n) Therefore, it is the intent of the Legislature to encourage cities and counties to address the seismic safety of soft story residential buildings and encourage local governments to initiate efforts to reduce the seismic risk in vulnerable soft story residential buildings.

SEC. 2. Section 19161 of the Health and Safety Code is amended to read:

19161. (a) Each city, city and county, or county, may assess the earthquake hazard in its jurisdiction and identify buildings subject to its jurisdiction as being potentially hazardous to life in the event of an earthquake. Potentially hazardous buildings include the following:

(1) Unreinforced masonry buildings constructed prior to the adoption of local building codes requiring earthquake resistant design of buildings, are constructed of unreinforced masonry wall construction, and exhibit any of the following characteristics:

- (A) Exterior parapets or ornamentation that may fall.
- (B) Exterior walls that are not anchored to the floors or roof.
- (C) Lacks an effective system to resist seismic forces.

(2) Woodframe, multiunit residential buildings constructed before January 1, 1978, where the ground floor portion of the structure contains parking or other similar open floor space that causes soft, weak, or open-front wall lines, as provided in a nationally recognized model code relating to the retrofit of existing buildings or substantially equivalent standards.

(b) Structural evaluations made pursuant to this section shall be made by an architect as defined in Section 5500 of the Business and Professions Code, or a civil or structural engineer registered pursuant to the provisions of Chapter 7 (commencing with Section 6700) of Division 3 of the Business and Professions Code, or staff of the enforcing agency, as described in Section 17960, supervised by an architect or civil or structural engineer authorized by this subdivision to make the structural evaluations.

SEC. 3. Section 19162 of the Health and Safety Code is amended to read:

19162. (a) Notwithstanding the provisions of Section 19100 or 19150 or any other provision of law, the governing body of any city, city and county, or county may, by ordinance, establish building seismic retrofit standards applicable to the seismic retrofit of any buildings identified pursuant to paragraph (1) of subdivision (a) of Section 19161 by the city, city and county, or county as being potentially hazardous to life in the event of an earthquake.

(b) (1) Notwithstanding the provisions of Section 19100, 19150, or any other provision of law, the governing body of any city, city and county, or county may, by ordinance, establish building seismic retrofit standards applicable to the seismic retrofit of any buildings identified pursuant to paragraph (2) of subdivision (a) of Section 19161 by the city, city and county, or county as being potentially hazardous to life in the event of an earthquake. Any standards established pursuant to this section shall apply until the effective date of building standards adopted by the California Building Standards Commission relating to the retrofit

of existing buildings, if any, at which time the standards adopted by the commission as amended by the city, county, or city and county pursuant to Section 17958.5 shall apply.

(2) A local ordinance establishing building seismic retrofit standards applicable to soft story residential structures adopted before January 1, 2006, shall remain in full force and effect until the effective date of building standards adopted by the California Building Standards Commission relating to the retrofit of existing buildings unless the city, county, or city and county after January 1, 2006, adopts an ordinance pursuant to paragraph (1).

(c) Building seismic retrofit standards adopted pursuant to this section may be applied uniformly throughout the city, city and county, or county, or may be applied in specific areas designated by the city, city and county, or county.

(d) For purposes of this chapter, "seismic retrofit" means either structural strengthening or providing the means necessary to modify the seismic response that would otherwise be expected by an existing building during an earthquake, to significantly reduce hazards to life and safety while also providing for the substantial safe ingress and egress of the building occupants immediately after an earthquake.

SEC. 4. Section 19163 of the Health and Safety Code is amended to read:

19163. Any local ordinance adopted pursuant to Section 19162 shall require the following:

(a) Any seismic retrofit of any building identified pursuant to paragraph (1) of subdivision (a) of Section 19161 as being hazardous to life in the event of an earthquake shall provide for the reasonable adequacy of all of the following:

(1) Unreinforced masonry walls to resist normal and inplane seismic forces.

(2) The anchorage and stability of exterior parapets and ornamentation.

(3) The anchorage of unreinforced masonry walls to the floors and roof.

(4) Floor and roof diaphragms.

(5) The development of a complete bracing system to resist earthquake forces.

(b) Any seismic retrofit of any building identified pursuant to paragraph (2) of subdivision (a) of Section 19161 as potentially hazardous shall comply with a nationally recognized model code relating to the retrofit of existing buildings or substantially equivalent standards. If the city, county, or city and county adopts local amendments to those provisions, it shall determine that the amendments are consistent with Section 17958.5.

(c) Seismic retrofit of any building or portions of any building shall be designed to resist and withstand the seismic forces from any direction as set forth in the building seismic retrofit standards using the allowable working stresses adopted pursuant to this article.

(d) The governing board of any city, city and county, or county may establish, by ordinance, standards and procedures to fulfill the intent of paragraph (2) of subdivision (a) without regard to the remainder of the requirements specified above.

SEC. 5. Section 19163.5 of the Health and Safety Code is amended to read:

19163.5. Except as otherwise provided in Chapter 1 (commencing with Section 15000) of Division 12.5, an ordinance adopted by a city, city and county, or county pursuant to Section 19163, may establish higher standards for the seismic retrofit of those structures or buildings which are needed for emergency purposes after an earthquake in order to preserve the peace, health, and safety of the general public, including, but not limited to, hospitals and other medical facilities having surgery or emergency treatment areas, fire and police stations, government disaster operations centers, and public utility and communication buildings deemed vital in emergencies.

SEC. 6. Section 19165 of the Health and Safety Code is amended to read:

19165. Any city, city and county, or county adopting an ordinance establishing seismically hazardous building seismic retrofit standards shall file for informational purposes with the Department of Housing and Community Development a copy of those standards and all subsequent amendments.

SEC. 7. Section 19166 of the Health and Safety Code is amended to read:

19166. Any building identified as being a seismic hazard to life and retrofitted in compliance with building seismic retrofit standards adopted pursuant to this article and properly maintained, shall not, within a period of 15 years, be identified as a seismic hazard to life pursuant to any local building standards adopted after the date of the building seismic retrofit unless the building no longer meets the seismically hazardous building retrofit standards under which it was retrofitted.

CHAPTER 526

An act to amend Section 1366.24 of, and to add Sections 1389.25 and 1389.3 to, the Health and Safety Code, to amend Section 10128.54 of,

to add Sections 10113.9 and 10113.95 to, the Insurance Code, and to amend Section 2800.2 of the Labor Code, relating to health care coverage.

[Approved by Governor October 5, 2005. Filed with
Secretary of State October 5, 2005.]

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

SECTION 1. (a) The Legislature finds and declares the following:

(1) Private individual health coverage is generally the only option for most individuals who do not have employment-based health coverage or who are not eligible for government-sponsored health coverage programs.

(2) Individuals seeking to purchase individual coverage face a complex marketplace. It can be difficult to assess the coverage options and products available and to obtain coverage, especially for people who are in less than perfect health. Access to individual coverage and the cost of coverage are dependent on a person's health status, age, place of residence, and other factors.

(3) The complexity of the individual health insurance market means that individuals who are seeking and trying to maintain coverage need good information about what they can expect in terms of coverage and rates.

(4) Most consumers generally do not know all of the health conditions or risk factors that carriers use in making coverage decisions for individuals. This information could help consumers make more informed choices about their health coverage.

(5) If an individual is denied coverage, or charged a rate that is higher than the standard rate, he or she has a right to know the reasons and to have the opportunity to verify, and potentially to supplement if inaccurate, any health status, health history, medical information, or any other information that may have led to the denial or higher rate.

(b) It is the intent of the Legislature to improve the information and guidance available to consumers about individual health care coverage, including those purchasing or attempting to purchase individual health care coverage.

SEC. 2. Section 1366.24 of the Health and Safety Code is amended to read:

1366.24. (a) Every health care service plan evidence of coverage, provided for group benefit plans subject to this article, that is issued, amended, or renewed on or after January 1, 1999, shall disclose to covered employees of group benefit plans subject to this article the ability to continue coverage pursuant to this article, as required by this section.

(b) This disclosure shall state that all enrollees who are eligible to be qualified beneficiaries, as defined in subdivision (c) of Section 1366.21, shall be required, as a condition of receiving benefits pursuant to this article, to notify, in writing, the health care service plan, or the employer if the employer contracts to perform the administrative services as provided for in Section 1366.25, of all qualifying events as specified in paragraphs (1), (3), (4), and (5) of subdivision (d) of Section 1366.21 within 60 days of the date of the qualifying event. This disclosure shall inform enrollees that failure to make the notification to the health care service plan, or to the employer when under contract to provide the administrative services, within the required 60 days will disqualify the qualified beneficiary from receiving continuation coverage pursuant to this article. The disclosure shall further state that a qualified beneficiary who wishes to continue coverage under the group benefit plan pursuant to this article must request the continuation in writing and deliver the written request, by first-class mail, or other reliable means of delivery, including personal delivery, express mail, or private courier company, to the health care service plan, or to the employer if the plan has contracted with the employer for administrative services pursuant to subdivision (d) of Section 1366.25, within the 60-day period following the later of (1) the date that the enrollee's coverage under the group benefit plan terminated or will terminate by reason of a qualifying event, or (2) the date the enrollee was sent notice pursuant to subdivision (e) of Section 1366.25 of the ability to continue coverage under the group benefit plan. The disclosure required by this section shall also state that a qualified beneficiary electing continuation shall pay to the health care service plan, in accordance with the terms and conditions of the plan contract, which shall be set forth in the notice to the qualified beneficiary pursuant to subdivision (d) of Section 1366.25, the amount of the required premium payment, as set forth in Section 1366.26. The disclosure shall further require that the qualified beneficiary's first premium payment required to establish premium payment be delivered by first-class mail, certified mail, or other reliable means of delivery, including personal delivery, express mail, or private courier company, to the health care service plan, or to the employer if the employer has contracted with the plan to perform the administrative services pursuant to subdivision (d) of Section 1366.25, within 45 days of the date the qualified beneficiary provided written notice to the health care service plan or the employer, if the employer has contracted to perform the administrative services, of the election to continue coverage in order for coverage to be continued under this article. This disclosure shall also state that the first premium payment must equal an amount sufficient to pay any required premiums and all premiums due, and that failure to submit the correct premium

amount within the 45-day period will disqualify the qualified beneficiary from receiving continuation coverage pursuant to this article.

(c) The disclosure required by this section shall also describe separately how qualified beneficiaries whose continuation coverage terminates under a prior group benefit plan pursuant to subdivision (b) of Section 1366.27 may continue their coverage for the balance of the period that the qualified beneficiary would have remained covered under the prior group benefit plan, including the requirements for election and payment. The disclosure shall clearly state that continuation coverage shall terminate if the qualified beneficiary fails to comply with the requirements pertaining to enrollment in, and payment of premiums to, the new group benefit plan within 30 days of receiving notice of the termination of the prior group benefit plan.

(d) Prior to August 1, 1998, every health care service plan shall provide to all covered employees of employers subject to this article a written notice containing the disclosures required by this section, or shall provide to all covered employees of employers subject to this section a new or amended evidence of coverage that includes the disclosures required by this section. Any specialized health care service plan that, in the ordinary course of business, maintains only the addresses of employer group purchasers of benefits and does not maintain addresses of covered employees, may comply with the notice requirements of this section through the provision of the notices to its employer group purchasers of benefits.

(e) Every plan disclosure form issued, amended, or renewed on and after January 1, 1999, for a group benefit plan subject to this article shall provide a notice that, under state law, an enrollee may be entitled to continuation of group coverage and that additional information regarding eligibility for this coverage may be found in the plan's evidence of coverage.

(f) Every disclosure issued, amended, or renewed on and after July 1, 2006, for a group benefit plan subject to this article shall include the following notice:

"Please examine your options carefully before declining this coverage. You should be aware that companies selling individual health insurance typically require a review of your medical history that could result in a higher premium or you could be denied coverage entirely."

SEC. 3. Section 1389.25 is added to the Health and Safety Code, to read:

1389.25. (a) (1) This section shall apply only to a full service health care service plan offering health coverage in the individual market in California and shall not apply to a specialized health care service plan, a health care service plan contract in the Medi-Cal program (Chapter 7

(commencing with Section 14000) of Part 3 of Division 9 of the Welfare and Institutions Code), a health care service plan conversion contract offered pursuant to Section 1373.6, a health care service plan contract in the Healthy Families Program (Part 6.2 (commencing with Section 12693) of Division 2 of the Insurance Code), or a health care service plan contract offered to a federally eligible defined individual under Article 4.6 (commencing with Section 1366.35).

(2) A local initiative, as defined in subdivision (v) of Section 53810 of Title 22 of the California Code of Regulations, that is awarded a contract by the State Department of Health Services pursuant to subdivision (b) of Section 53800 of Title 22 of the California Code of Regulations, shall not be subject to this section unless the plan offers coverage in the individual market to persons not covered by Medi-Cal or the Healthy Families Program.

(b) (1) A health care service plan that declines to offer coverage or denies enrollment for an individual or his or her dependents applying for individual coverage or that offers individual coverage at a rate that is higher than the standard rate, shall provide the individual applicant with the specific reason or reasons for the decision in writing at the time of the denial or offer of coverage.

(2) No change in the premium rate or coverage for an individual plan contract shall become effective unless the plan has delivered a written notice of the change at least 30 days prior to the effective date of the contract renewal or the date on which the rate or coverage changes. A notice of an increase in the premium rate shall include the reasons for the rate increase.

(3) The written notice required pursuant to paragraph (2) shall be delivered to the individual contractholder at his or her last address known to the plan, at least 30 days prior to the effective date of the change. The notice shall state in italics either the actual dollar amount of the premium rate increase or the specific percentage by which the current premium will be increased. The notice shall describe in plain, understandable English any changes in the plan design or any changes in benefits, including a reduction in benefits or changes to waivers, exclusions, or conditions, and highlight this information by printing it in italics. The notice shall specify in a minimum of 10-point bold typeface, the reason for a premium rate change or a change to the plan design or benefits.

(4) If a plan rejects an applicant or the dependents of an applicant for coverage or offers individual coverage at a rate that is higher than the standard rate, the plan shall inform the applicant about the state's high-risk health insurance pool, the California Major Risk Medical Insurance Program (Part 6.5 (commencing with Section 12700) of Division 2 of the Insurance Code). The information provided to the

applicant by the plan shall specifically include the program's toll-free telephone number and its Internet Web site address. The requirement to notify applicants of the availability of the California Major Risk Medical Insurance Program shall not apply when a health plan rejects an applicant for Medicare supplement coverage.

(c) A notice provided pursuant to this section is a private and confidential communication and at the time of application, the plan shall give the individual applicant the opportunity to designate the address for receipt of the written notice in order to protect the confidentiality of any personal or privileged information.

SEC. 4. Section 1389.3 is added to the Health and Safety Code, to read:

1389.3. (a) A full service health care service plan that markets and sells individual health plan contracts shall be subject to this section.

(b) A health care service plan subject to this section shall have written policies, procedures, or underwriting guidelines establishing the criteria and process whereby the plan makes its decision to provide or to deny coverage to individuals applying for coverage and sets the rate for that coverage. These guidelines, policies, or procedures shall assure that the plan rating and underwriting criteria comply with Sections 1365.5 and 1389.1 and all other applicable provisions of state and federal law.

(c) On or before June 1, 2006, and annually thereafter, every health care service plan shall file with the department a general description of the criteria, policies, procedures, or guidelines the plan uses for rating and underwriting decisions related to individual health plan contracts, which means automatic declinable health conditions, health conditions that may lead to a coverage decline, height and weight standards, health history, health care utilization, lifestyle, or behavior that might result in a decline for coverage or severely limit the plan products for which they would be eligible. A plan may comply with this section by submitting to the department underwriting materials or resource guides provided to plan solicitors or solicitor firms, provided that those materials include the information required to be submitted by this section.

(d) Commencing September 1, 2006, the director shall post on the department's Web site, in a manner accessible and understandable to consumers, general, noncompany specific information about rating and underwriting criteria and practices in the individual market and information about the Major Risk Medical Insurance Program. The director shall develop the information for the Web site in consultation with the Department of Insurance to enhance the consistency of information provided to consumers. Information about individual health coverage shall also include the following notification:

“Please examine your options carefully before declining group coverage or continuation coverage, such as COBRA, that may be available to you. You should be aware that companies selling individual health insurance typically require a review of your medical history that could result in a higher premium or you could be denied coverage entirely.”

(e) Nothing in this section shall authorize public disclosure of company-specific rating and underwriting criteria and practices submitted to the director.

SEC. 5. Section 10113.9 is added to the Insurance Code, to read:

10113.9. (a) This section shall not apply to short-term limited duration health insurance, vision-only, dental-only, or Champus-supplement insurance, or to hospital indemnity, hospital-only, accident-only, or specified disease insurance that does not pay benefits on a fixed benefit, cash payment only basis.

(b) No change in the premium rate or coverage for an individual health insurance policy shall become effective unless the insurer has delivered a written notice of the change at least 30 days prior to the effective date of the contract renewal or the date on which the rate or coverage changes. A notice of an increase in the premium rate shall include the reasons for the rate increase.

(c) The written notice required pursuant to subdivision (b) shall be delivered to the individual policyholder at his or her last address known to the insurer, at least 30 days prior to the effective date of the change. The notice shall state in italics either the actual dollar amount of the premium increase or the specific percentage by which the current premium will be increased. The notice shall describe in plain, understandable English any changes in the policy or any changes in benefits, including a reduction in benefits or changes to waivers, exclusions, or conditions, and highlight this information by printing it in italics. The notice shall specify in a minimum of 10-point bold typeface, the reason for a premium rate change or a change in coverage or benefits.

(d) If an insurer rejects an applicant or the dependents of an applicant for coverage or offers individual coverage at a rate that is higher than the standard rate, the insurer shall inform the applicant about the state's high-risk health insurance pool, the California Major Risk Medical Insurance Program (Part 6.5 (commencing with Section 12700)). The information provided to the applicant by the insurer shall specifically include the program's toll-free telephone number and its Internet Web site address. The requirement to notify applicants of the availability of the California Major Risk Medical Insurance Program shall not apply

when a health plan rejects an applicant for Medicare supplement coverage.

SEC. 6. Section 10113.95 is added to the Insurance Code, to read:

10113.95. (a) A health insurer that markets and sells individual health insurance policies shall be subject to this section.

(b) An insurer subject to this section shall have written policies, procedures, or underwriting guidelines establishing the criteria and process whereby the insurer makes its decision to provide or to deny coverage to individuals applying for coverage and sets the rate for that coverage. These guidelines, policies, or procedures shall assure that the plan rating and underwriting criteria comply with Sections 10140 and 10291.5 and all other applicable provisions.

(c) On or before June 1, 2006, and annually thereafter, every insurer shall file with the commissioner a general description of the criteria, policies, procedures, or guidelines that the insurer uses for rating and underwriting decisions related to individual health insurance policies, which means automatic declinable health conditions, health conditions that may lead to a coverage decline, height and weight standards, health history, health care utilization, lifestyle, or behavior that might result in a decline for coverage or severely limit the health insurance products for which they would be eligible. An insurer may comply with this section by submitting to the department underwriting materials or resource guides provided to agents and brokers, provided that those materials include the information required to be submitted by this section.

(d) Commencing September 1, 2006, the commissioner shall post on the department's Web site, in a manner accessible and understandable to consumers, general, noncompany specific information about rating and underwriting criteria and practices in the individual market and information about the Major Risk Medical Insurance Program. The commissioner shall develop the information for the Web site in consultation with the Department of Managed Health Care to enhance the consistency of information provided to consumers. Information about individual health insurance shall also include the following notification:

"Please examine your options carefully before declining group coverage or continuation coverage, such as COBRA, that may be available to you. You should be aware that companies selling individual health insurance typically require a review of your medical history that could result in a higher premium or you could be denied coverage entirely."

(e) Nothing in this section shall authorize public disclosure of company-specific rating and underwriting criteria and practices submitted to the commissioner.

SEC. 7. Section 10128.54 of the Insurance Code is amended to read:

10128.54. (a) Every insurer's evidence of coverage for group benefit plans subject to this article, that is issued, amended, or renewed on or after January 1, 1999, shall disclose to covered employees of group benefit plans subject to this article the ability to continue coverage pursuant to this article, as required by this section.

(b) This disclosure shall state that all insureds who are eligible to be qualified beneficiaries, as defined in subdivision (c) of Section 10128.51, shall be required, as a condition of receiving benefits pursuant to this article, to notify, in writing, the insurer, or the employer if the employer contracts to perform the administrative services as provided for in Section 10128.55, of all qualifying events as specified in paragraphs (1), (3), (4), and (5) of subdivision (d) of Section 10128.51 within 60 days of the date of the qualifying event. This disclosure shall inform insureds that failure to make the notification to the insurer, or to the employer when under contract to provide the administrative services, within the required 60 days will disqualify the qualified beneficiary from receiving continuation coverage pursuant to this article. The disclosure shall further state that a qualified beneficiary who wishes to continue coverage under the group benefit plan pursuant to this article must request the continuation in writing and deliver the written request, by first-class mail, or other reliable means of delivery, including personal delivery, express mail, or private courier company, to the disability insurer, or to the employer if the plan has contracted with the employer for administrative services pursuant to subdivision (d) of Section 10128.55, within the 60-day period following the later of (1) the date that the insured's coverage under the group benefit plan terminated or will terminate by reason of a qualifying event, or (2) the date the insured was sent notice pursuant to subdivision (e) of Section 10128.55 of the ability to continue coverage under the group benefit plan. The disclosure required by this section shall also state that a qualified beneficiary electing continuation shall pay to the disability insurer, in accordance with the terms and conditions of the policy or contract, which shall be set forth in the notice to the qualified beneficiary pursuant to subdivision (d) of Section 10128.55, the amount of the required premium payment, as set forth in Section 10128.56. The disclosure shall further require that the qualified beneficiary's first premium payment required to establish premium payment be delivered by first-class mail, certified mail, or other reliable means of delivery, including personal delivery, express mail, or private courier company, to the disability insurer, or to the employer if the employer has contracted with the insurer to perform the administrative services pursuant to subdivision (d) of Section 10128.55, within 45 days of the date the qualified beneficiary provided written notice to the insurer or the employer, if the employer has contracted to perform the

administrative services, of the election to continue coverage in order for coverage to be continued under this article. This disclosure shall also state that the first premium payment must equal an amount sufficient to pay all required premiums and all premiums due, and that failure to submit the correct premium amount within the 45-day period will disqualify the qualified beneficiary from receiving continuation coverage pursuant to this article.

(c) The disclosure required by this section shall also describe separately how qualified beneficiaries whose continuation coverage terminates under a prior group benefit plan pursuant to Section 10128.57 may continue their coverage for the balance of the period that the qualified beneficiary would have remained covered under the prior group benefit plan, including the requirements for election and payment. The disclosure shall clearly state that continuation coverage shall terminate if the qualified beneficiary fails to comply with the requirements pertaining to enrollment in, and payment of premiums to, the new group benefit plan within 30 days of receiving notice of the termination of the prior group benefit plan.

(d) Prior to August 1, 1998, every insurer shall provide to all covered employees of employers subject to this article written notice containing the disclosures required by this section, or shall provide to all covered employees of employers subject to this article a new or amended evidence of coverage that includes the disclosures required by this section. Any insurer that, in the ordinary course of business, maintains only the addresses of employer group purchasers of benefits, and does not maintain addresses of covered employees, may comply with the notice requirements of this section through the provision of the notices to its employer group purchases of benefits.

(e) Every disclosure form issued, amended, or renewed on and after January 1, 1999, for a group benefit plan subject to this article shall provide a notice that, under state law, an insured may be entitled to continuation of group coverage and that additional information regarding eligibility for this coverage may be found in the evidence of coverage.

(f) Every disclosure form issued, amended, or renewed on and after July 1, 2006, for a group benefit plan subject to this article shall include the following notice:

“Please examine your options carefully before declining this coverage. You should be aware that companies selling individual health insurance typically require a review of your medical history that could result in a higher premium or you could be denied coverage entirely.”

SEC. 8. Section 2800.2 of the Labor Code is amended to read:

2800.2. (a) Any employer, employee association, or other entity otherwise providing hospital, surgical, or major medical benefits to its

employees or members is solely responsible for notification of its employees or members of the conversion coverage made available pursuant to Part 6.1 (commencing with Section 12670) of Division 2 of the Insurance Code or Section 1373.6 of the Health and Safety Code.

(b) Any employer, employee association, or other entity, whether private or public, that provides hospital, medical, or surgical expense coverage that a former employee may continue under Section 4980B of Title 26 of the United States Code, Section 1161 et seq. of Title 29 of the United States Code, or 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 may be later amended (hereafter "COBRA"), shall, in conjunction with the notification required by COBRA that COBRA continuation coverage will cease and conversion coverage is available, and as a part of the notification required by subdivision (a), also notify the former employee, spouse, or former spouse of the availability of the continuation coverage under Section 1373.621 of the Health and Safety Code, and Sections 10116.5 and 11512.03 of the Insurance Code.

(c) On or after July 1, 2006, notification provided to employees, members, former employees, spouses, or former spouses under subdivisions (a) and (b) shall also include the following notification:

"Please examine your options carefully before declining this coverage. You should be aware that companies selling individual health insurance typically require a review of your medical history that could result in a higher premium or you could be denied coverage entirely."

SEC. 9. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

CHAPTER 527

An act to amend Section 22844 of the Government Code, relating to public employees' health benefits.

[Approved by Governor October 5, 2005. Filed with
Secretary of State October 5, 2005.]

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

SECTION 1. Section 22844 of the Government Code is amended to read:

22844. (a) 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.

(b) Employees, annuitants, and family members enrolled in a prescription drug plan under Part D of Medicare may not be enrolled in a board-approved health benefit plan. This subdivision does not apply to an individual enrolled in a board-approved Medicare Advantage health benefit plan offered under this part.

(c) 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.

CHAPTER 528

An act to add Section 19991.13 to the Government Code, relating to public employment.

[Approved by Governor October 5, 2005. Filed with
Secretary of State October 5, 2005.]

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

SECTION 1. Section 19991.13 is added to the Government Code, to read:

19991.13. (a) At the discretion of the appointing power, excluded employees as defined in subdivision (b) of Section 3527, may transfer eligible leave credits to an excluded employee when a catastrophic illness or injury occurs.

(b) For the purposes of this section, the following terms are defined as follows:

(1) Catastrophic illness or injury means an illness or injury that is expected to incapacitate the employee and that creates a financial hardship because the employee has exhausted all of his or her sick leave and other paid time off. Catastrophic illness or injury may also include an incapacitated family member if this results in the employee being required to take time off from work for an extended period of time to

care for the family member and the employee has exhausted all of his or her sick leave and other paid time off.

(2) Eligible leave credits include annual leave, vacation, compensating time off (CTO), and holiday leave credits, but do not include sick leave.

(c) Eligible leave credits may be donated for a catastrophic illness or injury if all of the following requirements are met:

(1) Upon the request of an employee.

(2) Upon determination by the department director that the employee in the department is unable to work due to the employee's or family member's catastrophic illness or injury.

(3) The employee has exhausted all paid leave credit.

(d) If catastrophic leave is approved by the department's director or his or her designee, any excluded employee, upon written notice, may donate eligible leave credits with a minimum donation of one hour. Donations thereafter must be in whole hour increments. Donations will be reflected as an hour-for-hour deduction from the leave balance of the donating employee. When transferring eligible leave credits, the state agency should ensure that only credits that may be needed are transferred. An excluded employee may donate eligible leave credits to a represented employee and may be the recipient of eligible leave credits donated by a represented employee.

(e) In order to receive donated leave credits, an excluded employee must provide appropriate verification of illness or injury as determined by the state agency. An excluded employee eligible for this program shall have any time that is donated credited to his or her account in one-hour increments. Donated credits shall be reflected as an hour-for-hour addition to the vacation or annual leave balance of the receiving employee. Use of donated credits may not exceed a maximum of 12 continuous months for any one catastrophic illness. The total amount of leave credits donated may not exceed an amount sufficient to ensure the continuance of regular compensation. All transfers of leave credits are irrevocable. An excluded employee who receives time through this program shall use any leave credits he or she continues to accrue on a monthly basis prior to receiving time from this program.

CHAPTER 529

An act to amend Sections 12015.3, 12015.5, 12240, and 12246 of, to repeal Section 12028 of, and to add and repeal Chapter 13.5 (commencing with Section 13350) of Division 5 of, the Business and Professions Code, relating to weights and measures.

[Approved by Governor October 5, 2005. Filed with
Secretary of State October 5, 2005.]

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

SECTION 1. Section 12015.3 of the Business and Professions Code is amended to read:

12015.3. (a) The sealer may levy a civil penalty against a person violating any provision of this division or a regulation adopted pursuant to any of these provisions, of not more than one thousand dollars (\$1,000) for each violation. It is a complete defense to a criminal prosecution for a violation of any provision of this division or a regulation adopted pursuant to any provision of this division that the defendant has been assessed and has paid a civil penalty under this section for the same act or acts constituting the violation. Any civil penalty under this section shall be cumulative to civil remedies or penalties imposed under any other law.

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

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

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

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

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

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

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

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

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

(8) Any person who does not request a hearing pursuant to subdivision (b) may not file an appeal pursuant to this subdivision.

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

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

(e) If the civil penalty is levied by the State Sealer, the revenues derived therefrom shall be deposited in the Department of Food and Agriculture Fund and, upon appropriation, shall be used by the State Sealer to carry out his or her responsibilities under this division. If the civil penalty is levied by the county sealer, the revenues shall be

deposited in the general fund of the county and, upon appropriation by the board of supervisors, shall be used by the county sealer to carry out his or her responsibilities under this division.

(f) This section does not apply to violations involving utility meters, or to violations involving the testing and inspection of utility meters, in mobilehome parks, recreational vehicle parks, or apartment complexes, where the owner of the park or complex owns and is responsible for the utility meters.

(g) Upon the written request of the Attorney General of California, any district attorney, or any city prosecutor or city attorney described in subdivision (a) of Section 17206, the State Sealer or the county sealer within their respective jurisdictions, shall provide all reports and records regarding any actions that occurred within the four months prior to the date of the written request in which civil penalties were levied pursuant to this section or liability for costs incurred are determined pursuant to Section 12015.5.

(h) No investigative costs shall be imposed pursuant to Section 12015.5 for violations for which civil penalties are imposed pursuant to this section.

SEC. 2. Section 12015.5 of the Business and Professions Code is amended to read:

12015.5. Any person convicted of violating any of the provisions of this division, or, except as provided in Section 12015.3, any person who is determined to be civilly liable for violating any of the provisions of this division, shall be liable for reasonable costs incurred in investigating the action.

SEC. 3. Section 12028 of the Business and Professions Code is repealed.

SEC. 4. Section 12240 of the Business and Professions Code is amended to read:

12240. (a) Except as otherwise provided in this section, the board of supervisors, by ordinance, may charge an annual registration fee, not to exceed the county's total cost of actually inspecting or testing the devices as required by law, to recover the costs of inspecting or testing weighing and measuring devices required of the county sealer pursuant to Section 12210, and to recover the cost of carrying out Section 12211.

(b) Except as otherwise provided in this section, the annual registration fee shall not exceed the amount set forth in subdivisions (f) to (n), inclusive.

(c) The county may collect the fees biennially, in which case they shall not exceed twice the amount of an annual registration fee. The ordinance shall be adopted pursuant to Article 7 (commencing with

Section 25120) of Chapter 1 of Part 2 of Division 2 of Title 2 of the Government Code.

(d) Retail gasoline pump meters, for which the above-fees are assessed, shall be inspected as frequently as required by regulation, but not less than once every two years.

(e) Livestock scales, animal scales and scales used primarily for weighing feed and seed, for which the above fees are assessed, shall be inspected as frequently as required by regulation.

(f) For purposes of this section, the annual registration fee for a business that uses a commercial weighing or measuring device or devices shall consist of a business location fee, and a device fee, as specified in subdivisions (g) to (n), inclusive. The business location fee and device fee shall not exceed the following:

(1) Beginning January 1, 2006, sixty dollars (\$60) per business location, plus 60 percent of the maximum applicable device fee listed in subdivisions (h) to (n), inclusive.

(2) Beginning January 1, 2007, eighty dollars (\$80) per business location, plus 80 percent of the maximum applicable device fee listed in subdivisions (h) to (n), inclusive.

(3) Beginning January 1, 2008, and thereafter, one hundred dollars (\$100) per business location, plus 100 percent of the maximum applicable device fee listed in subdivisions (h) to (n), inclusive.

(g) For marinas, mobilehome parks, recreational vehicle parks, and apartment complexes, where the owner of the marina, park, or complex owns and is responsible for the utility meters, the device fee shall not exceed two dollars (\$2) per device per space or apartment. Marinas, mobilehome parks, recreational vehicle parks, and apartment complexes for which the above fees are assessed shall be inspected and tested as frequently as required by regulation.

(h) For weighing devices, other than livestock, with capacities of 10,000 pounds or greater, the device fee shall not exceed two hundred fifty dollars (\$250) per device; for weighing devices, other than livestock scales, with capacities of at least 2,000 pounds but less than 10,000 pounds, the device fee shall not exceed one hundred fifty dollars (\$150) per device.

(i) This section does not apply to farm milk tanks.

(j) A scale or device used in a certified farmers' market, as defined by Section 113745 of the Health and Safety Code, is not required to be registered in the county where the market is conducted, if the scale or device has an unexpired seal for the current year, issued by a licensed California county sealer.

(k) For livestock scales with capacities of 10,000 pounds or greater, the device fee shall not exceed one hundred fifty dollars (\$150) per

device; for livestock scales with capacities of at least 2,000 pounds but less than 10,000 pounds, the device fee shall not exceed one hundred dollars (\$100) per device.

(l) For liquified petroleum gas (LPG) meters, truck mounted or stationary, the device fee shall not exceed one hundred seventy-five dollars (\$175) per device.

(m) For wholesale and vehicle meters, the device fee shall not exceed twenty-five dollars (\$25) per device.

(n) For all other commercial weighing or measuring devices not listed in subdivisions (g) to (m), inclusive, the device fee shall not exceed twenty dollars (\$20) per device. For the purposes of this subdivision, the total annual registration fee shall not exceed the sum of one thousand dollars (\$1,000), for each business location.

(o) For the purposes of this section, a single business location is defined as:

- (1) Each vehicle containing one or more commercial devices.
- (2) Each business location that uses different categories or types of commercial devices that require the use of specialized testing equipment and that necessitates not more than one inspection trip by a weights and measures official.

SEC. 5. Section 12246 of the Business and Professions Code is amended to read:

12246. This article 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. 6. Chapter 13.5 (commencing with Section 13350) is added to Division 5 of the Business and Professions Code, to read:

CHAPTER 13.5. POINT-OF-SALE SYSTEM PRICE ACCURACY VERIFICATION METHODOLOGIES

13350. (a) The board of supervisors of any county or city and county that has adopted or that adopts an ordinance for the purposes of determining the pricing accuracy of a retail establishment using a point-of-sale (POS) system, shall base the initial standard inspection of the POS system on the following criteria:

(1) The initial standard inspection shall be performed by collecting a random sample of items that shall include a maximum of 50 percent sale items from either:

- (i) One department of a retail store.
- (ii) Multiple areas of a retail store.
- (iii) The entire store.

(2) The initial standard inspection shall be performed by testing a minimum random sample of 25 items for a retail establishment with three or fewer POS checkout registers.

(3) The initial standard inspection shall be performed by testing a minimum random sample of 50 items for all other retail establishments.

(4) The sealer shall verify that the lowest advertised, posted, marked, displayed, or quoted price is the same as the price displayed or computed by the point-of-sale equipment or printed receipt. Only items computed at a higher price than the lowest advertised, posted, marked, displayed, or quoted price shall be considered not in compliance.

(5) The compliance rate percentage of a retail establishment shall be determined by dividing the number of items in compliance by the sample size multiplied by 100.

(b) Enforcement action may be taken for any item not in compliance.

(c) The sealer may reinspect any retail facility that has a compliance rate of less than 98 percent.

(d) The board of supervisors, by ordinance, may charge a point-of-sale system inspection fee or an annual registration fee, not to exceed the county's total cost of inspecting or testing the accuracy of prices accessed or generated by the system pursuant to this section.

(e) The board of supervisors, by ordinance, may charge a reinspection fee for reinspections of a retail establishment that fails a standard inspection, not to exceed the county's total cost of reinspecting or testing the accuracy of prices accessed or generated by the system pursuant to this section.

13351. For purposes of this chapter, "random sample" of items means that the selection process shall be modeled after the National Institute of Standards and Technology Handbook 130, 2005 Edition (HB 130) – Examination Procedures for Price Verification, randomized sample collection; stratified sample collection.

13352. For purposes of this chapter, "point-of-sale" system means any system used by a retail establishment such as, but not limited to, Universal Product Code (UPC) scanners, price-look-up codes, or an electronic price look-up system as a means for determining the price of the item being purchased by a consumer.

13353. For the purposes of this chapter, "sale items" include any item that is represented or advertised to be lower in price from that which the item is normally offered for sale. A "sale item" includes but is not limited to, an item that is represented as "promotional," "limited time offer," a "manager special," "discount taken at register," or displayed with any other advertisements that offers or suggests a reduced price.

13354. For purposes of this chapter, "area" means an "entire store," a "department," "grouping of shelves or displays," or other "section" of

a store as defined by the sealer from which samples are selected for verification. "Nonpublic" areas of a store, such as the area in a pharmacy in which controlled drugs are kept or product storage rooms, shall not be included.

13355. For the purposes of this chapter, "initial standard inspection" means an inspection made at the customary time interval used by an enforcement agency.

13356. All other inspections of the point-of-sale system are considered "special inspections," including, but not limited to, inspections pertaining to investigations, consumer complaints, complaints from competing businesses or a reinspection of a retail establishment at which one or more price accuracy violations have occurred within the previous three months.

13357. This chapter shall remain in effect only until January 1, 2009, and as of that date is repealed, unless a later enacted statute that is enacted before January 1, 2009, deletes or extends that date.

SEC. 7. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act, within the meaning of Section 17556 of the Government Code.

CHAPTER 530

An act to add Sections 56351.8 and 56351.9 to the Education Code, relating to public schools.

[Approved by Governor October 5, 2005. Filed with
Secretary of State October 5, 2005.]

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

SECTION 1. The Legislature finds and declares both of the following:
(a) The federal No Child Left Behind Act of 2001 is based on the idea that literacy is the foundation for learning for all pupils.

(b) Functionally blind pupils in California are at a disadvantage in mathematics performance due to the lack of braille mathematics standards in the state.

SEC. 2. Section 56351.8 is added to the Education Code, to read:

56351.8. (a) The Superintendent shall utilize the advisory task force established pursuant to Section 56351.7 to develop standards for pupils

described in subdivision (b) to learn, and to achieve mastery of, the braille mathematics code as they progress through kindergarten and grades 1 to 12, inclusive.

(b) The standards described in subdivision (a) shall be developed for pupils who, due to a visual impairment, are functionally blind or may be expected to have a need to learn the braille code as their primary literacy mode for learning.

(c) The task force shall, by March 1, 2006, report to the state board with the standards it develops pursuant to subdivision (a).

SEC. 3. Section 56351.9 is added to the Education Code, to read:

56351.9. (a) By June 1, 2006, the state board shall adopt braille reading and mathematics standards for pupils who, due to a visual impairment, are functionally blind or may be expected to have a need to learn the braille code as their primary literacy mode for learning.

(b) County offices of education, school districts, and special education local plan areas shall provide to pupils described in subdivision (a) opportunities for instruction to master the braille reading and mathematics standards described in subdivision (a).

CHAPTER 531

An act to amend Section 4970 of the Financial Code, and to amend Section 27388 of the Government Code, relating to loans.

[Approved by Governor October 5, 2005. Filed with
Secretary of State October 5, 2005.]

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

SECTION 1. Section 4970 of the Financial Code is amended to read: 4970. For purposes of this division:

(a) "Annual percentage rate" means the annual percentage rate for the loan calculated according to the provisions of the federal Truth in Lending Act and the regulations adopted thereunder by the Federal Reserve Board.

(b) "Covered loan" means a consumer loan in which the original principal balance of the loan does not exceed the most current conforming loan limit for a single-family first mortgage loan established by the Federal National Mortgage Association in the case of a mortgage or deed of trust, and where one of the following conditions are met:

(1) For a mortgage or deed of trust, the annual percentage rate at consummation of the transaction will exceed by more than eight

percentage points the yield on Treasury securities having comparable periods of maturity on the 15th day of the month immediately preceding the month in which the application for the extension of credit is received by the creditor.

(2) The total points and fees payable by the consumer at or before closing for a mortgage or deed of trust will exceed 6 percent of the total loan amount.

(c) "Points and fees" shall include the following:

(1) All items required to be disclosed as finance charges under Sections 226.4(a) and 226.4(b) of Title 12 of the Code of Federal Regulations, including the Official Staff Commentary, as amended from time to time, except interest.

(2) All compensation and fees paid to mortgage brokers in connection with the loan transaction.

(3) All items listed in Section 226.4(c)(7) of Title 12 of the Code of Federal Regulations, only if the person originating the covered loan receives direct compensation in connection with the charge.

(d) "Consumer loan" means a consumer credit transaction that is secured by real property located in this state used, or intended to be used or occupied, as the principal dwelling of the consumer that is improved by a one-to-four residential unit. "Consumer loan" does not include a reverse mortgage, an open line of credit as defined in Part 226 of Title 12 of the Code of Federal Regulations (Regulation Z), or a consumer credit transaction that is secured by rental property or second homes. "Consumer loan" does not include a bridge loan. For purposes of this division, a bridge loan is any temporary loan, having a maturity of one year or less, for the purpose of acquisition or construction of a dwelling intended to become the consumer's principal dwelling.

(e) "Original principal balance" means the total initial amount the consumer is obligated to repay on the loan.

(f) "Licensing agency" shall mean the Department of Real Estate for licensed real estate brokers, the Department of Corporations for licensed residential mortgage lenders and licensed finance lenders and brokers, and the Department of Financial Institutions for commercial and industrial banks and savings associations and credit unions organized in this state.

(g) "Licensed person" means a real estate broker licensed under the Real Estate Law (Part 1 (commencing with Section 10000) of Division 4 of the Business and Professions Code), a finance lender or broker licensed under the California Finance Lenders Law (Division 9 (commencing with Section 22000)), a residential mortgage lender licensed under the California Residential Mortgage Lending Act (Division 20 (commencing with Section 50000)), a commercial or industrial bank

organized under the Banking Law (Division 1 (commencing with Section 99)), a savings association organized under the Savings Association Law (Division 2 (commencing with Section 5000)), and a credit union organized under the California Credit Union Law (Division 5 (commencing with Section 14000)). Nothing in this division shall be construed to prevent any enforcement by a governmental entity against any person who originates a loan and who is exempt or excluded from licensure by all of the licensing agencies, based on a violation of any provision of this division. Nothing in this division shall be construed to prevent the Department of Real Estate from enforcing this division against a licensed salesperson employed by a licensed real estate broker as if that salesperson were a licensed person under this division. A licensed person includes any person engaged in the practice of consumer lending, as defined in this division, for which a license is required under any other provision of law, but whose license is invalid, suspended or revoked, or where no license has been obtained.

(h) "Originate" means to arrange, negotiate, or make a consumer loan.

(i) "Servicer" has the same meaning provided in Section 6 (i)(2) of the Real Estate Settlement Procedures Act of 1974.

SEC. 2. Section 27388 of the Government Code is amended to read:

27388. (a) In addition to any other recording fees specified in this code, upon the adoption of a resolution by the county board of supervisors, a fee of up to two dollars (\$2) shall be paid at the time of recording of every real estate instrument, paper, or notice required or permitted by law to be recorded within that county, except those expressly exempted from payment of recording fees. "Real estate instrument" is defined for the purpose of this section as a deed of trust, an assignment of deed of trust, a reconveyance, a request for notice, and a notice of default. "Real estate instrument" does not include any deed, instrument, or writing subject to the imposition of a documentary transfer tax as defined in Section 11911 of the Revenue and Taxation Code, nor any document required to facilitate the transfer subject to the documentary transfer tax. The fees, after deduction of any actual and necessary administrative costs incurred by the county in carrying out this section, shall be paid quarterly to the county auditor or director of finance, to be placed in the Real Estate Fraud Prosecution Trust Fund. The amount deducted for administrative costs shall not exceed 10 percent of the fees paid pursuant to this section.

(b) Money placed in the Real Estate Fraud Prosecution Trust Fund shall be expended to fund programs to enhance the capacity of local police and prosecutors to deter, investigate, and prosecute real estate fraud crimes. After deduction of the actual and necessary administrative costs referred to in subdivision (a), 60 percent of the funds shall be

distributed to district attorneys subject to review pursuant to subdivision (d), and 40 percent of the funds shall be distributed to local law enforcement agencies within the county in accordance with subdivision (c). In those counties where the investigation of real estate fraud is done exclusively by the district attorney, after deduction of the actual and necessary administrative costs referred to in subdivision (a), 100 percent of the funds shall be distributed to the district attorney, subject to review pursuant to subdivision (d). The funds so distributed shall be expended for the exclusive purpose of deterring, investigating, and prosecuting real estate fraud crimes.

(c) The county auditor or director of finance shall distribute funds in the Real Estate Fraud Prosecution Trust Fund to eligible law enforcement agencies within the county pursuant to subdivision (b), as determined by a Real Estate Fraud Prosecution Trust Fund Committee composed of the district attorney, the county chief administrative officer, the chief officer responsible for consumer protection within the county, and the chief law enforcement officer of one law enforcement agency receiving funding from the Real Estate Fraud Prosecution Trust Fund, the latter being selected by a majority of the other three members of the committee. The chief law enforcement officer shall be a nonvoting member of the committee and shall serve a one-year term, which may be renewed. Members may appoint representatives of their offices to serve on the committee. If a county lacks a chief officer responsible for consumer protection, the county board of supervisors may appoint an appropriate representative to serve on the committee. The committee shall establish and publish deadlines and written procedures for local law enforcement agencies within the county to apply for the use of funds and shall review applications and make determinations by majority vote as to the award of funds using the following criteria:

(1) Each law enforcement agency that seeks funds shall submit a written application to the committee setting forth in detail the agency's proposed use of the funds.

(2) In order to qualify for receipt of funds, each law enforcement agency submitting an application shall provide written evidence that the agency either:

(A) Has a unit, division, or section devoted to the investigation or prosecution of real estate fraud, or both, and the unit, division, or section has been in existence for at least one year prior to the application date.

(B) Has on a regular basis, during the three years immediately preceding the application date, accepted for investigation or prosecution, or both, and assigned to specific persons employed by the agency, cases of suspected real estate fraud, and actively investigated and prosecuted those cases.

(3) The committee's determination to award funds to a law enforcement agency shall be based on, but not be limited to, (A) the number of real estate fraud cases filed in the prior year; (B) the number of real estate fraud cases investigated in the prior year; (C) the number of victims involved in the cases filed; and (D) the total aggregated monetary loss suffered by victims, including individuals, associations, institutions, or corporations, as a result of the real estate fraud cases filed, and those under active investigation by that law enforcement agency.

(4) Each law enforcement agency that, pursuant to this section, has been awarded funds in the previous year, upon reapplication for funds to the committee in each successive year, in addition to any information the committee may require in paragraph (3), shall be required to submit a detailed accounting of funds received and expended in the prior year. The accounting shall include (A) the amount of funds received and expended; (B) the uses to which those funds were put, including payment of salaries and expenses, purchase of equipment and supplies, and other expenditures by type; (C) the number of filed complaints, investigations, arrests, and convictions that resulted from the expenditure of the funds; and (D) other relevant information the committee may reasonably require.

(d) The county board of supervisors shall annually review the effectiveness of the district attorney in deterring, investigating, and prosecuting real estate fraud crimes based upon information provided by the district attorney in an annual report submitted to the board and to the Legislative Analyst's Office, which shall compile the results and report to the Legislature, detailing both:

(1) Facts, based upon, but not limited to, (A) the number of real estate fraud cases filed in the prior year; (B) the number of real estate fraud cases investigated in the prior year; (C) the number of victims involved in the cases filed; (D) the number of convictions obtained in the prior year; and (E) the total aggregated monetary loss suffered by victims, including individuals, associations, institutions, corporations, and other relevant public entities, according to the number of cases filed, investigations, prosecutions, and convictions obtained.

(2) An accounting of funds received and expended in the prior year, which shall include (A) the amount of funds received and expended; (B) the uses to which those funds were put, including payment of salaries and expenses, purchase of equipment and supplies, and other expenditures by type; (C) the number of filed complaints, investigations, prosecutions, and convictions that resulted from the expenditure of funds; and (D) other relevant information provided at the discretion of the district attorney.

(e) The intent of the Legislature in enacting this section is to have an impact on real estate fraud involving the largest number of victims. To the extent possible, an emphasis should be placed on fraud against individuals whose residences are in danger of, or are in, foreclosure as defined under subdivision (b) of Section 1695.1 of the Civil Code. Case filing decisions continue to be in the discretion of the prosecutor.

(f) A district attorney's office or a local enforcement agency that has undertaken investigations and prosecutions that will continue into a subsequent program year may receive nonexpended funds from the previous fiscal year subsequent to the annual submission of information detailing the accounting of funds received and expended in the prior year.

(g) No money collected pursuant to this section shall be expended to offset a reduction in any other source of funds. Funds from the Real Estate Fraud Prosecution Trust Fund shall be used only in connection with criminal investigations or prosecutions involving recorded real estate documents.

CHAPTER 532

An act to amend Sections 1339.56 and 1339.59 of, to add Section 1339.585 to, and to repeal Section 1339.57 of, the Health and Safety Code, relating to the Payers' Bill of Rights.

[Approved by Governor October 5, 2005. Filed with
Secretary of State October 5, 2005.]

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

SECTION 1. Section 1339.56 of the Health and Safety Code is amended to read:

1339.56. (a) Each hospital shall compile a list of 25 common outpatient procedures and shall submit annually to the office a list of its average charges for those procedures, in a method determined by the office. The office may develop a uniform reporting form for the purposes of this subdivision and may require hospitals to file this completed form with the office. The office shall publish this information on its Internet Web site.

(b) The office shall establish a list of the 25 most commonly performed inpatient procedures in California hospitals, as grouped by Medicare diagnostic-related group. The office shall develop a list of each hospital's average charges for those procedures, if applicable, and shall update the

list at least annually. The office shall publish this information on its Internet Web site.

(c) Each hospital shall provide a copy of the lists described in subdivisions (a) and (b) to any person upon request.

SEC. 2. Section 1339.57 of the Health and Safety Code is repealed.

SEC. 3. Section 1339.585 is added to the Health and Safety Code, to read:

1339.585. Upon the request of a person without health coverage, a hospital shall provide the person with a written estimate of the amount the hospital will require the person to pay for the health care services, procedures, and supplies that are reasonably expected to be provided to the person by the hospital, based upon an average length of stay and services provided for the person's diagnosis. The hospital may provide this estimate during normal business office hours. In addition to the estimate, the hospital shall provide information about its financial assistance and charity care policies and contact information for a hospital employee or office from which the person may obtain further information about these policies. If requested, the hospital shall also provide the person with an application form for financial assistance or charity care. This section shall not apply to emergency services provided to a person pursuant to Section 1317.

SEC. 4. Section 1339.59 of the Health and Safety Code is amended to read:

1339.59. (a) A hospital shall be in violation of this article if it knowingly or negligently fails to comply with the requirements of this article.

(b) A hospital that does not file with the office the information required by this article may be liable for civil penalties as specified in Section 128770.

SEC. 5. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

CHAPTER 533

An act to amend Sections 19303, 19310, 19310.5, 19310.7, 19311, 19312, 19313.8, 19314, 19315, and 19316 of, and to add Sections

19305.5, 19313.1, and 19316.5 to, the Food and Agricultural Code, relating to kitchen grease.

[Approved by Governor October 5, 2005. Filed with
Secretary of State October 5, 2005.]

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

SECTION 1. Section 19303 of the Food and Agricultural Code is amended to read:

19303. In addition to any other records required to be kept pursuant to this chapter, every licensed renderer shall record and keep for 2 years, in connection with the receipt of kitchen grease which is not intended for human food, all of the following information:

(a) The name, address, and registration number of every transporter of inedible kitchen grease who has delivered that material to the renderer.

(b) The total amount of inedible kitchen grease purchased in each transaction.

(c) The date of each transaction.

SEC. 2. Section 19305.5 is added to the Food and Agricultural Code, to read:

19305.5. (a) The department may suspend or revoke a registration certificate at any time, if it finds any of the following has occurred:

(1) The licensee has sold or offered for sale to an unlicensed person, any inedible kitchen grease.

(2) The licensee has stolen, misappropriated, contaminated, or damaged inedible kitchen grease or containers thereof.

(3) The licensee has violated any provision of this article or any regulations adopted to implement this article.

(4) The licensee has taken possession of inedible kitchen grease from an unregistered transporter or has knowingly taken possession of inedible kitchen grease that has been stolen.

(b) (1) The licensee may appeal any suspension or revocation decision to the department.

(2) The department shall establish procedures for the appeals process, to include a noticed hearing.

(3) The department may reverse a suspension or revocation upon a finding of good cause to do so.

SEC. 3. Section 19310 of the Food and Agricultural Code is amended to read:

19310. (a) It is unlawful for any person or entity to engage in the transportation of inedible kitchen grease without being registered with

the department and without being in possession of a valid registration certificate issued by the department.

(b) Each registration shall expire on December 31st each year.

(c) (1) The department shall require, as a condition of registration, that the applicant demonstrate the ability to respond to damages resulting from the transportation of inedible kitchen grease.

(2) The damages to be covered include public liability, which shall include, but not be limited to, liability for personal injury and property damage.

(3) The ability to respond to damages shall be demonstrated by providing proof of a policy of insurance or surety bond for that purpose in an amount not less than two million dollars (\$2,000,000), except that the required amount shall be not less than one million dollars (\$1,000,000) if the applicant operates only one vehicle and the vehicle has a gross vehicle weight rating of not more than 10,000 pounds.

(4) This subdivision shall not preempt a local ordinance or rule that is more stringent than the provisions of this section.

SEC. 4. Section 19310.5 of the Food and Agricultural Code is amended to read:

19310.5. It is unlawful for any person who is not a registered transporter of inedible kitchen grease to transport that product from any place within this state to any place outside the borders of this state.

SEC. 5. Section 19310.7 of the Food and Agricultural Code is amended to read:

19310.7. Any person registered as a transporter of inedible kitchen grease may deliver any inedible kitchen grease to a licensed renderer or collection center for processing or recycling into usable products. As used in this section, "usable products" includes, but is not limited to, biofuels, lubricants, and animal feed, provided the uses for animal feed are permitted by the rules and regulations adopted by the United States Food and Drug Administration.

SEC. 6. Section 19311 of the Food and Agricultural Code is amended to read:

19311. Any renderer who operates vehicles for the purpose of collecting inedible kitchen grease shall register as a transporter of inedible kitchen grease and otherwise comply with this article.

SEC. 7. Section 19312 of the Food and Agricultural Code is amended to read:

19312. (a) Registration shall be made with the department and shall include all of the following:

- (1) The applicant's name and address.
- (2) A description of the operations to be performed by the applicant.
- (3) The vehicles to be used in the transportation.

- (4) A registration fee of one hundred dollars (\$100).
- (5) A list of the names of the drivers employed by the transporter who transport inedible kitchen grease subject to this article and their drivers' license numbers.
- (6) Any other information that may be required by the department.
- (b) Any renderer who registers pursuant to this article is not required to pay the fee prescribed in this section.
- (c) The department may refuse to issue an original or renewal registration certificate to any applicant for which the grounds specified in subdivisions (a) to (e), inclusive, of Section 19314 exist.
- (d) (1) The applicant may appeal the decision of the department to refuse to register the applicant.
- (2) The department shall establish procedures for the appeals process, to include a noticed hearing.
- (3) The department may reverse a decision to refuse to register the applicant, upon a finding of good cause to do so.

SEC. 8. Section 19313.1 is added to the Food and Agricultural Code, to read:

19313.1. In addition to any other records required to be kept pursuant to this chapter, every transporter of inedible kitchen grease shall record and maintain for two years all of the following:

- (a) The name and address of each location from which the transporter obtained the inedible kitchen grease.
- (b) The quantity of material received from each location.
- (c) The date on which the inedible kitchen grease was obtained from each location.

SEC. 9. Section 19313.8 of the Food and Agricultural Code is amended to read:

19313.8. No registered transporter or any other person shall take possession of inedible kitchen grease from an unregistered transporter or knowingly take possession of stolen inedible kitchen grease.

SEC. 10. Section 19314 of the Food and Agricultural Code is amended to read:

19314. The department may suspend or revoke a registration certificate, at any time, it finds any of the following has occurred:

- (a) The registrant has sold or offered for sale to an unlicensed person, any inedible kitchen grease.
- (b) The registrant has stolen, misappropriated, contaminated, or damaged inedible kitchen grease or containers thereof.
- (c) The registrant has violated any provision of this article or any regulations adopted to implement this article.

(d) The registrant has taken possession of inedible kitchen grease from an unregistered transporter or has knowingly taken possession of inedible kitchen grease that has been stolen.

(e) The registrant has been found to have engaged in, or aided and abetted another person or entity in the commission of, any violation of a statute, regulation, or order, relating to the transportation or disposal of inedible kitchen grease, including a violation of the federal Water Pollution Control Act (33 U.S.C. Sec. 1251 et seq.), the Porter-Cologne Water Quality Control Act (Chapter 1.5 (commencing with Section 13020) of Division 7 of the Water Code), Section 5650 of the Fish and Game Code, commercial vehicle weight limits, or commercial vehicle hours of service.

(f) For purposes of this section, "registrant" includes any business entity, trustee, officer, director, partner, person or other entity holding more than 5 percent equity, ownership, or debt liability in the registered entity engaged in the transportation of inedible kitchen grease.

(g) (1) The registrant may appeal the suspension or revocation decision of the department.

(2) The department shall establish procedures for the appeals process, to include a noticed hearing.

(3) The department may reverse a suspension or revocation upon a finding of good cause to do so.

SEC. 11. Section 19315 of the Food and Agricultural Code is amended to read:

19315. (a) In addition to the registration fee required by Section 19312, the department may charge an additional fee necessary to cover the costs of administering this article. Any additional fee charged pursuant to this section shall not exceed three hundred dollars (\$300) per year per vehicle that is operated to transport kitchen grease, and shall not exceed three thousand dollars (\$3,000) per year per registered transporter.

(b) The secretary shall fix the annual fee established pursuant to this section and may fix different fees for transporters of inedible kitchen grease and collection centers, and for transporters of interceptor grease. The secretary shall also fix the date the fee is due and the method of collecting the fee. If an additional fee is imposed on licensed renderers pursuant to subdivision (a) of Section 19227 and an additional fee is imposed on registered transporters pursuant to subdivision (a), only one additional fee may be imposed on a person or firm that is both licensed as a renderer pursuant to Article 6 (commencing with Section 19300) and registered as a transporter of inedible kitchen grease pursuant to this article, which fee shall be the higher of the two fees.

(c) If the fee established pursuant to this section is not paid within one calendar month of the date it is due, a penalty shall be imposed in the amount of 10 percent per annum on the amount of the unpaid fee.

(d) This section shall become inoperative on July 1, 2010, and, as of January 1, 2011, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 2011, deletes or extends the dates on which it becomes inoperative and is repealed.

(e) For the purposes of this section, “interceptor grease” means inedible kitchen grease that is principally derived from food preparation, processing, or waste, and that is removed from a grease trap or grease interceptor.

SEC. 12. Section 19316 of the Food and Agricultural Code is amended to read:

19316. It is the purpose of this article to prevent the sale and transfer of illegally obtained inedible kitchen grease, to protect the environment, to reduce blockages of public sewer systems, and to prevent the improper and illegal transportation and disposal of inedible kitchen grease.

SEC. 13. Section 19316.5 is added to the Food and Agricultural Code, to read:

19316.5. The department is authorized to establish a system for documenting and tracking the transportation of inedible kitchen grease in order to ensure the proper disposal or recycling of that material.

SEC. 14. 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 534

An act to amend Sections 1640, 1640.2, 1642, and 1724 of, to add Section 1640.3 to, and to repeal Section 1641 of, the Business and Professions Code, relating to dentistry.

[Approved by Governor October 5, 2005. Filed with
Secretary of State October 5, 2005.]

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

SECTION 1. Section 1640 of the Business and Professions Code is amended to read:

1640. Any person meeting all the following eligibility requirements may apply for a special permit:

(a) Furnishing satisfactory evidence of having a pending contract with a California dental college approved by the board as a full-time professor, an associate professor, or an assistant professor.

(b) Furnishing satisfactory evidence of having graduated from a dental college approved by the board.

(c) Furnishing satisfactory evidence of having been certified as a diplomate of a specialty board or, in lieu thereof, establishing his or her qualifications to take a specialty board examination or furnishing satisfactory evidence of having completed an advanced educational program in a discipline from a dental college approved by the board.

(d) Furnishing satisfactory evidence of successfully completing an examination in California law and ethics developed and administered by the board.

(e) Paying a fee for applications as provided by this chapter.

SEC. 2. Section 1640.2 of the Business and Professions Code is amended to read:

1640.2. (a) The board shall limit the number of special permits to practice in a discipline at a college to the number that may be properly administered and supervised by the board.

(b) The board shall allow a person who has held a special permit for at least the seven preceding years to enter into a part-time contract with a California dental college approved by the board, provided that the person notifies the board of this change and provides the board with a pending employment contract for part-time employment with a California dental college approved by the board.

(c) A holder of a special permit shall practice no more than one day per week in the school's faculty practice.

SEC. 3. Section 1640.3 is added to the Business and Professions Code, to read:

1640.3. The board may issue a special permit to a dentist who does not meet the eligibility requirements pursuant to Section 1640 if he or she provides evidence of compliance with the following requirements to the board:

(a) A dentist shall satisfy either of the following conditions:

(1) The dentist's expertise or skill is in a specialty area of dental practice approved by the American Dental Association and recognized by the board, and the board has received verification, in writing, from

the dean of the dental school where a contract is pending, that the addition of this dentist to the faculty will benefit the students and the dental program.

(2) Verification, in writing, from the dean of the dental school where a contract is pending, that the addition of this general dentist to the faculty will benefit the students and the dental program.

(b) A complete transcript of academic and clinical dental school records of the applicant is provided to the board.

(c) A legible, true copy of the dental diploma or dental degree conferred upon the applicant is provided to the board.

(d) A copy of the applicant's valid dental license is provided to the board.

(e) Satisfactory evidence of possessing a pending contract with a California dental college approved by the board as a full-time professor, associate professor, or as an assistant professor.

(f) Satisfactory evidence that the applicant's credentials were presented to the school's faculty credentialing committee or similar faculty review committee and the dean of the dental school provides written acknowledgment that the applicant is an essential addition to the school's faculty and strongly recommends to the dean that the applicant be offered an employment contract.

(g) The number of special permits issued by the board under paragraph (1) of subdivision (a) is no more than five permits per dental school. The number of special permits issued by the board under paragraph (2) of subdivision (a) is no more than five permits per dental school.

(h) The board is furnished with satisfactory evidence that the applicant has successfully completed an examination in California law and ethics developed and administered by the board.

(i) A fee for the application is paid as provided by this chapter.

SEC. 4. Section 1641 of the Business and Professions Code is repealed.

SEC. 5. Section 1642 of the Business and Professions Code is amended to read:

1642. Every person to whom a special permit is issued shall be entitled to practice in their recognized specialty or discipline at the dental college at which he or she is employed and its affiliated institutions as approved by the board on the following terms and conditions:

(a) The special permit holder shall file a copy of his or her employment contract with the board. The contract shall contain the following provision:

That the holder understands and acknowledges that when his or her full-time or part-time employment is terminated at the dental college, his or her special permit will be automatically revoked and that he or

she will voluntarily surrender the permit to the board and will no longer be eligible to practice unless or until he or she has successfully passed the required licensure examination as provided in Article 2 (commencing with Section 1625).

(b) The holder shall be employed as a full-time or part-time professor, an associate professor, or as an assistant professor at a California dental college approved by the board. "Full-time employment" as used in this section means a minimum of four days per week. "Part-time employment" as used in this section, means a maximum of three days a week.

(c) The holder shall be subject to all the provisions of this chapter applicable to licensed dentists with the exception that the special permit shall be renewed annually.

SEC. 6. Section 1724 of the Business and Professions Code is amended to read:

1724. The amount of charges and fees for dentists licensed pursuant to this chapter shall be established by the board as is necessary for the purpose of carrying out the responsibilities required by this chapter as it relates to dentists, subject to the following limitations:

(a) The fee for application for examination shall not exceed five hundred dollars (\$500).

(b) The fee for application for reexamination shall not exceed one hundred dollars (\$100).

(c) The fee for examination and for reexamination shall not exceed eight hundred dollars (\$800). Applicants who are found to be ineligible to take the examination shall be entitled to a refund in an amount fixed by the board.

(d) The fee for an initial license and for the renewal of a license shall not exceed four hundred fifty dollars (\$450).

(e) The fee for a special permit shall not exceed three hundred dollars (\$300), and the renewal fee for a special permit shall not exceed one hundred dollars (\$100).

(f) The delinquency fee shall be the amount prescribed by Section 163.5.

(g) The penalty for late registration of change of place of practice shall not exceed seventy-five dollars (\$75).

(h) The application fee for permission to conduct an additional place of practice shall not exceed two hundred dollars (\$200).

(i) The renewal fee for an additional place of practice shall not exceed one hundred dollars (\$100).

(j) The fee for issuance of a substitute certificate shall not exceed one hundred twenty-five dollars (\$125).

(k) The fee for a provider of continuing education shall not exceed two hundred fifty dollars (\$250) per year.

(l) The fee for application for a referral service permit and for renewal of that permit shall not exceed twenty-five dollars (\$25).

(m) The fee for application for an extramural facility permit and for the renewal of a permit shall not exceed twenty-five dollars (\$25).

The board shall report to the appropriate fiscal committees of each house of the Legislature whenever the board increases any fee pursuant to this section and shall specify the rationale and justification for that increase.

CHAPTER 535

An act to amend Section 425.16 of, and to add Section 425.18 to, the Code of Civil Procedure, relating to civil actions, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 5, 2005. Filed with
Secretary of State October 5, 2005.]

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

SECTION 1. Section 425.16 of the Code of Civil Procedure is amended to read:

425.16. (a) The Legislature finds and declares that there has been a disturbing increase in lawsuits brought primarily to chill the valid exercise of the constitutional rights of freedom of speech and petition for the redress of grievances. The Legislature finds and declares that it is in the public interest to encourage continued participation in matters of public significance, and that this participation should not be chilled through abuse of the judicial process. To this end, this section shall be construed broadly.

(b) (1) A cause of action against a person arising from any act of that person in furtherance of the person's right of petition or free speech under the United States or California Constitution in connection with a public issue shall be subject to a special motion to strike, unless the court determines that the plaintiff has established that there is a probability that the plaintiff will prevail on the claim.

(2) In making its determination, the court shall consider the pleadings, and supporting and opposing affidavits stating the facts upon which the liability or defense is based.

(3) If the court determines that the plaintiff has established a probability that he or she will prevail on the claim, neither that determination nor the fact of that determination shall be admissible in evidence at any later stage of the case, or in any subsequent action, and no burden of proof or degree of proof otherwise applicable shall be affected by that determination in any later stage of the case or in any subsequent proceeding.

(c) In any action subject to subdivision (b), a prevailing defendant on a special motion to strike shall be entitled to recover his or her attorney's fees and costs. If the court finds that a special motion to strike is frivolous or is solely intended to cause unnecessary delay, the court shall award costs and reasonable attorney's fees to a plaintiff prevailing on the motion, pursuant to Section 128.5.

(d) This section shall not apply to any enforcement action brought in the name of the people of the State of California by the Attorney General, district attorney, or city attorney, acting as a public prosecutor.

(e) As used in this section, "act in furtherance of a person's right of petition or free speech under the United States or California Constitution in connection with a public issue" includes: (1) any written or oral statement or writing made before a legislative, executive, or judicial proceeding, or any other official proceeding authorized by law; (2) any written or oral statement or writing made in connection with an issue under consideration or review by a legislative, executive, or judicial body, or any other official proceeding authorized by law; (3) any written or oral statement or writing made in a place open to the public or a public forum in connection with an issue of public interest; (4) or any other conduct in furtherance of the exercise of the constitutional right of petition or the constitutional right of free speech in connection with a public issue or an issue of public interest.

(f) The special motion may be filed within 60 days of the service of the complaint or, in the court's discretion, at any later time upon terms it deems proper. The motion shall be scheduled by the clerk of the court for a hearing not more than 30 days after the service of the motion unless the docket conditions of the court require a later hearing.

(g) All discovery proceedings in the action shall be stayed upon the filing of a notice of motion made pursuant to this section. The stay of discovery shall remain in effect until notice of entry of the order ruling on the motion. The court, on noticed motion and for good cause shown, may order that specified discovery be conducted notwithstanding this subdivision.

(h) For purposes of this section, "complaint" includes "cross-complaint" and "petition," "plaintiff" includes

“cross-complainant” and “petitioner,” and “defendant” includes “cross-defendant” and “respondent.”

(i) An order granting or denying a special motion to strike shall be appealable under Section 904.1.

(j) (1) Any party who files a special motion to strike pursuant to this section, and any party who files an opposition to a special motion to strike, shall, promptly upon so filing, transmit to the Judicial Council, by e-mail or facsimile, a copy of the endorsed, filed caption page of the motion or opposition, a copy of any related notice of appeal or petition for a writ, and a conformed copy of any order issued pursuant to this section, including any order granting or denying a special motion to strike, discovery, or fees.

(2) The Judicial Council shall maintain a public record of information transmitted pursuant to this subdivision for at least three years, and may store the information on microfilm or other appropriate electronic media.

SEC. 2. Section 425.18 is added to the Code of Civil Procedure, to read:

425.18. (a) The Legislature finds and declares that a SLAPPback is distinguishable in character and origin from the ordinary malicious prosecution action. The Legislature further finds and declares that a SLAPPback cause of action should be treated differently, as provided in this section, from an ordinary malicious prosecution action because a SLAPPback is consistent with the Legislature’s intent to protect the valid exercise of the constitutional rights of free speech and petition by its deterrent effect on SLAPP (strategic lawsuit against public participation) litigation and by its restoration of public confidence in participatory democracy.

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

(1) “SLAPPback” means any cause of action for malicious prosecution or abuse of process arising from the filing or maintenance of a prior cause of action that has been dismissed pursuant to a special motion to strike under Section 425.16.

(2) “Special motion to strike” means a motion made pursuant to Section 425.16.

(c) The provisions of subdivisions (c), (f), (g), and (i) of Section 425.16, and paragraph (13) of subdivision (a) of Section 904.1, shall not apply to a special motion to strike a SLAPPback.

(d) (1) A special motion to strike a SLAPPback shall be filed within any one of the following periods of time, as follows:

(A) Within 120 days of the service of the complaint.

(B) At the court’s discretion, within six months of the service of the complaint.

(C) At the court's discretion, at any later time in extraordinary cases due to no fault of the defendant and upon written findings of the court stating the extraordinary case and circumstance.

(2) The motion shall be scheduled by the clerk of the court for a hearing not more than 30 days after the service of the motion unless the docket conditions of the court require a later hearing.

(e) A party opposing a special motion to strike a SLAPPback may file an ex parte application for a continuance to obtain necessary discovery. If it appears that facts essential to justify opposition to that motion may exist, but cannot then be presented, the court shall grant a reasonable continuance to permit the party to obtain affidavits or conduct discovery or may make any other order as may be just.

(f) If the court finds that a special motion to strike a SLAPPback is frivolous or solely intended to cause unnecessary delay, the court shall award costs and reasonable attorney's fees to a plaintiff prevailing on the motion, pursuant to Section 128.5.

(g) Upon entry of an order denying a special motion to strike a SLAPPback claim, or granting the special motion to strike as to some but less than all causes of action alleged in a complaint containing a SLAPPback claim, an aggrieved party may, within 20 days after service of a written notice of the entry of the order, petition an appropriate reviewing court for a peremptory writ.

(h) A special motion to strike may not be filed against a SLAPPback by a party whose filing or maintenance of the prior cause of action from which the SLAPPback arises was illegal as a matter of law.

(i) This section does not apply to a SLAPPback filed by a public entity.

SEC. 3. It is the intent of the Legislature, in amending subdivision (f) of Section 425.16 of the Code of Civil Procedure, to overrule the decisions in *Decker v. U.D. Registry, Inc.* (2003) 105 Cal.App.4th 1382, 1387-1390, and *Fair Political Practices Commission v. American Civil Rights Coalition, Inc.* (2004) 121 Cal.App.4th 1171, 1174-1178.

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 clarify the law to protect SLAPP targets and avoid chilling petition and speech rights at the earliest time, it is necessary for this act to take effect immediately.

CHAPTER 536

An act to amend Sections 29031.1 and 29034 of the Public Utilities Code, relating to transportation, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 5, 2005. Filed with
Secretary of State October 5, 2005.]

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

SECTION 1. Section 29031.1 of the Public Utilities Code is amended to read:

29031.1. (a) Subject to compliance with subdivision (c), the district's seismic retrofit work on structures or facilities shall be exempt from Division 13 (commencing with Section 21000) of the Public Resources Code.

(b) For purposes of this section, the district's "seismic retrofit work" shall be defined as work to address earthquake vulnerabilities identified in the original BART system by retrofitting to full operability at stations, aerial guideways and structures, columns, and column foundations, parking structures, yards, administration and ancillary structures as identified in Section 6.1 of the BART Seismic Vulnerability Study, adopted by the board of directors of the district on June 6, 2002, and in the Earthquake Safety Program, General Obligation Bond Program Report, approved by the board of directors of the district on June 10, 2004.

(c) As a condition of the exemption, the district shall do all of the following:

(1) Conduct three workshops and other outreach efforts to ensure public awareness of the proposed seismic retrofit work prior to commencement of construction.

(2) Comply with applicable environmental, health, and safety laws.

(3) Comply with the district's standard construction practices, subject to minor modifications that would not result in a significant adverse effect on the environment, including Article GC7 of the 2003 General Conditions for Construction Contracts and Article 1.11 (Noise Control) of Section 01570 of BART Facilities Standards, Standard Specifications, Release 1.2.

(4) Require its contractors to comply with Feasible Control Measures for Construction Emissions of PM-10 set forth in the San Francisco Bay Area Air Quality Management District CEQA Guidelines, page 15, Table 2 (December 1999), as applicable.

(5) Use equipment powered by emulsified diesel fuel, electricity, natural gas, or ultralow sulfur diesel as an alternative to conventional diesel-powered construction equipment, where feasible.

(d) This section shall not apply to any project for the purpose of expanding the district's rapid transit service or providing service other than rapid transit service.

(e) This section shall become inoperative on June 1, 2010, and, as of January 1, 2011, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2011, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 2. Section 29034 of the Public Utilities Code is amended to read:

29034. The district may enter into agreements for the joint use of any property and rights by the district and any public agency or public utility operating transit facilities; may enter into agreements with any public agency or public utility operating any transit facilities, either wholly or partially within, or without, the district, for the joint use of any property of the district or of that public agency or public utility, or the establishment of through routes, joint fares, transfer of passengers or pooling arrangements.

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 seismic retrofit work undertaken by the San Francisco Bay Area Rapid Transit District is coordinated with the Department of Transportation and completed at the earliest possible time, it is necessary that this act take effect immediately.

CHAPTER 537

An act to add Section 13113.6 to the Health and Safety Code, relating to public safety.

[Approved by Governor October 5, 2005. Filed with
Secretary of State October 5, 2005.]

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

SECTION 1. Section 13113.6 is added to the Health and Safety Code, to read:

13113.6. (a) Any person, or public or private firm, organization, or corporation, that owns, rents, leases, or manages a facility that hosts a ticketed event for live entertainment shall make an announcement of the availability of emergency exits prior to the beginning of the live entertainment.

(b) As used in this section, “facility” means a building or portion of a building having an assembly room with an occupancy load of less than 1,000 persons and a legitimate stage for the gathering together of 50 or more persons as defined pursuant to Division 2 of Section 303.1.1 of Title 24 of the California Code of Regulations (California Building Code of 2001).

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 538

An act to add Section 854.1 to the Government Code, and to add Sections 4474.2 and 4474.3 to the Welfare and Institutions Code, relating to developmental services.

[Approved by Governor October 5, 2005. Filed with
Secretary of State October 5, 2005.]

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

SECTION 1. Section 854.1 is added to the Government Code, to read:

854.1. (a) It is the intent of the Legislature to ensure continuity of care for clients of Agnews Developmental Center.

(b) In the effort to achieve these goals, it is the intent of the Legislature to seek and implement recommendations that include all of the following services to retain Agnews staff as employees:

(1) Crisis management teams that provide behavioral, medical, and dental treatment, training, and technical assistance.

(2) Specialized services, including adaptive equipment design and fabrication, and medical, dental, psychological, and assessment services.

(3) Staff support in community homes to assist individuals with behavioral or psychiatric needs.

(c) As used in this chapter, the terms “mental institution” or “medical facility” also include a developmental services facility. For the purposes of this chapter “developmental services facility” means any facility or place where a public employee provides developmental services relating to the closure of Agnews Developmental Center.

SEC. 2. Section 4474.2 is added to the Welfare and Institutions Code, to read:

4474.2. Notwithstanding any provision of law to the contrary, the department may operate any facility, provide its employees to assist in the operation of any facility, or provide other necessary services and supports if in the discretion of the department it determines that the activity will assist in meeting the goal of an orderly closure of Agnews Developmental Center. The department may contract with any entity for the use of the department’s employees to provide services in furtherance of an orderly closure of Agnews Developmental Center.

SEC. 3. Section 4474.3 is added to the Welfare and Institutions Code, to read:

4474.3. The provisions of Section 10411 of the Public Contract Code shall not apply to any person who, in connection with the closure of Agnews Developmental Center, provides developmental services.

CHAPTER 539

An act to amend Sections 1646.4, 1646.5, 1647, 1647.1, 1647.2, 1647.3, 1647.10, 1647.11, 1647.12, and 1647.14 of, to add Article 2.86 (commencing with Section 1647.18) to Chapter 4 of Division 2 of, and to repeal Section 1647.4 of, the Business and Professions Code, relating to dentistry, and making an appropriation therefor.

[Approved by Governor October 5, 2005. Filed with
Secretary of State October 5, 2005.]

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

SECTION 1. Section 1646.4 of the Business and Professions Code is amended to read:

1646.4. (a) Prior to the issuance or renewal of a permit for the use of general anesthesia, the board may, at its discretion, require an onsite inspection and evaluation of the licensee and the facility, equipment, personnel, and procedures utilized by the licensee. The permit of any

dentist who has failed an onsite inspection and evaluation shall be automatically suspended 30 days after the date on which the board notifies the dentist of the failure, unless within that time period the dentist has retaken and passed an onsite inspection and evaluation. Every dentist issued a permit under this article shall have an onsite inspection and evaluation at least once every five years. Refusal to submit to an inspection shall result in automatic denial or revocation of the permit.

(b) The board may contract with public or private organizations or individuals expert in dental outpatient general anesthesia to perform onsite inspections and evaluations. The board may not, however, delegate its authority to issue permits or to determine the persons or facilities to be inspected.

SEC. 2. Section 1646.5 of the Business and Professions Code is amended to read:

1646.5. A permittee shall be required to complete 24 hours of approved courses of study related to general anesthesia as a condition of renewal of a permit. Those courses of study shall be credited toward any continuing education required by the board pursuant to Section 1645.

SEC. 3. Section 1647 of the Business and Professions Code is amended to read:

1647. (a) The Legislature finds and declares that a commendable patient safety record has been maintained in the past by dentists and those other qualified providers of anesthesia services who, pursuant to a dentist's authorization, administer patient sedation, and that the increasing number of pharmaceuticals and techniques used to administer them for patient sedation require additional regulation to maintain patient safety in the future.

(b) The Legislature further finds and declares all of the following:

(1) That previous laws enacted in 1980 contained separate and distinct definitions for general anesthesia and the state of consciousness.

(2) That in dental practice, there is a continuum of sedation used which cannot be adequately defined in terms of consciousness and general anesthesia.

(3) That the administration of sedation through this continuum results in different states of consciousness that may or may not be predictable in every instance.

(4) That in most instances, the level of sedation will result in a predictable level of consciousness during the entire time of sedation.

(c) The Legislature further finds and declares that the educational standards presently required for general anesthesia should be required when the degree of sedation in the continuum of sedation is such that there is a reasonable possibility that loss of consciousness may result, even if unintended. These degrees of sedation have been referred to as

“deep sedation” and “light general anesthesia” in dental literature. However, achieving the degree of sedation commonly referred to as “light conscious sedation,” where a margin of safety exists wide enough to render unintended loss of consciousness unlikely, requires educational standards appropriate to the administration of the resulting predictable level of consciousness.

SEC. 4. Section 1647.1 of the Business and Professions Code is amended to read:

1647.1. (a) As used in this article, “conscious sedation” means a minimally depressed level of consciousness produced by a pharmacologic or nonpharmacologic method, or a combination thereof, that retains the patient’s ability to maintain independently and continuously an airway, and respond appropriately to physical stimulation or verbal command.

“Conscious sedation” does not include the administration of oral medications or the administration of a mixture of nitrous oxide and oxygen, whether administered alone or in combination with each other.

(b) The drugs and techniques used in conscious sedation shall have a margin of safety wide enough to render unintended loss of consciousness unlikely. Further, patients whose only response is reflex withdrawal from painful stimuli shall not be considered to be in a state of conscious sedation.

(c) For the very young or handicapped individual, incapable of the usually expected verbal response, a minimally depressed level of consciousness for that individual should be maintained.

SEC. 5. Section 1647.2 of the Business and Professions Code is amended to read:

1647.2. (a) No dentist shall administer or order the administration of, conscious sedation on an outpatient basis for dental patients unless one of the following conditions is met:

(1) The dentist possesses a current license in good standing to practice dentistry in California and either holds a valid general anesthesia permit or obtains a permit issued by the board authorizing the dentist to administer conscious sedation.

(2) The dentist possesses a current permit under Section 1638 or 1640 and either holds a valid anesthesia permit or obtains a permit issued by the board authorizing the dentist to administer conscious sedation.

(b) A conscious sedation permit shall expire on the date specified in Section 1715 which next occurs after its issuance, unless it is renewed as provided in this article.

(c) This article shall not apply to the administration of local anesthesia or to general anesthesia.

(d) A dentist who orders the administration of conscious sedation shall be physically present in the treatment facility while the patient is sedated.

SEC. 6. Section 1647.3 of the Business and Professions Code is amended to read:

1647.3. (a) A dentist who desires to administer or order the administration of conscious sedation, shall apply to the board on an application form prescribed by the board. The dentist shall submit an application fee and produce evidence showing that he or she has successfully completed a course of training in conscious sedation that meets the requirements of subdivision (c).

(b) The application for a permit shall include documentation that equipment and drugs required by the board are on the premises.

(c) A course in the administration of conscious sedation shall be acceptable if it meets all of the following as approved by the board:

- (1) Consists of at least 60 hours of instruction.
- (2) Requires satisfactory completion of at least 20 cases of administration of conscious sedation for a variety of dental procedures.
- (3) Complies with the requirements of the Guidelines for Teaching the Comprehensive Control of Anxiety and Pain in Dentistry of the American Dental Association.

SEC. 7. Section 1647.4 of the Business and Professions Code is repealed.

SEC. 8. Section 1647.10 of the Business and Professions Code is amended to read:

1647.10. As used in this article:

(a) "Oral conscious sedation" means a minimally depressed level of consciousness produced by oral medication that retains the patient's ability to maintain independently and continuously an airway, and respond appropriately to physical stimulation or verbal command.

(1) The drugs and techniques used in oral conscious sedation shall have a margin of safety wide enough to render unintended loss of consciousness unlikely. Further, patients whose only response is reflex withdrawal from painful stimuli would not be considered to be in a state of oral conscious sedation.

(2) For very young or handicapped individuals, incapable of the usually expected verbal response, a minimally depressed level of consciousness should be maintained.

(b) "Minor patient" means a dental patient under the age of 13 years.

(c) "Certification" means the issuance of a certificate to a dentist licensed by the board who provides the board with his or her name, and the location where the administration of oral conscious sedation will

occur, and fulfills the requirements specified in Sections 1647.12 and 1647.13.

SEC. 9. Section 1647.11 of the Business and Professions Code is amended to read:

1647.11. (a) Notwithstanding subdivision (a) of Section 1647.2, a dentist may not administer oral conscious sedation on an outpatient basis to a minor patient unless one of the following conditions is met:

(1) The dentist possesses a current license in good standing to practice dentistry in California and either holds a valid general anesthesia permit, conscious sedation permit, or has been certified by the board, pursuant to Section 1647.12, to administer oral sedation to minor patients.

(2) The dentist possesses a current permit issued under Section 1638 or 1640 and either holds a valid general anesthesia permit, or conscious sedation permit, or possesses a certificate as a provider of oral conscious sedation to minor patients in compliance with, and pursuant to, this article.

(b) Certification as a provider of oral conscious sedation to minor patients expires at the same time the license or permit of the dentist expires unless renewed at the same time the dentist's license or permit is renewed after its issuance, unless certification is renewed as provided in this article.

(c) This article shall not apply to the administration of local anesthesia or a mixture of nitrous oxide and oxygen or to the administration, dispensing, or prescription of postoperative medications.

SEC. 10. Section 1647.12 of the Business and Professions Code is amended to read:

1647.12. A dentist who desires to administer, or order the administration of, oral conscious sedation for minor patients, who does not hold a general anesthesia permit, as provided in Sections 1646.1 and 1646.2, or a conscious sedation permit, as provided in Sections 1647.2 and 1647.3, shall register his or her name with the board on a board-prescribed registration form. The dentist shall submit the registration fee and evidence showing that he or she satisfies any of the following requirements:

(a) Satisfactory completion of a postgraduate program in oral and maxillofacial surgery or pediatric dentistry approved by either the Commission on Dental Accreditation or a comparable organization approved by the board.

(b) Satisfactory completion of a periodontics or general practice residency or other advanced education in a general dentistry program approved by the board.

(c) Satisfactory completion of a board-approved educational program on oral medications and sedation.

SEC. 11. Section 1647.14 of the Business and Professions Code is amended to read:

1647.14. (a) A physical evaluation and medical history shall be taken before the administration of, oral conscious sedation to a minor. Any dentist who administers, or orders the administration of, oral conscious sedation to a minor shall maintain records of the physical evaluation, medical history, and oral conscious sedation procedures used as required by the board regulations.

(b) A dentist who administers, or who orders the administration of, oral conscious sedation for a minor patient shall be physically present in the treatment facility while the patient is sedated and shall be present until discharge of the patient from the facility.

(c) The drugs and techniques used in oral conscious sedation to minors shall have a margin of safety wide enough to render unintended loss of consciousness unlikely.

SEC. 12. Article 2.86 (commencing with Section 1647.18) is added to Chapter 4 of Division 2 of the Business and Professions Code, to read:

Article 2.86. Use of Oral Conscious Sedation for Adult Patients

1647.18. As used in this article, the following terms have the following meanings:

(a) "Adult patient" means a dental patient 13 years of age or older.

(b) "Certification" means the issuance of a certificate to a dentist licensed by the board who provides the board with his or her name and the location at which the administration of oral conscious sedation will occur, and fulfills the requirements specified in Sections 1647.12 and 1647.13.

(c) "Oral conscious sedation" means a minimally depressed level of consciousness produced by oral medication that retains the patient's ability to maintain independently and continuously an airway, and respond appropriately to physical stimulation or verbal command. "Oral conscious sedation" does not include dosages less than or equal to the single maximum recommended dose that can be prescribed for home use.

(1) The drugs and techniques used in oral conscious sedation shall have a margin of safety wide enough to render unintended loss of consciousness unlikely. Further, patients whose only response is reflex withdrawal from painful stimuli would not be considered to be in a state of oral conscious sedation.

(2) For the handicapped individual, incapable of the usually expected verbal response, a minimally depressed level of consciousness for that individual should be maintained.

1647.19. (a) Notwithstanding subdivision (a) of Section 1647.2, a dentist may not administer oral conscious sedation on an outpatient basis to an adult patient unless the dentist possesses a current license in good standing to practice dentistry in California, and one of the following conditions is met:

(1) The dentist holds a valid general anesthesia permit, holds a conscious sedation permit, has been certified by the board, pursuant to Section 1647.20, to administer oral sedation to adult patients, or has been certified by the board, pursuant to Section 1647.12, to administer oral conscious sedation to minor patients.

(2) The dentist possesses a current permit issued under Section 1638 or 1640 and either holds a valid general anesthesia permit, or conscious sedation permit, or possesses a certificate as a provider of oral conscious sedation to adult patients in compliance with, and pursuant to, this article.

(b) Certification as a provider of oral conscious sedation to adult patients expires at the same time the license or permit of the dentist expires unless renewed at the same time the dentist's license or permit is renewed after its issuance, unless certification is renewed as provided in this article.

(c) This article shall not apply to the administration of local anesthesia or a mixture of nitrous oxide and oxygen, or to the administration, dispensing, or prescription of postoperative medications.

1647.20. A dentist who desires to administer, or order the administration of, oral conscious sedation for adult patients, who does not hold a general anesthesia permit, as provided in Sections 1646.1 and 1646.2, does not hold a conscious sedation permit, as provided in Sections 1647.2 and 1647.3, and has not been certified by the board, pursuant to Section 1647.12, to administer oral conscious sedation to minor patients, shall register his or her name with the board on a registration form prescribed by the board. The dentist shall submit the registration fee and evidence showing that he or she satisfies any of the following requirements:

(a) Satisfactory completion of a postgraduate program in oral and maxillofacial surgery approved by either the Commission on Dental Accreditation or a comparable organization approved by the board.

(b) Satisfactory completion of a periodontics or general practice residency or other advanced education in a general dentistry program approved by the board.

(c) Satisfactory completion of a board-approved educational program on oral medications and sedation.

(d) For an applicant who has been using oral conscious sedation in connection with the treatment of adult patients, submission of documentation as required by the board of 10 cases of oral conscious

sedation satisfactorily performed by the applicant on adult patients in any three-year period ending no later than December 31, 2005.

1647.21. A certificate holder shall be required to complete a minimum of seven hours of approved courses of study related to oral conscious sedation of adult patients as a condition of certification renewal as an oral conscious sedation provider. Those courses of study shall be accredited toward any continuing education required by the board pursuant to Section 1645.

1647.22. (a) A physical evaluation and medical history shall be taken before the administration of oral conscious sedation to an adult. Any dentist who administers, or orders the administration of, oral conscious sedation to an adult shall maintain records of the physical evaluation, medical history, and oral conscious sedation procedures used as required by the board regulations.

(b) A dentist who administers, or who orders the administration of, oral conscious sedation for an adult patient shall be physically present in the treatment facility while the patient is sedated, and shall be present until discharge of the patient from the facility.

(c) The drugs and techniques used in oral conscious sedation to adults shall have a margin of safety wide enough to render unintended loss of consciousness unlikely.

1647.23. The fee for an application for initial certification or renewal under this article shall not exceed the amount necessary to cover administration and enforcement costs incurred by the board in carrying out this article. The listed fee may be prorated based upon the date of the renewal of the dentist's license or permit.

1647.24. Any office in which oral conscious sedation of adult patients is conducted pursuant to this article shall, unless otherwise provided by law, meet the facilities and equipment standards set forth by the board in regulation.

1647.25. A violation of any provision of this article constitutes unprofessional conduct and is grounds for the revocation or suspension of the dentist's permit, certificate, license, or all three, or the dentist may be reprimanded or placed on probation. The proceedings under this section shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part I of Division 3 of Title 2 of the Government Code, and the board shall have all the powers granted therein.

1647.26. The sum of forty-seven thousand dollars (\$47,000) is hereby appropriated for the 2005–06 fiscal year from the State Dentistry Fund to the Department of Consumer Affairs for the purpose of processing

applications for adult conscious sedation certificates pursuant to this article.

CHAPTER 540

An act to amend Section 54953 of the Government Code, relating to local agencies.

[Approved by Governor October 5, 2005. Filed with
Secretary of State October 5, 2005.]

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

SECTION 1. Section 54953 of the Government Code is amended to read:

54953. (a) All meetings of the legislative body of a local agency shall be open and public, and all persons shall be permitted to attend any meeting of the legislative body of a local agency, except as otherwise provided in this chapter.

(b) (1) Notwithstanding any other provision of law, the legislative body of a local agency may use teleconferencing for the benefit of the public and the legislative body of a local agency in connection with any meeting or proceeding authorized by law. The teleconferenced meeting or proceeding shall comply with all requirements of this chapter and all otherwise applicable provisions of law relating to a specific type of meeting or proceeding.

(2) Teleconferencing, as authorized by this section, may be used for all purposes in connection with any meeting within the subject matter jurisdiction of the legislative body. All votes taken during a teleconferenced meeting shall be by rollcall.

(3) If the legislative body of a local agency elects to use teleconferencing, it shall post agendas at all teleconference locations and conduct teleconference meetings in a manner that protects the statutory and constitutional rights of the parties or the public appearing before the legislative body of a local agency. Each teleconference location shall be identified in the notice and agenda of the meeting or proceeding, and each teleconference location shall be accessible to the public. During the teleconference, at least a quorum of the members of the legislative body shall participate from locations within the boundaries of the territory over which the local agency exercises jurisdiction, except as provided in subdivision (d). The agenda shall provide an opportunity for members

of the public to address the legislative body directly pursuant to Section 54954.3 at each teleconference location.

(4) For the purposes of this section, “teleconference” means a meeting of a legislative body, the members of which are in different locations, connected by electronic means, through either audio or video, or both. Nothing in this section shall prohibit a local agency from providing the public with additional teleconference locations.

(c) No legislative body shall take action by secret ballot, whether preliminary or final.

(d) (1) Notwithstanding the provisions relating to a quorum in paragraph (3) of subdivision (b), when a health authority conducts a teleconference meeting, members who are outside the jurisdiction of the authority may be counted toward the establishment of a quorum when participating in the teleconference if at least 50 percent of the number of members that would establish a quorum are present within the boundaries of the territory over which the authority exercises jurisdiction, and the health authority provides a teleconference number, and associated access codes, if any, that allows any person to call in to participate in the meeting and that number and access codes are identified in the notice and agenda of the meeting.

(2) Nothing in this subdivision shall be construed as discouraging health authority members from regularly meeting at a common physical site within the jurisdiction of the authority or from using teleconference locations within or near the jurisdiction of the authority. A teleconference meeting for which a quorum is established pursuant to this subdivision shall be subject to all other requirements of this section.

(3) For purposes of this subdivision, a health authority means any entity created pursuant to Sections 14018.7, 14087.31, 14087.35, 14087.36, 14087.38, and 14087.9605 of the Welfare and Institutions Code, any joint powers authority created pursuant to Article 1 (commencing with Section 6500) of Chapter 5 of Division 7 for the purpose of contracting pursuant to Section 14087.3 of the Welfare and Institutions Code, and any advisory committee to a county sponsored health plan licensed pursuant to Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code if the advisory committee has 12 or more members.

(4) This subdivision shall remain in effect only until January 1, 2009.

SEC. 2. The Legislature finds and declares that Section 1 of this act, which amends Section 54953 of the Government Code, imposes a limitation on the public’s right of access to the meetings of public bodies or the writings of public officials and agencies within the meaning of Section 3 of Article I of the California Constitution. Pursuant to that constitutional provision, the Legislature makes the following findings

to demonstrate the interest protected by this limitation and the need for protecting that interest:

Local health initiatives are an essential component of California's health care delivery system, and their ability to meet regularly to address the health care concerns of Medi-Cal beneficiaries is vital. The membership of local health initiative boards of directors is required by statute to represent a diverse group of health care professionals, and, as a result, these boards frequently are large and comprised of persons working and residing outside of the board's jurisdiction. Accordingly, these boards have a demonstrated difficulty in obtaining a quorum of members located within the board's jurisdiction as required by the teleconference provisions of the Ralph M. Brown Act.

CHAPTER 541

An act relating to government real property, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 5, 2005. Filed with
Secretary of State October 5, 2005.]

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

SECTION 1. (a) Under the quitclaim deed No. 84-272201 recorded in San Bernardino County on November 13, 1984, the real property was transferred to the Redevelopment Agency of the City of San Bernardino on the condition that it only be used for park and recreational purposes for a period of 25 years from the date of the quitclaim deed with the right of the state to reenter and take possession of the real property and to cause the title to the property to revert to the state if this use restriction is violated.

(b) The Legislature recognizes that the Redevelopment Agency of the City of San Bernardino transferred title to the property referred to in subdivision (a) to the San Bernardino City Unified School District for use as recreational fields that will be accessible to the public in furtherance of the construction of new educational school facilities of the school district on the property previously transferred to the Redevelopment Agency of the City of San Bernardino subject to the use restriction being imposed upon the property.

(c) The Legislature acknowledges that the use of the property by the San Bernardino City Unified School District is in compliance with the

purposes and intent of the restrictions contained in the quitclaim deed referred to in subdivision (a).

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 people of the state may have the benefit of government real property transfers at the earliest possible time, it is necessary that this act take effect immediately.

CHAPTER 542

An act to amend Sections 1357 and 1357.50 of the Health and Safety Code, and to amend Sections 10198.6 and 10700 of the Insurance Code, relating to health care coverage.

[Approved by Governor October 5, 2005. Filed with
Secretary of State October 5, 2005.]

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

SECTION 1. It is the intent of the Legislature that this act allow an employer to add to the employer's sponsored coverage an employee or an employee's dependent if that employee or employee's dependent has become ineligible for Healthy Families Program coverage due to income or age ineligibility. The eligibility to enroll in the employer sponsored coverage is intended to be extended only to the individual losing eligibility for coverage under the Healthy Families Program.

SEC. 2. Section 1357 of the Health and Safety Code is amended to read:

1357. As used in this article:

(a) "Dependent" means the spouse or child of an eligible employee, subject to applicable terms of the health care plan contract covering the employee, and includes dependents of guaranteed association members if the association elects to include dependents under its health coverage at the same time it determines its membership composition pursuant to subdivision (o).

(b) "Eligible employee" means either of the following:

(1) Any permanent employee who is actively engaged on a full-time basis in the conduct of the business of the small employer with a normal workweek of at least 30 hours, at the small employer's regular places of business, who has met any statutorily authorized applicable waiting

period requirements. The term includes sole proprietors or partners of a partnership, if they are actively engaged on a full-time basis in the small employer's business and included as employees under a health care plan contract of a small employer, but does not include employees who work on a part-time, temporary, or substitute basis. It includes any eligible employee, as defined in this paragraph, who obtains coverage through a guaranteed association. Employees of employers purchasing through a guaranteed association shall be deemed to be eligible employees if they would otherwise meet the definition except for the number of persons employed by the employer. Permanent employees who work at least 20 hours but not more than 29 hours are deemed to be eligible employees if all four of the following apply:

(A) They otherwise meet the definition of an eligible employee except for the number of hours worked.

(B) The employer offers the employees health coverage under a health benefit plan.

(C) All similarly situated individuals are offered coverage under the health benefit plan.

(D) The employee must have worked at least 20 hours per normal workweek for at least 50 percent of the weeks in the previous calendar quarter. The health care service plan may request any necessary information to document the hours and time period in question, including, but not limited to, payroll records and employee wage and tax filings.

(2) Any member of a guaranteed association as defined in subdivision (o).

(c) "In force business" means an existing health benefit plan contract issued by the plan to a small employer.

(d) "Late enrollee" means an eligible employee or dependent who has declined enrollment in a health benefit plan offered by a small employer at the time of the initial enrollment period provided under the terms of the health benefit plan and who subsequently requests enrollment in a health benefit plan of that small employer, provided that the initial enrollment period shall be a period of at least 30 days. It also means any member of an association that is a guaranteed association as well as any other person eligible to purchase through the guaranteed association when that person has failed to purchase coverage during the initial enrollment period provided under the terms of the guaranteed association's plan contract and who subsequently requests enrollment in the plan, provided that the initial enrollment period shall be a period of at least 30 days. However, an eligible employee, any other person eligible for coverage through a guaranteed association pursuant to subdivision (o), or an eligible dependent shall not be considered a late enrollee if any of the following is applicable:

(1) The individual meets all of the following requirements:

(A) He or she was covered under another employer health benefit plan, the Healthy Families Program, or no share-of-cost Medi-Cal coverage at the time the individual was eligible to enroll.

(B) He or she certified at the time of the initial enrollment that coverage under another employer health benefit plan, the Healthy Families Program, or no share-of-cost Medi-Cal coverage was the reason for declining enrollment, provided that, if the individual was covered under another employer health plan, the individual was given the opportunity to make the certification required by this subdivision and was notified that failure to do so could result in later treatment as a late enrollee.

(C) He or she has lost or will lose coverage under another employer health benefit plan as a result of termination of employment of the individual or of a person through whom the individual was covered as a dependent, change in employment status of the individual or of a person through whom the individual was covered as a dependent, termination of the other plan's coverage, cessation of an employer's contribution toward an employee or dependent's coverage, death of the person through whom the individual was covered as a dependent, legal separation, divorce, loss of coverage under the Healthy Families Program as a result of exceeding the program's income or age limits, or loss of no share-of-cost Medi-Cal coverage.

(D) He or she requests enrollment within 30 days after termination of coverage or employer contribution toward coverage provided under another employer health benefit plan.

(2) The employer offers multiple health benefit plans and the employee elects a different plan during an open enrollment period.

(3) A court has ordered that coverage be provided for a spouse or minor child under a covered employee's health benefit plan.

(4) (A) In the case of an eligible employee, as defined in paragraph (1) of subdivision (b), the plan cannot produce a written statement from the employer stating that the individual or the person through whom the individual was eligible to be covered as a dependent, prior to declining coverage, was provided with, and signed, acknowledgment of an explicit written notice in boldface type specifying that failure to elect coverage during the initial enrollment period permits the plan to impose, at the time of the individual's later decision to elect coverage, an exclusion from coverage for a period of 12 months as well as a six-month preexisting condition exclusion, unless the individual meets the criteria specified in paragraph (1), (2), or (3).

(B) In the case of an association member who did not purchase coverage through a guaranteed association, the plan cannot produce a

written statement from the association stating that the association sent a written notice in boldface type to all potentially eligible association members at their last known address prior to the initial enrollment period informing members that failure to elect coverage during the initial enrollment period permits the plan to impose, at the time of the member's later decision to elect coverage, an exclusion from coverage for a period of 12 months as well as a six-month preexisting condition exclusion unless the member can demonstrate that he or she meets the requirements of subparagraphs (A), (C), and (D) of paragraph (1) or meets the requirements of paragraph (2) or (3).

(C) In the case of an employer or person who is not a member of an association, was eligible to purchase coverage through a guaranteed association, and did not do so, and would not be eligible to purchase guaranteed coverage unless purchased through a guaranteed association, the employer or person can demonstrate that he or she meets the requirements of subparagraphs (A), (C), and (D) of paragraph (1), or meets the requirements of paragraph (2) or (3), or that he or she recently had a change in status that would make him or her eligible and that application for enrollment was made within 30 days of the change.

(5) The individual is an employee or dependent who meets the criteria described in paragraph (1) and was under a COBRA continuation provision and the coverage under that provision has been exhausted. For purposes of this section, the definition of "COBRA" set forth in subdivision (e) of Section 1373.621 shall apply.

(6) The individual is a dependent of an enrolled eligible employee who has lost or will lose his or her coverage under the Healthy Families Program as a result of exceeding the program's income or age limits or no share-of-cost Medi-Cal coverage and requests enrollment within 30 days after notification of this loss of coverage.

(7) The individual is an eligible employee who previously declined coverage under an employer health benefit plan and who has subsequently acquired a dependent who would be eligible for coverage as a dependent of the employee through marriage, birth, adoption, or placement for adoption, and who enrolls for coverage under that employer health benefit plan on his or her behalf and on behalf of his or her dependent within 30 days following the date of marriage, birth, adoption, or placement for adoption, in which case the effective date of coverage shall be the first day of the month following the date the completed request for enrollment is received in the case of marriage, or the date of birth, or the date of adoption or placement for adoption, whichever applies. Notice of the special enrollment rights contained in this paragraph shall be provided by the employer to an employee at or before the time the employee is offered an opportunity to enroll in plan coverage.

(8) The individual is an eligible employee who has declined coverage for himself or herself or his or her dependents during a previous enrollment period because his or her dependents were covered by another employer health benefit plan at the time of the previous enrollment period. That individual may enroll himself or herself or his or her dependents for plan coverage during a special open enrollment opportunity if his or her dependents have lost or will lose coverage under that other employer health benefit plan. The special open enrollment opportunity shall be requested by the employee not more than 30 days after the date that the other health coverage is exhausted or terminated. Upon enrollment, coverage shall be effective not later than the first day of the first calendar month beginning after the date the request for enrollment is received. Notice of the special enrollment rights contained in this paragraph shall be provided by the employer to an employee at or before the time the employee is offered an opportunity to enroll in plan coverage.

(e) "New business" means a health care service plan contract issued to a small employer that is not the plan's in force business.

(f) "Preexisting condition provision" means a contract provision that excludes coverage for charges or expenses incurred during a specified period following the employee's effective date of coverage, as to a condition for which medical advice, diagnosis, care, or treatment was recommended or received during a specified period immediately preceding the effective date of coverage.

(g) "Creditable coverage" means:

(1) Any individual or group policy, contract, or program that is written or administered by a disability insurer, health care service plan, fraternal benefits society, self-insured employer plan, or any other entity, in this state or elsewhere, and that arranges or provides medical, hospital, and surgical coverage not designed to supplement other private or governmental plans. The term includes continuation or conversion coverage but does not include accident only, credit, coverage for onsite medical clinics, disability income, Medicare supplement, long-term care, dental, vision, coverage issued as a supplement to liability insurance, insurance arising out of a workers' compensation or similar law, automobile medical payment insurance, or insurance under which benefits are payable with or without regard to fault and that is statutorily required to be contained in any liability insurance policy or equivalent self-insurance.

(2) The federal Medicare program pursuant to Title XVIII of the Social Security Act.

(3) The medicaid program pursuant to Title XIX of the Social Security Act.

(4) Any other publicly sponsored program, provided in this state or elsewhere, of medical, hospital, and surgical care.

(5) 10 U.S.C. Chapter 55 (commencing with Section 1071) (Civilian Health and Medical Program of the Uniformed Services (CHAMPUS)).

(6) A medical care program of the Indian Health Service or of a tribal organization.

(7) A state health benefits risk pool.

(8) A health plan offered under 5 U.S.C. Chapter 89 (commencing with Section 8901) (Federal Employees Health Benefits Program (FEHBP)).

(9) A public health plan as defined in federal regulations authorized by Section 2701(c)(1)(I) of the Public Health Service Act, as amended by Public Law 104-191, the Health Insurance Portability and Accountability Act of 1996.

(10) A health benefit plan under Section 5(e) of the Peace Corps Act (22 U.S.C. Sec. 2504(e)).

(11) Any other creditable coverage as defined by subdivision (c) of Section 2701 of Title XXVII of the federal Public Health Services Act (42 U.S.C. Sec. 300gg(c)).

(h) "Rating period" means the period for which premium rates established by a plan are in effect and shall be no less than six months.

(i) "Risk adjusted employee risk rate" means the rate determined for an eligible employee of a small employer in a particular risk category after applying the risk adjustment factor.

(j) "Risk adjustment factor" means the percentage adjustment to be applied equally to each standard employee risk rate for a particular small employer, based upon any expected deviations from standard cost of services. This factor may not be more than 120 percent or less than 80 percent until July 1, 1996. Effective July 1, 1996, this factor may not be more than 110 percent or less than 90 percent.

(k) "Risk category" means the following characteristics of an eligible employee: age, geographic region, and family composition of the employee, plus the health benefit plan selected by the small employer.

(1) No more than the following age categories may be used in determining premium rates:

Under 30

30-39

40-49

50-54

55-59

60-64

65 and over

However, for the 65 and over age category, separate premium rates may be specified depending upon whether coverage under the plan contract will be primary or secondary to benefits provided by the federal Medicare program pursuant to Title XVIII of the federal Social Security Act.

(2) Small employer health care service plans shall base rates to small employers using no more than the following family size categories:

- (A) Single.
- (B) Married couple.
- (C) One adult and child or children.
- (D) Married couple and child or children.

(3) (A) In determining rates for small employers, a plan that operates statewide shall use no more than nine geographic regions in the state, have no region smaller than an area in which the first three digits of all its ZIP Codes are in common within a county, and divide no county into more than two regions. Plans shall be deemed to be operating statewide if their coverage area includes 90 percent or more of the state's population. Geographic regions established pursuant to this section shall, as a group, cover the entire state, and the area encompassed in a geographic region shall be separate and distinct from areas encompassed in other geographic regions. Geographic regions may be noncontiguous.

(B) (i) In determining rates for small employers, a plan that does not operate statewide shall use no more than the number of geographic regions in the state that is determined by the following formula: the population, as determined in the last federal census, of all counties that are included in their entirety in a plan's service area divided by the total population of the state, as determined in the last federal census, multiplied by nine. The resulting number shall be rounded to the nearest whole integer. No region may be smaller than an area in which the first three digits of all its ZIP Codes are in common within a county and no county may be divided into more than two regions. The area encompassed in a geographic region shall be separate and distinct from areas encompassed in other geographic regions. Geographic regions may be noncontiguous. No plan shall have less than one geographic area.

(ii) If the formula in clause (i) results in a plan that operates in more than one county having only one geographic region, then the formula in clause (i) shall not apply and the plan may have two geographic regions, provided that no county is divided into more than one region.

Nothing in this section shall be construed to require a plan to establish a new service area or to offer health coverage on a statewide basis, outside of the plan's existing service area.

(l) "Small employer" means either of the following:

(1) Any person, firm, proprietary or nonprofit corporation, partnership, public agency, or association that is actively engaged in business or service, that, on at least 50 percent of its working days during the preceding calendar quarter or preceding calendar year, employed at least two, but no more than 50, eligible employees, the majority of whom were employed within this state, that was not formed primarily for purposes of buying health care service plan contracts, and in which a bona fide employer-employee relationship exists. In determining whether to apply the calendar quarter or calendar year test, a health care service plan shall use the test that ensures eligibility if only one test would establish eligibility. However, for purposes of subdivisions (a), (b), and (c) of Section 1357.03, the definition shall include employers with at least three eligible employees until July 1, 1997, and two eligible employees thereafter. In determining the number of eligible employees, companies that are affiliated companies and that are eligible to file a combined tax return for purposes of state taxation shall be considered one employer. Subsequent to the issuance of a health care service plan contract to a small employer pursuant to this article, and for the purpose of determining eligibility, the size of a small employer shall be determined annually. Except as otherwise specifically provided in this article, provisions of this article that apply to a small employer shall continue to apply until the plan contract anniversary following the date the employer no longer meets the requirements of this definition. It includes any small employer as defined in this paragraph who purchases coverage through a guaranteed association, and any employer purchasing coverage for employees through a guaranteed association.

(2) Any guaranteed association, as defined in subdivision (n), that purchases health coverage for members of the association.

(m) "Standard employee risk rate" means the rate applicable to an eligible employee in a particular risk category in a small employer group.

(n) "Guaranteed association" means a nonprofit organization comprised of a group of individuals or employers who associate based solely on participation in a specified profession or industry, accepting for membership any individual or employer meeting its membership criteria, and that (1) includes one or more small employers as defined in paragraph (1) of subdivision (l), (2) does not condition membership directly or indirectly on the health or claims history of any person, (3) uses membership dues solely for and in consideration of the membership and membership benefits, except that the amount of the dues shall not depend on whether the member applies for or purchases insurance offered to the association, (4) is organized and maintained in good faith for purposes unrelated to insurance, (5) has been in active existence on January 1, 1992, and for at least five years prior to that date, (6) has

included health insurance as a membership benefit for at least five years prior to January 1, 1992, (7) has a constitution and bylaws, or other analogous governing documents that provide for election of the governing board of the association by its members, (8) offers any plan contract that is purchased to all individual members and employer members in this state, (9) includes any member choosing to enroll in the plan contracts offered to the association provided that the member has agreed to make the required premium payments, and (10) covers at least 1,000 persons with the health care service plan with which it contracts. The requirement of 1,000 persons may be met if component chapters of a statewide association contracting separately with the same carrier cover at least 1,000 persons in the aggregate.

This subdivision applies regardless of whether a contract issued by a plan is with an association or a trust formed for, or sponsored by, an association to administer benefits for association members.

For purposes of this subdivision, an association formed by a merger of two or more associations after January 1, 1992, and otherwise meeting the criteria of this subdivision shall be deemed to have been in active existence on January 1, 1992, if its predecessor organizations had been in active existence on January 1, 1992, and for at least five years prior to that date and otherwise met the criteria of this subdivision.

(o) "Members of a guaranteed association" means any individual or employer meeting the association's membership criteria if that person is a member of the association and chooses to purchase health coverage through the association. At the association's discretion, it also may include employees of association members, association staff, retired members, retired employees of members, and surviving spouses and dependents of deceased members. However, if an association chooses to include these persons as members of the guaranteed association, the association shall make that election in advance of purchasing a plan contract. Health care service plans may require an association to adhere to the membership composition it selects for up to 12 months.

(p) "Affiliation period" means a period that, under the terms of the health care service plan contract, must expire before health care services under the contract become effective.

SEC. 3. Section 1357.50 of the Health and Safety Code is amended to read:

1357.50. For purposes of this article:

(a) "Health benefit plan" means any individual or group insurance policy or health care service plan contract that provides medical, hospital, and surgical benefits. The term does not include accident only, credit, disability income, coverage of Medicare services pursuant to contracts with the United States government, Medicare supplement, long-term

care insurance, dental, vision, coverage issued as a supplement to liability insurance, insurance arising out of a workers' compensation or similar law, automobile medical payment insurance, or insurance under which benefits are payable with or without regard to fault and that is statutorily required to be contained in any liability insurance policy or equivalent self-insurance.

(b) "Late enrollee" means an eligible employee or dependent who has declined health coverage under a health benefit plan offered through employment or sponsored by an employer at the time of the initial enrollment period provided under the terms of the health benefit plan, and who subsequently requests enrollment in a health benefit plan of that employer, provided that the initial enrollment period shall be a period of at least 30 days. However, an eligible employee or dependent shall not be considered a late enrollee if any of the following is applicable:

(1) The individual meets all of the following requirements:

(A) The individual was covered under another employer health benefit plan, the Healthy Families Program, or no share-of-cost Medi-Cal coverage at the time the individual was eligible to enroll.

(B) The individual certified, at the time of the initial enrollment, that coverage under another employer health benefit plan, the Healthy Families Program, or no share-of-cost Medi-Cal coverage was the reason for declining enrollment provided that, if the individual was covered under another employer health benefit plan, the individual was given the opportunity to make the certification required by this subdivision and was notified that failure to do so could result in later treatment as a late enrollee.

(C) The individual has lost or will lose coverage under another employer health benefit plan as a result of termination of employment of the individual or of a person through whom the individual was covered as a dependent, change in employment status of the individual or of a person through whom the individual was covered as a dependent, termination of the other plan's coverage, cessation of an employer's contribution toward an employee or dependent's coverage, death of a person through whom the individual was covered as a dependent, legal separation, divorce, loss of coverage under the Healthy Families Program as a result of exceeding the program's income or age limits, or loss of no share-of-cost Medi-Cal coverage.

(D) The individual requests enrollment within 30 days after termination of coverage, or cessation of employer contribution toward coverage provided under another employer health benefit plan.

(2) The individual is employed by an employer that offers multiple health benefit plans and the individual elects a different plan during an open enrollment period.

(3) A court has ordered that coverage be provided for a spouse or minor child under a covered employee's health benefit plan. The health benefit plan shall enroll a dependent child within 30 days after receipt of a court order or request from the district attorney, either parent or the person having custody of the child as defined in Section 3751.5 of the Family Code, the employer, or the group administrator. In the case of children who are eligible for medicaid, the State Department of Health Services may also make the request.

(4) The plan cannot produce a written statement from the employer stating that, prior to declining coverage, the individual or the person through whom the individual was eligible to be covered as a dependent was provided with, and signed acknowledgment of, explicit written notice in boldface type specifying that failure to elect coverage during the initial enrollment period permits the plan to impose, at the time of the individual's later decision to elect coverage, an exclusion from coverage for a period of 12 months as well as a six-month preexisting condition exclusion, unless the individual meets the criteria specified in paragraph (1), (2), or (3).

(5) The individual is an employee or dependent who meets the criteria described in paragraph (1) and was under a COBRA continuation provision, and the coverage under that provision has been exhausted. For purposes of this section, the definition of "COBRA" set forth in subdivision (e) of Section 1373.621 shall apply.

(6) The individual is a dependent of an enrolled eligible employee who has lost or will lose his or her coverage under the Healthy Families Program as a result of exceeding the program's income or age limits or no share-of-cost Medi-Cal coverage and requests enrollment within 30 days of notification of this loss of coverage.

(7) The individual is an eligible employee who previously declined coverage under an employer health benefit plan and who has subsequently acquired a dependent who would be eligible for coverage as a dependent of the employee through marriage, birth, adoption, or placement for adoption, and who enrolls for coverage under that employer health benefit plan on his or her behalf, and on behalf of his or her dependent within 30 days following the date of marriage, birth, adoption, or placement for adoption, in which case the effective date of coverage shall be the first day of the month following the date the completed request for enrollment is received in the case of marriage, or the date of birth, or the date of adoption or placement for adoption, whichever applies. Notice of the special enrollment rights contained in this paragraph shall be provided by the employer to an employee at or before the time the employee is offered an opportunity to enroll in plan coverage.

(8) The individual is an eligible employee who has declined coverage for himself or herself or his or her dependents during a previous enrollment period because his or her dependents were covered by another employer health benefit plan at the time of the previous enrollment period. That individual may enroll himself or herself or his or her dependents for plan coverage during a special open enrollment opportunity if his or her dependents have lost or will lose coverage under that other employer health benefit plan. The special open enrollment opportunity shall be requested by the employee not more than 30 days after the date that the other health coverage is exhausted or terminated. Upon enrollment, coverage shall be effective not later than the first day of the first calendar month beginning after the date the request for enrollment is received. Notice of the special enrollment rights contained in this paragraph shall be provided by the employer to an employee at or before the time the employee is offered an opportunity to enroll in plan coverage.

(c) "Preexisting condition provision" means a contract provision that excludes coverage for charges or expenses incurred during a specified period following the enrollee's effective date of coverage, as to a condition for which medical advice, diagnosis, care, or treatment was recommended or received during a specified period immediately preceding the effective date of coverage.

(d) "Creditable coverage" means:

(1) Any individual or group policy, contract, or program that is written or administered by a disability insurance company, nonprofit hospital service plan, health care service plan, fraternal benefits society, self-insured employer plan, or any other entity, in this state or elsewhere, and that arranges or provides medical, hospital and surgical coverage not designed to supplement other private or governmental plans. The term includes continuation or conversion coverage but does not include accident only, credit, coverage for onsite medical clinics, disability income, Medicare supplement, long-term care insurance, dental, vision, coverage issued as a supplement to liability insurance, insurance arising out of a workers' compensation or similar law, automobile medical payment insurance, or insurance under which benefits are payable with or without regard to fault and that is statutorily required to be contained in any liability insurance policy or equivalent self-insurance.

(2) The federal Medicare program pursuant to Title XVIII of the Social Security Act.

(3) The medicaid program pursuant to Title XIX of the Social Security Act.

(4) Any other publicly sponsored program, provided in this state or elsewhere, of medical, hospital and surgical care.

(5) 10 U.S.C. Chapter 55 (commencing with Section 1071) (Civilian Health and Medical Program of the Uniformed Services (CHAMPUS)).

(6) A medical care program of the Indian Health Service or of a tribal organization.

(7) A state health benefits risk pool.

(8) A health plan offered under 5 U.S.C. Chapter 89 (commencing with Section 8901) (Federal Employees Health Benefits Program (FEHBP)).

(9) A public health plan as defined in federal regulations authorized by Section 2701(c)(1)(I) of the Public Health Service Act, as amended by Public Law 104-191, the Health Insurance Portability and Accountability Act of 1996.

(10) A health benefit plan under Section 5(e) of the Peace Corps Act (22 U.S.C. Sec. 2504(e)).

(11) Any other creditable coverage as defined by subdivision (c) of Section 2701 of Title XXVII of the federal Public Health Services Act (42 U.S.C. Sec. 300gg(c)).

(e) "Waivered condition" means a contract provision that excludes coverage for charges or expenses incurred during a specified period of time for one or more specific, identified, medical conditions.

(f) "Affiliation period" means a period that, under the terms of the health benefit plan, must expire before health care services under the plan become effective.

SEC. 4. Section 10198.6 of the Insurance Code is amended to read:
10198.6. For purposes of this article:

(a) "Health benefit plan" means any group or individual policy or contract that provides medical, hospital, or surgical benefits. The term does not include accident only, credit, disability income, coverage of Medicare services pursuant to contracts with the United States government, Medicare supplement, long-term care insurance, dental, vision, coverage issued as a supplement to liability insurance, insurance arising out of a workers' compensation or similar law, automobile medical payment insurance, or insurance under which benefits are payable with or without regard to fault and that is statutorily required to be contained in any liability insurance policy or equivalent self-insurance.

(b) "Late enrollee" means an eligible employee or dependent who has declined health coverage under a health benefit plan offered through employment or sponsored by an employer at the time of the initial enrollment period provided under the terms of the health benefit plan, and who subsequently requests enrollment in a health benefit plan of that employer; provided that the initial enrollment period shall be a period of at least 30 days. However, an eligible employee or dependent shall not be considered a late enrollee if any of the following is applicable:

(1) The individual meets all of the following requirements:

(A) The individual was covered under another employer health benefit plan, the Healthy Families Program, or no share-of-cost Medi-Cal coverage at the time the individual was eligible to enroll.

(B) The individual certified, at the time of the initial enrollment that coverage under another employer health benefit plan, the Healthy Families Program, or no share-of-cost Medi-Cal coverage was the reason for declining enrollment provided that, if the individual was covered under another employer health benefit plan, the individual was given the opportunity to make the certification required by this subdivision and was notified that failure to do so could result in later treatment as a late enrollee.

(C) The individual has lost or will lose coverage under another employer health benefit plan as a result of termination of employment of the individual or of a person through whom the individual was covered as a dependent, change in employment status of the individual or of a person through whom the individual was covered as a dependent, termination of the other plan's coverage, cessation of an employer's contribution toward an employee or dependent's coverage, death of a person through whom the individual was covered as a dependent, legal separation, divorce, loss of coverage under the Healthy Families Program as a result of exceeding the program's income or age limits, or loss of no share-of-cost Medi-Cal coverage.

(D) The individual requests enrollment within 30 days after termination of coverage, or cessation of employer contribution toward coverage provided under another employer health benefit plan.

(2) The individual is employed by an employer that offers multiple health benefit plans and the individual elects a different plan during an open enrollment period.

(3) A court has ordered that coverage be provided for a spouse or minor child under a covered employee's health benefit plan.

(4) The carrier cannot produce a written statement from the employer stating that, prior to declining coverage, the individual or the person through whom the individual was eligible to be covered as a dependent was provided with, and signed acknowledgment of, explicit written notice in boldface type specifying that failure to elect coverage during the initial enrollment period permits the carrier to impose, at the time of the individual's later decision to elect coverage, an exclusion from coverage for a period of 12 months as well as a six-month preexisting condition exclusion, unless the individual meets the criteria specified in paragraph (1), (2), or (3).

(5) The individual is an employee or dependent who meets the criteria described in paragraph (1) and was under a COBRA continuation

provision and the coverage under that provision has been exhausted. For purposes of this section, the definition of “COBRA” set forth in subdivision (e) of Section 10116.5 shall apply.

(6) The individual is a dependent of an enrolled eligible employee who has lost or will lose his or her coverage under the Healthy Families Program as a result of exceeding the program’s income or age limits or no share-of-cost Medi-Cal coverage and requests enrollment within 30 days of notification of this loss of coverage.

(c) “Preexisting condition provision” means a policy provision that excludes coverage for charges or expenses incurred during a specified period following the insured’s effective date of coverage, as to a condition for which medical advice, diagnosis, care, or treatment was recommended or received during a specified period immediately preceding the effective date of coverage.

(d) “Creditable coverage” means:

(1) Any individual or group policy, contract or program, that is written or administered by a disability insurance company, health care service plan, fraternal benefits society, self-insured employer plan, or any other entity, in this state or elsewhere, and that arranges or provides medical, hospital, and surgical coverage not designed to supplement other private or governmental plans. The term includes continuation or conversion coverage but does not include accident only, credit, coverage for onsite medical clinics, disability income, Medicare supplement, long-term care insurance, dental, vision, coverage issued as a supplement to liability insurance, insurance arising out of a workers’ compensation or similar law, automobile medical payment insurance, or insurance under which benefits are payable with or without regard to fault and that is statutorily required to be contained in any liability insurance policy or equivalent self-insurance.

(2) The federal Medicare program pursuant to Title XVIII of the Social Security Act.

(3) The medicaid program pursuant to Title XIX of the Social Security Act.

(4) Any other publicly sponsored program, provided in this state or elsewhere, of medical, hospital and surgical care.

(5) 10 U.S.C. Chapter 55 (commencing with Section 1071) (Civilian Health and Medical Program of the Uniformed Services (CHAMPUS)).

(6) A medical care program of the Indian Health Service or of a tribal organization.

(7) A state health benefits risk pool.

(8) A health plan offered under 5 U.S.C. Chapter 89 (commencing with Section 8901) (Federal Employees Health Benefits Program (FEHBP)).

(9) A public health plan as defined in federal regulations authorized by Section 2701(c)(1)(I) of the Public Health Service Act, as amended by Public Law 104-191, the Health Insurance Portability and Accountability Act of 1996.

(10) A health benefit plan under Section 5(e) of the Peace Corps Act (22 U.S.C. Sec. 2504(e)).

(11) Any other creditable coverage as defined by subsection (c) of Section 2701 of Title XXVII of the federal Public Health Services Act (42 U.S.C. Sec. 300gg(c)).

(e) "Affiliation period" means a period that, under the terms of the health benefit plan, must expire before health care services under the plan become effective.

(f) "Waivered condition" means a contract provision that excludes coverage for charges or expenses incurred during a specified period of time for one or more specific, identified, medical conditions.

SEC. 5. Section 10700 of the Insurance Code is amended to read: 10700. As used in this chapter:

(a) "Agent or broker" means a person or entity licensed under Chapter 5 (commencing with Section 1621) of Part 2 of Division 1.

(b) "Benefit plan design" means a specific health coverage product issued by a carrier to small employers, to trustees of associations that include small employers, or to individuals if the coverage is offered through employment or sponsored by an employer. It includes services covered and the levels of copayment and deductibles, and it may include the professional providers who are to provide those services and the sites where those services are to be provided. A benefit plan design may also be an integrated system for the financing and delivery of quality health care services which has significant incentives for the covered individuals to use the system.

(c) "Board" means the Major Risk Medical Insurance Board.

(d) "Carrier" means any disability insurance company or any other entity that writes, issues, or administers health benefit plans that cover the employees of small employers, regardless of the situs of the contract or master policyholder. For the purposes of Articles 3 (commencing with Section 10719) and 4 (commencing with Section 10730), "carrier" also includes health care service plans.

(e) "Dependent" means the spouse or child of an eligible employee, subject to applicable terms of the health benefit plan covering the employee, and includes dependents of guaranteed association members if the association elects to include dependents under its health coverage at the same time it determines its membership composition pursuant to subdivision (z).

(f) "Eligible employee" means either of the following:

(1) Any permanent employee who is actively engaged on a full-time basis in the conduct of the business of the small employer with a normal workweek of at least 30 hours, in the small employer's regular place of business, who has met any statutorily authorized applicable waiting period requirements. The term includes sole proprietors or partners of a partnership, if they are actively engaged on a full-time basis in the small employer's business, and they are included as employees under a health benefit plan of a small employer, but does not include employees who work on a part-time, temporary, or substitute basis. It includes any eligible employee as defined in this paragraph who obtains coverage through a guaranteed association. Employees of employers purchasing through a guaranteed association shall be deemed to be eligible employees if they would otherwise meet the definition except for the number of persons employed by the employer. A permanent employee who works at least 20 hours but not more than 29 hours is deemed to be an eligible employee if all four of the following apply:

(A) The employee otherwise meets the definition of an eligible employee except for the number of hours worked.

(B) The employer offers the employee health coverage under a health benefit plan.

(C) All similarly situated individuals are offered coverage under the health benefit plan.

(D) The employee must have worked at least 20 hours per normal workweek for at least 50 percent of the weeks in the previous calendar quarter. The insurer may request any necessary information to document the hours and time period in question, including, but not limited to, payroll records and employee wage and tax filings.

(2) Any member of a guaranteed association as defined in subdivision (z).

(g) "Enrollee" means an eligible employee or dependent who receives health coverage through the program from a participating carrier.

(h) "Financially impaired" means, for the purposes of this chapter, a carrier that, on or after the effective date of this chapter, is not insolvent and is either:

(1) Deemed by the commissioner to be potentially unable to fulfill its contractual obligations.

(2) Placed under an order of rehabilitation or conservation by a court of competent jurisdiction.

(i) "Fund" means the California Small Group Reinsurance Fund.

(j) "Health benefit plan" means a policy or contract written or administered by a carrier that arranges or provides health care benefits for the covered eligible employees of a small employer and their dependents. The term does not include accident only, credit, disability

income, coverage of Medicare services pursuant to contracts with the United States government, Medicare supplement, long-term care insurance, dental, vision, coverage issued as a supplement to liability insurance, automobile medical payment insurance, or insurance under which benefits are payable with or without regard to fault and that is statutorily required to be contained in any liability insurance policy or equivalent self-insurance.

(k) "In force business" means an existing health benefit plan issued by the carrier to a small employer.

(l) "Late enrollee" means an eligible employee or dependent who has declined health coverage under a health benefit plan offered by a small employer at the time of the initial enrollment period provided under the terms of the health benefit plan, and who subsequently requests enrollment in a health benefit plan of that small employer, provided that the initial enrollment period shall be a period of at least 30 days. It also means any member of an association that is a guaranteed association as well as any other person eligible to purchase through the guaranteed association when that person has failed to purchase coverage during the initial enrollment period provided under the terms of the guaranteed association's health benefit plan and who subsequently requests enrollment in the plan, provided that the initial enrollment period shall be a period of at least 30 days. However, an eligible employee, another person eligible for coverage through a guaranteed association pursuant to subdivision (z), or an eligible dependent shall not be considered a late enrollee if any of the following is applicable:

(1) The individual meets all of the following requirements:

(A) He or she was covered under another employer health benefit plan, the Healthy Families Program, or no share-of-cost Medi-Cal coverage at the time the individual was eligible to enroll.

(B) He or she certified at the time of the initial enrollment that coverage under another employer health benefit plan, the Healthy Families Program, or no share-of-cost Medi-Cal coverage was the reason for declining enrollment provided that, if the individual was covered under another employer health plan, the individual was given the opportunity to make the certification required by this subdivision and was notified that failure to do so could result in later treatment as a late enrollee.

(C) He or she has lost or will lose coverage under another employer health benefit plan as a result of termination of employment of the individual or of a person through whom the individual was covered as a dependent, change in employment status of the individual, or of a person through whom the individual was covered as a dependent, the termination of the other plan's coverage, cessation of an employer's

contribution toward an employee or dependent's coverage, death of the person through whom the individual was covered as a dependent, legal separation, divorce, loss of coverage under the Healthy Families Program as a result of exceeding the program's income or age limits, or loss of no share-of-cost Medi-Cal coverage.

(D) He or she requests enrollment within 30 days after termination of coverage or employer contribution toward coverage provided under another employer health benefit plan.

(2) The individual is employed by an employer who offers multiple health benefit plans and the individual elects a different plan during an open enrollment period.

(3) A court has ordered that coverage be provided for a spouse or minor child under a covered employee's health benefit plan.

(4) (A) In the case of an eligible employee as defined in paragraph (1) of subdivision (f), the carrier cannot produce a written statement from the employer stating that the individual or the person through whom an individual was eligible to be covered as a dependent, prior to declining coverage, was provided with, and signed acknowledgment of, an explicit written notice in boldface type specifying that failure to elect coverage during the initial enrollment period permits the carrier to impose, at the time of the individual's later decision to elect coverage, an exclusion from coverage for a period of 12 months as well as a six-month preexisting condition exclusion unless the individual meets the criteria specified in paragraph (1), (2), or (3).

(B) In the case of an eligible employee who is a guaranteed association member, the plan cannot produce a written statement from the guaranteed association stating that the association sent a written notice in boldface type to all potentially eligible association members at their last known address prior to the initial enrollment period informing members that failure to elect coverage during the initial enrollment period permits the plan to impose, at the time of the member's later decision to elect coverage, an exclusion from coverage for a period of 12 months as well as a six-month preexisting condition exclusion unless the member can demonstrate that he or she meets the requirements of subparagraphs (A), (C), and (D) of paragraph (1) or meets the requirements of paragraph (2) or (3).

(C) In the case of an employer or person who is not a member of an association, was eligible to purchase coverage through a guaranteed association, and did not do so, and would not be eligible to purchase guaranteed coverage unless purchased through a guaranteed association, the employer or person can demonstrate that he or she meets the requirements of subparagraphs (A), (C), and (D) of paragraph (1), or meets the requirements of paragraph (2) or (3), or that he or she recently

had a change in status that would make him or her eligible and that application for coverage was made within 30 days of the change.

(5) The individual is an employee or dependent who meets the criteria described in paragraph (1) and was under a COBRA continuation provision and the coverage under that provision has been exhausted. For purposes of this section, the definition of "COBRA" set forth in subdivision (e) of Section 1373.62 shall apply.

(6) The individual is a dependent of an enrolled eligible employee who has lost or will lose his or her coverage under the Healthy Families Program as a result of exceeding the program's income or age limits or no share-of-cost Medi-Cal coverage and requests enrollment within 30 days after notification of this loss of coverage.

(7) The individual is an eligible employee who previously declined coverage under an employer health benefit plan and who has subsequently acquired a dependent who would be eligible for coverage as a dependent of the employee through marriage, birth, adoption, or placement for adoption, and who enrolls for coverage under that employer health benefit plan on his or her behalf, and on behalf of his or her dependent within 30 days following the date of marriage, birth, adoption, or placement for adoption, in which case the effective date of coverage shall be the first day of the month following the date the completed request for enrollment is received in the case of marriage, or the date of birth, or the date of adoption or placement for adoption, whichever applies. Notice of the special enrollment rights contained in this paragraph shall be provided by the employer to an employee at or before the time the employee is offered an opportunity to enroll in plan coverage.

(8) The individual is an eligible employee who has declined coverage for himself or herself or his or her dependents during a previous enrollment period because his or her dependents were covered by another employer health benefit plan at the time of the previous enrollment period. That individual may enroll himself or herself or his or her dependents for plan coverage during a special open enrollment opportunity if his or her dependents have lost or will lose coverage under that other employer health benefit plan. The special open enrollment opportunity shall be requested by the employee not more than 30 days after the date that the other health coverage is exhausted or terminated. Upon enrollment, coverage shall be effective not later than the first day of the first calendar month beginning after the date the request for enrollment is received. Notice of the special enrollment rights contained in this paragraph shall be provided by the employer to an employee at or before the time the employee is offered an opportunity to enroll in plan coverage.

(m) “New business” means a health benefit plan issued to a small employer that is not the carrier’s in force business.

(n) “Participating carrier” means a carrier that has entered into a contract with the program to provide health benefits coverage under this part.

(o) “Plan of operation” means the plan of operation of the fund, including articles, bylaws and operating rules adopted by the fund pursuant to Article 3 (commencing with Section 10719).

(p) “Program” means the Health Insurance Plan of California.

(q) “Preexisting condition provision” means a policy provision that excludes coverage for charges or expenses incurred during a specified period following the insured’s effective date of coverage, as to a condition for which medical advice, diagnosis, care, or treatment was recommended or received during a specified period immediately preceding the effective date of coverage.

(r) “Creditable coverage” means:

(1) Any individual or group policy, contract, or program, that is written or administered by a disability insurer, health care service plan, fraternal benefits society, self-insured employer plan, or any other entity, in this state or elsewhere, and that arranges or provides medical, hospital, and surgical coverage not designed to supplement other private or governmental plans. The term includes continuation or conversion coverage but does not include accident only, credit, coverage for onsite medical clinics, disability income, Medicare supplement, long-term care, dental, vision, coverage issued as a supplement to liability insurance, insurance arising out of a workers’ compensation or similar law, automobile medical payment insurance, or insurance under which benefits are payable with or without regard to fault and that is statutorily required to be contained in any liability insurance policy or equivalent self-insurance.

(2) The federal Medicare program pursuant to Title XVIII of the Social Security Act.

(3) The medicaid program pursuant to Title XIX of the Social Security Act.

(4) Any other publicly sponsored program, provided in this state or elsewhere, of medical, hospital, and surgical care.

(5) 10 U.S.C. Chapter 55 (commencing with Section 1071) (Civilian Health and Medical Program of the Uniformed Services (CHAMPUS)).

(6) A medical care program of the Indian Health Service or of a tribal organization.

(7) A state health benefits risk pool.

(8) A health plan offered under 5 U.S.C. Chapter 89 (commencing with Section 8901) (Federal Employees Health Benefits Program (FEHBP)).

(9) A public health plan as defined in federal regulations authorized by Section 2701(c)(1)(I) of the Public Health Service Act, as amended by Public Law 104-191, the Health Insurance Portability and Accountability Act of 1996.

(10) A health benefit plan under Section 5(e) of the Peace Corps Act (22 U.S.C. Sec. 2504(e)).

(11) Any other creditable coverage as defined by subdivision (c) of Section 2701 of Title XXVII of the federal Public Health Services Act (42 U.S.C. Sec. 300gg(c)).

(s) "Rating period" means the period for which premium rates established by a carrier are in effect and shall be no less than six months.

(t) "Risk adjusted employee risk rate" means the rate determined for an eligible employee of a small employer in a particular risk category after applying the risk adjustment factor.

(u) "Risk adjustment factor" means the percent adjustment to be applied equally to each standard employee risk rate for a particular small employer, based upon any expected deviations from standard claims. This factor may not be more than 120 percent or less than 80 percent until July 1, 1996. Effective July 1, 1996, this factor may not be more than 110 percent or less than 90 percent.

(v) "Risk category" means the following characteristics of an eligible employee: age, geographic region, and family size of the employee, plus the benefit plan design selected by the small employer.

(1) No more than the following age categories may be used in determining premium rates:

Under 30

30-39

40-49

50-54

55-59

60-64

65 and over

However, for the 65 and over age category, separate premium rates may be specified depending upon whether coverage under the health benefit plan will be primary or secondary to benefits provided by the federal Medicare program pursuant to Title XVIII of the federal Social Security Act.

(2) Small employer carriers shall base rates to small employers using no more than the following family size categories:

(A) Single.

- (B) Married couple.
- (C) One adult and child or children.
- (D) Married couple and child or children.

(3) (A) In determining rates for small employers, a carrier that operates statewide shall use no more than nine geographic regions in the state, have no region smaller than an area in which the first three digits of all its ZIP Codes are in common within a county and shall divide no county into more than two regions. Carriers shall be deemed to be operating statewide if their coverage area includes 90 percent or more of the state's population. Geographic regions established pursuant to this section shall, as a group, cover the entire state, and the area encompassed in a geographic region shall be separate and distinct from areas encompassed in other geographic regions. Geographic regions may be noncontiguous.

(B) In determining rates for small employers, a carrier that does not operate statewide shall use no more than the number of geographic regions in the state than is determined by the following formula: the population, as determined in the last federal census, of all counties which are included in their entirety in a carrier's service area divided by the total population of the state, as determined in the last federal census, multiplied by nine. The resulting number shall be rounded to the nearest whole integer. No region may be smaller than an area in which the first three digits of all its ZIP Codes are in common within a county and no county may be divided into more than two regions. The area encompassed in a geographic region shall be separate and distinct from areas encompassed in other geographic regions. Geographic regions may be noncontiguous. No carrier shall have less than one geographic area.

(w) "Small employer" means either of the following:

(1) Any person, proprietary or nonprofit firm, corporation, partnership, public agency, or association that is actively engaged in business or service that, on at least 50 percent of its working days during the preceding calendar quarter, or preceding calendar year, employed at least two, but not more than 50, eligible employees, the majority of whom were employed within this state, that was not formed primarily for purposes of buying health insurance and in which a bona fide employer-employee relationship exists. In determining whether to apply the calendar quarter or calendar year test, the insurer shall use the test that ensures eligibility if only one test would establish eligibility. However, for purposes of subdivisions (b) and (h) of Section 10705, the definition shall include employers with at least three eligible employees until July 1, 1997, and two eligible employees thereafter. In determining the number of eligible employees, companies that are affiliated companies and that are eligible to file a combined income tax return for purposes

of state taxation shall be considered one employer. Subsequent to the issuance of a health benefit plan to a small employer pursuant to this chapter, and for the purpose of determining eligibility, the size of a small employer shall be determined annually. Except as otherwise specifically provided, provisions of this chapter that apply to a small employer shall continue to apply until the health benefit plan anniversary following the date the employer no longer meets the requirements of this definition. It includes any small employer as defined in this paragraph who purchases coverage through a guaranteed association, and any employer purchasing coverage for employees through a guaranteed association.

(2) Any guaranteed association, as defined in subdivision (y), that purchases health coverage for members of the association.

(x) "Standard employee risk rate" means the rate applicable to an eligible employee in a particular risk category in a small employer group.

(y) "Guaranteed association" means a nonprofit organization comprised of a group of individuals or employers who associate based solely on participation in a specified profession or industry, accepting for membership any individual or employer meeting its membership criteria which (1) includes one or more small employers as defined in paragraph (1) of subdivision (w), (2) does not condition membership directly or indirectly on the health or claims history of any person, (3) uses membership dues solely for and in consideration of the membership and membership benefits, except that the amount of the dues shall not depend on whether the member applies for or purchases insurance offered by the association, (4) is organized and maintained in good faith for purposes unrelated to insurance, (5) has been in active existence on January 1, 1992, and for at least five years prior to that date, (6) has been offering health insurance to its members for at least five years prior to January 1, 1992, (7) has a constitution and bylaws, or other analogous governing documents that provide for election of the governing board of the association by its members, (8) offers any benefit plan design that is purchased to all individual members and employer members in this state, (9) includes any member choosing to enroll in the benefit plan design offered to the association provided that the member has agreed to make the required premium payments, and (10) covers at least 1,000 persons with the carrier with which it contracts. The requirement of 1,000 persons may be met if component chapters of a statewide association contracting separately with the same carrier cover at least 1,000 persons in the aggregate.

This subdivision applies regardless of whether a master policy by an admitted insurer is delivered directly to the association or a trust formed for or sponsored by an association to administer benefits for association members.

For purposes of this subdivision, an association formed by a merger of two or more associations after January 1, 1992, and otherwise meeting the criteria of this subdivision shall be deemed to have been in active existence on January 1, 1992, if its predecessor organizations had been in active existence on January 1, 1992, and for at least five years prior to that date and otherwise met the criteria of this subdivision.

(z) "Members of a guaranteed association" means any individual or employer meeting the association's membership criteria if that person is a member of the association and chooses to purchase health coverage through the association. At the association's discretion, it may also include employees of association members, association staff, retired members, retired employees of members, and surviving spouses and dependents of deceased members. However, if an association chooses to include those persons as members of the guaranteed association, the association must so elect in advance of purchasing coverage from a plan. Health plans may require an association to adhere to the membership composition it selects for up to 12 months.

(aa) "Affiliation period" means a period that, under the terms of the health benefit plan, must expire before health care services under the plan become effective.

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 543

An act to amend Sections 33054, 47605, 47605.6, 47607, 47612.5, and 51745.6 of, and to add Section 47612.6 to, the Education Code, relating to charter schools.

[Approved by Governor October 5, 2005. Filed with
Secretary of State October 5, 2005.]

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

SECTION 1. Section 33054 of the Education Code is amended to read:

33054. (a) The governing board of a charter school may request, and the State Board of Education may approve, a waiver of any otherwise applicable provisions of this code pursuant to this article. To be eligible to request a waiver, a charter school shall submit its application for a waiver to its chartering authority. The governing board of the chartering authority shall hold the public hearing on the waiver request no later than 90 days following receipt of the request. If the chartering authority fails to hold the public hearing within the 90 days, the charter school shall hold a public hearing prior to submitting the waiver request directly to the State Board of Education. If the chartering authority is a school district or county board of education, it shall prepare a summary of the public hearing to be forwarded with the waiver request to the State Board of Education. If the school district or county board of education recommends against approval of the waiver request, it shall set forth the reasons for its disapproval in written documentation that shall be forwarded to the state board.

(b) For purposes of this article, a charter school shall be deemed to be a “school district” that is eligible to submit a waiver application pursuant to this section.

(c) A charter school shall meet the same criteria that a school district is required to meet when it requests a waiver, except that the chartering authority shall conduct the public hearing, as required pursuant to subdivision (a).

(d) This section shall become inoperative on January 1, 2007, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2007, deletes or extends that date.

SEC. 2. Section 47605 of the Education Code is amended to read:

47605. (a) (1) Except as set forth in paragraph (2), a petition for the establishment of a charter school within any school district may be circulated by any one or more persons seeking to establish the charter school. A petition for the establishment of a charter school shall identify a single charter school that will operate within the geographic boundaries of that school district. A charter school may propose to operate at multiple sites within the school district, as long as each location is identified in the charter school petition. The petition may be submitted to the governing board of the school district for review after either of the following conditions are met:

(A) The petition has been signed by a number of parents or guardians of pupils that is equivalent to at least one-half of the number of pupils that the charter school estimates will enroll in the school for its first year of operation.

(B) The petition has been signed by a number of teachers that is equivalent to at least one-half of the number of teachers that the charter

school estimates will be employed at the school during its first year of operation.

(2) A petition that proposes to convert an existing public school to a charter school that would not be eligible for a loan pursuant to subdivision (b) of Section 41365 may be circulated by any one or more persons seeking to establish the charter school. The petition may be submitted to the governing board of the school district for review after the petition has been signed by not less than 50 percent of the permanent status teachers currently employed at the public school to be converted.

(3) A petition shall include a prominent statement that a signature on the petition means that the parent or guardian is meaningfully interested in having his or her child, or ward, attend the charter school, or in the case of a teacher's signature, means that the teacher is meaningfully interested in teaching at the charter school. The proposed charter shall be attached to the petition.

(4) After receiving approval of its petition, a charter school that proposes to establish operations at one or more additional sites shall request a material revision to its charter and shall notify the authority that granted its charter of those additional locations. The authority that granted its charter shall consider whether to approve those additional locations at an open, public meeting. If the additional locations are approved, they shall be a material revision to the charter school's charter.

(5) Notwithstanding subdivision (a), a charter school that is unable to locate within the jurisdiction of the chartering school district may establish one site outside the boundaries of the school district, but within the county within which that school district is located, if the school district within whose jurisdiction the charter school proposes to operate is notified in advance of the charter petition approval, the county superintendent of schools and the Superintendent are notified of the location of the charter school before it commences operations, and either of the following circumstances exist:

(A) The school has attempted to locate a single site or facility to house the entire program, but a site or facility is unavailable in the area in which the school chooses to locate.

(B) The site is needed for temporary use during a construction or expansion project.

(6) Commencing January 1, 2003, a petition to establish a charter school may not be approved to serve pupils in a grade level that is not served by the school district of the governing board considering the petition, unless the petition proposes to serve pupils in all of the grade levels served by that school district.

(b) No later than 30 days after receiving a petition, in accordance with subdivision (a), the governing board of the school district shall hold a

public hearing on the provisions of the charter, at which time the governing board of the school district shall consider the level of support for the petition by teachers employed by the district, other employees of the district, and parents. Following review of the petition and the public hearing, the governing board of the school district shall either grant or deny the charter within 60 days of receipt of the petition, provided, however, that the date may be extended by an additional 30 days if both parties agree to the extension. In reviewing petitions for the establishment of charter schools pursuant to this section, the chartering authority shall be guided by the intent of the Legislature that charter schools are and should become an integral part of the California educational system and that establishment of charter schools should be encouraged. A school district governing board shall grant a charter for the operation of a school under this part if it is satisfied that granting the charter is consistent with sound educational practice. The governing board of the school district shall not deny a petition for the establishment of a charter school unless it makes written factual findings, specific to the particular petition, setting forth specific facts to support one or more of the following findings:

(1) The charter school presents an unsound educational program for the pupils to be enrolled in the charter school.

(2) The petitioners are demonstrably unlikely to successfully implement the program set forth in the petition.

(3) The petition does not contain the number of signatures required by subdivision (a).

(4) The petition does not contain an affirmation of each of the conditions described in subdivision (d).

(5) The petition does not contain reasonably comprehensive descriptions of all of the following:

(A) (i) A description of the educational program of the school, designed, among other things, to identify those whom the school is attempting to educate, what it means to be an “educated person” in the 21st century, and how learning best occurs. The goals identified in that program shall include the objective of enabling pupils to become self-motivated, competent, and lifelong learners.

(ii) If the proposed school will serve high school pupils, a description of the manner in which the charter school will inform parents about the transferability of courses to other public high schools and the eligibility of courses to meet college entrance requirements. Courses offered by the charter school that are accredited by the Western Association of Schools and Colleges may be considered transferable and courses approved by the University of California or the California State

University as creditable under the “A” to “G” admissions criteria may be considered to meet college entrance requirements.

(B) The measurable pupil outcomes identified for use by the charter school. “Pupil outcomes,” for purposes of this part, means the extent to which all pupils of the school demonstrate that they have attained the skills, knowledge, and attitudes specified as goals in the school’s educational program.

(C) The method by which pupil progress in meeting those pupil outcomes is to be measured.

(D) The governance structure of the school, including, but not limited to, the process to be followed by the school to ensure parental involvement.

(E) The qualifications to be met by individuals to be employed by the school.

(F) The procedures that the school will follow to ensure the health and safety of pupils and staff. These procedures shall include the requirement that each employee of the school furnish the school with a criminal record summary as described in Section 44237.

(G) The means by which the school will achieve a racial and ethnic balance among its pupils that is reflective of the general population residing within the territorial jurisdiction of the school district to which the charter petition is submitted.

(H) Admission requirements, if applicable.

(I) The manner in which annual, independent, financial audits shall be conducted, which shall employ generally accepted accounting principles, and the manner in which audit exceptions and deficiencies shall be resolved to the satisfaction of the chartering authority.

(J) The procedures by which pupils can be suspended or expelled.

(K) The manner by which staff members of the charter schools will be covered by the State Teachers’ Retirement System, the Public Employees’ Retirement System, or federal social security.

(L) The public school attendance alternatives for pupils residing within the school district who choose not to attend charter schools.

(M) A description of the rights of any employee of the school district upon leaving the employment of the school district to work in a charter school, and of any rights of return to the school district after employment at a charter school.

(N) The procedures to be followed by the charter school and the entity granting the charter to resolve disputes relating to provisions of the charter.

(O) A declaration whether or not the charter school shall be deemed the exclusive public school employer of the employees of the charter school for the purposes of the Educational Employment Relations Act

(Chapter 10.7 (commencing with Section 3540) of Division 4 of Title 1 of the Government Code).

(P) A description of the procedures to be used if the charter school closes. The procedures shall ensure a final audit of the school to determine the disposition of all assets and liabilities of the charter school, including plans for disposing of any net assets and for the maintenance and transfer of pupil records.

(c) (1) Charter schools shall meet all statewide standards and conduct the pupil assessments required pursuant to Sections 60605 and 60851 and any other statewide standards authorized in statute or pupil assessments applicable to pupils in noncharter public schools.

(2) Charter schools shall, on a regular basis, consult with their parents, guardians, and teachers regarding the school's educational programs.

(d) (1) In addition to any other requirement imposed under this part, a charter school shall be nonsectarian in its programs, admission policies, employment practices, and all other operations, shall not charge tuition, and shall not discriminate against any pupil on the basis of ethnicity, national origin, gender, or disability. Except as provided in paragraph (2), admission to a charter school shall not be determined according to the place of residence of the pupil, or of his or her parent or guardian, within this state, except that any existing public school converting partially or entirely to a charter school under this part shall adopt and maintain a policy giving admission preference to pupils who reside within the former attendance area of that public school.

(2) (A) A charter school shall admit all pupils who wish to attend the school.

(B) However, if the number of pupils who wish to attend the charter school exceeds the school's capacity, attendance, except for existing pupils of the charter school, shall be determined by a public random drawing. Preference shall be extended to pupils currently attending the charter school and pupils who reside in the district except as provided for in Section 47614.5. Other preferences may be permitted by the chartering authority on an individual school basis and only if consistent with the law.

(C) In the event of a drawing, the chartering authority shall make reasonable efforts to accommodate the growth of the charter school and, in no event, shall take any action to impede the charter school from expanding enrollment to meet pupil demand.

(3) If a pupil is expelled or leaves the charter school without graduating or completing the school year for any reason, the charter school shall notify the superintendent of the school district of the pupil's last known address within 30 days, and shall, upon request, provide that school district with a copy of the cumulative record of the pupil, including

a transcript of grades or report card, and health information. This paragraph applies only to pupils subject to compulsory full-time education pursuant to Section 48200.

(e) The governing board of a school district shall not require any employee of the school district to be employed in a charter school.

(f) The governing board of a school district shall not require any pupil enrolled in the school district to attend a charter school.

(g) The governing board of a school district shall require that the petitioner or petitioners provide information regarding the proposed operation and potential effects of the school, including, but not limited to, the facilities to be utilized by the school, the manner in which administrative services of the school are to be provided, and potential civil liability effects, if any, upon the school and upon the school district. The description of the facilities to be used by the charter school shall specify where the school intends to locate. The petitioner or petitioners shall also be required to provide financial statements that include a proposed first-year operational budget, including startup costs, and cashflow and financial projections for the first three years of operation.

(h) In reviewing petitions for the establishment of charter schools within the school district, the school district governing board shall give preference to petitions that demonstrate the capability to provide comprehensive learning experiences to pupils identified by the petitioner or petitioners as academically low achieving pursuant to the standards established by the department under Section 54032.

(i) Upon the approval of the petition by the governing board of the school district, the petitioner or petitioners shall provide written notice of that approval, including a copy of the petition, to the applicable county superintendent of schools, the department, and the State Board of Education.

(j) (1) If the governing board of a school district denies a petition, the petitioner may elect to submit the petition for the establishment of a charter school to the county board of education. The county board of education shall review the petition pursuant to subdivision (b). If the petitioner elects to submit a petition for establishment of a charter school to the county board of education and the county board of education denies the petition, the petitioner may file a petition for establishment of a charter school with the State Board of Education, and the state board may approve the petition, in accordance with subdivision (b). Any charter school that receives approval of its petition from a county board of education or from the State Board of Education on appeal shall be subject to the same requirements concerning geographic location that it would otherwise be subject to if it receives approval from the entity to whom it originally submits its petition. A charter petition that is submitted to

either a county board of education or to the State Board of Education shall meet all otherwise applicable petition requirements, including the identification of the proposed site or sites where the charter school will operate.

(2) In assuming its role as a chartering agency, the State Board of Education shall develop criteria to be used for the review and approval of charter school petitions presented to the State Board of Education. The criteria shall address all elements required for charter approval, as identified in subdivision (b) and shall define “reasonably comprehensive” as used in paragraph (5) of subdivision (b) in a way that is consistent with the intent of this part. Upon satisfactory completion of the criteria, the State Board of Education shall adopt the criteria on or before June 30, 2001.

(3) A charter school for which a charter is granted by either the county board of education or the State Board of Education based on an appeal pursuant to this subdivision shall qualify fully as a charter school for all funding and other purposes of this part.

(4) If either the county board of education or the State Board of Education fails to act on a petition within 120 days of receipt, the decision of the governing board of the school district, to deny a petition shall, thereafter, be subject to judicial review.

(5) The State Board of Education shall adopt regulations implementing this subdivision.

(6) Upon the approval of the petition by the county board of education, the petitioner or petitioners shall provide written notice of that approval, including a copy of the petition to the department and the State Board of Education.

(k) (1) The State Board of Education may, by mutual agreement, designate its supervisory and oversight responsibilities for a charter school approved by the State Board of Education to any local education agency in the county in which the charter school is located or to the governing board of the school district that first denied the petition.

(2) The designated local education agency shall have all monitoring and supervising authority of a chartering agency, including, but not limited to, powers and duties set forth in Section 47607, except the power of revocation, which shall remain with the State Board of Education.

(3) A charter school that has been granted its charter through an appeal to the State Board of Education and elects to seek renewal of its charter shall, prior to expiration of the charter, submit its petition for renewal to the governing board of the school district that initially denied the charter. If the governing board of the school district denies the school’s petition for renewal, the school may petition the State Board of Education for renewal of its charter.

(l) Teachers in charter schools shall hold a Commission on Teacher Credentialing certificate, permit, or other document equivalent to that which a teacher in other public schools would be required to hold. These documents shall be maintained on file at the charter school and are subject to periodic inspection by the chartering authority. It is the intent of the Legislature that charter schools be given flexibility with regard to noncore, noncollege preparatory courses.

(m) A charter school shall transmit a copy of its annual, independent, financial audit report for the preceding fiscal year, as described in subparagraph (I) of paragraph (5) of subdivision (b), to its chartering entity, the Controller, the county superintendent of schools of the county in which the charter school is sited, unless the county board of education of the county in which the charter school is sited is the chartering entity, and the department by December 15 of each year. This subdivision does not apply if the audit of the charter school is encompassed in the audit of the chartering entity pursuant to Section 41020.

SEC. 3. Section 47605.6 of the Education Code is amended to read:

47605.6. (a) (1) In addition to the authority provided by Section 47605.5, a county board of education may also approve a petition for the operation of a charter school that operates at one or more sites within the geographic boundaries of the county and that provides instructional services that are not generally provided by a county office of education. A county board of education may only approve a countywide charter if it finds, in addition to the other requirements of this section, that the educational services to be provided by the charter school will offer services to a pupil population that will benefit from those services and that cannot be served as well by a charter school that operates in only one school district in the county. A petition for the establishment of a countywide charter school pursuant to this subdivision may be circulated throughout the county by any one or more persons seeking to establish the charter school. The petition may be submitted to the county board of education for review after either of the following conditions are met:

(A) The petition has been signed by a number of parents or guardians of pupils residing within the county that is equivalent to at least one-half of the number of pupils that the charter school estimates will enroll in the school for its first year of operation and each of the school districts where the charter school petitioner proposes to operate a facility has received at least 30 days notice of the petitioner's intent to operate a school pursuant to this section.

(B) The petition has been signed by a number of teachers that is equivalent to at least one-half of the number of teachers that the charter school estimates will be employed at the school during its first year of operation and each of the school districts where the charter school

petitioner proposes to operate a facility has received at least 30 days notice of the petitioner's intent to operate a school pursuant to this section.

(2) An existing public school may not be converted to a charter school in accordance with this section.

(3) After receiving approval of its petition, a charter school that proposes to establish operations at additional sites within the geographic boundaries of the county board of education shall notify the school districts where those sites will be located. The charter school shall also request a material revision of its charter by the county board of education that approved its charter and the county board shall consider whether to approve those additional locations at an open, public meeting, held no sooner than 30 days following notification of the school districts where the sites will be located. If approved, the location of the approved sites shall be a material revision of the school's approved charter.

(4) A petition shall include a prominent statement indicating that a signature on the petition means that the parent or guardian is meaningfully interested in having his or her child or ward attend the charter school, or in the case of a teacher's signature, means that the teacher is meaningfully interested in teaching at the charter school. The proposed charter shall be attached to the petition.

(b) No later than 60 days after receiving a petition, in accordance with subdivision (a), the county board of education shall hold a public hearing on the provisions of the charter, at which time the county board of education shall consider the level of support for the petition by teachers, parents or guardians, and the school districts where the charter school petitioner proposes to place school facilities. Following review of the petition and the public hearing, the county board of education shall either grant or deny the charter within 90 days of receipt of the petition. However, this date may be extended by an additional 30 days if both parties agree to the extension. A county board of education may impose any additional requirements beyond those required by this section that it considers necessary for the sound operation of a countywide charter school. A county board of education may grant a charter for the operation of a school under this part only if the board is satisfied that granting the charter is consistent with sound educational practice and that the charter school has reasonable justification for why it could not be established by petition to a school district pursuant to Section 47605. The county board of education shall deny a petition for the establishment of a charter school if the board finds, one or more of the following:

(1) The charter school presents an unsound educational program for the pupils to be enrolled in the charter school.

(2) The petitioners are demonstrably unlikely to successfully implement the program set forth in the petition.

(3) The petition does not contain the number of signatures required by subdivision (a).

(4) The petition does not contain an affirmation of each of the conditions described in subdivision (d).

(5) The petition does not contain reasonably comprehensive descriptions of all of the following:

(A) (i) A description of the educational program of the school, designed, among other things, to identify those pupils whom the school is attempting to educate, what it means to be an “educated person” in the 21st century, and how learning best occurs. The goals identified in that program shall include the objective of enabling pupils to become self-motivated, competent, and lifelong learners.

(ii) If the proposed charter school will enroll high school pupils, a description of the manner in which the charter school will inform parents regarding the transferability of courses to other public high schools. Courses offered by the charter school that are accredited by the Western Association of Schools and Colleges may be considered to be transferable to other public high schools.

(iii) If the proposed charter school will enroll high school pupils, information as to the manner in which the charter school will inform parents as to whether each individual course offered by the charter school meets college entrance requirements. Courses approved by the University of California or the California State University as satisfying their prerequisites for admission may be considered as meeting college entrance requirements for purposes of this clause.

(B) The measurable pupil outcomes identified for use by the charter school. “Pupil outcomes,” for purposes of this part, means the extent to which all pupils of the school demonstrate that they have attained the skills, knowledge, and attitudes specified as goals in the school’s educational program.

(C) The method by which pupil progress in meeting those pupil outcomes is to be measured.

(D) The location of each charter school facility that the petitioner proposes to operate.

(E) The governance structure of the school, including, but not limited to, the process to be followed by the school to ensure parental involvement.

(F) The qualifications to be met by individuals to be employed by the school.

(G) The procedures that the school will follow to ensure the health and safety of pupils and staff. These procedures shall include the

requirement that each employee of the school furnish the school with a criminal record summary as described in Section 44237.

(H) The means by which the school will achieve a racial and ethnic balance among its pupils that is reflective of the general population residing within the territorial jurisdiction of the school district to which the charter petition is submitted.

(I) The manner in which annual, independent, financial audits shall be conducted, in accordance with regulations established by the State Board of Education, and the manner in which audit exceptions and deficiencies shall be resolved.

(J) The procedures by which pupils can be suspended or expelled.

(K) The manner by which staff members of the charter schools will be covered by the State Teachers' Retirement System, the Public Employees' Retirement System, or federal social security.

(L) The procedures to be followed by the charter school and the county board of education to resolve disputes relating to provisions of the charter.

(M) A declaration whether or not the charter school shall be deemed the exclusive public school employer of the employees of the charter school for the purposes of the Educational Employment Relations Act (Chapter 10.7 (commencing with Section 3540) of Division 4 of Title 1 of the Government Code).

(N) Admission requirements, of the charter school, if applicable.

(O) The public school attendance alternatives for pupils residing within the county who choose not to attend the charter school.

(P) A description of the rights of an employee of the county office of education, upon leaving the employment of the county office of education, to be employed by the charter school, and a description of any rights of return to the county office of education that an employee may have upon leaving the employ of the charter school.

(Q) A description of the procedures to be used if the charter school closes. The procedures shall ensure a final audit of the school to determine the disposition of all assets and liabilities of the charter school, including plans for disposing of any net assets and for the maintenance and transfer of public records.

(6) Any other basis that the board finds justifies the denial of the petition.

(c) A county board of education that approves a petition for the operation of a countywide charter may, as a condition of charter approval, enter into an agreement with a third party, at the expense of the charter school, to oversee, monitor, and report to the county board of education on the operations of the charter school. The county board of education may prescribe the aspects of the charter school's operations to be monitored by the third party and may prescribe appropriate requirements

regarding the reporting of information concerning the operations of the charter school to the county board of education.

(d) (1) Charter schools shall meet all statewide standards and conduct the pupil assessments required pursuant to Section 60605 and any other statewide standards authorized in statute or pupil assessments applicable to pupils in noncharter public schools.

(2) Charter schools shall on a regular basis consult with their parents and teachers regarding the school's educational programs.

(e) (1) In addition to any other requirement imposed under this part, a charter school shall be nonsectarian in its programs, admission policies, employment practices, and all other operations, shall not charge tuition, and shall not discriminate against any pupil on the basis of ethnicity, national origin, gender, or disability. Except as provided in paragraph (2), admission to a charter school shall not be determined according to the place of residence of the pupil, or of his or her parent or guardian, within this state.

(2) (A) A charter school shall admit all pupils who wish to attend the school.

(B) However, if the number of pupils who wish to attend the charter school exceeds the school's capacity, attendance, except for existing pupils of the charter school, shall be determined by a public random drawing. Preference shall be extended to pupils currently attending the charter school and pupils who reside in the county except as provided for in Section 47614.5. Other preferences may be permitted by the chartering authority on an individual school basis and only if consistent with the law.

(C) In the event of a drawing, the county board of education shall make reasonable efforts to accommodate the growth of the charter school and, in no event, shall take any action to impede the charter school from expanding enrollment to meet pupil demand.

(f) No county board of education shall require any employee of the county or a school district to be employed in a charter school.

(g) No county board of education shall require any pupil enrolled in a county program to attend a charter school.

(h) The county board of education shall require that the petitioner or petitioners provide information regarding the proposed operation and potential effects of the school, including, but not limited to, the facilities to be utilized by the school, the manner in which administrative services of the school are to be provided, and potential civil liability effects, if any, upon the school, any school district where the charter school may operate and upon the county board of education. The petitioner or petitioners shall also be required to provide financial statements that include a proposed first-year operational budget, including startup costs,

and cashflow and financial projections for the first three years of operation.

(i) In reviewing petitions for the establishment of charter schools within the county, the county board of education shall give preference to petitions that demonstrate the capability to provide comprehensive learning experiences to pupils identified by the petitioner or petitioners as academically low-achieving pursuant to the standards established by the State Department of Education under Section 54032.

(j) Upon the approval of the petition by the county board of education, the petitioner or petitioners shall provide written notice of that approval, including a copy of the petition, to the school districts within the county, the Superintendent of Public Instruction and to the State Board of Education.

(k) If a county board of education denies a petition, the petitioner may not elect to submit the petition for the establishment of the charter school to the State Board of Education.

(l) Teachers in charter schools shall be required to hold a Commission on Teacher Credentialing certificate, permit, or other document equivalent to that which a teacher in other public schools would be required to hold. These documents shall be maintained on file at the charter school and shall be subject to periodic inspection by the chartering authority.

(m) A charter school shall transmit a copy of its annual, independent, financial audit report for the preceding fiscal year, as described in subparagraph (I) of paragraph (5) of subdivision (b), to the County Office of Education, State Controller and the State Department of Education by December 15 of each year. This subdivision shall not apply if the audit of the charter school is encompassed in the audit of the chartering entity pursuant to Section 41020.

SEC. 4. Section 47607 of the Education Code is amended to read:

47607. (a) (1) A charter may be granted pursuant to Sections 47605, 47605.5, and 47606 for a period not to exceed five years. A charter granted by a school district governing board, a county board of education or the State Board of Education, may be granted one or more subsequent renewals by that entity. Each renewal shall be for a period of five years. A material revision of the provisions of a charter petition may be made only with the approval of the authority that granted the charter. The authority that granted the charter may inspect or observe any part of the charter school at any time.

(2) Renewals and material revisions of charters shall be governed by the standards and criteria in Section 47605, and shall include, but not be limited to, a reasonably comprehensive description of any new requirement of charter schools enacted into law after the charter was originally granted or last renewed.

(b) Commencing on January 1, 2005, or after a charter school has been in operation for four years, whichever is later, a charter school shall meet at least one of the following criteria prior to receiving a charter renewal pursuant to paragraph (1) of subdivision (a):

(1) Attained its Academic Performance Index (API) growth target in the prior year or in two of the last three years, or in the aggregate for the prior three years.

(2) Ranked in deciles 4 to 10, inclusive, on the API in the prior year or in two of the last three years.

(3) Ranked in deciles 4 to 10, inclusive, on the API for a demographically comparable school in the prior year or in two of the last three years.

(4) (A) The entity that granted the charter determines that the academic performance of the charter school is at least equal to the academic performance of the public schools that the charter school pupils would otherwise have been required to attend, as well as the academic performance of the schools in the school district in which the charter school is located, taking into account the composition of the pupil population that is served at the charter school.

(B) The determination made pursuant to this paragraph shall be based upon all of the following:

(i) Documented and clear and convincing data.

(ii) Pupil achievement data from assessments, including, but not limited to, the Standardized Testing and Reporting Program established by Article 4 (commencing with Section 60640) for demographically similar pupil populations in the comparison schools.

(iii) Information submitted by the charter school.

(C) A chartering authority shall submit to the Superintendent of Public Instruction copies of supporting documentation and a written summary of the basis for any determination made pursuant to this paragraph. The Superintendent of Public Instruction shall review the materials and make recommendations to the chartering authority based on that review. The review may be the basis for a recommendation made pursuant to Section 47604.5.

(D) A charter renewal may not be granted to a charter school prior to 30 days after that charter school submits materials pursuant to this paragraph.

(5) Has qualified for an alternative accountability system pursuant to subdivision (h) of Section 52052.

(c) A charter may be revoked by the authority that granted the charter under this chapter if the authority finds that the charter school did any of the following:

(1) Committed a material violation of any of the conditions, standards, or procedures set forth in the charter.

(2) Failed to meet or pursue any of the pupil outcomes identified in the charter.

(3) Failed to meet generally accepted accounting principles, or engaged in fiscal mismanagement.

(4) Violated any provision of law.

(d) Prior to revocation, the authority that granted the charter shall notify the charter public school of any violation of this section and give the school a reasonable opportunity to cure the violation, unless the authority determines, in writing, that the violation constitutes a severe and imminent threat to the health or safety of the pupils.

SEC. 5. Section 47612.5 of the Education Code is amended to read:

47612.5. (a) Notwithstanding any other provision of law and as a condition of apportionment, a charter school shall do all of the following:

(1) For each fiscal year, offer, at a minimum, the following number of minutes of instruction:

(A) To pupils in kindergarten, 36,000 minutes.

(B) To pupils in grades 1 to 3, inclusive, 50,400 minutes.

(C) To pupils in grades 4 to 8, inclusive, 54,000 minutes.

(D) To pupils in grades 9 to 12, inclusive, 64,800 minutes.

(2) Maintain written contemporaneous records that document all pupil attendance and make these records available for audit and inspection.

(3) Certify that its pupils have participated in the state testing programs specified in Chapter 5 (commencing with Section 60600) of Part 33 in the same manner as other pupils attending public schools as a condition of apportionment of state funding.

(b) Notwithstanding any other provision of law and except to the extent inconsistent with this section and Section 47634.2, a charter school that provides independent study shall comply with Article 5.5 (commencing with Section 51745) of Chapter 5 of Part 28 and implementing regulations adopted thereunder. The State Board of Education shall adopt regulations that apply this article to charter schools. To the extent that these regulations concern the qualifications of instructional personnel, the State Board of Education shall be guided by subdivision (l) of Section 47605.

(c) A reduction in apportionment made pursuant to subdivision (a) shall be proportional to the magnitude of the exception that causes the reduction. For purposes of paragraph (1) of subdivision (a), for each charter school that fails to offer pupils the minimum number of minutes of instruction specified in that paragraph, the Superintendent shall withhold from the charter school's apportionment for average daily attendance of the affected pupils, by grade level, the sum of that

apportionment multiplied by the percentage of the minimum number of minutes of instruction at each grade level that the charter school failed to offer.

(d) (1) Notwithstanding any other provision of law and except as provided in paragraph (1) of subdivision (e), a charter school that has an approved charter may receive funding for nonclassroom-based instruction only if a determination for funding is made pursuant to Section 47634.2 by the State Board of Education. The determination for funding shall be subject to any conditions or limitations the State Board of Education may prescribe. The State Board of Education shall adopt regulations on or before February 1, 2002, that define and establish general rules governing nonclassroom-based instruction that apply to all charter schools and to the process for determining funding of nonclassroom-based instruction by charter schools offering nonclassroom-based instruction other than the nonclassroom-based instruction allowed by paragraph (1) of subdivision (e). Nonclassroom-based instruction includes, but is not limited to, independent study, home study, work study, and distance and computer-based education. In prescribing any conditions or limitations relating to the qualifications of instructional personnel, the State Board of Education shall be guided by subdivision (l) of Section 47605.

(2) Except as provided in paragraph (2) of subdivision (b) of Section 47634.2, a charter school that receives a determination pursuant to subdivision (b) of Section 47634.2 is not required to reapply annually for a funding determination of its nonclassroom-based instruction program if an update of the information the State Board of Education reviewed when initially determining funding would not require material revision, as that term is defined in regulations adopted by the board. A charter school that has achieved a rank of 6 or greater on the Academic Performance Index for the two years immediately prior to receiving a funding determination pursuant to subdivision (b) of Section 47634.2 shall receive a five-year determination and is not required to annually reapply for a funding determination of its nonclassroom-based instruction program if an update of the information the State Board of Education reviewed when initially determining funding would not require material revision, as that term is defined in regulations adopted by the board. Notwithstanding any provision of law, the State Board of Education may require a charter school to provide updated information at any time it determines that a review of that information is necessary. The State Board of Education may terminate a determination for funding if updated or additional information requested by the board is not made available to the board by the charter school within a reasonable amount of time

or if the information otherwise supports termination. A determination for funding pursuant to Section 47634.2 may not exceed five years.

(3) A charter school that offers nonclassroom-based instruction in excess of the amount authorized by paragraph (1) of subdivision (e) is subject to the determination for funding requirement of Section 47634.2 to receive funding each time its charter is renewed or materially revised pursuant to Section 47607. A charter school that materially revises its charter to offer nonclassroom-based instruction in excess of the amount authorized by paragraph (1) of subdivision (e) is subject to the determination for funding requirement of Section 47634.2.

(e) (1) Notwithstanding any other provision of law, and as a condition of apportionment, “classroom-based instruction” in a charter school, for the purposes of this part, occurs only when charter school pupils are engaged in educational activities required of those pupils and are under the immediate supervision and control of an employee of the charter school who possesses a valid teaching certification in accordance with subdivision (l) of Section 47605. For purposes of calculating average daily attendance for classroom-based instruction apportionments, at least 80 percent of the instructional time offered by the charter school shall be at the schoolsite, and the charter school shall require the attendance of all pupils for whom a classroom-based apportionment is claimed at the schoolsite for at least 80 percent of the minimum instructional time required to be offered pursuant to paragraph (1) of subdivision (a) of Section 47612.5.

(2) For the purposes of this part, “nonclassroom instruction” or “nonclassroom-based instruction” means instruction that does not meet the requirements specified in paragraph (1). The State Board of Education may adopt regulations pursuant to paragraph (1) of subdivision (d) specifying other conditions or limitations on what constitutes nonclassroom-based instruction, as it deems appropriate and consistent with this part.

(3) For purposes of this part, a schoolsite is a facility that is used principally for classroom instruction.

(4) Notwithstanding any other provision of law, neither the State Board of Education, nor the Superintendent may waive the requirements of paragraph (1) of subdivision (a).

SEC. 6. Section 47612.6 is added to the Education Code, to read:

47612.6. (a) The State Board of Education may waive fiscal penalties calculated pursuant to subdivision (c) of Section 47612.5 for a charter school that fails to offer the minimum number of instructional minutes required pursuant to subdivision (a) of Section 47612.5 for the fiscal year.

(b) For fiscal penalties incurred as a result of providing insufficient instructional minutes in the 2002–03 fiscal year, or any fiscal year thereafter, the State Board of Education may grant a waiver only upon the condition that the charter school agrees to maintain minutes of instruction equal to those minutes of instruction it failed to offer and the minimum number of instructional minutes required pursuant to subdivision (a) of Section 47612.5 for twice the number of years that it failed to maintain the required minimum number of instructional minutes for the fiscal year. Compliance with the condition shall commence no later than the school year following the fiscal year that the waiver was granted and shall continue for each subsequent school year until the condition is satisfied.

(c) Compliance with the condition set forth in subdivision (b) shall be verified in the report of the annual audit of the charter school for each fiscal year in which it is required to maintain additional time pursuant to subdivision (b). If the audit report for a year in which the additional time is required to be maintained does not verify that the additional time was provided, the waiver granted pursuant to subdivision (b) shall be revoked and the charter school shall repay the fiscal penalty calculated pursuant to subdivision (c) of Section 47612.5, in accordance with subdivision (a) of Section 41344.

(d) It is the intent of the Legislature that charter schools make every effort to make up any instructional minutes lost during the fiscal year in which the loss occurred rather than seek a waiver pursuant to this section.

SEC. 7. Section 51745.6 of the Education Code is amended to read:

51745.6. (a) The ratio of average daily attendance for independent study pupils 18 years of age or less to school district full-time equivalent certificated employees responsible for independent study, calculated as specified by the State Department of Education, shall not exceed the equivalent ratio of pupils to full-time certificated employees for all other educational programs operated by the school district. The ratio of average daily attendance for independent study pupils 18 years of age or less to county office of education full-time equivalent certificated employees responsible for independent study, to be calculated in a manner prescribed by the State Department of Education, shall not exceed the equivalent ratio of pupils to full-time certificated employees for all other educational programs operated by the high school or unified school district with the largest average daily attendance of pupils in that county. The computation of those ratios shall be performed annually by the reporting agency at the time of, and in connection with, the second principal apportionment report to the Superintendent of Public Instruction.

(b) Only those units of average daily attendance for independent study that reflect a pupil-teacher ratio that does not exceed the ratio described

in subdivision (a) shall be eligible for apportionment pursuant to Section 42238.5, for school districts, and Section 2558, for county offices of education. Nothing in this section shall prevent a school district or county office of education from serving additional units of average daily attendance greater than the ratio described in subdivision (a), except that those additional units shall not be funded pursuant to Section 42238.5 or Section 2558.

(c) The calculations performed for purposes of this section shall not include either of the following:

(1) The average daily attendance generated by special education pupils enrolled in special day classes on a full-time basis, or the teachers of those classes.

(2) The average daily attendance or teachers in necessary small schools that are eligible to receive funding pursuant to Article 4 (commencing with Section 42280) of Chapter 7 of Part 24.

(d) The pupil-teacher ratio described in subdivision (a) in a unified school district participating in the class size reduction program pursuant to Chapter 6.10 (commencing with Section 52120) may, at the school district's option, be calculated separately for kindergarten and grades 1 to 6, inclusive, and for grades 7 to 12, inclusive.

(e) The pupils-to-certificated-employee ratio described in subdivision (a) may, in a charter school, be calculated by using a fixed pupils-to-certificated-employee ratio of 25 to one, or by being a ratio of less than 25 pupils per certificated employee. All charter school pupils, regardless of age, shall be included in pupil-to-certificated-employee ratio calculations.

SEC. 8. 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.

CHAPTER 544

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 October 5, 2005. Filed with
Secretary of State October 5, 2005.]

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

SECTION 1. Section 68120 of the Education Code 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 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.

(3) "Surviving child" means either of the following:

(A) A surviving natural or adopted child of the deceased person.

(B) A surviving stepchild of the deceased person who, at the time of the death of that deceased person or at any time while that stepchild was a minor, was living or domiciled with that deceased person and claimed on a tax form filed by or on behalf of that deceased person.

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 imminent hardship to students who are deserving of the waiver of mandatory systemwide fees and tuition that is provided by Section 68120 of the Education Code, it is necessary that this act take effect immediately.

CHAPTER 545

An act to amend Section 103627 of, and to add and repeal Section 103627.5 of, the Health and Safety Code, and to amend Section 18309 of the Welfare and Institutions Code, relating to domestic violence.

[Approved by Governor October 5, 2005. Filed with
Secretary of State October 5, 2005.]

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

SECTION 1. Section 103627 of the Health and Safety Code is amended to read:

103627. (a) (1) The Alameda County Board of Supervisors , upon making findings and declarations supporting the need for governmental oversight and coordination of the multiple agencies dealing with domestic violence, may authorize an increase in the fees for certified copies of marriage certificates, birth certificates, fetal death records, and death records, up to a maximum increase of two dollars (\$2).

(2) The City Council of the City of Berkeley, upon making findings and declarations supporting the need for governmental oversight and coordination of the multiple agencies dealing with domestic violence, may authorize an increase in the fees for certified copies of birth certificates, fetal death records, and death records, up to a maximum increase of two dollars (\$2).

(b) Effective July 1 of each year, the Alameda County Board of Supervisors and the City Council of the City of Berkeley may authorize

an increase in these fees by an amount equal to the increase in the Consumer Price Index for the San Francisco metropolitan area for the preceding calendar year, rounded to the nearest half-dollar (\$0.50). The fees shall be disposed of pursuant to the provisions of Section 18309 of the Welfare and Institutions Code.

(c) In addition to the fees prescribed by subdivisions (a) and (b), any applicant for a certified copy of a birth certificate, a fetal death record, or death record in Alameda County or in the City of Berkeley shall pay an additional fee to the local registrar, county recorder, or county clerk, as applicable, as established by the Alameda County Board of Supervisors or the City Council of the City of Berkeley.

(d) This section shall remain in effect only until January 1, 2010, and as of that date is repealed, unless a later enacted statute deletes or extends that date.

SEC. 2. Section 103627.5 is added to the Health and Safety Code, to read:

103627.5. If it elects to increase fees pursuant to Section 103627, the City Council of the City of Berkeley shall submit a report to the Assembly Committee on Judiciary and the Senate Committee on Judiciary, by no later than July 1, 2009, that contains the following information:

(a) The annual amount of funds received and expended from fee increases for the purpose of governmental oversight and coordination of domestic violence prevention, intervention, and prosecution efforts in the city.

(b) Outcomes achieved as a result of the activities associated with the implementation of Section 103627.

(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. 3. Section 18309 of the Welfare and Institutions Code is amended to read:

18309. (a) The Alameda County Board of Supervisors shall direct the local registrar, county recorder, and county clerk to deposit fees collected pursuant to Section 26840.10 of the Government Code and Section 103627 of the Health and Safety Code into a special fund. The county may retain up to 4 percent of the funds for administrative costs associated with the collection and segregation of the additional fees and the deposit of these fees into the special fund. Proceeds from the fund shall be used for governmental oversight and coordination of domestic violence and family violence prevention, intervention, and prosecution efforts among the court system, the district attorney's office, the public defender's office, law enforcement, the probation department, mental

health, substance abuse, child welfare services, adult protective services, and community-based organizations and other agencies working in Alameda County in order to increase the effectiveness of prevention, early intervention, and prosecution of domestic and family violence.

(b) The City Council of the City of Berkeley shall direct the local registrar to deposit fees collected pursuant to Section 103627 of the Health and Safety Code into a special fund. The city may retain up to 4 percent of the funds for administrative costs associated with the collection and segregation of the additional fees and the deposit of these fees into the special fund. Proceeds from the fund shall be used for governmental oversight and coordination of domestic violence and family violence prevention and intervention efforts, including law enforcement, mental health, public health, substance abuse, victim advocacy, community education, and housing, in order to increase the effectiveness of prevention, early intervention, and prosecution of domestic and family violence.

(c) This section shall remain in effect only until January 1, 2010, and as of that date is repealed, unless a later enacted statute deletes or extends that date.

SEC. 4. Due to the unique circumstances of the City of Berkeley with respect to domestic violence, the Legislature hereby finds and declares that a general statute cannot be made applicable within the meaning of Section 16 of Article IV of the California Constitution. Therefore, the special legislation contained in this act is necessarily applicable only in the City of Berkeley.

CHAPTER 546

An act to amend Section 19854 of the Business and Professions Code, and to amend Sections 330.9, 332, 337a, 337d, 337j, and 337z of the Penal Code, relating to gambling.

[Approved by Governor October 5, 2005. Filed with
Secretary of State October 5, 2005.]

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

SECTION 1. Section 19854 of the Business and Professions Code is amended to read:

19854. (a) Every key employee shall apply for and obtain a key employee license.

(b) Licenses issued to key employees shall be for specified positions only, and those positions shall be enumerated in the endorsement described in subdivision (b) of Section 19851.

(c) No person may be issued a key employee license unless the person would qualify for a state gambling license.

SEC. 2. Section 330.9 of the Penal Code is amended to read:

330.9. (a) Notwithstanding Sections 330a, 330b, 330.1 to 330.5, inclusive, or any other provision of law, it shall be lawful for any person to transport and possess any slot machine or device for display at a trade show, conference, or convention being held within this state, or if used solely as a prop for a motion picture, television, or video production.

(b) Subdivision (a) shall apply only if the slot machine or device is adjusted to render the machine or device inoperable, or if the slot machine or device is set on demonstration mode.

(c) This section is intended to constitute a state exemption as provided in Section 1172 of Title 15 of the United States Code.

(d) For purposes of this section:

(1) "Demonstration mode" means that the programming or settings of a slot machine or device have been programmed, set, or selected to operate normally, but to not accept or pay out cash or any other consideration.

(2) "Slot machine or device" has the same meaning as "slot machine or device" as defined in Section 330.1, or "gambling device" as defined in paragraph (1) of subsection (a) of Section 1171 of Title 15 of the United States Code.

SEC. 3. Section 332 of the Penal Code is amended to read:

332. (a) Every person who by the game of "three card monte," so-called, or any other game, device, sleight of hand, pretensions to fortune telling, trick, or other means whatever, by use of cards or other implements or instruments, or while betting on sides or hands of any play or game, fraudulently obtains from another person money or property of any description, shall be punished as in the case of larceny of property of like value for the first offense, except that the fine may not exceed more than five thousand dollars (\$5,000). A second offense of this section is punishable, as in the case of larceny, except that the fine shall not exceed ten thousand dollars (\$10,000), or both imprisonment and fine.

(b) For the purposes of this section, "fraudulently obtains" includes, but is not limited to, cheating, including, for example, gaining an unfair advantage for any player in any game through a technique or device not sanctioned by the rules of the game.

(c) For the purposes of establishing the value of property under this section, poker chips, tokens, or markers have the monetary value assigned to them by the players in any game.

SEC. 4. Section 337a of the Penal Code is amended to read:

337a. (a) Every person who engages in one of the following offenses, shall be punished for a first offense by imprisonment in a county jail for a period of not more than one year or in the state prison, or by a fine not to exceed five thousand dollars (\$5,000), or by both imprisonment and fine:

(1) Pool selling or bookmaking, with or without writing, at any time or place.

(2) Whether for gain, hire, reward, or gratuitously, or otherwise, keeps or occupies, for any period of time whatsoever, any room, shed, tenement, tent, booth, building, float, vessel, place, stand or enclosure, of any kind, or any part thereof, with a book or books, paper or papers, apparatus, device or paraphernalia, for the purpose of recording or registering any bet or bets, any purported bet or bets, wager or wagers, any purported wager or wagers, selling pools, or purported pools, upon the result, or purported result, of any trial, purported trial, contest, or purported contest, of skill, speed or power of endurance of person or animal, or between persons, animals, or mechanical apparatus, or upon the result, or purported result, of any lot, chance, casualty, unknown or contingent event whatsoever.

(3) Whether for gain, hire, reward, or gratuitously, or otherwise, receives, holds, or forwards, or purports or pretends to receive, hold, or forward, in any manner whatsoever, any money, thing or consideration of value, or the equivalent or memorandum thereof, staked, pledged, bet or wagered, or to be staked, pledged, bet or wagered, or offered for the purpose of being staked, pledged, bet or wagered, upon the result, or purported result, of any trial, or purported trial, or contest, or purported contest, of skill, speed or power of endurance of person or animal, or between persons, animals, or mechanical apparatus, or upon the result, or purported result, of any lot, chance, casualty, unknown or contingent event whatsoever.

(4) Whether for gain, hire, reward, or gratuitously, or otherwise, at any time or place, records, or registers any bet or bets, wager or wagers, upon the result, or purported result, of any trial, or purported trial, or contest, or purported contest, of skill, speed or power of endurance of person or animal, or between persons, animals, or mechanical apparatus, or upon the result, or purported result, of any lot, chance, casualty, unknown or contingent event whatsoever.

(5) Being the owner, lessee or occupant of any room, shed, tenement, tent, booth, building, float, vessel, place, stand, enclosure or grounds,

or any part thereof, whether for gain, hire, reward, or gratuitously, or otherwise, permits that space to be used or occupied for any purpose, or in any manner prohibited by paragraph (1), (2), (3), or (4).

(6) Lays, makes, offers or accepts any bet or bets, or wager or wagers, upon the result, or purported result, of any trial, or purported trial, or contest, or purported contest, of skill, speed or power of endurance of person or animal, or between persons, animals, or mechanical apparatus.

(b) In any accusatory pleading charging a violation of this section, if the defendant has been once previously convicted of a violation of any subdivision of this section, the previous conviction shall be charged in the accusatory pleading, and, if the previous conviction is found to be true by the jury, upon a jury trial, or by the court, upon a court trial, or is admitted by the defendant, the defendant shall, if he or she is not imprisoned in the state prison, be imprisoned in the county jail for a period of not more than one year and pay a fine of not less than one thousand dollars (\$1,000) and not to exceed ten thousand dollars (\$10,000). Nothing in this paragraph shall prohibit a court from placing a person subject to this subdivision on probation. However, that person shall be required to pay a fine of not less than one thousand dollars (\$1,000) nor more than ten thousand dollars (\$10,000) or be imprisoned in the county jail for a period of not more than one year, as a condition thereof. In no event does the court have the power to absolve a person convicted pursuant to this subdivision from either being imprisoned or from paying a fine of not less than one thousand dollars (\$1,000) and not more than ten thousand dollars (\$10,000).

(c) In any accusatory pleading charging a violation of this section, if the defendant has been previously convicted two or more times of a violation of any subdivision of this section, each previous conviction shall be charged in the accusatory pleadings. If two or more of the previous convictions are found to be true by the jury, upon a jury trial, or by the court, upon a court trial, or are admitted by the defendant, the defendant shall, if he or she is not imprisoned in the state prison, be imprisoned in the county jail for a period of not more than one year or pay a fine of not less than one thousand dollars (\$1,000) nor more than fifteen thousand dollars (\$15,000), or be punished by both imprisonment and fine. Nothing in this paragraph shall prohibit a court from placing a person subject to this subdivision on probation. However, that person shall be required to pay a fine of not less than one thousand dollars (\$1,000) nor more than fifteen thousand dollars (\$15,000), or be imprisoned in the county jail for a period of not more than one year as a condition thereof. In no event does the court have the power to absolve a person convicted and subject to this subdivision from either being

imprisoned or from paying a fine of not more than fifteen thousand dollars (\$15,000).

(d) Except where the existence of a previous conviction of any subdivision of this section was not admitted or not found to be true pursuant to this section, or the court finds that a prior conviction was invalid, the court shall not strike or dismiss any prior convictions alleged in the information or indictment.

(e) This section applies not only to persons who commit any of the acts designated in paragraphs (1) to (6), inclusive, of subdivision (a), as a business or occupation, but also applies to every person who in a single instance engages in any one of the acts specified in paragraphs (1) to (6), inclusive, of subdivision (a).

SEC. 5. Section 337d of the Penal Code is amended to read:

337d. Any person who gives, offers to give, promises to give, or attempts to give, any money, bribe, or thing of value to any person who is umpiring, managing, directing, refereeing, supervising, judging, presiding, or officiating at, or who is about to umpire, manage, direct, referee, supervise, judge, preside, or officiate at any sporting event, contest, or exhibition of any kind whatsoever, including, but not limited to, sporting events, contests, and exhibitions such as baseball, football, boxing, horse racing, and wrestling matches, with the intention or agreement or understanding that the person shall corruptly or dishonestly umpire, manage, direct, referee, supervise, judge, preside, or officiate at, any sporting event, contest, or exhibition, or the players or participants thereof, with the intention or purpose that the result of the sporting event, contest, or exhibition will be affected or influenced thereby, is guilty of a felony and shall be punished by imprisonment in the state prison or by a fine of not more than ten thousand dollars (\$10,000), or by imprisonment and fine. A second offense of this section is a felony and shall be punished by imprisonment in the state prison or by a fine of not more than fifteen thousand dollars (\$15,000), or by both imprisonment and fine.

SEC. 6. Section 337j of the Penal Code is amended to read:

337j. (a) It is unlawful for any person, as owner, lessee, or employee, whether for hire or not, either solely or in conjunction with others, to do any of the following without having first procured and thereafter maintained in effect all federal, state, and local licenses required by law:

(1) To deal, operate, carry on, conduct, maintain, or expose for play in this state any controlled game.

(2) To receive, directly or indirectly, any compensation or reward or any percentage or share of the revenue, for keeping, running, or carrying on any controlled game.

(3) To manufacture, distribute, or repair any gambling equipment within the boundaries of this state, or to receive, directly or indirectly, any compensation or reward for the manufacture, distribution, or repair of any gambling equipment within the boundaries of this state.

(b) It is unlawful for any person to knowingly permit any controlled game to be conducted, operated, dealt, or carried on in any house or building or other premises that he or she owns or leases, in whole or in part, if that activity is undertaken by a person who is not licensed as required by state law, or by an employee of that person.

(c) It is unlawful for any person to knowingly permit any gambling equipment to be manufactured, stored, or repaired in any house or building or other premises that the person owns or leases, in whole or in part, if that activity is undertaken by a person who is not licensed as required by state law, or by an employee of that person.

(d) Any person who violates, attempts to violate, or conspires to violate this section shall be punished by imprisonment in a county jail for not more than one year or by a fine of not more than ten thousand dollars (\$10,000), or by both imprisonment and fine. A second offense of this section is punishable by imprisonment in a county jail for a period of not more than one year or in the state prison or by a fine of not more than ten thousand dollars (\$10,000), or by both imprisonment and fine.

(e) (1) As used in this section, "controlled game" means any poker or Pai Gow game, and any other game played with cards or tiles, or both, and approved by the Division of Gambling Control, and any game of chance, including any gambling device, played for currency, check, credit, or any other thing of value that is not prohibited and made unlawful by statute or local ordinance.

(2) As used in this section, "controlled game" does not include any of the following:

(A) The game of bingo conducted pursuant to Section 326.5.

(B) Parimutuel racing on horse races regulated by the California Horse Racing Board.

(C) Any lottery game conducted by the California State Lottery.

(D) Games played with cards in private homes or residences, in which no person makes money for operating the game, except as a player.

(f) This subdivision is intended to be dispositive of the law relating to the collection of player fees in gambling establishments. A fee may not be calculated as a fraction or percentage of wagers made or winnings earned. The amount of fees charged for all wagers shall be determined prior to the start of play of any hand or round. However, the gambling establishment may waive collection of the fee or portion of the fee in any hand or round of play after the hand or round has begun pursuant to the published rules of the game and the notice provided to the public.

The actual collection of the fee may occur before or after the start of play. Ample notice shall be provided to the patrons of gambling establishments relating to the assessment of fees. Flat fees on each wager may be assessed at different collection rates, but no more than three collection rates may be established per table. However, if the gambling establishment waives its collection fee, this fee does not constitute one of the three collection rates.

SEC. 7. Section 337z of the Penal Code is amended to read:

337z. (a) Any person who violates Section 337u, 337v, 337w, 337x, or 337y shall be punished as follows:

(1) For the first violation, by imprisonment in a county jail for a term not to exceed one year, or by a fine of not more than ten thousand dollars (\$10,000), or by both imprisonment and fine.

(2) For a second or subsequent violation of any of those sections, by imprisonment in a county jail for a term not to exceed one year or by a fine of not more than fifteen thousand dollars (\$15,000), or by both imprisonment and fine.

(b) A person who attempts to violate Section 337u, 337v, 337w, 337x, or 337y shall be punished in the same manner as the underlying crime.

(c) This section does not preclude prosecution under Section 332 or any other provision of law.

SEC. 8. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

CHAPTER 547

An act to amend Sections 45240, 45262, 45272.5, 45277.5, 45278, and 45387 of the Education Code, relating to classified school employees.

[Approved by Governor October 5, 2005. Filed with
Secretary of State October 5, 2005.]

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

SECTION 1. Section 45240 of the Education Code is amended to read:

45240. A school district that adopts the provisions of this article in accordance with Section 45222 or 45224.5 shall appoint a personnel commission in the manner prescribed in Sections 45245, 45246 and 45247. The personnel commission shall appoint a director in the manner provided in Section 45264 after appointment of at least two members.

SEC. 2. Section 45262 of the Education Code is amended to read:

45262. (a) The rules of the commission and copies of this article shall be printed and made available or electronically transmitted to each school, office, and permanent worksite where employees report, and shall be distributed to school libraries for loan to employees.

(b) Within one year of the adoption of the merit system, the commission shall adopt rules pursuant to Section 45260 and shall give to each new regular employee a handbook that summarizes the basic rules and working conditions for classified employees and provides information regarding access to copies of the complete rules and the merit system.

SEC. 3. Section 45272.5 of the Education Code is amended to read:

45272.5. (a) Notwithstanding subdivision (a) of Section 45272, in a school district with a pupil population over 400,000, an appointment for an open, entry-level, school-based position, may be made from any rank on the eligibility list. However, in making appointments pursuant to this section, at least three eligible candidates from the list, if available, shall be considered and appointing authorities shall consider job-related background and training that are related to successful job performance, placement on the eligibility lists, and seniority, prior to making a job offer.

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

SEC. 4. Section 45277.5 of the Education Code is amended to read:

45277.5. Notwithstanding Section 45277, in a school district with a pupil population of over 400,000 the following shall apply:

(a) An appointment may be made from other than the first three ranks of eligible applicants on the eligibility list if one or more of the following are required for successful job performance of a position to be filled:

(1) The ability to speak, read, or write a language in addition to English.

(2) A valid driver's license.

(3) Specialized licenses, certifications, knowledge, or ability, as determined by the school district personnel commission, that cannot reasonably be acquired during the probationary period.

(4) A specific gender if it is a bona fide occupational qualification.

(b) The recruitment bulletin announcing the examination shall indicate the special requirements that may be necessary for filling one or more of the positions in the classification. If a position is to be filled using the authority of this section, the appointment shall be made from among the highest three ranks of eligible candidates on the appropriate eligibility list who meet the special requirements of the position and who are ready and willing to accept the position.

(c) If there are insufficient applicants who meet the special requirements, an employee who meets the special requirements may receive provisional appointments which may accumulate to a total of 90 working days. Successive provisional appointments of 90 working days or less each may be made in the absence of an appropriate eligibility list containing applicants who meet the special requirements if the personnel commission finds that the requirements of subdivisions (a) and (b) of Section 45288 have been met. These appointments may continue for the period of the provisional appointment, but may not be additionally extended if certification can later be made from an appropriate eligibility list.

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

SEC. 5. Section 45278 of the Education Code is amended to read:

45278. (a) Written notices concerning tests, vacancies, transfer opportunities, and other selections of shifts, positions, assignments, classifications, or locations shall be posted at all work locations of employees who may be affected, not later than 15 working days prior to the closing date of filing appropriate applications, together with the normal use of newspapers and bulletins for public notice for open or promotional vacancies. If the subject of those notices affects a probationary or permanent classified employee who will not be reporting at his or her work location during periods when that employee is not normally required to work, including Christmas, Easter, summer recesses, and other paid or unpaid leaves of absences, including vacations, and who has previously requested notification, those notices shall be mailed to the employee. However, the failure of an employee to receive that notice shall not invalidate any procedure, if in fact the notice was placed in the U.S. mail and postage paid.

(b) (1) Subdivision (a) does not apply to a school district that publishes and distributes to all work locations examination bulletins at least once each month, provided that records of employee requests for transfer and change of location are maintained and that the names of all candidates for transfer and change of location to a vacancy are certified

to the appointing authority along with names of appropriate applicants from employment lists.

(2) A school district may publish and distribute pursuant to paragraph (1) by electronic means.

(c) The personnel commission shall establish procedures for the maintenance of employee requests for transfer, change of location, change of shift, and notification of forthcoming examinations.

SEC. 6. Section 45387 of the Education Code is amended to read:

45387. (a) The governing board of a school district may grant reimbursement of the costs, including tuition fees, to a permanent classified employee who satisfactorily completes approved training to improve his or her job knowledge, ability, or skill. Programs eligible for that reimbursement shall include courses of study at approved academic institutions, seminars and training institutes conducted by recognized professional associations, and conferences, meetings and other training programs that are designed to upgrade the classified service and to encourage retraining of employees who may otherwise be subject to layoff as the result of technological changes. Eligibility for reimbursement shall be in accordance with rules established by the personnel commission in those districts that have adopted a merit system. This section does not apply to an employee who is receiving training and is eligible for reimbursement by another governmental agency, organization, or association.

(b) The governing board of a school district may permit a permanent classified employee to attend a minimum of one schoolday each year, during working hours, for job-related in-service training, with pay.

SEC. 7. It is the intent of the Legislature that because of the unique size of the Los Angeles Unified School District, and to maintain consistency with the merit system provisions of the Education Code, Sections 45272.5 and 45277.5 of the Education Code shall not be expanded to include school districts with a pupil population of 400,000 or less.

CHAPTER 548

An act to add Sections 14132.101 and 14132.102 to the Welfare and Institutions Code, relating to Medi-Cal.

[Approved by Governor October 5, 2005. Filed with
Secretary of State October 5, 2005.]

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

SECTION 1. Section 14132.101 is added to the Welfare and Institutions Code, to read:

14132.101. (a) Notwithstanding paragraphs (4) and (5) of subdivision (e) of Section 14132.100, a scope-of-service change request, whether mandatory or permissive, shall be timely when filed within 150 days following the beginning of the federally qualified health center's or rural health clinic's fiscal year following the year in which the change occurred.

(b) Notwithstanding subdivision (a), and notwithstanding subdivision (e) of Section 14132.100, a federally qualified health center described in Section 14132.102 shall be deemed to have filed a scope-of-service change in a timely manner upon compliance with the requirements set forth in subdivision (c) of Section 14132.102.

SEC. 2. Section 14132.102 is added to the Welfare and Institutions Code, to read:

14132.102. (a) With the exception of clinics and hospital outpatient departments that are subject to Section 14105.24, federally qualified health centers (FQHCs) that are receiving cost-based reimbursement under the terms of the Los Angeles County 1115 Waiver Demonstration Project on June 30, 2005, shall be required to transition to a prospective payment system (PPS) rate upon expiration of that waiver. These FQHCs shall be referred to in this section as "Los Angeles cost-based FQHCs."

(b) For visits occurring on or after July 1, 2005, Los Angeles cost-based FQHCs shall receive a PPS rate equivalent to the following:

(1) FQHC sites that were in existence during the FQHC's 2000 fiscal year shall be permitted to elect their 2000 per-visit rates or the average of the 1999 and 2000 per-visit rates as reported on the cost reports submitted for those fiscal years adjusted as described in subdivision (c).

(2) FQHC sites that were first qualified as an FQHC after the site's 2000 fiscal year shall receive a base rate equivalent to the first full fiscal year rate, as audited on the cost report submitted for that fiscal year and adjusted as described in subdivision (c).

(3) Sites that were first qualified as an FQHC after the site's 2000 fiscal year, and that have not yet filed a cost report for their first full fiscal year shall have a rate set in accordance with subdivision (i) of Section 14132.100 and adjusted as described in subdivision (c).

(c) The base rates described in this section shall be adjusted in the manner described in subdivision (d), paragraphs (1), (2), (3), and (7) of subdivision (e), and subdivision (f) of Section 14132.100.

(d) For Los Angeles cost-based FQHCs, as defined in subdivision (a), no new cost reports shall be required in order to claim

scope-of-service changes occurring in fiscal years prior to July 1, 2005. Only the following information shall be required by the department:

(1) A description of the events triggering any applicable rate changes in the form of Worksheet 1 of the Change in Scope-of-Service Request form developed for fiscal years 2004 and thereafter, modified to identify the applicable fiscal year in which the scope change occurred.

(2) The two worksheets to the Change in Scope-of-Service Request form summarizing the health center's health care practitioners and services for the applicable fiscal year or years.

(e) Change in Scope-of-Service Request forms for changes occurring prior to July 1, 2005, shall be filed with the department no later than July 1, 2006, and shall be deemed to have been filed only when both the Medi-Cal cost report for the applicable period and the referenced Change in Scope-of-Service Request form worksheets have been filed with the department. The date of filing shall be the date on which either the Medi-Cal cost report or the referenced Change in Scope-of-Service Request forms are received by the department, whichever is later.

(f) Notwithstanding Section 14132.107, the department shall calculate a tentative scope-of-service rate adjustment based on 80 percent of the difference in the "as reported" scope-of-service per visit cost. This adjustment shall occur no later than 150 days after receipt of the Medi-Cal cost report and the referenced Change in Scope-of-Service Request forms. Within 12 months after receipt of request forms, the department shall complete its FQHC fiscal year audit of the Medi-Cal cost report and associated Change in Scope-of-Service Request and final rate adjustment pursuant to that audit. The final rate adjustment will be retroactive to July 1, 2005. Nothing in this subdivision shall be construed to extend the time period for review and finalization of cost reports as set forth in Section 14170.

(g) The department shall, by no later than March 30, 2006, promptly seek all necessary federal approvals in order to implement this section, including any amendments to the state plan. To the extent that any element or requirement of this section is not approved, the department shall submit a request to the federal Centers for Medicare and Medicaid Services for any waivers that would be necessary to implement this section.

(h) Notwithstanding Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, and only to the extent that all necessary federal approvals are obtained and there is an appropriation for the purposes of implementing this section, the

department may implement this section without taking any regulatory action and by means of a provider bulletin or similar instructions.

CHAPTER 549

An act to amend Sections 19460, 19461, 19462, 19469 and 19470 of, to amend the heading of Article 2 (commencing with Section 19460) of Chapter 5 of Part 2 of Division 10 of, to add Section 19471 to, and to repeal Chapter 10 (commencing with Section 19850) of Part 2 of Division 10 of, the Welfare and Institutions Code, relating to rehabilitation services, and making an appropriation therefor.

[Approved by Governor October 5, 2005. Filed with
Secretary of State October 5, 2005.]

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

SECTION 1. The heading of Article 2 (commencing with Section 19460) of Chapter 5 of Part 2 of Division 10 of the Welfare and Institutions Code is amended to read:

Article 2. Transportation and Assistive Technology Loan Guarantees

SECTION 1. Section 19460 of the Welfare and Institutions Code is amended to read:

19460. (a) There is in the State Treasury a permanent revolving fund to be known as the Rehabilitation Revolving Loan Guarantee Fund, and to be administered by the department. The money deposited in the fund, including, but not limited to, money in any previously established account within the fund, is hereby appropriated, without regard to fiscal years, for the purposes of this article. The fund shall be used to guarantee loans made by eligible lenders to eligible persons for the purchase of vans, automobiles, and other special equipment to facilitate transportation of individuals with disabilities, and to assist private employers and employees, and other persons regardless of age, with disabilities to purchase assistive technology in order to live more independently or to engage in employment, including, but not limited to, supported employment as defined and determined by the department.

(b) Nothing in this section shall be construed to abrogate the requirement that employers comply with reasonable accommodations and related responsibilities pursuant to federal and state laws. Nothing in this section shall be construed to prevent a loan guarantee for

individuals with disabilities who have previously received vocational rehabilitation services and who wish to obtain a loan to purchase newly developed assistive technology or to replace worn or obsolete assistive technology.

(c) In determining eligibility for a loan guarantee from this account, the department shall make any loan guarantee contingent upon a determination that the person or the family of a child reasonably can be expected to repay the loan based on the person's or family's expected income or other resources.

(d) To the extent possible, loans made pursuant to this chapter shall provide for a security interest to be given the lending institution in the vehicle or assistive technology for which the loan is made.

SEC. 2. Section 19461 of the Welfare and Institutions Code is amended to read:

19461. As used in this article, the following definitions apply:

(a) "Department" means the Department of Rehabilitation.

(b) "Eligible persons" means any of the following, provided that household income does not exceed the level prescribed for moderate-income families by the Department of Housing and Community Development pursuant to Section 50093 of the Health and Safety Code:

(1) Parents of a child with a disability who has been certified by a physician or the department as having a disability, who is living in the home, and who requires a modified vehicle for mobility.

(2) A person with a disability who has been certified by a physician or the department as having a disability, and who requires a modified vehicle for mobility.

(3) Parents of a child with a disability who has been certified by a physician or the department as having a disability, who is living in the home, and who requires assistive technology, including evaluation and training in the use of an assistive technology device, which is necessary for independent living.

(4) A person with a disability who has been certified by a physician or the department as having a disability, and who requires assistive technology, including evaluation and training in the use of an assistive technology device, which is necessary for independent living.

(c) "Eligible lender" means a financial institution organized, chartered, or holding a license or authorization certificate under a law of this state or the United States to make loans or extend credit and subject to supervision by an official or agency of this state or the United States.

(d) "Assistive technology" means any item, piece of equipment, or product system, whether acquired commercially, modified, or customized, that is used to increase, maintain, or improve functional capabilities of individuals with disabilities, and any service that directly assists an

individual with a disability in the selection, acquisition, or use of the item, equipment, or product system.

SEC. 3. Section 19462 of the Welfare and Institutions Code is amended to read:

19462. The department shall serve as a state loan guarantee agency to guarantee loans and to administer a guaranteed loan program established pursuant to this article. The department shall guarantee any loan made pursuant to this article at 100 percent of the total amount of principal and interest of the loan in default. The department shall establish the ratio of reserve funds to loans outstanding. The effective interest rate to the borrower shall be a percent per annum, which is less than the fair market interest rate at the time the loan guarantee request is considered by the department, and which is based upon the ability of the borrower to pay, as determined by the department. When an application for a loan guarantee is approved by the department, the differential interest between the percent per annum approved by the department and the rate charged by the participating lender shall be prepaid by the department to the participating lender out of the Rehabilitation Revolving Loan Guarantee Fund. If the borrower defaults on any loan guaranteed by this program, the participating lender shall reimburse the department for any interest not accrued, after deduction for any unavoidable loss suffered by the lender.

SEC. 4. Section 19469 of the Welfare and Institutions Code is amended to read:

19469. No loan in excess of fifty thousand dollars (\$50,000) shall be made to any eligible person pursuant to this article.

SEC. 5. Section 19470 of the Welfare and Institutions Code is amended to read:

19470. The department shall adopt regulations not inconsistent with this article that, among other things, shall establish criteria for determining eligibility for loans in the guarantee program that ensure that the applicants have the ability to repay the loans

SEC. 6. Section 19471 is added to the Welfare and Institutions Code, to read:

19471. (a) The department may apply for a federal grant award through the federal alternative financing program established pursuant to subparagraph (D) of paragraph (2) of subsection (b) of Section 3003 of Title 29 of the United States Code and may use funds in the Rehabilitation Revolving Loan Guarantee Fund, established pursuant to Section 19460, as the match for these federal grant funds. The department may comply with applicable federal grant requirements, including, to the extent required, contracting with a community-based, nonprofit organization that has individuals with disabilities involved in the

organization decisionmaking at all organizational levels, to administer the alternative financing program.

(b) The department may do all of the following:

(1) Select a community-based organization with which to contract based upon consideration of criteria, including, but not limited to, the organization's sound fiscal condition and internal controls.

(2) Monitor and audit performance by the organization under the contract to minimize the risk of loss to the loan guarantee program of loan defaults.

(3) Terminate the contract in the event the department determines that the organization has not complied with the contract terms or has not prudently administered the loan guarantee funds.

(c) Moneys received from a federal alternative financing grant shall be deposited in the Rehabilitation Revolving Loan Guarantee Fund established pursuant to Section 19460, and the federal funds and state matching funds shall be administered by the department and, as set forth in subdivision (a), by a community-based organization through a contract with the department, for the purpose of providing loan guarantees consistent with this article and applicable federal grant requirements.

(d) To the extent that state funds in the Rehabilitation Revolving Loan Guarantee Fund are not used to fund the alternative financing program, the department shall administer any remaining money in the fund consistent with the provisions of this article, and may enter into contracts with any public or private entity for the provision of services relating to the administration of the loan guarantee program.

(e) No more than 10 percent of the fund, excluding funds held in reserve pursuant to Section 19462, per fiscal year, may be used for costs of administration of the loan guarantee program, including administrative costs incurred by the department and any contractor.

SEC. 7. Chapter 10 (commencing with Section 19850) of Part 2 of Division 10 of the Welfare and Institutions Code is repealed.

CHAPTER 550

An act to amend and repeal Section 104200 of the Health and Safety Code, relating to cancer.

[Approved by Governor October 5, 2005. Filed with
Secretary of State October 5, 2005.]

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

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

(a) Cervical cancer is highly preventable and is the only cancer with one known cause—the human papillomavirus (HPV).

(b) Even with this knowledge, the American Cancer Society estimates that in the United States 10,520 cases of invasive cervical cancer were diagnosed in 2004, and 3,900 women died of the disease. In 2004, an estimated 1,735 California women were diagnosed with invasive cervical cancer and 470 California women died from the disease.

(c) Approximately one-half of the women who are diagnosed with cervical cancer are between the ages of 35 and 55 years.

(d) Ethnic patterns of cervical cancer in the United States are quite different from those of any other cancer of the female reproductive system. The highest age-adjusted incidence rate occurs among Vietnamese women, at 43 incidents per 100,000 women. An incidence rate of 15 incidents per 100,000 women or higher occurs among Alaska Native, Korean, and Hispanic women. Black women have the highest age-adjusted mortality rate from cervical cancer and are followed by Hispanic women.

(e) In California, 800,000 women 18 years of age and older who need to be routinely screened have never had a Pap test and most Californians have not heard of HPV or its association with cervical cancer.

(f) Direct annual medical costs for treating symptoms of HPV infection in the United States are estimated at \$1.6 billion, and the cost of cervical cancer screening programs (Pap smears) is \$5 billion to \$6 billion every year.

(g) The Legislature commends the existing educational efforts of the State Department of Health Services and finds that the Cervical Cancer Community Awareness Campaign should be expanded to address the link between human papillomavirus and cervical cancer.

SEC. 2. Section 104200 of the Health and Safety Code is amended to read:

104200. (a) Subject to subdivision (f), the department shall conduct the Cervical Cancer Community Awareness Campaign to do all of the following:

(1) To provide awareness, assistance, and information regarding cervical cancer and the human papillomavirus (HPV). These efforts shall include provider education aimed at promoting the awareness of HPV and its link to cervical cancer. Information regarding prevention, early detection, options for testing, and treatment costs shall be included.

(2) To promote the availability of preventive treatment for cervical cancer for women in California.

(3) To perform other activities related to cervical cancer.

(b) (1) For purposes of the Cervical Cancer Community Awareness Campaign, the department shall establish a study of and research regarding cervical cancer.

(2) The study and research shall contain, but not be limited to, statistical information in order to target appropriate regions of the state with the Cervical Cancer Community Awareness Campaign. The statistical information shall include, but not be limited to, age, ethnicity, region, and socioeconomic status of the women in the state in relation to cervical cancer. The research shall provide studies of current treatment evolutions, possible cures, and the availability of preventive care for women in the state in relation to cervical cancer.

(c) To the extent feasible and appropriate, the Cervical Cancer Community Awareness Campaign shall be incorporated into existing cancer awareness programs operated by the department.

(d) On or before January 1, 2007, the department shall report to the chairs and vice chairs of the health committees of both houses of the Legislature on the progress of the campaign. The report shall do all of the following:

(1) Provide an overview of progress being made in fulfilling the duties of the Cervical Cancer Community Awareness Campaign.

(2) Recommend strategies or actions to reduce the occurrence of cervical cancer among, and the burden caused by cervical cancer on, women in the state.

(3) Review statistical and qualitative data on the prevalence and burden of cervical cancer and HPV in California.

(e) There is hereby established in the State Treasury the Cervical Cancer Fund to be expended by the State Department of Health Services, upon appropriation of nonstate funds by the Legislature, solely for the Cervical Cancer Community Awareness Campaign.

(f) (1) The department shall conduct the Cervical Cancer Community Awareness Campaign only if voluntary contributions are received to support its activities pursuant to this section. The continued implementation of this section shall be contingent upon the receipt of voluntary contributions for that purpose.

(2) Voluntary contributions received for purposes of this subdivision shall be deposited into the Cervical Cancer Fund.

(g) This section shall be implemented only after the Department of Finance determines that nonstate funds in an amount sufficient to fully support the activities of this section have been deposited with the state. Thereafter, this section shall continue to be implemented only to the extent that the Department of Finance determines that sufficient nonstate funds to fully support the activities of this section have been deposited

with the state for purposes of this section. If the Department of Finance determines that insufficient voluntary contributions for purposes of implementing this section have been deposited with the state by January 1, 2007, the Department of Finance shall notify either the Chief Clerk of the Assembly or the Secretary of the Senate of this fact, and this section shall be repealed on January 1, 2007, unless a later enacted statute, that is enacted before January 1, 2007, deletes or extends that date.

CHAPTER 551

An act to amend Sections 4688.5 and 14043.26 of, and to add Section 14132.99 to, the Welfare and Institutions Code, relating to health care.

[Approved by Governor October 5, 2005. Filed with
Secretary of State October 5, 2005.]

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

SECTION 1. Section 4688.5 of the Welfare and Institutions Code is amended to read:

4688.5. (a) Notwithstanding any other provision of law to the contrary, the department may approve a proposal or proposals by Golden Gate Regional Center, Regional Center of the East Bay, and San Andreas Regional Center to provide for, secure, and assure the full payment of a lease or leases on housing, developed pursuant to this section, based on the availability for occupancy in each home, if all of the following conditions are met:

(1) The acquired or developed real property is available for occupancy by individuals eligible for regional center services and is integrated with housing for people without disabilities.

(2) The regional center has approved the proposed ownership entity, management entity, and developer or development entity for each project, and, prior to granting the approval, has consulted with the department and has provided to the department a proposal that includes the credentials of the proposed entities.

(3) The costs associated with the proposal are reasonable.

(4) The proposal includes a plan for a transfer at a time certain of the real property's ownership to a nonprofit entity to be approved by the regional center.

(b) Prior to approving a regional center proposal pursuant to subdivision (a), the department, in consultation with the California

Housing Finance Agency and the Department of Housing and Community Development shall review all of the following:

(1) The terms and conditions of the financing structure for acquisition and/or development of the real property.

(2) Any and all agreements that govern the real property's ownership, occupancy, maintenance, management, and operation, to ensure that the use of the property is maintained for the benefit of persons with developmental disabilities.

(c) No sale encumbrance, hypothecation, assignment, refinancing, pledge, conveyance, exchange or transfer in any other form of the real property, or of any of its interest therein, shall occur without the prior written approval of the department and the Health and Human Services Agency.

(d) Notice of the restrictions pursuant to this section shall be recorded against the acquired or developed real property subject to this section.

(e) At least 45 days prior to granting approval under subdivision (c), the department shall provide notice to the chairs and vice chairs of the fiscal committees of the Assembly and the Senate, the Secretary of the Health and Human Services Agency, and the Director of Finance.

(f) The regional center shall not be eligible to acquire or develop real property for the purpose of residential housing.

SEC. 2. Section 14043.26 of the Welfare and Institutions Code is amended to read:

14043.26. (a) (1) On and after January 1, 2004, an applicant that is not currently enrolled in the Medi-Cal program, or a provider applying for continued enrollment, upon written notification from the department that enrollment for continued participation of all providers in a specific provider of service category or subgroup of that category to which the provider belongs will occur, or a provider not currently enrolled at a location where the provider intends to provide services, goods, supplies, or merchandise to a Medi-Cal beneficiary, shall submit a complete application package for enrollment, continuing enrollment, or enrollment at a new location or a change in location.

(2) Clinics licensed by the department pursuant to Chapter 1 (commencing with Section 1200) of Division 2 of the Health and Safety Code and certified by the department to participate in the Medi-Cal program shall not be subject to this section.

(3) Health facilities licensed by the department pursuant to Chapter 2 (commencing with Section 1250) of Division 2 of the Health and Safety Code and certified by the department to participate in the Medi-Cal program shall not be subject to this section.

(4) Adult day health care providers licensed pursuant to Chapter 3.3 (commencing with Section 1570) of Division 2 of the Health and Safety

Code and certified by the department to participate in the Medi-Cal program shall not be subject to this section.

(5) Home health agencies licensed pursuant to Chapter 8 (commencing with Section 1725) of Division 2 of the Health and Safety Code and certified by the department to participate in the Medi-Cal program shall not be subject to this section.

(6) Hospices licensed pursuant to Chapter 8.5 (commencing with Section 1745) of Division 2 of the Health and Safety Code and certified by the department to participate in the Medi-Cal program shall not be subject to this section.

(b) Within 30 days after receiving an application package submitted pursuant to subdivision (a), the department shall provide written notice that the application package has been received and, if applicable, that there is a moratorium on the enrollment of providers in the specific provider of service category or subgroup of the category to which the applicant or provider belongs. This moratorium shall bar further processing of the application package.

(c) (1) If the applicant package submitted pursuant to subdivision (a) is from an applicant or provider who meets the criteria listed in paragraph (2), the applicant or provider shall be considered a preferred provider and shall be granted preferred provisional provider status pursuant to this section and for a period of no longer than 18 months, effective from the date on the notice from the department. The ability to request consideration as a preferred provider and the criteria necessary for the consideration shall be publicized to all applicants and providers. An applicant or provider who desires consideration as a preferred provider pursuant to this subdivision shall request consideration from the department by making a notation to that effect on the application package, by cover letter, or by other means identified by the department in a provider bulletin. Request for consideration as a preferred provider shall be made with each application package submitted in order for the department to grant the consideration. An applicant or provider who requests consideration as a preferred provider shall be notified within 90 days whether the applicant or provider meets or does not meet the criteria listed in paragraph (2). If an applicant or provider is notified that the applicant or provider does not meet the criteria for a preferred provider, the application package submitted shall be processed in accordance with the remainder of this section.

(2) To be considered a preferred provider, the applicant or provider shall meet all of the following criteria:

(A) Hold a current license as a physician and surgeon issued by the Medical Board of California or the Osteopathic Medical Board of

California, which license shall not have been revoked, whether stayed or not, suspended, placed on probation, or subject to other limitation.

(B) Be a current faculty member of a teaching hospital or a children's hospital, as defined in Section 10727, accredited by the Joint Commission for Accreditation of Healthcare Organizations or the American Osteopathic Association, or be credentialed by a health care service plan that is licensed under the Knox-Keene Health Care Service Plan Act of 1975 (Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code; the Knox-Keene Act) or county organized health system, or be a current member in good standing of a group that is credentialed by a health care service plan that is licensed under the Knox-Keene Act.

(C) Have full, current, unrevoked, and unsuspended privileges at a Joint Commission for Accreditation of Healthcare Organizations or American Osteopathic Association accredited general acute care hospital.

(D) Not have any adverse entries in the Healthcare Integrity and Protection Databank.

(3) The department may recognize other providers as qualifying as preferred providers if criteria similar to those set forth in paragraph (2) are identified for the other providers. The department shall consult with interested parties and appropriate stakeholders to identify similar criteria for other providers so that they may be considered as preferred providers.

(d) Within 180 days after receiving an application package submitted pursuant to subdivision (a), or from the date of the notice to an applicant or provider that the applicant or provider does not qualify as a preferred provider under subdivision (c), the department shall give written notice to the applicant or provider that any of the following applies, or shall on the 181st day grant the applicant or provider provisional provider status pursuant to this section for a period no longer than 12 months, effective from the 181st day:

(1) The applicant or provider is being granted provisional provider status for a period of 12 months, effective from the date on the notice.

(2) The application package is incomplete. The notice shall identify any additional information or documentation that is needed to complete the application package.

(3) The department is exercising its authority under Section 14043.37, 14043.4, or 14043.7, and is conducting background checks, preenrollment inspections, or unannounced visits.

(4) The application package is denied for any of the following reasons:

(A) Pursuant to Section 14043.2 or 14043.36.

(B) For lack of a license necessary to perform the health care services or to provide the goods, supplies, or merchandise directly or indirectly

to a Medi-Cal beneficiary, within the applicable provider of service category or subgroup of that category.

(C) The period of time during which an applicant or provider has been barred from reapplying has not passed.

(D) For other stated reasons authorized by law.

(e) (1) If the application package that was noticed as incomplete under subdivision (d) is resubmitted with all requested information and documentation, and received by the department within 35 days of the date on the notice, the department shall, within 60 days of the resubmission, send a notice that any of the following applies:

(A) The applicant or provider is being granted provisional provider status for a period of 12 months, effective from the date on the notice.

(B) The application package is denied for any other reasons provided for in paragraph (4) of subdivision (d).

(C) The department is exercising its authority under Section 14043.37, 14043.4, or 14043.7 to conduct background checks, preenrollment inspections, or unannounced visits.

(2) (A) If the application package that was noticed as incomplete under paragraph (2) of subdivision (d) is not resubmitted with all requested information and documentation and received by the department within 35 days of the date on the notice, the application package shall be denied by operation of law. The applicant or provider may reapply by submitting a new application package that shall be reviewed de novo.

(B) If the failure to resubmit is by a provider applying for continued enrollment, the failure shall make the provider also subject to deactivation of all provider numbers used by the provider to obtain reimbursement from the Medi-Cal program.

(C) Notwithstanding subparagraph (A), if the notice of an incomplete application package included a request for information or documentation related to grounds for denial under Section 14043.2 or 14043.36, the applicant or provider may not reapply for enrollment or continued enrollment in the Medi-Cal program or for participation in any health care program administered by the department or its agents or contractors for a period of three years.

(f) (1) If the department exercises its authority under Section 14043.37, 14043.4, or 14043.7 to conduct background checks, preenrollment inspections, or unannounced visits, the applicant or provider shall receive notice, from the department, after the conclusion of the background check, preenrollment inspections, or unannounced visit of either of the following:

(A) The applicant or provider is granted provisional provider status for a period of 12 months, effective from the date on the notice.

(B) Discrepancies or failure to meet program requirements, as prescribed by the department, have been found to exist during the preenrollment period.

(2) (A) The notice shall identify the discrepancies or failures, and whether remediation can be made or not, and if so, the time period within which remediation must be accomplished. Failure to remediate discrepancies and failures as prescribed by the department, or notification that remediation is not available, shall result in denial of the application by operation of law. The applicant or provider may reapply by submitting a new application package that shall be reviewed de novo.

(B) If the failure to remediate is by a provider applying for continued enrollment, the failure shall make the provider also subject to deactivation of all provider numbers used by the provider to obtain reimbursement from the Medi-Cal program.

(C) Notwithstanding subparagraph (A), if the discrepancies or failure to meet program requirements, as prescribed by the director, included in the notice were related to grounds for denial under Section 14043.2 or 14043.36, the applicant or provider may not reapply for three years.

(g) If provisional provider status or preferred provisional provider status is granted pursuant to this section, a separate provider number shall be issued for each location for which an application package has been approved. This separate provider number shall be used exclusively for the location for which it is issued, unless the practice of the provider's profession or delivery of services, goods, supplies, or merchandise is such that services, goods, supplies, or merchandise are rendered or delivered at locations other than the provider's business address and this practice or delivery of services, goods, supplies, or merchandise has been disclosed in the application package approved by the department when the provisional provider status or preferred provisional provider status was granted.

(h) Except for providers subject to subdivision (c) of Section 14043.47, a provider currently enrolled in the Medi-Cal program at one or more locations who has submitted an application package for enrollment at a new location or a change in location pursuant to subdivision (a) may continue to submit claims under an existing provider number for services rendered at the new location until the application package is approved or denied under this section, and shall not be subject, during that period, to deactivation of the provider's provider number, or be subject to any delay or nonpayment of claims as a result of the use of the existing provider number for services rendered at the new location as herein authorized. However, the provider shall be considered during that period to have been granted provisional provider status or preferred provisional provider status and be subject to termination of that status pursuant to

Section 14043.27. A provider that is subject to subdivision (c) of Section 14043.47 may come within the scope of this subdivision upon submitting documentation in the application package that identifies the physician providing supervision for every three locations.

(i) An applicant or a provider whose application for enrollment, continued enrollment, or a new location or change in location has been denied pursuant to this section, may appeal the denial in accordance with Section 14043.65.

(j) (1) Upon receipt of a complete and accurate claim for an individual nurse provider, the department shall adjudicate the claim within an average of 30 days.

(2) During the budget proceedings of the 2006-07 fiscal year, and each fiscal year thereafter, the department shall provide data to the Legislature specifying the timeframe under which it has processed and approved the provider applications submitted by individual nurse providers.

(3) For purposes of this subdivision, "individual nurse providers" are providers authorized under certain home- and community-based waivers and under the state plan to provide nursing services to Medi-Cal recipients in the recipients' own homes rather than in institutional settings.

SEC. 3. Section 14132.99 is added to the Welfare and Institutions Code, to read:

14132.99. (a) For the purposes of this section, "facility residents" means individuals who are currently residing in a nursing facility and whose care is paid for by Medi-Cal either with or without a share of cost. The term "facility residents" also includes individuals who are hospitalized and who are or will be waiting for transfer to a nursing facility.

(b) An additional 500 slots beyond those currently authorized for the home- and community-based Level A/B nursing facility waiver shall be added and 250 of these slots shall be reserved for residents residing in facilities and transitioning out of facilities.

(c) For those patients who are in acute care hospitals and who are pending placement in a nursing facility, the department shall expedite the processing of waiver applications in order to divert hospital discharges from nursing facilities into the community.

(d) The nursing facility Level A/B waivers shall be amended to add the following services:

(1) One-time community transition services as defined and allowed by the federal Centers for Medicare and Medicaid Services, including, but not limited to, security deposits that are required to obtain a lease on an apartment or home, essential furnishings, and moving expenses

required to occupy and use a community domicile, set-up fees, or deposits for utility or service access, including, but not limited to, telephone, electricity, and heating, and health and safety assurances, including, but not limited to, pest eradication, allergen control, or one-time cleaning prior to occupancy. These costs shall not exceed five thousand dollars (\$5,000).

(2) Habilitation services, as defined in Section 1915(c)(5) of the federal Social Security Act (42 U.S.C. Sec. 1396n(c)(5)), and in attachment 3-d to the July 25, 2003, State Medicaid Directors Letter re Olmstead Update No. 3, to mean services designed to assist individuals in acquiring, retaining, and improving the self-help, socialization, and adaptive skills necessary to reside successfully in home- and community-based settings.

(e) When requesting the renewal of the waiver, the department shall consider expanding the number of waiver slots. Prior to submission of the waiver renewal request, the department shall notify the appropriate fiscal and policy committees of the Legislature of the number of waiver slots included in the waiver renewal request along with supportive data for those slots.

(f) The department shall implement this section only to the extent it can demonstrate fiscal neutrality within the overall department budget, and federal fiscal neutrality as required under the terms of the federal waiver, and only if the department has obtained the necessary approvals and receives federal financial participation from the federal Centers for Medicare and Medicaid Services. Contingent upon federal approval of the waiver expansion, implementation shall commence within six months of the department receiving authorization for the necessary resources to provide the services to additional waiver participants.

CHAPTER 552

An act to add Section 89241 to the Education Code, relating to public postsecondary education.

[Approved by Governor October 5, 2005. Filed with
Secretary of State October 5, 2005.]

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

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

(a) The graduation rates and academic progress rates of student athletes are lower than those of the general student body at several

California State University campuses and among specific athletic teams at California State University campuses.

(b) Student athletes at the California State University face significant challenges in their attempt to be successful in their academic pursuits while meeting the demands of their sports obligations.

(c) The California State University exercises its statutory discretion related to admissions policies to admit and enroll some students who are otherwise ineligible, solely because these students have athletic ability that will contribute to the sports enterprise of the campus.

(d) Summer academic support is a valuable tool in helping student athletes reach their academic goals.

SEC. 2. Section 89241 is added to the Education Code, to read:

89241. (a) This section shall be known and may be cited as the California Student Athlete Fair Opportunity Act of 2005.

(b) It is the intent of the Legislature to ensure that the Trustees of the California State University provide appropriate academic support services for student athletes and that those athletes are given a fair opportunity to earn a baccalaureate degree.

(c) The trustees shall ensure, through executive order or regulation, that all California State University campuses that provide athletic scholarships for student athletes also provide summer athletic scholarships commencing with the 2006 summer term. The provision of these summer athletic scholarships shall be consistent with both of the following:

(1) The requirements of Title IX of the federal Education Amendments of 1972, as amended from time to time.

(2) The bylaws of the National Collegiate Athletic Association, as amended from time to time.

(d) Students who are otherwise ineligible for admission to the specific campus of the California State University, but who are admitted under policies that permit those students to be admitted if they have athletic ability that will contribute to the campus, shall be given first priority for summer athletic scholarship assistance.

(e) (1) Summer athletic scholarships awarded pursuant to this section shall, at a minimum, be sufficient to cover the cost of tuition, fees, books, and supplies as calculated for purposes of the summer cost of attendance under the provisions of Title IV of the federal Education Act of 1965, as it is amended from time to time.

(2) Nothing in this part shall be construed to limit a summer athletic scholarship awarded pursuant to this section to any amount less than that which is allowed under the bylaws of the National Collegiate Athletic Association.

(3) A summer athletic scholarship awarded pursuant to this section shall be of sufficient amount and duration with regard to the number of summer sessions and the number of units covered, to provide a student athlete a fair opportunity to correct academic progress problems through attendance in a summer session.

(f) A summer athletic scholarship awarded pursuant to this section may be funded through any revenue source available to, or procured by, the campuses of the California State University, including, but not necessarily limited to, gate receipts, donations from alumni and others, corporate sponsorships, associated student contributions, campus-based student fees that may be legally used for this purpose. In accordance with subdivision (i), the California State University shall not use state General Fund moneys or state university fee revenue to fund summer athletic scholarships. The California State University shall not set aside, for the purposes of summer athletic scholarships, any institutional financial aid funds for which any financially needy students are eligible. A student athlete may only receive summer financial aid assistance if that student athlete otherwise qualifies for that assistance irrespective of his or her status as a student athlete.

(g) (1) The trustees shall ensure, through executive order or regulation, that all California State University campuses that are members of the National Collegiate Athletic Association have a comprehensive plan for the academic support of student athletes.

(2) The plan adopted pursuant to this subdivision shall be consistent with the requirements of Title IX of the federal Education Amendments of 1972, as amended from time to time, and the bylaws of the National Collegiate Athletic Association, as amended from time to time. This plan shall include, but not necessarily be limited to, coordination with existing academic and financial support services at the campus, evaluation of the academic needs of student athletes, a set of academic support initiatives, a financing plan for these initiatives and a fund-raising strategy for the augmentation of these initiatives, and a regular evaluation mechanism to monitor the academic progress of athletes and the effectiveness of academic support programs.

(3) Services provided under this subdivision may include any of the following:

(A) Additional athletic financial assistance, which covers an amount up to the cost of attendance under the provisions of Title IV of the federal Education Act of 1965, as it is amended from time to time, for additional periods of attendance necessary for an athlete to complete the requirements for a baccalaureate degree after the student's period of athletic eligibility has ended.

(B) Employment assistance, including work study programs.

(C) Tutoring.

(D) Mentoring.

(E) Accommodations in the scheduling of class sections to provide a fair opportunity for student athletes to attend required courses in a manner that allows them to participate in the requirements of their sports.

(h) (1) The trustees shall report to the Legislature and the Governor on or before November 1, 2006, and subsequently on or before November 1 of each odd-numbered year, commencing on November 1, 2007, regarding the status of athletic academic progress and athletic academic support in the California State University system for all campuses that are members of the National Collegiate Athletic Association.

(2) If any data that are required to be reported pursuant to paragraph (3) could yield an individual identification of an athlete, or if any data or information required to be reported pursuant to paragraph (3) could be considered to be of a proprietary nature as related to the sports enterprise of the campus, those data may be forwarded under separate cover to the Governor and to the relevant policy committees of the Legislature with a request for confidentiality.

(3) The report required by this subdivision shall include, but not necessarily be limited to, all of the following information:

(A) A five-year history of the graduation rate and Academic Progress Rate of each team on each campus as calculated by the National Collegiate Athletic Association, to the extent these rates are available.

(B) Annual admission category information for each team on each campus that indicates the number and percent of students admitted who were not eligible for regular admission to the campus or the university.

(C) A summary of the academic initiatives and support programs available to the athletes at each campus.

(D) If the campus participates in Division I, including any of its subparts, of the National Collegiate Athletic Association, and if any team or the athletic program overall has an Academic Progress Rate score of less than 925 for any year, a summary of the corrective action planned by the campus or athletic department as well as a report on sanctions, if any, imposed by the National Collegiate Athletic Association.

(E) The total budget for the athletic programs and each team, including an itemization of the amount spent on athletic scholarships and the amount spent on summer athletic scholarships.

(i) The California State University shall not encumber, for the purposes of this section, any moneys from the state General Fund or any state university fee revenue.

CHAPTER 553

An act to amend Sections 8482.8, 8483, 8483.1, 8483.7, 8483.75, and 8483.9 of the Education Code, relating to before and after school programs.

[Approved by Governor October 5, 2005. Filed with
Secretary of State October 5, 2005.]

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

SECTION 1. Section 8482.8 of the Education Code is amended to read:

8482.8. (a) If there is a significant barrier to pupil participation in a program established pursuant to this article at the school of attendance for either the before school or the after school component, an applicant may request approval from the Superintendent, prior to or during the grant application process, to provide services at another school site for that component. An applicant that requests approval shall describe the manner in which the applicant intends to provide safe, supervised transportation between school sites; ensure communication among teachers in the regular school program, staff in the before school and after school components of the program, and parents of pupils; and align the educational and literacy component of the before and after school components of the program with the regular school programs of participating pupils.

(b) For purposes of this article, a significant barrier to pupil participation in the before or after school component of a program established pursuant to this chapter means either of the following:

(1) Fewer than 20 pupils participating in the component of the program.

(2) Extreme transportation constraints, including, but not limited to, desegregation bussing, bussing for magnet or open enrollment schools, or pupil dependence on public transportation.

(c) In addition to the authority to transfer funds among school programs pursuant to Sections 8483.7 and 8483.75, and in addition to the flexibility provided by subdivisions (a) and (b), a program grantee that is temporarily prevented from operating a program established pursuant to this article at the program site due to natural disaster, civil unrest, or imminent danger to pupils or staff may shift program funds to the sites of other programs established pursuant to this article to meet attendance targets during that time period.

(d) If a program grantee is temporarily prevented from operating its entire program due to natural disaster, civil unrest, or imminent danger to pupils or staff, the department may recommend, and the state board may approve, a request by the grantee for payment equal to the amount of funding the grantee would have received if it had been able to operate its entire program during that time period.

(e) Upon the request of a program grantee, the state board may approve other unforeseen events as qualifying a program grantee to use the authority provided by subdivisions (c) and (d).

SEC. 2. Section 8483 of the Education Code is amended to read:

8483. (a) (1) Every after school component of a program established pursuant to this article shall commence immediately upon the conclusion of the regular schoolday, and operate a minimum of 15 hours per week, and at least until 6 p.m. on every regular schoolday. Every after school component of the program shall establish a policy regarding reasonable early daily release of pupils from the program. For those programs or schoolsites operating in a community where the early release policy does not meet the unique needs of that community or school, or both, documented evidence may be submitted to the department for an exception and a request for approval of an alternative plan.

(2) It is the intent of the Legislature that elementary school pupils participate in the full day of the program every day during which pupils participate and that pupils in middle school or junior high school attend a minimum of nine hours a week and three days a week to accomplish program goals.

(3) In order to develop an age-appropriate after school program for pupils in middle school or junior high school, programs established pursuant to this article may implement a flexible attendance schedule for those pupils. Priority for enrollment of pupils in middle school or junior high school shall be given to pupils who attend daily.

(b) The administrators of a program established pursuant to this article have the option of operating during any combination of summer, intersession, or vacation periods for a minimum of three hours per day at the approved rate for the regular school year pursuant to Section 8483.7.

SEC. 3. Section 8483.1 of the Education Code is amended to read:

8483.1. (a) (1) Every before school program component established pursuant to this article shall commence operation at or before 6 a.m. on every regular schoolday or two hours before the commencement of the regular schoolday. A program may operate less than two hours per regular schoolday, but in no instance shall a program operate for less than one and one-half hours per regular schoolday. Every program shall establish a policy regarding reasonable late daily arrival of pupils to the program.

(2) (A) It is the intent of the Legislature that elementary school pupils participate in the full day of the program every day during which pupils participate and that pupils in middle school or junior high school attend a minimum of six hours a week and three days a week to accomplish program goals, except when arriving late in accordance with the late arrival policy described in paragraph (1) or as reasonably necessary.

(B) A school is not eligible to receive funds provided pursuant to this article for a pupil who attends less than one-half of the daily program hours.

(3) In order to develop an age-appropriate before school program for pupils in middle school or junior high school, programs established pursuant to this article may implement a flexible attendance schedule for those pupils. Priority for enrollment of pupils in middle school or junior high school shall be given to pupils who attend daily.

(b) The administrators of a before school program established pursuant to this article shall have the option of operating during any combination of summer, intersession, or vacation periods for a minimum of two hours per day at the approved rate for the regular school year pursuant to Section 8483.75.

SEC. 4. Section 8483.7 of the Education Code is amended to read:

8483.7. (a) (1) (A) Every school that establishes a program pursuant to this article is eligible to receive a three-year renewable incentive grant, that shall be awarded in three one-year increments and is subject to annual reporting and recertification as required by the department, for either of the following, as selected by the school:

(i) Up to five dollars (\$5) per day per pupil, if the program serves pupils in elementary, middle, or junior high school.

(ii) Five dollars (\$5) per pupil for each three hours of pupil attendance, with a maximum total reimbursement of twenty-five dollars (\$25) per pupil per week, if the program serves pupils in middle or junior high school. To receive reimbursement pursuant to this subparagraph, the program administrator shall apply to and receive approval annually from the Superintendent. Approval by the Superintendent shall be based on program results.

(B) The maximum total grant amount awarded annually pursuant to this paragraph shall be seventy-five thousand dollars (\$75,000) for each regular school year for each elementary school and one hundred thousand dollars (\$100,000) for each regular school year for each middle or junior high school.

(2) For large schools, the maximum total grant amounts described in paragraph (1) may be increased based on the following formulas, up to a maximum amount of twice the respective limits specified in paragraph (1):

(A) For elementary schools, multiply seventy-five dollars (\$75) by the number of pupils enrolled at the schoolsite for the normal schoolday program that exceeds 600.

(B) For middle schools, multiply seventy-five dollars (\$75) by the number of pupils enrolled at the schoolsite for the normal schoolday program that exceeds 900.

(3) The maximum total grant amounts set forth in subparagraph (B) of paragraph (1) and in paragraph (2) may be increased from any funds made available for this purpose in the annual Budget Act for participating schools that have pupils on waiting lists for the program. Grants may be increased by the lesser of an amount that is either 25 percent of the current maximum total grant amount or equal to the proportion of pupils unserved by the program as measured by documented waiting lists as of January 1, 2001, compared to the actual after school enrollment on the same date. Matching fund requirements shall be increased accordingly.

(4) A school that establishes a program pursuant to this article is eligible to receive a supplemental grant to operate the program during any combination of summer, intersession, or vacation periods for a maximum of the lesser of the following amounts:

(A) Five dollars (\$5) per day per pupil.

(B) Thirty percent of the total grant amount awarded to the school per school year pursuant to this subdivision.

(5) Each program shall provide at least 50 percent cash or in-kind local matching funds from the school district, governmental agencies, community organizations, or the private sector for each dollar received in grant funds. Neither facilities nor space usage may fulfill the match requirement.

(6) (A) The department may reimburse a program grantee for up to 125 percent of the maximum total grant amount for an individual school, so long as the maximum total grant amount for all school programs administered by the program grantee is not exceeded.

(B) In order to be eligible for reimbursement, a program grantee that transfers funds for purposes of administering a program established pursuant to this article shall have an established waiting list for enrollment, and may transfer only from another school program that has met a minimum of 70 percent of its attendance goal.

(b) The administrator of a program established pursuant to this article may supplement, but not supplant, existing funding for after school programs with grant funds awarded pursuant to this article. State categorical funds for remedial education activities shall not be eligible as matching funds for those after school programs.

(c) Up to 15 percent of the initial year's grant amount for each grant recipient may be utilized for startup costs. Under no circumstance shall funding for startup costs result in an increase in the grant recipient's total funding above the approved grant amount.

SEC. 5. Section 8483.75 of the Education Code is amended to read:

8483.75. (a) (1) (A) Every school that establishes a before school program component pursuant to Section 8483.1 of this article is eligible to receive a three year renewable incentive grant, that shall be awarded in three one-year increments and is subject to annual reporting and recertification as required by the department, for either of the following, as selected by the school:

(i) Up to three dollars and thirty-three cents (\$3.33) per day per pupil for a two hour program, if the program serves pupils in elementary, middle, or junior high school. Per pupil reimbursement rates shall be reduced on a prorated basis for those programs which operate for less than two hours per regular schoolday. The rate shall be determined by multiplying 3.33 by the fraction represented by dividing the minutes of operation per day by 120.

(ii) Three dollars and thirty-three cents (\$3.33) per pupil for each two hours of pupil attendance, with a maximum total reimbursement of sixteen dollars and sixty-five cents (\$16.65) per pupil per week, if the program serves pupils in middle or junior high school. To receive reimbursement pursuant to this subparagraph, the program administrator shall apply to and receive approval annually from the Superintendent. Approval by the Superintendent shall be based on program results.

(B) The maximum total grant amount awarded annually pursuant to this paragraph shall be twenty-five thousand dollars (\$25,000) for each regular school year for each elementary school and thirty-three thousand dollars (\$33,000) for each regular school year for each middle or junior high school.

(2) For large schools, the maximum total grant amounts described in paragraph (1) may be increased based on the following formulas, up to a maximum amount of twice the respective limits specified in paragraph (1):

(A) For elementary schools, multiply fifty dollars (\$50) by the number of pupils enrolled at the schoolsite for the normal schoolday program that exceeds 600.

(B) For middle schools, multiply fifty dollars (\$50) by the number of pupils enrolled at the schoolsite for the normal schoolday program that exceeds 900.

(3) A school that establishes a program pursuant to this article is eligible to receive a supplemental grant to operate the program during

any combination of summer, intersession, or vacation periods for a maximum of the lesser of the following amounts:

(A) Three dollars and thirty-three cents (\$3.33) per day per pupil.

(B) Thirty percent of the total grant amount awarded to the school per school year pursuant to this subdivision.

(4) Each program shall provide at least 50 percent cash or in-kind local matching funds from the school district, governmental agencies, community organizations, or the private sector for each dollar received in grant funds. Neither facilities nor space usage may fulfill the match requirement.

(5) (A) The department may reimburse a program grantee for up to 125 percent of the maximum total grant amount for an individual school, so long as the maximum total grant amount for all school programs administered by the program grantee is not exceeded.

(B) In order to be eligible for reimbursement, a program grantee that transfers funds for purposes of administering a program established pursuant to this article shall have an established waiting list for enrollment, and may transfer only from another school program that has met a minimum of 70 percent of its attendance goal.

(b) The administrator of a program established pursuant to this article may supplement, but not supplant, existing funding for before school programs with grant funds awarded pursuant to this article. State categorical funds for remedial education activities shall not be eligible as matching funds for those before school programs.

(c) Up to 15 percent of the initial year's grant amount for each grant recipient may be utilized for startup costs. Under no circumstance shall funding for startup costs result in an increase in the grant recipient's total funding above the approved grant amount.

SEC. 6. Section 8483.9 of the Education Code is amended to read:

8483.9. (a) A program participant receiving funding pursuant to this article may expend on indirect costs no more than the lesser of the following:

(1) The school district's indirect cost rate, as approved by the department for the appropriate fiscal year.

(2) Five percent of the state program funding received pursuant to this article.

(b) A program participant receiving state funding pursuant to this article may expend no more than 15 percent of that funding on administrative costs, which funding need not be earned through pupil attendance. For purposes of this section, administrative costs shall include indirect costs, as described in subdivision (a).

(c) A program participant receiving state funding pursuant to this program shall ensure that no less than 85 percent of that funding is allocated to schoolsites for direct services to pupils.

CHAPTER 554

An act to amend Section 32127.3 of, and to add Section 32130.6 to the Health and Safety Code, relating to health care districts.

[Approved by Governor October 5, 2005. Filed with
Secretary of State October 5, 2005.]

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

SECTION 1. The Legislature intends to provide California's public hospitals owned and operated by health care districts with access to loans insured by the United States Department of Housing and Urban Development to ensure that they are able to finance essential modernization and seismic safety retrofit and reconstruction projects. It is the intent of the Legislature that federally insured hospital loans be utilized on a priority basis to finance essential retrofit and construction projects.

SEC. 2. Section 32127.3 of the Health and Safety Code is amended to read:

32127.3. (a) Exclusively for the purpose of securing federal mortgage insurance, federal loans, or federally insured loans issued pursuant to the National Housing Act (12 U.S.C. Secs. 1715w and 1715z-7) for financing or refinancing the construction of new health facilities, the expansion, modernization, renovation, remodeling, or alteration of existing health facilities, and the initial equipping of those health facilities under the federal mortgage insurance programs as are now or may hereafter become available to a local hospital district, and notwithstanding any provision of this division, or any other provision or holding of law, the board of directors of any district may do either or both of the following:

(1) Borrow money or issue bonds, in addition to other financing methods authorized under this division.

(2) Execute, in favor of the United States, appropriate federal agency, or federally designated mortgagor, first mortgages, first deeds of trust, or other necessary security interests as the federal government may reasonably require with respect to a health facility project property as security for that insurance.

(b) No payments of principal, interest, insurance premiums and inspection fees, and all other costs of financing obtained as authorized by this section shall be made from funds derived from the district's power to tax.

(c) The Legislature hereby determines and declares that the authorizations for executing the mortgages, deeds of trust, or other necessary security agreements by the board and for the enforcement of the federal government's rights thereunder are in the public interest in order to preserve and promote the health, welfare, and safety of the people of the state by providing, without cost to the state, a federal mortgage insurance program for health facility construction loans in order to stimulate the flow of private capital into health facilities construction to enable the critical need for new, expanded, and modernized public health facilities to be met.

(d) The Legislature further determines and declares that the United States, appropriate federal agency, or federally designated mortgagor named as beneficiary of any first mortgage or other security interest delivered as authorized by this section is not a private person or body within the meaning of Section 11 of Article XI of the California Constitution.

SEC. 3. Section 32130.6 is added to the Health and Safety Code, to read:

32130.6. Notwithstanding any other provision of law, a district may do any of the following by resolution adopted by a majority of the district board:

(a) Enter into a line of credit with a commercial lender that is secured, in whole or in part, by the accounts receivable or other intangible assets of the district, including anticipated tax revenues, and thereafter borrow funds against the line of credit to be used for any district purpose.

(1) Any money borrowed under this line of credit shall be repaid within five years from each separate borrowing or draw upon the line of credit.

(2) The district may enter into a new and separate line of credit to repay a previous line of credit, provided that the district complies with this section in entering into a new line of credit.

(b) Enter into capital leases for the purchase by the district of equipment to be used for any district purpose.

(1) The term of any capital lease shall not be longer than 10 years.

(2) The district may secure the purchase of equipment by a capital lease by giving the lender a security interest in the equipment leased under the capital lease.

(c) Enter into lease-purchase agreements for the purchase by the district of real property, buildings, and facilities to be used for any district

purpose. The term of any lease-purchase agreement shall not exceed 10 years.

(d) Nothing in this section shall provide the district with the authority to increase taxes in order to repay a line of credit established pursuant to subdivision (a) unless the tax is passed pursuant to Article 4.6 (commencing with Section 53750) of Chapter 4 of Part 1 of Division 2 of Title 5 of the Government Code.

CHAPTER 555

An act to amend Section 8484.8 of, and to add Sections 8484.75 and 8484.9 to, the Education Code, relating to afterschool programs, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 5, 2005. Filed with
Secretary of State October 5, 2005.]

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

SECTION 1. Section 8484.75 is added to the Education Code, to read:

8484.75. The requirements of the After School Education and Safety Program described in Article 22.5 (commencing with Section 8482), apply to the program established by this article, with the following exceptions as applicable:

(a) Sections 8482.5, 8482.55, 8483.5, 8483.55, 8483.6, 8483.7, 8483.75, and 8484.5, do not apply to this article.

(b) Any provision of Article 22.5 (commencing with Section 8482) that is in conflict with, or duplicative of, any provision of this article.

(c) Any provision that is in conflict with applicable federal law or regulations.

SEC. 2. Section 8484.8 of the Education Code is amended to read:

8484.8. In accordance with Part B of Title IV of the federal No Child Left Behind Act of 2001 (P.L. 107-110), funds appropriated in Item 6110-197-0890 of Section 2.00 of the Budget Act of 2002 are available for expenditure as follows, with any subsequent allocations for these purposes to be determined in the annual Budget Act:

(a) The amount of one million dollars (\$1,000,000) shall be available to the department for purposes of providing technical assistance, evaluation and training services, for carrying out programs related to 21st Century Community Learning Center programs.

(b) (1) An amount of up to three million five hundred thousand dollars (\$3,500,000) shall be available for direct grants, in an amount not to exceed twenty-five thousand dollars (\$25,000) per site, per year, for community learning center programs that serve middle and elementary school pupils for providing equitable access to, and participation in, community learning center programs, according to needs determined by the local community.

(2) The department shall determine the requirements for eligibility for a grant under this subdivision, consistent with the following:

(A) Consistent with the local partnership approach inherent in Article 22.5 (commencing with Section 8482), grants awarded under this subdivision shall provide supplemental assistance to programs. It is not intended that a grant fund the full anticipated costs of the services provided by a community learning center program.

(B) In determining the need for a grant pursuant to this subdivision, the department shall base its determination on a needs assessment and a determination that existing resources are not available to meet these needs, including, but not limited to, a description of how the needs, strengths, and resources of the community have been assessed, currently available resources, and the justification for additional resources for that purpose.

(C) The department shall award grants for a specific purpose, as justified by the applicant.

(3) To be eligible to receive a grant under this subdivision, the designated public agency representative for the applicant shall certify that an annual fiscal audit will be conducted and that adequate, accurate records will be kept. In addition, each applicant shall provide the department with the assurance that funds received under this subdivision are expended only for those services and supports for which they are granted. The department shall require grant recipients to submit annual budget reports, and the department may withhold funds in subsequent years if direct grant funds are expended for purposes other than as awarded.

(c) Up to one million dollars (\$1,000,000) shall be available for direct grants of up to twenty thousand dollars (\$20,000) per site, per year, for providing family literacy services only to those schoolsites that identify such a need for families of 21st Century Community Learning Center program pupils, and that demonstrate a fiscal hardship by certifying that existing resources including, but not limited to, funding for Title III of the No Child Left Behind Act of 2001, Chapter 3 (commencing with Section 300) of Part 1, adult education, community college, and the federal Even Start Program are not available or are insufficient to serve these families. An assurance that the funds received under this

subdivision are expended only for those services and supports for which they were granted shall be required.

(d) Of the remaining funds in Item 6110-197-0890 of Section 2.00 of the Budget Act of 2002, two million five hundred thousand dollars (\$2,500,000) shall be allocated on a priority basis for grants to community learning center programs serving high school pupils, and the remainder of this amount shall be allocated on a priority basis for programs for middle and elementary school pupils.

(e) Grant awards under this section shall be restricted to those applications that propose primarily to serve pupils that attend schoolwide programs, as described in Title I of the No Child Left Behind Act of 2001. Competitive priority shall be given to applications that propose to serve children and youth in schools designated as being in need of improvement under subsection (b) of Section 6316 of Title 20 of the United States Code, and that are jointly submitted by school districts and community-based organizations. Applications to serve pupils in programs that have received grants under Article 22.5 (commencing with Section 8482) shall be funded only when proposing to expand in additional sites or to add pupils to a currently funded site.

(f) (1) Core funding grants for programs serving middle and elementary school pupils in before and after school programs shall be allocated as follows:

(A) For after school programs, seven dollars and fifty cents (\$7.50) per pupil, per day, up to a maximum grant of one hundred twelve thousand five hundred dollars (\$112,500) for each regular school year for each elementary school, and one hundred fifty thousand dollars (\$150,000) for each regular school year for each middle or junior high school.

(B) For before school programs, five dollars (\$5) per pupil, per day, up to a maximum grant of thirty-seven thousand five hundred dollars (\$37,500) for each regular school year for each elementary school, and forty-nine thousand dollars (\$49,000) for each regular school year for each middle or junior high school.

(2) For an after school component of a program, the maximum total grant amount described in subparagraph (A) of paragraph (1) may be increased up to a maximum amount of twice the respective limits specified in that subparagraph, in accordance with the following:

(A) For elementary schools, one hundred thirteen dollars (\$113) per pupil, only for each pupil that exceeds 600 pupils enrolled at the schoolsite for the normal schoolday program.

(B) For middle schools, one hundred thirteen dollars (\$113) per pupil, only for each pupil that exceeds 900 pupils enrolled at the schoolsite for the normal schoolday program.

(3) For a before school component of a program, the maximum total grant amount described in subparagraph (B) of paragraph (1) may be increased up to a maximum amount of twice the respective limits specified in that subparagraph, in accordance with the following:

(A) For elementary schools, seventy-five dollars (\$75) per pupil, only for each pupil that exceeds 600 pupils enrolled at the schoolsite for the normal schoolday program.

(B) For middle schools, seventy-five dollars (\$75) per pupil, only for each pupil that exceeds 900 pupils enrolled at the schoolsite for the normal schoolday program.

(4) A school that establishes an after school component of a program pursuant to this article is eligible to receive a supplemental grant to operate the program during any combination of summer, intersession, or vacation periods for a maximum of the lesser of the following amounts:

(A) Seven dollars and fifty cents (\$7.50) per day per pupil.

(B) Thirty percent of the total grant amount awarded to the school per school year pursuant to this subdivision.

(5) A school that establishes a before school component of a program pursuant to this article is eligible to receive a supplemental grant to operate the program during any combination of summer, intersession, or vacation periods for a maximum of the lesser of the following amounts:

(A) Five dollars (\$5) per day per pupil.

(B) Thirty percent of the total grant amount awarded to the school per school year pursuant to this subdivision.

(6) (A) The department may reimburse a program grantee for up to 125 percent of the maximum total grant amount for an individual school, so long as the maximum total grant amount for all school programs administered by the program grantee is not exceeded.

(B) In order to be eligible for reimbursement, a program grantee that borrows funds for purposes of administering a program established pursuant to this article shall have an established waiting list for enrollment and may borrow only from another program grantee that has met a minimum of 70 percent of its attendance goal.

(7) (A) Funding for a grant shall be allocated in annual increments for a period not to exceed five years. The department shall notify new grantees, whose grant awards are contingent upon the appropriation of funds for those grants, in writing no later than June 15 of each year in which new grants are awarded. A first year grant award shall be made no later than 60 days after enactment of the annual Budget Act and any authorizing legislation. A grant award for the second and subsequent fiscal years shall be made no later than 30 days after enactment of the annual Budget Act and any authorizing legislation. The grantee shall notify the department in writing of its acceptance of the grant.

(B) For the first year of a grant, the department shall allocate 15 percent of the grant for that year no later than 30 days after the grantee accepts the grant. For the second and subsequent years of the grant, the department shall allocate 15-percent of the grant for that year no later than 30 days after the annual Budget Act becomes effective. This 15 percent amount is to be used by a grantee for administrative costs and need not be earned through pupil attendance.

(C) In addition to the funding allocated pursuant to subparagraph (B), up to 15 percent of the initial annual grant award for each core grant recipient may be utilized for startup costs, which funding need not be earned through pupil attendance.

(D) Under no circumstance shall funding made available pursuant to subparagraphs (B) and (C) result in an increase in the total funding of a grantee above the approved grant amount.

(E) Payments to a grantee shall be based on quarterly pupil attendance and expenditure reports, as required by the department. If a report is submitted to the department in a timely manner, payments to a grantee based on that report shall be issued within 30 days if its receipt.

(8) A grantee shall identify the federal, state, and local programs that will be combined or coordinated with the proposed program for the most effective use of public resources, and shall prepare a plan for continuing the program beyond federal grant funding.

(9) A grantee shall submit annual attendance data and results to facilitate evaluation and compliance in accordance with provisions established by the department.

(10) A program receiving a grant under this subdivision is not assured of grant renewal from future state or federal funding at the conclusion of the grant period.

(g) A total annual grant award for core funding and direct grants for a site serving elementary or middle school pupils shall be fifty thousand dollars (\$50,000) per year or more, consistent with federal requirements.

(h) Grants for programs serving high school pupils at schoolsites or sites of other organizations, as determined to be eligible by the department and consistent with the provisions of the 21st Century Community Learning Centers program, shall be available as an annual minimum grant of fifty thousand dollars (\$50,000) per year. Grant funding above the minimum shall be determined in proportion to the average daily attendance of the high school program site or sites to be served and other factors including, but not limited to, proposed attendance and effective use of resources as determined by the department up to two hundred fifty thousand dollars (\$250,000) per year for five years. A grantee that establishes a high school program pursuant to this subdivision shall be subject to annual reporting and recertification as

required by the department. After the second year, the department shall reduce funding of programs in which actual attendance is significantly below proposed attendance levels. An evaluation of the program funded pursuant to this subdivision shall be submitted no later than 180 days after the completion of the second year of the program. The department shall provide the results of that evaluation and work with the Legislature, the Department of Finance, program providers, and other interested parties to adopt or restructure a high school after school program for California that is both programmatically and fiscally sound. Grantees shall be eligible for fourth and fifth year funding consistent with the restructured requirements. Each grantee shall be required to identify the federal, state, and local programs that will be combined or coordinated with the proposed program for the most effective use of public resources and to describe a plan for continuing the program beyond federal grant funding. Grantees shall be required to submit annual attendance data results to facilitate evaluation and compliance with provisions established by the department. Programs receiving grants under this subdivision are not assured of grant renewal from future state or federal funding at the conclusion of the grant period.

(i) Notwithstanding any other provision of law, and contingent upon the availability of funding, the department may adjust the core grant cap of any grantee based upon one or both of the following:

(1) Amendments made to this section by the act that added this subdivision.

(2) The demonstrated historical earning pattern of the grantee. If an adjustment based upon the demonstrated historical earning pattern of the grantee results in a reduction, that adjustment shall be based upon at least two years of historical earning pattern data for the affected grantee.

(j) Funds received but unexpended under this article may be carried forward to subsequent years consistent with federal requirements. In year one, the full grant may be retained.

(k) This article shall be operative only to the extent that federal funds are made available for the purposes of this article. It is the intent of the Legislature that this article not be considered a precedent for general fund augmentation of either the state administered, federally funded program of this article, or any other state funded before or after school program.

SEC. 3. Section 8484.9 is added to the Education Code, to read:

8484.9. (a) There is hereby established in the department an Advisory Committee on Before and After School Programs for the purpose of providing information and advice to the Superintendent, the Secretary for Education, and the State Board of Education regarding state and

federal policy and funding issues affecting before and after school programs, based on regular and systematic input from providers.

(b) The membership of the advisory committee shall consist of all of the following persons, the majority of whom shall be operators of before or after school programs:

(1) Six persons appointed by the Governor as follows:

(A) Two persons who operate an urban before or after school program.

(B) Two persons who operate a rural before or after school program.

(C) One person from a private foundation or a postsecondary academic institution.

(D) One person representing a unified school district.

(2) Two persons appointed by the Superintendent as follows:

(A) One person who operates a high school after school program.

(B) One person from a private foundation or a postsecondary academic institution.

(3) Two persons appointed by the Senate Committee on Rules as follows:

(A) One person who operates a small elementary after school program.

(B) One person who operates a large middle school after school program.

(4) Two persons appointed by the Speaker of the Assembly as follows:

(A) One person who operates a large elementary school after school program.

(B) One person who operates a small middle school after school program.

(5) The Secretary for Education, or his or her designee.

(c) The advisory committee membership shall be representative of the diversity of before and after school programs, regarding geography, size, and public or nonpublic operation.

(d) The advisory committee members shall select one of its members to be the chair of the committee. It is the responsibility of the chair to act as the conduit between the advisory committee and the Superintendent, the state board, and appropriate staff.

(e) The advisory committee shall nominate, and the state board shall confirm, a staff member to serve as consultant to the advisory committee.

(f) The advisory committee shall meet as frequently as necessary but at least three times each year. The meetings of the committee may be conducted by teleconference.

(g) The members of the advisory committee shall serve without compensation, including for travel and per diem expenses.

(h) The advisory committee shall do all of the following:

(1) Provide information on the status of funding provided for before and after school programs in each fiscal year, including the number of

applications received, the number of applications funded, and the amount and timing of committed funding.

(2) Provide recommendations on legislative and administrative action needed to ensure that funding for before and after school programs is allocated promptly to qualified providers of before and after school programs.

(3) Provide information on the quality of services and accountability measures.

(4) Provide information regarding challenges faced by before and after school programs that impede the provision of best possible services.

SEC. 4. It is the intent of the Legislature that the increases in per pupil reimbursement rates and maximum grant awards authorized by this act do not reduce the number of children actually served by a core program during the prior year.

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 allocate funds appropriated in the Budget Act of 2005 for learning center programs at the earliest possible time, it is necessary that this act take effect immediately.

CHAPTER 556

An act to add Sections 12103.5, 12104, and 12104.5 to the Public Contract Code, relating to public contracts, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 5, 2005. Filed with
Secretary of State October 5, 2005.]

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

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

(a) The State of California depends on information technology goods and services to accomplish its legally mandated core business functions and public services and it is in the best interest of the state to procure these services according to best practices, thereby rationalizing the process and providing a consistent basis for communication and decisionmaking.

(b) Information technology improves the functioning of government by providing increased public access and enhanced customer service.

(c) Conducting business with technology industry vendors in a professional manner with an attitude of cooperative, direct, and straightforward communication serves the best interests of the State of California and its citizens for the following reasons:

(1) Vendors can better respond to the state if published business and technical requirements are clear.

(2) An efficient and effective procurement process saves the state valuable dollars and time, mitigating overall project risk long term.

(d) Information technology goods and services are complex and multidimensional. The implementation of new technology invariably impacts existing technology, dependent and independent information technology systems, governmental business processes, operational expectations and outcomes, and future technical and operations choices for the functions of a governmental entity. Purchases, therefore, should be considered in the appropriate context with a total cost of ownership for the state.

(e) New information systems that require information technology goods and services for their implementation should be conceived in terms of a "solution." Thinking and planning according to an information technology "solution" mindset appropriately considers the complete set of information technology goods and services required to complete an objective or set of objectives in the context of the actual business needs of the purchasing state agency. This also provides a means with which to consider the overall purchasing decision and weigh the benefits of different information technology options according to the total cost of ownership for the state.

SEC. 2. Section 12103.5 is added to the Public Contract Code, to read:

12103.5. Beginning January 1, 2007, for those information technology purchases for which the department determines that a request for proposal (RFP) is appropriate, the department shall identify and document the following, with respect to information technology procurements, prior to releasing the RFP:

(a) Identify the legislative mandate, state business, or operational reason for the information technology procurement.

(b) Identify the existing business processes currently used to accomplish the legislative mandate, state business, or operational reason.

(c) Identify the most important priorities for the information technology project to accomplish.

(d) Identify what current technology is being used and how it is being used.

(e) If the data used in a proposed information technology system comes from multiple sources, identify the existing business processes

or technical systems that produce and maintain the source data to ensure interoperability.

(f) Identify how the new information technology project leverages existing technology investments while accomplishing its business objectives.

SEC. 3. Section 12104 is added to the Public Contract Code, to read:

12104. (a) (1) Commencing on or before January 1, 2007, the State Contracting Manual shall set forth all policies, procedures, and methods that shall be used by the department when seeking to obtain bids for the acquisition of information technology, including any policies contained in the State Administrative Manual.

(2) Revisions to the manual must be publicly announced, including, but not limited to, postings on the department's Internet homepage.

(b) On or before January 1, 2007, the department shall designate a single entity within the department that shall be solely responsible for the development, implementation, and maintenance of standardized methods for the development of information technology requests for proposals.

(c) Commencing on or before January 1, 2007, all information technology requests for proposals shall be reviewed by the Office of Legal Services prior to release to the public.

(d) (1) On or before January 1, 2007, the department, in consultation with a representative from the Department of Technology Services, the Department of Finance, the Senate, and the Assembly, along with representatives from the information technology industry, shall issue a management memorandum setting forth uniform standards for information technology procurement. The management memorandum shall prioritize how the technology will advance the public policy purpose of the state program that the information technology will serve over the department's or client's preference for a particular information product design. Prior to issuing the management memorandum, the department shall hold at least two public hearings on the standards that are proposed to be included in the management memorandum.

(2) The management memorandum issued pursuant to paragraph (1) shall not apply to procurements necessary to meet the requirements of the Department of Justice Hawkins Data Center.

SEC. 4. Section 12104.5 is added to the Public Contract Code, to read:

12104.5. (a) All rules and requirements governing an information technology acquisition, for which the department determines that a request for proposal (RFP) is appropriate, shall be communicated in writing to all vendors that have expressed an intent to bid and shall be posted in a public location. Any changes to the rules and requirements

governing that RFP shall be communicated in writing to all vendors that have expressed an intent to bid and shall be posted in a public location. No requirements other than those provided by law or outside of the published RFP and posted addendums shall be used by the department to score bids.

(b) The requirements of this section shall be in addition to any other requirement provided by law.

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

In order to protect the integrity of California's information technology procurement practices, and to ensure that the state is not wasting resources on poorly designed technology investments that may fail to perform in critical state health and safety programs, it is necessary that this act take effect immediately.

CHAPTER 557

An act to amend Sections 20340 and 20341 of the Public Contract Code, and to amend Sections 120100, 120105, 120220, 120224.1, 120224.3, 120224.4, 120260, 120264, 120300, 120301, 120302, 120351, 120352, 120355, 120400, 120452, 120508, 120540, 120630, and 120631 of, to add Section 120220.5 to, to repeal Sections 120262 and 120353 of, and to repeal and add Sections 120202, 120222, and 120350 of, the Public Utilities Code, relating to transportation, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 5, 2005. Filed with
Secretary of State October 5, 2005.]

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

SECTION 1. Section 20340 of the Public Contract Code is amended to read:

20340. The provisions of this article shall apply to contracts by the San Diego Metropolitan Transit Development Board, as provided for in Division 11 (commencing with Section 120000) of the Public Utilities Code.

SEC. 2. Section 20341 of the Public Contract Code is amended to read:

20341. (a) Except as provided in subdivision (c), contracts for construction in excess of fifty thousand dollars (\$50,000) shall be awarded to the lowest responsible bidder submitting a responsive bid after competitive bidding, except in emergency declared by the vote of two-thirds of the membership of the board. If the expected construction contract exceeds one thousand dollars (\$1,000) and does not exceed fifty thousand dollars (\$50,000), the board shall seek a minimum of three quotations, either written or oral, that permit prices and other terms to be compared, and the board shall award the contract to the bidder who submitted the lowest quotation.

(b) If no bids are received, the project may be performed by a negotiated contract.

(c) This section does not apply to the Los Angeles County Metropolitan Transportation Authority.

SEC. 3. Section 120100 of the Public Utilities Code is amended to read:

120100. The board at its first meeting, and thereafter annually at the first meeting in January, shall elect a vice chair who shall preside in the absence of the chair. In the event of the absence or inability to act by the chair or vice chair, the chair pro tempore shall preside.

SEC. 4. Section 120105 of the Public Utilities Code is amended to read:

120105. The board shall perform the following duties:

(a) Determine whether to operate exclusive public mass transit guideways or to let contracts for their operation in conformity with state labor laws and subdivision (d) of Section 120508.

(b) Determine the means to finance the operation of public mass transit guideways.

(c) Adopt an annual budget and fix the compensation of its officers and employees.

(d) Adopt an administrative code, by ordinance, that shall prescribe the powers and duties of board officers, the method of appointment of board employees, and methods, procedures, and systems of operation and management of the board. The administrative code shall also provide for, among other things, the appointment of a general manager or chief executive officer, and the organization of the employees of the board into units for finance and administration, planning and operations, property acquisition and management, and community relations, and other units as the board deems necessary.

(e) Cause a postaudit of the financial transactions and records of the board to be made at least annually by a certified public accountant.

(f) Adopt all ordinances and make all rules and regulations proper or necessary to regulate the use, operation, and maintenance of its property

and facilities, including its public transit systems and related transportation facilities and services operating within its area of jurisdiction, and to carry into effect the powers granted to the board.

(g) Appoint such advisory commissions as it deems necessary.

(h) Do any and all things necessary to carry out the purposes of this division.

SEC. 5. Section 120202 of the Public Utilities Code is repealed.

SEC. 6. Section 120202 is added to the Public Utilities Code, to read:

120202. (a) All of the privileges, immunities from liability, and exemptions from laws, ordinances, and rules, and all pension, relief, disability, workers' compensation, and other benefits that apply to the activity of officers, agents, or employees of a public agency when performing their respective functions shall apply to employees of the board, and to any nonprofit public benefit corporation of which the board is the sole member.

(b) All claims for money or damages against the board or its employees, and against any nonprofit public benefit corporation of which the board is the sole member or the employees of that corporation, shall be governed by Part 1 (commencing with Section 810), Part 2 (commencing with Section 814), Part 3 (commencing with Section 900), and Part 4 (commencing with Section 940) of Division 3.6 of Title 1 of the Government Code applicable to public agencies and their employees, or by other statutes or regulations expressly applicable thereto.

SEC. 7. Section 120220 of the Public Utilities Code is amended to read:

120220. The board may make contracts and enter into stipulations of any nature whatsoever, either in connection with eminent domain proceedings or otherwise, including, without limiting the generality of the foregoing, contracts and stipulations to indemnify and save harmless, to employ labor, and to do all acts necessary and convenient for the full exercise of the powers granted in this division.

SEC. 8. Section 120220.5 is added to the Public Utilities Code, to read:

120220.5. The board may provide and maintain by contract with a public agency or by other means, a security force to enforce its regulations, to preserve and protect any public transit system or project financed pursuant to this division, and to preserve and protect the public peace, health, and safety with respect to its system or projects. Alternatively, the board may contract with a private patrol operator licensed pursuant to Chapter 11.5 (commencing with Section 7580) of Division 3 of the Business and Professions Code, with the county sheriff and municipal police departments within the areas described in Section

120054, and with other transit development boards for security, police, and related services.

SEC. 9. Section 120222 of the Public Utilities Code is repealed.

SEC. 10. Section 120222 is added to the Public Utilities Code, to read:

120222. (a) The Legislature finds and declares that a compelling interest exists in ensuring that all federal, state, local, and private funds available to the board are captured and used in a timely manner. In order to maximize the use of federal, state, local, and private funds and to maintain a competitive posture in seeking supplemental federal funds, the board shall have the authority to establish and use a flexible contracting process to maximize its efficient use of public funds.

(b) Except in cases when an article of a specified brand or trade name is the only article that will properly meet the needs of the board or in an emergency declared by the vote of two-thirds of the membership of the board, all contracts for the acquisition or lease of materials, supplies, or equipment in an amount of one hundred thousand dollars (\$100,000), or in excess of that amount as authorized by the board, shall be made or entered into with the lowest responsible bidder meeting specifications. For purposes of determining the lowest bid, the amount of sales tax shall be excluded from the total amount of the bid. When the expected purchase amount of the contract exceeds five thousand dollars (\$5,000) and does not exceed one hundred thousand dollars (\$100,000), the board shall seek a minimum of three quotations, either written or oral, to permit comparison of prices and other terms.

(c) Except in cases of an emergency declared by the vote of two-thirds of the membership of the board, the board shall for all contracts for the acquisition of services that exceed one hundred thousand dollars (\$100,000), that will not be performed by an entity described in Section 120221.5, and that are not within the category of services defined in Section 4525 of the Government Code, solicit bids in writing and award the contract in a competitive procurement process that is in the best interest of the board, including, but not limited to, a negotiated procurement that may or may not evaluate price as a consideration. When the expected amount of the service contract exceeds five thousand dollars (\$5,000) and does not exceed one hundred thousand dollars (100,000), the board shall seek a minimum of three quotations, either written or oral, to permit comparison of prices and other terms.

(d) The board shall award contracts for architectural, landscape architectural, engineering, environmental, land surveying services, and construction project management services that are in excess of one hundred thousand dollars (\$100,000) in accordance with the provisions

of Chapter 10 (commencing with Section 4525) of Division 5 of Title 1 of the Government Code.

(e) Notwithstanding any other provisions of this chapter, the board may use any procurement method authorized for state or local agencies under state or federal law, including, but not limited to, a competitive negotiation process in accordance with the provisions of Article 7.5 (commencing with Section 20216) of Chapter 1 of Part 3 of Division 2 of the Public Contract Code. The board shall maintain acquisition and contracting guidelines and comply with those guidelines in the procurement of all goods and services.

(f) Provisions in any federally funded contract concerning disadvantaged business enterprises that are in accordance with the request for proposals shall not be subject to negotiation with the successful bidder.

SEC. 11. Section 120224.1 of the Public Utilities Code is amended to read:

120224.1. (a) Upon determining that immediate remedial measures to avert or alleviate damage to, or to repair or restore damaged or destroyed property of, the board are necessary in order to insure that the facilities of the board are available to serve the transportation needs of the general public or to comply with any state or federal regulation with respect to the operation of public transportation services, and upon determining that available remedial measures, including procurement in compliance with Sections 120222, and 120223, are inadequate, the general manager or chief executive officer may authorize the expenditure of money previously appropriated by the board specifically for the direct purchases of goods and services, without observance of the provisions of those sections.

(b) The general manager or chief executive officer, after the expenditure authorized under subdivision (a) has been made, shall submit to the board a full report explaining the necessity for that action.

SEC. 12. Section 120224.3 of the Public Utilities Code is amended to read:

120224.3. Notwithstanding Section 120222, the board may direct the purchase of any supply, equipment, or materials without observance of any provision requiring contracts, bids, or advertisements upon a finding by two-thirds of all members of the board that there is only a single source of procurement therefor and that the purchase is for the sole purpose of duplicating, repairing, or replacing supply, equipment, or materials that are in use, including upgrades or migrations of proprietary intellectual property.

SEC. 13. Section 120224.4 of the Public Utilities Code is amended to read:

120224.4. (a) A person who submits, or who plans to submit, a proposal in response to a procurement solicitation may protest any acquisition conducted in accordance with Sections 120222 and 120223 as follows:

(1) Protests based on the content of the procurement solicitation shall be filed with the board within 10 calendar days after the procurement solicitation is first advertised. The general manager or the chief executive officer, or the designee of the general manager or chief executive officer, shall issue a written decision on the protest prior to opening of the procurement solicitation. A protest may be renewed by refileing the protest with the board within 15 calendar days after the mailing of the notice of the intent to award.

(2) Any bidder may protest the intent to award on any ground not based upon the content of the procurement solicitation by filing a protest with the board within 15 calendar days after the mailing of the notice of the intent to award.

(3) Any protest shall contain a full and complete written statement specifying in detail the grounds of the protest and the facts supporting the protest. Protestors shall have an opportunity to appear and be heard before the board prior to the opening of the procurement solicitation in the case of protests based on the content of the procurement solicitation, or prior to final award in the case of protests based on other grounds or the renewal of protests based on the content of the procurement solicitation.

(b) The decision of the protest by the board shall be in writing and constitutes a final administrative decision for purposes of judicial review pursuant to Section 1094.6 of the Code of Civil Procedure.

SEC. 14. Section 120260 of the Public Utilities Code is amended to read:

120260. The board shall provide input to the San Diego Association of Governments on the planning and construction of exclusive public mass transit guideways in the area under its jurisdiction in conformance with the California Transportation Plan and the regional transportation plan developed pursuant to Chapter 2.5 (commencing with Section 65080.1) of Division 1 of Title 7 of the Government Code.

SEC. 15. Section 120262 of the Public Utilities Code is repealed.

SEC. 16. Section 120264 of the Public Utilities Code is amended to read:

120264. The transit development board may acquire, construct, maintain, and operate (or let a contract in conformity with state labor laws and subdivision (d) of Section 120508 to operate) public transit systems and related transportation facilities and services as it deems necessary to carry out the purposes of this division in conformity with,

and to the extent provided in, the San Diego Regional Transportation Consolidation Act (Chapter 3 (commencing with Section 132350) of Division 12.7). The various systems, facilities, and services may be administered by the transit development board under the name of the San Diego Metropolitan Transit System.

SEC. 17. Section 120300 of the Public Utilities Code is amended to read:

120300. The San Diego Association of Governments that includes the area of the board shall be responsible for long-term transportation system planning in that area.

The planning shall be directed to, among other things:

- (a) Identification of corridors of travel.
- (b) Definition of the transportation problems of each corridor.
- (c) Definition of the transportation goals for each corridor.
- (d) Definition of land use goals, with the concurrence of affected local jurisdiction, to be supported by transportation investment decisions in each corridor.
- (e) Recommendation of priority corridors for guideway development.
- (f) Recommendation of the mix of alternative transportation modes appropriate for deployment in light of transportation needs and goals for each corridor.
- (g) Recommendation of environmental, economic, energy, and social policies that should guide transportation investment decision within corridors.

SEC. 18. Section 120301 of the Public Utilities Code is amended to read:

120301. With respect to the area under its jurisdiction, the board shall be responsible for operational planning, which includes all planning and monitoring necessary for the operation, implementation, modification, and elimination of public transportation services operated by the board.

SEC. 19. Section 120302 of the Public Utilities Code is amended to read:

120302. Notice of the time and place of the public hearing by the board shall be published pursuant to Section 6061 of the Government Code, and shall be published not later than the 15th day prior to the date of the hearing.

The materials for the public hearing shall be available for public inspection at least 15 days prior to the hearing.

SEC. 20. Section 120350 of the Public Utilities Code is repealed.

SEC. 21. Section 120350 is added to the Public Utilities Code, to read:

120350. The provisions of Article 6 (commencing with Section 120350) and Article 7 (commencing with Section 120400) shall be implemented in conformity with, and subject to, the San Diego Regional Transportation Consolidation Act (Chapter 3 (commencing with Section 132350) of Division 12.7).

SEC. 22. Section 120351 of the Public Utilities Code is amended to read:

120351. The designated recipient for purposes of Chapter 53 (commencing with Section 5301) of Subtitle III of Title 49 of the United States Code shall be the San Diego Association of Governments, and it shall be responsible for allocating federal transit funds to eligible recipients. The board shall prepare the program of projects for transit capital and operating assistance projects in its area of jurisdiction for receipt of federal funds. The San Diego Association of Governments shall allocate the funds to the board to fund its projects. If a dispute regarding the allocation of funds arises between the board and the North San Diego County Transit Development Board, the two boards shall negotiate in good faith to resolve the dispute. If the negotiation does not result in resolving the dispute prior to adoption of the annual regional transportation improvement program, the San Diego Association of Governments shall resolve the dispute and allocate the funds accordingly.

SEC. 23. Section 120352 of the Public Utilities Code is amended to read:

120352. The board may receive any money pursuant to Chapter 53 (commencing with Section 5301) of Subtitle III of Title 49 of the United States Code for mass transit purposes, and reallocate that money for those purposes in accordance with federal law and rules and regulations.

SEC. 24. Section 120353 of the Public Utilities Code is repealed.

SEC. 25. Section 120355 of the Public Utilities Code is amended to read:

120355. The board may take all action necessary to obtain funding available pursuant to Chapter 53 (commencing with Section 5301) of Subtitle III of Title 49 of the United States Code.

SEC. 26. Section 120400 of the Public Utilities Code is amended to read:

120400. The board may accept contributions, grants, or loans from any public agency or the United States or any department, instrumentality, or agency thereof, for the purpose of financing the planning, acquisition, construction, or operation of public transportation services, and may enter into contracts and cooperate with, and accept cooperation from, any public agency or the United States, or agency thereof, in the planning, acquisition, construction, or operation of any of those public transportation services in accordance with any legislation that Congress

or the Legislature of the State of California may have heretofore adopted or may hereafter adopt, under which aid, assistance, and cooperation may be furnished by the United States or any public agency in the planning, acquisition, construction, or operation of any of those public transportation services. The board may do any and all things necessary in order to avail itself of this aid, assistance, and cooperation under any federal or state legislation now or hereafter enacted.

SEC. 27. Section 120452 of the Public Utilities Code is amended to read:

120452. Violation of any ordinance, rule, or regulation enacted by the board prohibiting the unauthorized entering into, climbing upon, holding onto, or in any manner attaching oneself to vehicles operated upon exclusive public mass transit guideways owned or controlled by the board, is an infraction punishable by a fine not exceeding fifty dollars (\$50), except that a violation by a person, after the first conviction under this section, is a misdemeanor punishable by a fine not exceeding five hundred dollars (\$500) or by imprisonment in a county jail not exceeding six months, or by both that fine and imprisonment.

SEC. 28. Section 120508 of the Public Utilities Code is amended to read:

120508. (a) This article also applies to the employee relations of employees of a nonprofit entity that operates public mass transit services and that is solely owned by the board. For employee relations regarding these employees, the term "board," as used in this article, means the board and the board of directors of the nonprofit entity as the joint employer of the employees.

(b) The board may, at any time in its sole discretion, abolish any nonprofit entity or merge any nonprofit entity with another nonprofit entity or with the board.

(c) Upon abolishing or merging a nonprofit entity pursuant to subdivision (b), the board shall become the sole employer of the employees of the nonprofit entity and shall assume sole responsibility to observe all existing labor contracts established and maintained pursuant to this article.

(d) Except as may be agreed upon through the collective bargaining process, nothing in this section shall prohibit or limit the right of the board to contract with common carriers of persons operating under a franchise, license, or other agreement. Any provision in an existing collective bargaining agreement made applicable to the board in its capacity as a joint employer with a nonprofit entity pursuant to subdivision (a) or sole successor employer pursuant to subdivision (b) that is intended to prohibit or limit the right of a nonprofit entity to contract out covered bargaining unit services to another common carrier

of persons shall not be binding upon the board with respect to any contract for services entered into, renewed, or extended by the board prior to January 1, 2004, and thereafter shall apply only to contracts for bargaining unit services covered by an existing collective bargaining agreement assumed by or binding upon the board as a joint employer unless otherwise agreed upon through the collective bargaining process. The amendments to this subdivision made by Senate Bill 959 of the 2005-06 Regular Session are intended solely to clarify existing law and shall not be interpreted either to enlarge or contract the board's right to contract out for public transportation services.

SEC. 29. Section 120540 of the Public Utilities Code is amended to read:

120540. It shall be a condition of the operation of any transit facility owned or controlled by the board that Section 5333 of Title 49 of the United States Code shall be given effect to the extent required by law.

SEC. 30. Section 120630 of the Public Utilities Code is amended to read:

120630. The board may issue bonds, payable from revenue of any facility or enterprise to be acquired or constructed by, or on behalf of, the board, in the manner provided by the Revenue Bond Law of 1941 (Chapter 6 (commencing with Section 54300) of Part 1 of Division 2 of Title 5 of the Government Code), and all of the provisions of that law are applicable to the board.

SEC. 31. Section 120631 of the Public Utilities Code is amended to read:

120631. The board is a local agency within the meaning of the Revenue Bond Law of 1941 (Chapter 6 (commencing with Section 54300) of Part 1 of Division 2 of Title 5 of the Government Code). The term "enterprise," as used in the Revenue Bond Law of 1941, for all purposes of this article, includes the transit system or any or all transit facilities and all additions, extensions, and improvements thereto authorized to be acquired, constructed, or completed by the board.

The board may issue revenue bonds under the Revenue Bond Law of 1941 for any one or more transit facilities authorized to be acquired, constructed, or completed by, or on behalf of, the board or, in the alternative, the board may issue revenue bonds under the Revenue Bond Law of 1941 for the acquisition, construction, and completion of any one of those transit facilities.

Nothing in this article prohibits the board from availing itself of, or making use of, any procedure provided in this chapter for the issuance of bonds of any type or character for any of the transit facilities authorized hereunder, and all proceedings may be carried on simultaneously or, in the alternative, as the board may determine.

SEC. 32. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district 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. 33. 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 needed changes to the San Diego Metropolitan Transit Development Board as soon as possible, it is necessary that this act take effect immediately.

CHAPTER 558

An act to amend Sections 1507.3, 1524, 1538, 1562, 1562.3, and 1562.4 of, to add Section 1538.55 to, and to add and repeal Article 9 (commencing with Section 1567.50) to Chapter 3 of Division 2 of, the Health and Safety Code, and to add and repeal Article 3.5 (commencing with Section 4684.50) to Chapter 6 of Division 4.5 of, the Welfare and Institutions Code, relating to developmental services.

[Approved by Governor October 5, 2005. Filed with
Secretary of State October 5, 2005.]

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

SECTION 1. Section 1507.3 of the Health and Safety Code is amended to read:

1507.3. (a) A residential facility that provides care to adults may obtain a waiver from the department for the purpose of allowing a resident who has been diagnosed as terminally ill by his or her physician or surgeon to remain in the facility, or allowing a person who has been diagnosed as terminally ill by his or her physician and surgeon to become a resident of the facility if that person is already receiving hospice services and would continue to receive hospice services without disruption if he or she became a resident, when all of the following conditions are met:

(1) The facility agrees to retain the terminally ill resident, or accept as a resident the terminally ill person, and to seek a waiver on behalf of

the individual, provided the individual has requested the waiver and is capable of deciding to obtain hospice services.

(2) The terminally ill resident, or the terminally ill person to be accepted as a resident, has obtained the services of a hospice certified in accordance with federal medicare conditions of participation and licensed pursuant to Chapter 8 (commencing with Section 1725) or Chapter 8.5 (commencing with Section 1745).

(3) The facility, in the judgment of the department, has the ability to provide care and supervision appropriate to meet the needs of the terminally ill resident, or the terminally ill person to be accepted as a resident, and is in substantial compliance with regulations governing the operation of residential facilities that provide care to adults.

(4) The hospice has agreed to design and provide for care, services, and necessary medical intervention related to the terminal illness as necessary to supplement the care and supervision provided by the facility.

(5) An agreement has been executed between the facility and the hospice regarding the care plan for the terminally ill resident, or the terminally ill person to be accepted as a resident. The care plan shall designate the primary caregiver, identify other caregivers, and outline the tasks the facility is responsible for performing and the approximate frequency with which they shall be performed. The care plan shall specifically limit the facility's role for care and supervision to those tasks authorized for a residential facility under this chapter.

(6) The facility has obtained the agreement of those residents who share the same room with the terminally ill resident, or any resident who will share a room with the terminally ill person to be accepted as a resident, to allow the hospice caregivers into their residence.

(b) At any time that the licensed hospice, the facility, or the terminally ill resident determines that the resident's condition has changed so that continued residence in the facility will pose a threat to the health and safety of the terminally ill resident or any other resident, the facility may initiate procedures for a transfer.

(c) A facility that has obtained a hospice waiver from the department pursuant to this section, or an Adult Residential Facility for Persons with Special Health Care Needs (ARFPSHN) licensed pursuant to Article 9 (commencing with Section 1567.50), need not call emergency response services at the time of a life-threatening emergency if the hospice agency is notified instead and all of the following conditions are met:

(1) The resident is receiving hospice services from a licensed hospice agency.

(2) The resident has completed an advance directive, as defined in Section 4605 of the Probate Code, requesting to forego resuscitative measures.

(3) The facility has documented that facility staff have received training from the hospice agency on the expected course of the resident's illness and the symptoms of impending death.

(d) Nothing in this section is intended to expand the scope of care and supervision for a residential facility, as defined in this chapter, that provides care to adults nor shall a facility be required to alter or extend its license in order to retain a terminally ill resident, or allow a terminally ill person to become a resident of the facility, as authorized by this section.

(e) Nothing in this section shall require any care or supervision to be provided by the residential facility beyond that which is permitted in this chapter.

(f) Nothing in this section is intended to expand the scope of life care contracts or the contractual obligation of continuing care retirement communities as defined in Section 1771.

(g) The department shall not be responsible for the evaluation of medical services provided to the resident by the hospice and shall have no liability for the independent acts of the hospice.

(h) The department, in consultation with the State Fire Marshal, shall develop and expedite implementation of regulations related to residents who have been diagnosed as terminally ill who remain in the facility and who are nonambulatory that ensure resident safety but also provide flexibility to allow residents to remain in the least restrictive environment.

(i) Nothing in this section shall be construed to relieve a licensed residential facility that provides care to adults of its responsibility, for purposes of allowing a resident who has been diagnosed as terminally ill to remain in the facility, to do both of the following:

(1) With regard to any resident who is bedridden, as defined in subdivision (a) of Section 1566.45, to, within 48 hours of the resident's retention in the facility, notify the local fire authority with jurisdiction in the bedridden resident's location of the estimated length of time the resident will retain his or her bedridden status in the facility.

(2) Secure a fire clearance approval from the city or county fire department, fire district, or any other local agency providing fire protection services, or the State Fire Marshal, whichever has primary fire protection jurisdiction.

(j) The requirement in paragraph (1) of subdivision (a) to obtain a waiver, and the requirement in paragraph (1) of subdivision (i) to notify the local fire authority, shall not apply to a facility licensed as an ARFPSHN pursuant to Article 9 (commencing with Section 1567.50).

SEC. 1.5. Section 1524 of the Health and Safety Code is amended to read:

1524. A license shall be forfeited by operation of law when one of the following occurs:

(a) The licensee sells or otherwise transfers the facility or facility property, except when change of ownership applies to transferring of stock when the facility is owned by a corporation, and when the transfer of stock does not constitute a majority change of ownership.

(b) The licensee surrenders the license to the department.

(c) The licensee moves a facility from one location to another. The department shall develop regulations to ensure that the facilities are not charged a full licensing fee and do not have to complete the entire application process when applying for a license for the new location.

(d) The licensee is convicted of an offense specified in Section 220, 243.4, or 264.1, or paragraph (1) of Section 273a, Section 273d, 288, or 289 of the Penal Code, or is convicted of another crime specified in subdivision (c) of Section 667.5 of the Penal Code.

(e) The licensee dies. If an adult relative notifies the department of his or her desire to continue operation of the facility and submits an application, the department shall expedite the application. The department shall promulgate regulations for expediting applications submitted pursuant to this subdivision.

(f) The licensee abandons the facility.

(g) When the certification issued by the State Department of Developmental Services to a licensee of an Adult Residential Facility for Persons with Special Health Care Needs, licensed pursuant to Article 9 (commencing with Section 1567.50), is rescinded.

SEC. 2. Section 1538 of the Health and Safety Code is amended to read:

1538. (a) Any person may request an inspection of any community care facility or certified family home in accordance with this chapter by transmitting to the state department notice of an alleged violation of applicable requirements prescribed by statutes or regulations of this state, including, but not limited to, a denial of access of any person authorized to enter the facility pursuant to Section 9701 of the Welfare and Institutions Code. A complaint may be made either orally or in writing.

(b) The substance of the complaint shall be provided to the licensee or certified family home and foster family agency no earlier than at the time of the inspection. Unless the complainant specifically requests otherwise, neither the substance of the complaint provided the licensee or certified family home and foster family agency nor any copy of the complaint or any record published, released, or otherwise made available to the licensee or certified family home and foster family agency shall disclose the name of any person mentioned in the complaint except the name of any duly authorized officer, employee, or agent of the state

department conducting the investigation or inspection pursuant to this chapter.

(c) Upon receipt of a complaint, other than a complaint alleging denial of a statutory right of access to a community care facility or certified family home, the state department shall make a preliminary review and, unless the state department determines that the complaint is willfully intended to harass a licensee or is without any reasonable basis, it shall make an onsite inspection of the community care facility or certified family home within 10 days after receiving the complaint, except where a visit would adversely affect the licensing investigation or the investigation of other agencies. In either event, the complainant shall be promptly informed of the state department's proposed course of action.

If the department determines that the complaint is intended to harass, is without a reasonable basis, or, after a site inspection, is unfounded, then the complaint and any documents related to it shall be marked confidential and shall not be disclosed to the public. If the complaint investigation included a site visit, the licensee or certified family home and foster family agency shall be notified in writing within 30 days of the dismissal that the complaint has been dismissed.

(d) Upon receipt of a complaint alleging denial of a statutory right of access to a community care facility or certified family home, the state department shall review the complaint. The complainant shall be notified promptly of the state department's proposed course of action.

(e) The department shall commence performance of complaint inspections of certified family homes upon the employment of sufficient personnel to carry out this function, and by no later than June 30, 1999. Upon implementation, the department shall notify all licensed foster family agencies.

(f) Upon receipt of a complaint concerning the care of a client in an Adult Residential Facility for Persons with Special Health Care Needs licensed pursuant to Article 9 (commencing with Section 1567.50), the department shall notify the appropriate regional center and the State Department of Developmental Services for the purposes of investigating the complaint.

(g) Upon receipt of a complaint concerning the vendorization of an Adult Residential Facility for Persons with Special Health Care Needs, the department shall notify the State Department of Developmental Services for purposes of investigating the complaint.

SEC. 3. Section 1538.55 is added to the Health and Safety Code, immediately following Section 1538.5, to read:

1538.55. (a) The licensee of an Adult Residential Facility for Persons with Special Health Care Needs (ARFPSHN), licensed pursuant to Article 9 (commencing with Section 1567.50), shall report to the department's

Community Care Licensing Division, within the department's next working day and to the regional center with whom the ARFPSHN contracts, and the State Department of Developmental Services, within 24 hours upon the occurrence of any of the following events:

- (1) The death of any client from any cause.
- (2) The use of an automated external defibrillator.
- (3) Any injury to any client that requires medical treatment.
- (4) Any unusual incident that threatens the physical or emotional health or safety of any client.

- (5) Any suspected physical or psychological abuse of any client.
- (6) Epidemic outbreaks.
- (7) Poisonings.
- (8) Catastrophes.
- (9) Fires or explosions that occur in or on the premises.

(b) The licensee additionally shall submit a written report to the department's Community Care Licensing Division, the regional center with whom the ARFPSHN contracts, and the State Department of Developmental Services within seven days following any event set forth in subdivision (a), and shall include the following:

- (1) Client's name, age, sex, and date of admission.
- (2) The date and nature of event.
- (3) The attending physician's name, findings, and treatment, if any.
- (4) The disposition of the case.

(c) The department's Community Care Licensing Division shall notify the State Department of Developmental Services upon its findings of any deficiencies or of possible actions to exclude, pursuant to Section 1558, any individual from an ARFPSHN.

SEC. 4. Section 1562 of the Health and Safety Code is amended to read:

1562. The director shall ensure that operators and staffs of community care facilities have appropriate training to provide the care and services for which a license or certificate is issued. The section shall not apply to a facility licensed as an Adult Residential Facility for Persons with Special Health Care Needs pursuant to Article 9 (commencing with Section 1567.50).

SEC. 5. Section 1562.3 of the Health and Safety Code is amended to read:

1562.3. (a) The Director of Social Services, in consultation with the Director of Mental Health and the Director of Developmental Services, shall establish a training program to ensure that licensees, operators, and staffs of adult residential facilities, as defined in paragraph (1) of subdivision (a) of Section 1502, have appropriate training to provide the

care and services for which a license or certificate is issued. The training program shall be developed in consultation with provider organizations.

(b) (1) An administrator of an adult residential care facility, as defined in paragraph (1) of subdivision (a) of Section 1502, shall successfully complete a department approved certification program pursuant to subdivision (c) prior to employment.

(2) In those cases where the individual is both the licensee and the administrator of a facility, the individual shall comply with both the licensee and administrator requirements of this section.

(3) Failure to comply with this section shall constitute cause for revocation of the license of the facility.

(4) The licensee shall notify the department within 30 days of any change in administrators.

(c) (1) The administrator certification program shall require a minimum of 35 hours of classroom instruction that provides training on a uniform core of knowledge in each of the following areas:

(A) Laws, regulations, and policies and procedural standards that impact the operations of the type of facility for which the applicant will be an administrator.

(B) Business operations.

(C) Management and supervision of staff.

(D) Psychosocial needs of the facility residents.

(E) Community and support services.

(F) Physical needs for facility residents.

(G) Use, misuse, and interaction of medication commonly used by facility residents.

(H) Resident admission, retention, and assessment procedures.

(I) Nonviolent crisis intervention for administrators.

(2) The requirement for 35 hours of classroom instruction pursuant to this subdivision shall not apply to persons who were employed as administrators prior to July 1, 1996. A person holding the position of administrator of an adult residential facility on June 30, 1996, shall file a completed application for certification with the department on or before April 1, 1998. In order to be exempt from the 35-hour training program and the test component, the application shall include documentation showing proof of continuous employment as the administrator of an adult residential facility between, at a minimum, June 30, 1994, and June 30, 1996. An administrator of an adult residential facility who became certified as a result of passing the department-administered challenge test, that was offered between October 1, 1996, and December 23, 1996, shall be deemed to have fulfilled the requirements of this paragraph.

(3) Unless an extension is granted to the applicant by the department, an applicant for an administrator's certificate shall, within 60 days of

the applicant's completion of classroom instruction, pass the written test provided in this section.

(d) The department shall not begin the process of issuing a certificate until receipt of all of the following:

(1) A certificate of completion of the administrator training required pursuant to this chapter.

(2) The fee required for issuance of the certificate. A fee of one hundred dollars (\$100) shall be charged by the department to cover the costs of processing the application for certification.

(3) Documentation from the applicant that he or she has passed the written test.

(4) Submission of fingerprints. The department and the Department of Justice shall expedite the criminal record clearance for holders of certificates of completion. The department may waive the submission for those persons who have a current clearance on file.

(e) It shall be unlawful for any person not certified under this section to hold himself or herself out as a certified administrator of an adult residential facility. Any person willfully making any false representation as being a certified administrator is guilty of a misdemeanor.

(f) (1) Certificates issued under this section shall be renewed every two years and renewal shall be conditional upon the certificate holder submitting documentation of completion of 40 hours of continuing education related to the core of knowledge specified in subdivision (c). For purposes of this section, an individual who is an adult residential facility administrator and who is required to complete the continuing education hours required by the regulations of the State Department of Developmental Services, and approved by the regional center, shall be permitted to have up to 24 of the required continuing education course hours credited toward the 40-hour continuing education requirement of this section. Community college course hours approved by the regional centers shall be accepted by the department for certification.

(2) Every licensee and administrator of an adult residential facility is required to complete the continuing education requirements of this subdivision.

(3) Certificates issued under this section shall expire every two years, on the anniversary date of the initial issuance of the certificate, except that any administrator receiving his or her initial certification on or after January 1, 1999, shall make an irrevocable election to have his or her recertification date for any subsequent recertification either on the date two years from the date of issuance of the certificate or on the individual's birthday during the second calendar year following certification. The department shall send a renewal notice to the certificate holder 90 days prior to the expiration date of the certificate. If the

certificate is not renewed prior to its expiration date, reinstatement shall only be permitted after the certificate holder has paid a delinquency fee equal to three times the renewal fee and has provided evidence of completion of the continuing education required.

(4) To renew a certificate, the certificate holder shall, on or before the certificate expiration date, request renewal by submitting to the department documentation of completion of the required continuing education courses and pay the renewal fee of one hundred dollars (\$100), irrespective of receipt of the department's notification of the renewal. A renewal request postmarked on or before the expiration of the certificate is proof of compliance with this paragraph.

(5) A suspended or revoked certificate is subject to expiration as provided for in this section. If reinstatement of the certificate is approved by the department, the certificate holder, as a condition precedent to reinstatement, shall submit proof of compliance with paragraphs (1) and (2) of subdivision (f) and shall pay a fee in an amount equal to the renewal fee, plus the delinquency fee, if any, accrued at the time of its revocation or suspension. Delinquency fees, if any, accrued subsequent to the time of its revocation or suspension and prior to an order for reinstatement, shall be waived for one year to allow the individual sufficient time to complete the required continuing education units and to submit the required documentation. Individuals whose certificates will expire within 90 days after the order for reinstatement may be granted a three-month extension to renew their certificates during which time the delinquency fees shall not accrue.

(6) A certificate that is not renewed within four years after its expiration shall not be renewed, restored, reissued, or reinstated except upon completion of a certification training program, passing any test that may be required of an applicant for a new certificate at that time, and paying the appropriate fees provided for in this section.

(7) A fee of twenty-five dollars (\$25) shall be charged for the reissuance of a lost certificate.

(8) A certificate holder shall inform the department of his or her employment status within 30 days of any change.

(g) The certificate shall be considered forfeited under the following conditions:

(1) The administrator has had a license revoked, suspended, or denied as authorized under Section 1550.

(2) The administrator has been denied employment, residence, or presence in a facility based on action resulting from an administrative hearing pursuant to Section 1522 or Section 1558.

(h) (1) The department, in consultation with the State Department of Mental Health and the State Department of Developmental Services,

shall establish, by regulation, the program content, the testing instrument, the process for approving certification training programs, and criteria to be used in authorizing individuals, organizations, or educational institutions to conduct certification training programs and continuing education courses. These regulations shall be developed in consultation with provider organizations, and shall be made available at least six months prior to the deadline required for certification. The department may deny vendor approval to any agency or person in any of the following circumstances:

(A) The applicant has not provided the department with evidence satisfactory to the department of the ability of the applicant to satisfy the requirements of vendorization set out in the regulations adopted by the department pursuant to subdivision (i).

(B) The applicant person or agency has a conflict of interest in that the person or agency places its clients in adult residential facilities.

(C) The applicant public or private agency has a conflict of interest in that the agency is mandated to place clients in adult residential facilities and to pay directly for the services. The department may deny vendorization to this type of agency only as long as there are other vendor programs available to conduct the certification training programs and conduct education courses.

(2) The department may authorize vendors to conduct the administrator's certification training program pursuant to provisions set forth in this section. The department shall conduct the written test pursuant to regulations adopted by the department.

(3) The department shall prepare and maintain an updated list of approved training vendors.

(4) The department may inspect certification training programs and continuing education courses to determine if content and teaching methods comply with regulations. If the department determines that any vendor is not complying with the intent of this section, the department shall take appropriate action to bring the program into compliance, which may include removing the vendor from the approved list.

(5) The department shall establish reasonable procedures and timeframes not to exceed 30 days for the approval of vendor training programs.

(6) The department may charge a reasonable fee, not to exceed one hundred fifty dollars (\$150) every two years to certification program vendors for review and approval of the initial 35-hour training program pursuant to subdivision (c). The department may also charge the vendor a fee not to exceed one hundred dollars (\$100) every two years for the review and approval of the continuing education courses needed for recertification pursuant to this subdivision.

(i) This section shall be operative upon regulations being adopted by the department, no later than July 1, 1996, to implement the administrator certification program as provided for in this section. If regulations are not adopted by the department, or are adopted after July 1, 1996, this section shall not become operative.

(j) The department shall establish a registry for holders of certificates that shall include, at a minimum, information on employment status and criminal record clearance.

SEC. 6. Section 1562.4 of the Health and Safety Code is amended to read:

1562.4. Any person who becomes an administrator of an adult residential facility, as defined in paragraph (1) of subdivision (a) of Section 1502, on or after July 1, 1996, shall, at a minimum, fulfill all of the following requirements:

(a) Be at least 21 years of age.

(b) Provide documentation of having successfully completed a certification program approved by the department and successfully passing the state examination.

(c) Have a high school diploma or pass a general educational development test as described in Article 3 (commencing with Section 51420) of Chapter 3 of Part 28 of the Education Code.

(d) Obtain a criminal record clearance as provided for in Sections 1522 and 1522.03.

SEC. 7. Article 9 (commencing with Section 1567.50) is added to Chapter 3 of Division 2 of the Health and Safety Code, to read:

**Article 9. Adult Residential Facilities for Persons with Special Health
Care Needs: Licensing**

1567.50. (a) Notwithstanding that a community care facility means a place that provides nonmedical care under subdivision (a) of Section 1502, pursuant to Article 3.5 (commencing with Section 4684.50) of Chapter 6 of Division 4.5 of the Welfare and Institutions Code, the department shall jointly implement with the State Department of Developmental Services a pilot project to test the effectiveness of providing special health care and intensive support services to adults in homelike community settings.

(b) The State Department of Social Services may license, subject to the following conditions, an Adult Residential Facility for Persons with Special Health Care Needs to provide 24-hour services to up to five adults with developmental disabilities who have special health care and intensive support needs, as defined in subdivisions (f) and (g) of Section 4684.50 of the Welfare and Institutions Code.

(1) The State Department of Developmental Services shall be responsible for granting the certificate of program approval for an Adult Residential Facility for Persons with Special Health Care Needs (ARFPSHN). The State Department of Social Services shall not issue a license unless the applicant has obtained a certification of program approval from the State Department of Developmental Services.

(2) The State Department of Social Services shall ensure that the ARFPSHN meets the administration requirements under Article 2 (commencing with Section 1520) including, but not limited to, requirements relating to fingerprinting and criminal records under Section 1522.

(3) The State Department of Social Services shall administer employee actions under Article 5.5 (commencing with Section 1558).

(4) The regional center shall monitor and enforce compliance of the program and health and safety requirements, including monitoring and evaluating the quality of care and intensive support services. The State Department of Developmental Services shall ensure that the regional center performs these functions.

(5) The State Department of Developmental Services may decertify any ARFPSHN that does not comply with program requirements. When the State Department of Developmental Services determines that urgent action is necessary to protect clients of the ARFPSHN from physical or mental abuse, abandonment, or any other substantial threat to their health and safety, the State Department of Developmental Services may request the regional center or centers to remove the clients from the ARFPSHN or direct the regional center or centers to obtain alternative services for the consumers within 24 hours.

(6) The State Department of Social Services may initiate proceedings for temporary suspension of the license pursuant to Section 1550.5.

(7) The State Department of Developmental Services, upon its decertification, shall inform the State Department of Social Services of the licensee's decertification, with its recommendation concerning revocation of the license, for which the State Department of Social Services may initiate proceedings pursuant to Section 1550.

(8) The State Department of Developmental Services and the regional centers shall provide the State Department of Social Services all available documentation and evidentiary support necessary for any enforcement proceedings to suspend the license pursuant to Section 1550.5, to revoke or deny a license pursuant to Section 1551, or to exclude an individual pursuant to Section 1558.

(9) The State Department of Social Services Community Care Licensing Division shall enter into a memorandum of understanding with the State Department of Developmental Services to outline a formal

protocol to address shared responsibilities, including monitoring responsibilities, complaint investigations, administrative actions, and closures.

(10) The licensee shall provide documentation that, in addition to the administrator requirements set forth under paragraph (4) of subdivision (a) of Section 4684.63 of the Welfare and Institutions Code, the administrator, prior to employment, has completed a minimum of 35 hours of initial training in the general laws, regulations and policies and procedural standards applicable to facilities licensed by the State Department of Social Services under Article 2 (commencing with Section 1520). Thereafter, the licensee shall provide documentation every two years that the administrator has completed 40 hours of continuing education in the general laws, regulations and policies and procedural standards applicable to adult residential facilities. The training specified in this section shall be provided by a vendor approved by the State Department of Social Services and the cost of the training shall be borne by the administrator or licensee.

(c) The article shall remain in effect only until January 1, 2010, and as of that date is repealed, unless a later enacted statute extends or deletes that date.

(d) This article shall only be implemented to the extent that funds are made available through an appropriation in the annual Budget Act.

SEC. 8. Article 3.5 (commencing with Section 4684.50) is added to Chapter 6 of Division 4.5 of the Welfare and Institutions Code, to read:

**Article 3.5. Adult Residential Facilities for Persons with Special
Health Care Needs: Pilot Program**

4684.50. (a) (1) "Adult Residential Facility for Persons with Special Health Care Needs (ARFPSHN)" means any adult residential facility that provides 24-hour health care and intensive support services in a homelike setting that is licensed to serve up to five adults with developmental disabilities as defined in Section 4512.

(2) For purposes of this article, an ARFPSHN may be established in a facility financed pursuant to Section 4688.5.

(b) "Consultant" means a person professionally qualified by training and experience to give expert advice, information, training, or to provide health-related assessments and interventions specified in a consumer's individual health care plan.

(c) "Direct care personnel" means all personnel who directly provide program or nursing services to consumers. Administrative and licensed personnel shall be considered direct care personnel when directly

providing program or nursing services to clients. Consultants shall not be considered direct care personnel.

(d) "Individual health care plan" means the plan that identifies and documents the health care and intensive support service needs of a consumer.

(e) "Individual health care plan team" means those individuals who develop, monitor, and revise the individual health care plan for consumers residing in an Adult Residential Facility for Persons with Special Health Care Needs. The team shall, at a minimum, be composed of all of the following individuals:

(1) Regional center service coordinator and other regional center representative, as necessary.

(2) Consumer, and, where appropriate, his or her parents, legal guardian or conservator, or authorized representative.

(3) Consumer's primary care physician, or other physician as designated by the regional center.

(4) ARFPSHN administrator.

(5) ARFPSHN registered nurse.

(6) Others deemed necessary for developing a comprehensive and effective plan.

(f) "Intensive support needs" means the consumer requires physical assistance in performing four or more of the following activities of daily living:

(1) Eating.

(2) Dressing.

(3) Bathing.

(4) Transferring.

(5) Toileting.

(6) Continence.

(g) "Special health care needs" means the consumer has health conditions that are predictable and stable, as determined by the individual health care plan team, and for which the individual requires nursing supports for any of the following types of care:

(1) Nutrition support, including total parenteral feeding and gastrostomy feeding, and hydration.

(2) Cardiorespiratory monitoring.

(3) Oxygen support, including continuous positive airway pressure and bilevel positive airway pressure, and use of other inhalation-assistive devices.

(4) Nursing interventions for tracheostomy care and suctioning.

(5) Nursing interventions for colostomy, ileostomy, or other medical or surgical procedures.

(6) Special medication regimes including injection and intravenous medications.

(7) Management of insulin-dependent diabetes.

(8) Manual fecal impaction, removal, enemas, or suppositories.

(9) Indwelling urinary catheter/catheter procedure.

(10) Treatment for staphylococcus infection.

(11) Treatment for wounds or pressure ulcers (stages 1 and 2).

(12) Postoperative care and rehabilitation.

(13) Pain management and palliative care.

(14) Renal dialysis.

4684.53. (a) The State Department of Developmental Services and the State Department of Social Services shall jointly implement a pilot project to test the effectiveness of providing special health care and intensive support services to adults in homelike community settings.

(b) The pilot project shall be implemented through the following regional centers only:

(1) The San Andreas Regional Center.

(2) The Regional Center of the East Bay.

(3) The Golden Gate Regional Center.

(c) The regional centers participating in this pilot project may contract for an aggregate total of services for no more than 120 persons in an ARFPSHN.

(d) Each ARFPSHN shall possess a community care facility license issued pursuant to Article 9 (commencing with Section 1567.50) of Chapter 3 of Division 2 of the Health and Safety Code, and shall be subject to the requirements of Chapter 1 (commencing with Section 80000) of Division 6 of Title 22 of the California Code of Regulations, except for Article 8 (commencing with Section 80090).

(e) For purposes of this article, a health facility licensed pursuant to subdivision (e) or (h) of Section 1250 may place its licensed bed capacity in voluntary suspension for the purpose of using the facility to operate an ARFPSHN if the facility is selected to participate in the pilot project pursuant to Section 4684.58. Consistent with subdivision (a) of Section 4684.50, any facility selected to participate in the program shall be licensed to serve up to five adults. A facility's bed capacity shall not be placed in voluntary suspension until all consumers residing in the facility under the license to be suspended have been relocated. No consumer may be relocated unless it is reflected in the consumer's individual program plan developed pursuant to Sections 4646 and 4646.5.

(f) Each ARFPSHN shall be subject to the requirements of Subchapters 5 through 9 of Chapter 1 of, and Subchapters 2 and 4 of Chapter 3 of, Division 2 of Title 17 of the California Code of Regulations.

(g) Each ARFPSHN shall ensure that an operable automatic fire sprinkler system is installed and maintained.

(h) Each ARFPSHN shall have an operable automatic fire sprinkler system that is approved by the State Fire Marshal and that meets the National Fire Protection Association (NFPA) 13D standard for the installation of sprinkler systems in single- and two-family dwellings and manufactured homes. A local jurisdiction shall not require a sprinkler system exceeding this standard by amending the standard or by applying standards other than NFPA 13D. A public water agency shall not interpret this section as changing the status of a facility from a residence entitled to residential water rates, nor shall a new meter or larger connection pipe be required of the facility.

(i) Each ARFPSHN shall provide an alternative power source to operate all functions of the facility for a minimum of six hours in the event the primary power source is interrupted. The alternative power source shall comply with Section 517-50 of the California Electric Code. The alternative power source shall be maintained in safe operating condition, and shall be tested every 14 days under the full load condition for a minimum of 10 minutes. Written records of inspection, performance, exercising period, and repair of the alternative power source shall be regularly maintained on the premises and available for inspection by the State Department of Developmental Services.

4684.55. (a) No regional center may pay a rate to any ARFPSHN for any consumer that exceeds the average annual cost of serving a consumer at Agnews Developmental Center, as determined by the State Department of Developmental Services.

(b) The payment rate for ARFPSHN services shall be negotiated between the regional center and the ARFPSHN, and shall be paid by the regional center under the service code "Specialized Residential Facility (Habilitation)."

(c) The established rate for a full month of service shall be made by the regional center when a consumer is temporarily absent from the ARFPSHN 14 days or less per month. When the consumer's temporary absence is due to the need for inpatient care in a health facility, as defined in subdivision (a), (b), or (c) of Section 1250 of the Health and Safety Code, the regional center shall continue to pay the established rate as long as no other consumer occupies the vacancy created by the consumer's temporary absence, or until the individual health care plan team has determined that the consumer will not return to the facility. In all other cases, the established rate shall be prorated for a partial month of service by dividing the established rate by 30.44 then by multiplying the quotient by the number of days the consumer resided in the facility.

4684.58. The regional center may recommend for participation, the State Department of Developmental Services, an applicant for this pilot project when the applicant meets all of the following requirements and has been selected through a request for proposals process issued by one or more of the three participating regional centers:

(a) The applicant employs or contracts with a program administrator who has a successful record of administering residential services for at least two years, as evidenced by substantial compliance with the applicable state licensing requirements.

(b) The applicant prepares and submits, to the regional center, a complete facility program plan that includes, but is not limited to, all of the following:

- (1) The total number of the consumers to be served.
- (2) A profile of the consumer population to be served, including their health care and intensive support needs.
- (3) A description of the program components, including a description of the health care and intensive support services to be provided.
- (4) A week's program schedule, including proposed consumer day and community integration activities.
- (5) A week's proposed program staffing pattern, including licensed, unlicensed, and support personnel and the number and distribution of hours for such personnel.
- (6) An organizational chart, including identification of lead and supervisory personnel.
- (7) The consultants to be utilized, including their professional disciplines and hours to be worked per week or month, as appropriate.
- (8) The plan for accessing and retaining consultant and health care services, including assessments, in the areas of physical therapy, occupational therapy, respiratory therapy, speech pathology, audiology, pharmacy, dietary/nutrition, dental, and other areas required for meeting the needs identified in consumers' individual health care plans.
- (9) A description, including the size, layout, location, and condition of the proposed home.
- (10) A description of the equipment and supplies available, or to be obtained, for programming and care.
- (11) The type, location, and response time of emergency medical service personnel.
- (12) The in-service training program plan for at least the next 12 months.
- (13) The plan for ensuring that outside services are coordinated, integrated, and consistent with those provided by the ARFPSHN.

(14) Written certification that an alternative power system required by subdivision (i) of Section 4684.53 meets the manufacturer's recommendations for installation and operation.

(c) Submits a proposed budget itemizing direct and indirect costs, total costs, and the rate for services.

(d) Certifies, in writing, that the applicant has the ability to comply with all of the requirements of Section 1520 of the Health and Safety Code.

(e) The regional center shall provide all documentation specified in subdivisions (b) to (d), inclusive, of Section 4684.58 and a letter recommending program certification to the State Department of Developmental Services.

(f) The State Department of Developmental Services shall either approve or deny the recommendation and transmit its written decision to the regional center and to the State Department of Social Services within 30 days of its decision. The decision of the State Department of Developmental Services not to approve an application for program certification shall be the final administrative decision.

(g) Any change in the ARFPSHN operation that alters the contents of the approved program plan shall be reported to the State Department of Developmental Services and the contracting regional center, and approved by both agencies, prior to implementation.

4684.60. The vendoring regional center shall, before placing any consumer into an ARFPSHN, ensure that the ARFPSHN has a license issued by the State Department of Social Services for not more than five adults and a contract with the regional center that includes, at a minimum, all of the following:

(a) The names of the regional center and the licensee.

(b) The purpose of the pilot project.

(c) A requirement that the contractor shall comply with all applicable statutes and regulations, including Section 4681.1.

(d) The effective date and termination date of the contract.

(e) A requirement that, under no circumstances, shall the contract extend beyond the stated termination date, which shall not be longer than the pilot legislation end date of January 1, 2010.

(f) The definition of terms.

(g) A requirement that the execution of any amendment or modification to the contract be in accordance with all applicable federal and state statutes and regulations and be by mutual agreement of both parties.

(h) A requirement that the licensee and the agents and employees of the licensee, in the performance of the contract, shall act in an

independent capacity, and not as officers or employees or agents of the regional center.

(i) A requirement that the assignment of the contract for consumer services shall not be allowed.

(j) The rate of payment per consumer.

(k) Incorporation, by reference, of the ARFPSHN's approved program plan.

(l) A requirement that the contractor verify, and maintain for the duration of the project, possession of commercial general liability insurance in the amount of at least one million dollars (\$1,000,000) per occurrence.

(m) Contractor performance criteria.

(n) An agreement to provide, to the evaluation contractor engaged pursuant to subdivision (a) of Section 4684.74, all information necessary for evaluating the project.

4684.63. (a) Each ARFPSHN shall do all of the following:

(1) Meet the minimum requirements for a Residential Facility Service Level 4-i pursuant to Sections 56004 and 56013 of Title 17 of the California Code of Regulations, and ensure that all of the following conditions are met:

(A) That a licensed registered nurse, licensed vocational nurse, or licensed psychiatric technician, is awake and on duty 24-hours per day, seven days per week.

(B) That a licensed registered nurse is awake and on duty at least eight hours per person, per week.

(C) That at least two staff on the premises are awake and on duty when providing care to four or more consumers.

(2) Ensure the consumer remains under the care of a physician at all times and is examined by the primary care physician at least once every 60 days, or more often if required by the consumer's individual health care plan.

(3) Ensure that an administrator is on duty at least 20 hours per week to ensure the effective operation of the ARFPSHN.

(4) The administrator shall have at least one year of administrative and supervisory experience in a licensed residential program for persons with developmental disabilities and shall meet one or more of the following qualifications:

(A) Be a licensed registered nurse.

(B) Be a licensed nursing home administrator.

(C) Be a licensed psychiatric technician with at least five years of experience serving individuals with developmental disabilities.

(D) Be an individual with a bachelors degree in the health or human services field and two years experience working in a licensed residential

program for persons with developmental disabilities and special health care needs.

(b) The regional center may require an ARFPSHN to provide additional professional, administrative, or supportive personnel whenever the regional center determines, in consultation with the individual health care plan team, that additional personnel are needed to provide for the health and safety of consumers.

(c) ARFPSHNs may utilize appropriate staff from Agnews Developmental Center.

(d) All direct care personnel shall be subject to the training requirements specified in Section 4695.2.

4684.65. (a) A regional center shall not place, or fund the placement for, any consumer in an ARFPSHN until the individual health care plan team has prepared a written individual health care plan that can be fully and immediately implemented upon the consumer's placement.

(b) (1) An ARFPSHN shall only accept, for initial admission, consumers who meet the following requirements:

(A) Reside at Agnews Developmental Center at the time of the proposed placement.

(B) Have an individual program plan that specifies placement in an ARFPSHN.

(C) Have special health care and intensive support needs.

(2) Except as provided in paragraph (3), when a vacancy in an ARFPSHN occurs due to the permanent relocation or death of a resident, the vacancy may only be filled by a consumer who meets the requirements of paragraph (1).

(3) If there is no resident residing at Agnews Developmental Center who meets the requirements of subparagraphs (B) and (C) of paragraph (1), a vacancy may be filled by a consumer who is residing at another developmental center or who is at risk of placement into a developmental center, as determined by the regional center, and who meets the requirements of subparagraphs (B) and (C) of paragraph (1).

(c) The ARFPSHN shall not admit a consumer if the individual health care plan team determines that the consumer is likely to exhibit behaviors posing a threat of substantial harm to others, or has a serious health condition that is unpredictable or unstable. A determination that the individual is a threat to others may only be based on objective evidence or recent behavior and a determination that the threat cannot be mitigated by reasonable interventions.

4684.68. (a) The individual health care plan shall include, at a minimum, all of the following:

(1) An evaluation of the consumer's current health.

(2) A description of the consumer's ability to perform the activities of daily living.

(3) A list of all current prescription and nonprescription medications the consumer is using.

(4) A list of all health care and intensive support services the consumer is currently receiving or may need upon placement in the ARFPSHN.

(5) A written statement from the consumer's primary care physician familiar with the health care needs of the consumer, or other physician as designated by the regional center, that the consumer's medical condition is predictable and stable, and that the consumer's level of care is appropriate for the ARFPSHN.

(6) Provision for the consumer to be examined by his or her primary care physician at least once every 60 days, or more frequently if indicated.

(7) A list of the appropriate professionals assigned to provide the health care as described in the plan.

(8) A description of, and plan for providing, any training required for all direct care personnel to meet individuals' needs.

(9) The name of the individual health care plan team member, and an alternate designee, who is responsible for day-to-day monitoring of the consumer's health care plan and ensuring its implementation as written.

(10) Identification of the legally authorized representative to make health care decisions on the consumer's behalf, if the consumer lacks the capacity to give informed consent.

(11) The name and telephone number of the person or persons to notify in case of an emergency.

(12) The next meeting date of the individual health care plan team, which shall be at least every six months, to evaluate and update the individual health care plan.

(b) In addition to Section 80075 of Title 22 of the California Code of Regulations, the ARFPSHN shall comply with all of the following requirements:

(1) Medications shall be given only on the order of a person lawfully authorized to prescribe.

(2) Medications shall be administered as prescribed and shall be recorded in the consumer record. The name and title of the person administering the medication or treatment, and the date, time, and dosage of the medication administered shall be recorded. Initials may be used provided the signature of the person administering the medication or treatment is recorded on the medication or treatment record.

(3) Preparation of dosages for more than one scheduled administration time shall not be permitted.

(4) Persons administering medications shall confirm each consumer's identity prior to the administration.

(5) Medications shall be administered within two hours after dosages are prepared and shall be administered by the same person who prepared the dosages. Dosages shall be administered within one hour of the prescribed time unless otherwise indicated by the prescriber.

(6) All medications shall be administered only by those persons specifically authorized to do so by their respective scope of practice.

(7) No medication shall be administered to or used by any consumer other than the consumer for whom the medication was prescribed.

(8) Medication errors and adverse drug reactions shall be recorded and reported immediately to the practitioner who ordered the drug or another practitioner responsible for the medical care of the consumer. Minor adverse reactions which are identified in the literature accompanying the product as a usual or common side effect, need not be reported to the practitioner immediately, but in all cases shall be recorded in the consumer's record. Medication errors include, but are not limited to, the failure to administer a drug ordered by a prescriber within one hour of the time prescribed, administration of any drugs other than prescribed or the administration of a dose not prescribed.

4684.70. (a) The State Department of Social Services, in administering the licensing program, shall not have any responsibility for evaluating consumers' level of care or health care provided by ARFPSHN. Any suspected deficiencies in a consumer's level of care or health care identified by the State Department of Social Services' personnel shall be reported immediately to the appropriate regional center and the State Department of Developmental Services for investigation.

(b) The regional center shall have responsibility for monitoring and evaluating the implementation of the consumer's individual plan objectives, including, but not limited to, the health care and intensive support service needs identified in the consumer's individual health care plan and the consumer's integration and participation in community life.

(c) For each consumer placed in an ARFPSHN, the regional center shall assign a service coordinator pursuant to subdivision (b) of Section 4647.

(d) A regional center licensed registered nurse shall visit, with or without prior notice, the consumer, in person, at least monthly in the ARFPSHN, or more frequently if specified in the consumer's individual health care plan. At least four of these visits, annually, shall be unannounced.

(e) The State Department of Developmental Services shall monitor and ensure the regional centers' compliance with the requirements of

this article. The monitoring shall include onsite visits to all the ARFPSHNs at least every six months for the duration of the pilot project.

4684.73. (a) In addition to any other contract termination provisions, a regional center may terminate its contract with an ARFPSHN when the regional center determines that the ARFPSHN is unable to maintain substantial compliance with state laws, regulations, or its contract with the regional center, or the ARFPSHN demonstrates an inability to ensure the health and safety of the consumers.

(b) The ARFPSHN may appeal a regional center's decision to terminate its contract by sending, to the executive director of the contracting regional center, a detailed statement containing the reasons and facts demonstrating why the termination is inappropriate. The appeal must be received by the regional center within 10 working days from the date of the letter terminating the contract. The executive director shall respond with his or her decision within 10 working days of the date of receipt of the appeal from the ARFPSHN. The executive director shall submit his or her decision to the State Department of Developmental Services on the same date that it is signed. The decision of the executive director shall be the final administrative decision.

(c) The Director of Developmental Services may rescind an ARFPSHN's program certification when, in his or her sole discretion, an ARFPSHN does not maintain substantial compliance with an applicable statute, regulation, or ordinance, or cannot ensure the health and safety of the consumers. The decision of the Director of Developmental Services shall be the final administrative decision. The Director of Developmental Services shall transmit his or her decision rescinding an ARFPSHN's program certification to the State Department of Social Services and the regional center with his or her recommendation as to whether to revoke the ARFPSHN's license.

(d) In addition to complying with Section 1524.1 of the Health and Safety Code, any ARFPSHN licensee that is unable to continue to provide services to consumers in the facility shall, upon the date on which a new ARFPSHN license is issued pursuant to Sections 1520 and 1525 of the Health and Safety Code, arrange with the regional center or department the transfer of all information, property, and documents related to the operation of the facility and the provision of services to the consumers. The department or the regional center shall take all steps permitted by this article to ensure that at all times the consumers who are residing in the facility receive services set forth in their individual health care plans.

4684.74. (a) By July 1, 2006, the State Department of Developmental Services shall contract with an independent agency or organization to evaluate the pilot project and prepare a written report of its findings. The scope of services for the contractor shall be jointly prepared by the State

Department of Developmental Services, the State Department of Social Services, and the State Department of Health Services and, at a minimum, shall address all of the following:

- (1) The number, business status, and location of all the ARFPSHNs.
- (2) The number and characteristics of the consumers served.
- (3) The effectiveness of the pilot project in addressing consumers' health care and intensive support needs.
- (4) The extent of consumers' community integration and satisfaction.
- (5) The consumers' access to, and quality of, community-based health care and dental services.
- (6) The types, amounts, qualifications, and sufficiency of staffing.
- (7) The overall impressions, problems encountered, and satisfaction with the ARFPSHN service model by ARFPSHN employees, regional center participants, state licensing and monitoring personnel, and consumers and families.
- (8) The costs of all direct, indirect, and ancillary services.
- (9) An analysis and summary findings of all ARFPSHN consumer special incident reports and unusual occurrences reported during the evaluation period.
- (10) The recommendations for improving the ARFPSHN service model.
- (11) The cost-effectiveness of the ARFPSHN model of care compared with other existing public and private models of care serving similar consumers.

(b) The contractor's written report shall be submitted to the State Department of Developmental Services, the State Department of Social Services, the State Department of Health Services. The State Department of Developmental Services shall submit the report to the appropriate fiscal and policy committees of the Legislature by January 1, 2009.

4684.75. (a) The State Department of Developmental Services may adopt emergency regulations to implement this article. The adoption, amendment, repeal, or readoption of a regulation authorized by this section is deemed to be necessary for the immediate preservation of the public peace, health and safety, or general welfare, for purposes of Sections 11346.1 and 11349.6 of the Government Code, and the State Department of Developmental Services is hereby exempted from the requirement that it describe specific facts showing the need for immediate action. A certificate of compliance for these implementing regulations shall be filed within 24 months following the adoption of the first emergency regulations filed pursuant to this section.

(b) This article shall remain in effect only until January 1, 2010, and as of that date is repealed, unless a later enacted statute extends or deletes that date.

(c) This article shall only be implemented to the extent that funds are made available through an appropriation in the annual Budget Act.

SEC. 9. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

CHAPTER 559

An act to add Section 56328.5 to the Government Code, relating to local agency formation commissions.

[Approved by Governor October 5, 2005. Filed with
Secretary of State October 5, 2005.]

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

SECTION 1. Section 56328.5 is added to the Government Code, to read:

56328.5. (a) In Kern County, the commission, which consists of seven members, augmented pursuant to Section 56332, shall be additionally augmented by the appointment of an eighth member and a ninth member.

(b) The eighth member shall, notwithstanding subdivision (b) of Section 56325, be a member of the legislative body of the city in the county having the largest population, appointed by the legislative body of that city.

The legislative body of the city shall appoint an alternate member at the same time and in the same manner as it appoints the eighth regular member. If the regular city member is absent from a commission meeting, or disqualifies himself or herself from participating in a meeting, the alternate member may serve and vote in place of the regular city member for that meeting. If the office of the regular city member becomes vacant, the alternate member may serve and vote in place of the former regular city member until the appointment and qualification of a regular city member to fill the vacancy.

(c) The ninth member shall represent the general public, but shall not be a member of the governing body of any local agency. The ninth

member shall be appointed by the four members of the commission appointed by the county supervisors and the independent special district selection committee. Those commission members may also appoint an alternate public member, who is not a member of the governing body of any local agency, who may serve and vote in the place of the regular public member appointed pursuant to this subdivision if that regular public member is absent or disqualifies himself or herself from participating in a meeting of the commission. If the office of the regular public member appointed pursuant to this subdivision becomes vacant, the alternate member may serve and vote in place of that former regular public member until the appointment and qualification of a regular public member pursuant to this subdivision to fill the vacancy.

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 560

An act to add and repeal Article 5.2 (commencing with Section 14166) of Chapter 7 of Part 3 of Division 9 of the Welfare and Institutions Code, relating to hospitals, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 5, 2005. Filed with
Secretary of State October 5, 2005.]

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

SECTION 1. Article 5.2 (commencing with Section 14166) is added to Chapter 7 of Part 3 of Division 9 of the Welfare and Institutions Code, to read:

Article 5.2. Medi-Cal Hospital Care/Uninsured Hospital Care Demonstration Project Act

14166. (a) This article shall be known and may be cited as the “Medi-Cal Hospital/Uninsured Care Demonstration Project Act.”

(b) The Legislature finds and declares all of the following:

(1) The preservation of the state's disproportionate share hospitals and the University of California hospitals is of critical importance to the health and welfare of the people of the state.

(2) These hospitals, as well as many nondisproportionate district hospitals, are facing unprecedented financial challenges. Many are facing significant budget deficits impeding their ability to continue serving their essential role in the health care delivery system, including providing care to Medi-Cal beneficiaries and uninsured patients.

(3) The financial viability of these hospitals has been sustained through funding that has been available for California's disproportionate share hospital program under Medi-Cal. Without these funds, many of these hospitals would be unable to keep their doors open and others would be forced to curtail services, thereby impacting service to Medi-Cal beneficiaries and other needy individuals.

(4) The federal Centers for Medicare and Medicaid Services has indicated in negotiations with the State Department of Health Services that it is changing its approach to federal funding of Medicaid in various respects. For instance, the methodology that many states, including California, have used to fund their disproportionate share hospital programs successfully for more than a decade has become the subject of negative attention by the federal Centers for Medicare and Medicaid Services, which is refusing to approve discretionary waivers and state plan amendments that rely on these funding methods. Accordingly, the State of California has proposed that the funding mechanism for inpatient hospital services under Medi-Cal be modified to secure federal approval and address continued and adequate funding to the University of California and disproportionate share hospitals. To this end, the state has negotiated a waiver from various federal Medicaid requirements that will allow it to implement a demonstration project using modified funding methodologies. The Medi-Cal Hospital/Uninsured Care Demonstration Project is intended to make up to \$3.3 billion in additional federal funds available to California safety net hospitals over a five-year period.

(5) The methodologies used to fund the Medi-Cal program should maximize the use of federal funds consistent with federal Medicaid law in an effort to access all of the increased federal funding available under the Medi-Cal Hospital/Uninsured Care Demonstration Project.

(6) The amount of Medi-Cal funding to the University of California hospitals and disproportionate share hospitals as a whole should not be less than the amount of funding for the 2004-05 fiscal year. Similarly, the amount of Medi-Cal funding for the public disproportionate share hospitals as a group and for the private disproportionate share hospitals as a group should not be less than the amount of funding for the 2004-05 fiscal year.

(7) The distributions of Medi-Cal funds should provide a predictable and stable amount of funding for these hospitals in order to allow them to engage in short-term and long-term planning. The distribution methodologies should be fair and equitable, and take into account utilization changes among hospitals.

(8) The payments of Medi-Cal funds to these hospitals should be made regularly and periodically throughout the year in order to provide hospitals with necessary cashflow.

14166.1. For purposes of this article, the following definitions shall apply:

(a) "Allowable costs" means those costs recognized as allowable under Medicare reasonable cost principles and additional costs recognized under the demonstration project, including those expenditures identified in Appendix D to the Special Terms and Conditions for the demonstration project. Allowable costs under this subdivision shall be determined in accordance with the Special Terms and Conditions for the demonstration project and demonstration project implementation documents approved by the federal Centers for Medicare and Medicaid Services.

(b) "Base year private DSH hospital" means a nonpublic hospital, nonpublic-converted hospital, or converted hospital, as those terms are defined in paragraphs (26), (27), and (28), respectively, of subdivision (a) of Section 14105.98, that was an eligible hospital under paragraph (3) of subdivision (a) of Section 14105.98 for the 2004-05 state fiscal year.

(c) "Demonstration project" means the Medi-Cal Hospital/Uninsured Care Demonstration, Number 11-W-00193/9, as approved by the federal Centers for Medicare and Medicaid Services.

(d) "Designated public hospital" means any one of the following 22 hospitals identified in Attachment C, "Government-operated Hospitals to be Reimbursed on a Certified Public Expenditure Basis," to the Special Terms and Conditions for the demonstration project issued by the federal Centers for Medicare and Medicaid Services:

- (1) UC Davis Medical Center.
- (2) UC Irvine Medical Center.
- (3) UC San Diego Medical Center.
- (4) UC San Francisco Medical Center.
- (5) UC Los Angeles Medical Center, including Santa Monica/UCLA Medical Center.
- (6) LA County Harbor/UCLA Medical Center.
- (7) LA County Martin Luther King Jr. Charles R. Drew Medical Center.
- (8) LA County Olive View UCLA Medical Center.
- (9) LA County Rancho Los Amigos National Rehabilitation Center.

- (10) LA County University of Southern California Medical Center.
- (11) Alameda County Medical Center.
- (12) Arrowhead Regional Medical Center.
- (13) Contra Costa Regional Medical Center.
- (14) Kern Medical Center.
- (15) Natividad Medical Center.
- (16) Riverside County Regional Medical Center.
- (17) San Francisco General Hospital.
- (18) San Joaquin General Hospital.
- (19) San Mateo Medical Center.
- (20) Santa Clara Valley Medical Center.
- (21) Tuolumne General Hospital.
- (22) Ventura County Medical Center.

(e) "Federal medical assistance percentage" means the federal medical assistance percentage applicable for federal financial participation purposes for medical services under the Medi-Cal state plan pursuant to Section 1396b(a) of Title 42 of the United States Code.

(f) "Nondesignated public hospital" means a public hospital defined in paragraph (25) of subdivision (a) of Section 14105.98, excluding designated public hospitals.

(g) "Project year" means the applicable state fiscal year of the Medi-Cal Hospital/Uninsured Care Demonstration Project.

(h) "Project year private DSH hospital" means a nonpublic hospital, nonpublic-converted hospital, or converted hospital, as those terms are defined in paragraphs (26), (27), and (28), respectively, of Section 14105.98, that was an eligible hospital under paragraph (3) of subdivision (a) of Section 14105.98, for the particular project year.

(i) "Prior supplemental funds" means the Emergency Services and Supplemental Payment Fund, the Medi-Cal Medical Education Supplemental Payment Fund, the Large Teaching Emphasis Hospital and Children's Hospital Medi-Cal Medical Education Supplemental Payment Fund, and the Small and Rural Hospital Supplemental Payments Fund, established under Sections 14085.6, 14085.7, 14085.8, and 14085.9, respectively.

(j) "Private hospital" means a nonpublic hospital, nonpublic converted hospital, or converted hospital, as those terms are defined in paragraphs (26) to (28), inclusive, respectively, of subdivision (a) of Section 14105.98.

(k) "Safety net care pool" means the federal funds available under the Medi-Cal Hospital/Uninsured Care Demonstration Project to ensure continued government support for the provision of health care services to uninsured populations.

(l) "Uninsured" shall have the same meaning as that term has in the Special Terms and Conditions issued by the federal Centers for Medicare and Medicaid Services for the demonstration project.

14166.2. (a) The demonstration project shall be implemented and administered pursuant to this article.

(b) The director may modify any process or methodology specified in this article to the extent necessary to comply with federal law or the terms of the demonstration project, but only if the modification results in the equitable distribution of funding, consistent with this article, among the hospitals affected by the modification. If the director, after consulting with affected hospitals, determines that an equitable distribution cannot be achieved, the director shall execute a declaration stating that this determination has been made. The director shall retain the declaration and provide a copy, within five working days of the execution of the declaration, to the fiscal and appropriate policy committees of the Legislature. This article shall become inoperative on the date that the director executes a declaration pursuant to this subdivision, and as of January 1 of the following year shall be repealed.

(c) The director shall administer the demonstration project and related Medi-Cal payment programs in a manner that attempts to maximize available payment of federal financial participation, consistent with federal law, the Special Terms and Conditions for the demonstration project issued by the federal Centers for Medicare and Medicaid Services, and this article.

(d) As permitted by the federal Centers for Medicare and Medicaid Services, this article shall be effective with regard to services rendered throughout the term of the demonstration project, and retroactively, with regard to services rendered on or after July 1, 2005, but prior to the implementation of the demonstration project.

(e) In the administration of this article, the state shall continue to make payments to hospitals that meet the eligibility requirements for participation in the supplemental reimbursement program for hospital facility construction, renovation, or replacement pursuant to Section 14085.5 and shall continue to make inpatient hospital payments not covered by the contract. These payments shall not duplicate any other payments made under this article.

(f) The department shall continue to operate the selective provider contracting program in accordance with Article 2.6 (commencing with Section 14081) in a manner consistent with this article. A designated public hospital participating in the certified public expenditure process shall maintain a selective provider contracting program contract. These contracts shall continue to be exempt from Chapter 2 (commencing with Section 10290) of Part 2 of Division 2 of the Public Contract Code.

(g) In the event of a final judicial determination made by any state or federal court that is not appealed in any action by any party or a final determination by the administrator of the Centers for Medicare and Medicaid Services that federal financial participation is not available with respect to any payment made under any of the methodologies implemented pursuant to this article because the methodology is invalid, unlawful, or is contrary to any provision of federal law or regulation, the director may modify the process or methodology to comply with law, but only if the modification results in the equitable distribution of demonstration project funding, consistent with this article, among the hospitals affected by the modification. If the director, after consulting with affected hospitals, determines that an equitable distribution cannot be achieved, the director shall execute a declaration stating that this determination has been made. The director shall retain the declaration and provide a copy, within five working days of the execution of the declaration, to the fiscal and appropriate policy committees of the Legislature. This article shall become inoperative on the date that the director executes a declaration pursuant to this subdivision, and as of January 1 of the following year shall be repealed.

(h) (1) The department may adopt regulations to implement this article. These regulations may initially be adopted as emergency regulations in accordance with the rulemaking provisions of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code). For purposes of this article, the adoption of regulations shall be deemed an emergency and necessary for the immediate preservation of the public peace, health, and safety or general welfare. Any emergency regulations adopted pursuant to this section shall not remain in effect subsequent to 24 months after the effective date of this article.

(2) As an alternative, and notwithstanding the rulemaking provisions of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, or any other provision of law, the department may implement and administer this article by means of provider bulletins, manuals, or other similar instructions, without taking regulatory action. The department shall notify the fiscal and appropriate policy committees of the Legislature of its intent to issue a provider bulletin, manual, or other similar instruction, at least five days prior to issuance. In addition, the department shall provide a copy of any provider bulletin, manual, or other similar instruction issued under this paragraph to the fiscal and appropriate policy committees of the Legislature. The department shall consult with interested parties and appropriate stakeholders, regarding the implementation and ongoing administration of this article.

(i) To the extent necessary to implement this article, the department shall submit, by September 30, 2005, to the federal Centers for Medicare and Medicaid Services proposed amendments to the Medi-Cal state plan, including, but not limited to, proposals to modify inpatient hospital payments to designated public hospitals, modify the disproportionate share hospital payment program, and provide for supplemental Medi-Cal reimbursement for certain physician and nonphysician professional services. The department shall, subsequent to September 30, 2005, submit any additional proposed amendments to the Medi-Cal state plan that may be required by the federal Centers for Medicare and Medicaid Services, to the extent necessary to implement this article.

(j) Each designated public hospital shall implement a comprehensive process to offer individuals who receive services at the hospital the opportunity to apply for the Medi-Cal program, the Healthy Families Program, or any other public health coverage program for which the individual may be eligible, and shall refer the individual to those programs, as appropriate.

(k) In any judicial challenge of the provisions of this article, nothing shall create an obligation on the part of the state to fund any payment from state funds due to the absence or shortfall of federal funding.

14166.3. (a) During the demonstration project term, payment adjustments to disproportionate share hospitals shall not be made pursuant to Section 14105.98. Payment adjustments to disproportionate share hospitals shall be made solely in accordance with this article.

(b) Except as otherwise provided in this article, the department shall continue to make all eligibility determinations and perform all payment adjustment amount computations under the disproportionate share hospital payment adjustment program pursuant to Section 14105.98 and pursuant to the disproportionate share hospital provisions of the Medicaid state plan in effect as of the 2004-05 state fiscal year.

(c) (1) Notwithstanding Section 14105.98, the federal disproportionate share hospital allotment specified for California under Section 1396r-4(f) of Title 42 of the United States Code for each of federal fiscal years 2006 to 2010, inclusive, shall be distributed solely among the following hospitals:

(A) Eligible hospitals, as determined pursuant to Section 14105.98 for each project year in which the particular federal fiscal year commences, which meet the definition of a public hospital as specified in paragraph (25) of subdivision (a) of Section 14105.98.

(B) Hospitals that are licensed to the University of California, which meet the requirements set forth in Section 1396r-4(d) of Title 42 of the United States Code.

(2) The federal disproportionate share hospital allotment for each of the federal fiscal years 2006 to 2010, inclusive, shall be aligned with the project year in which the applicable federal fiscal year commences. The payment adjustment year, as used within the meaning of paragraph (6) of subdivision (a) of Section 14105.98, shall be the corresponding project year.

(3) Uncompensated Medi-Cal and uninsured costs as reported pursuant to Section 14166.8, shall be used by the department as the basis for determining the hospital-specific disproportionate share hospital payment limits required by Section 1396r-4(g) of Title 42 of the United States Code for the hospitals described in paragraph (1).

(4) The distribution of the federal disproportionate share hospital allotment to hospitals described in paragraph (1) shall satisfy the state's payment obligations, if any, with respect to those hospitals under Section 1396r-4 of Title 42 of the United States Code.

(d) Eligible hospitals, as determined pursuant to Section 14105.98 for each project year, which are nonpublic hospitals, nonpublic-converted hospitals, and converted hospitals, as those terms are defined in paragraphs (26), (27) and (28), respectively, of subdivision (a) of Section 14105.98, shall receive Medi-Cal disproportionate share hospital replacement payment adjustments pursuant to Section 14166.11. The payment adjustments so provided shall satisfy the state's payment obligations, if any, with respect to those hospitals under Section 1396r-4 of Title 42 of the United States Code. The federal share of these payments shall not be claimed from the federal disproportionate share hospital allotment described in subdivision (c).

(e) The nonfederal share of payments described in subdivisions (c) and (d) shall be derived from the following sources:

(1) With respect to the payments described in paragraph (1) of subdivision (c) that are made to designated public hospitals, the nonfederal share shall consist of certified public expenditures described in subparagraphs (A) and (C) of paragraph (2) of subdivision (a) of Section 14166.9, and intergovernmental transfer amounts described in paragraph (2) of subdivision (d) of Section 14166.6.

(2) With respect to the payments described in paragraph (1) of subdivision (c) that are made to nondesignated public hospitals, the nonfederal share shall consist solely of state General Fund appropriations.

(3) With respect to the payments described in subdivision (d), the nonfederal share shall consist of state General Fund appropriations.

(f) (1) During the term of the demonstration project, for the 2005-06 state fiscal year and any subsequent state fiscal years, no public entity shall be obligated to make any intergovernmental transfer pursuant to Section 14163, and all transfer amount determinations for those state

fiscal years shall be suspended. However, during the demonstration project term, intergovernmental transfers shall be made with respect to the disproportionate share hospital payment adjustments made in accordance with paragraph (2) of subdivision (d) of Section 14166.6.

(2) During the term of the demonstration project, for the 2005-06 state fiscal year and any subsequent state fiscal years, transfer amounts from the Medi-Cal Inpatient Payment Adjustment Fund to the Health Care Deposit Fund, as provided for pursuant to paragraph (2) of subdivision (d) of Section 14163, are hereby reduced to zero. Unless otherwise specified in this article, this paragraph shall be disregarded for purposes of the calculations made under Section 14105.98 during the demonstration project.

14166.35. (a) For each project year, designated public hospitals shall be eligible to receive the following:

(1) Payments for Medi-Cal inpatient hospital services and supplemental payments for physician and nonphysician practitioner services, as specified in Section 14166.4.

(2) Disproportionate share hospital payment adjustments, as specified in Section 14166.6.

(3) Safety net care pool funding, as specified in Section 14166.7.

(4) Stabilization funding, as specified in Section 14166.75.

(5) Grants to distressed hospitals as negotiated by the California Medical Assistance Commission pursuant to Section 14199.23.

(b) Payments under this section shall be in addition to other payments that may be made in accordance with law.

14166.4. (a) Notwithstanding Article 2.6 (commencing with Section 14081), and any other provision of law, fee-for-service payments to the designated public hospitals for inpatient services to Medi-Cal beneficiaries shall be governed by this section. Each of the designated public hospitals shall receive as payment for inpatient hospital services provided to Medi-Cal beneficiaries during any project year, the hospital's allowable costs incurred in providing those services, multiplied by the federal medical assistance percentage. These costs shall be determined, certified, and claimed in accordance with Sections 14166.8 and 14166.9. All Medicaid federal financial participation received by the state for the certified public expenditures of the hospital, or the governmental entity with which the hospital is affiliated, for inpatient hospital services rendered to Medi-Cal beneficiaries shall be paid to the hospital.

(b) With respect to each project year, each of the designated public hospitals shall receive an interim payment for each day of inpatient hospital services rendered to Medi-Cal beneficiaries based upon claims filed by the hospital in accordance with the claiming process set forth in Division 3 (commencing with Section 50000) of Title 22 of the

California Code of Regulations. The interim per diem payment amount shall be based on estimated costs, which shall be derived from statistical data from the following sources and which shall be multiplied by the federal medical assistance percentage:

(1) For allowable costs reflected in the Medicare cost report, the cost report most recently audited by the hospital's Medicare fiscal intermediary adjusted by a trend factor to reflect increased costs, as approved by the federal Centers for Medicare and Medicaid Services for the demonstration project.

(2) For allowable costs not reflected in the Medicare cost report, each hospital shall provide hospital-specific cost data requested by the department. The department shall adjust the data by a trend factor as necessary to reflect project year allowable costs.

(c) Until the department commences making payments pursuant to subdivision (b), the department may continue to make fee-for-service, per diem payments to the designated public hospitals, pursuant to the selective provider contracting program in accordance with Article 2.6 (commencing with Section 14081), for services rendered on and after July 1, 2005, for a period of 120 days following the award of this demonstration. Per diem payments shall be adjusted retroactively to the amounts determined under the payment methodology prescribed in this article.

(d) No later than April 1 following the end of the project year, the department shall undertake an interim reconciliation of payments made pursuant to subdivisions (a) to (c), inclusive, based on Medicare and other cost and statistical data submitted by the hospital for the project year and shall adjust payments to the hospital accordingly.

(e) (1) The designated public hospitals shall receive supplemental reimbursement for the costs incurred for physician and nonphysician practitioner services provided to Medi-Cal beneficiaries who are patients of the hospital, to the extent that those services are not claimed as inpatient hospital services under the hospital's Medi-Cal provider number and the costs of those services are not otherwise recognized under subdivision (a).

(2) Expenditures made by the designated public hospital, or a governmental entity with which it is affiliated, for the services identified in paragraph (1) shall be reduced by any payments received pursuant to Article 7 (commencing with Section 51501) of Title 22 of the California Code of Regulations. The remainder shall be certified by the appropriate public official and claimed by the department in accordance with Sections 14166.8 and 14166.9. These expenditures may include any of the following:

(A) Compensation to physicians or nonphysician practitioners pursuant to contracts with the designated public hospital.

(B) Salaries and related costs for employed physicians and nonphysician practitioners.

(C) The costs of interns, residents, and related teaching physician and supervision costs.

(D) Administrative costs associated with the services described in subparagraphs (A) to (C), inclusive, including billing costs.

(3) Designated public hospitals shall receive federal funding based on the expenditures identified and certified in paragraph (2). All federal financial participation received by the department for the certified public expenditures identified in paragraph (2) shall be paid to the designated public hospital, or a governmental entity with which it is affiliated.

(4) To the extent that the supplemental reimbursement received under this subdivision relates to services provided to hospital inpatients, the reimbursement shall be applied in determining whether the designated public hospital has received full baseline payments for purposes of paragraph (1) of subdivision (b) of Section 14166.21.

(5) Supplemental reimbursement under this subdivision may be distributed as part of the interim payments under subdivision (b), on a per-visit basis, on a per-procedure basis, or on any other federally permissible basis.

(6) The department shall submit for federal approval, by September 30, 2005, a proposed amendment to the Medi-Cal state plan to implement this subdivision, retroactive to July 1, 2005, to the extent permitted by the federal Centers for Medicare and Medicaid Services. If necessary to obtain federal approval, the department may limit the application of this subdivision to costs determined allowable by the federal Centers for Medicare and Medicaid Services. If federal approval is not obtained, this subdivision shall not be implemented.

14166.5. (a) With respect to each project year, the director shall determine a baseline funding amount for each designated public hospital. A hospital's baseline funding amount shall be an amount equal to the total amount paid to the hospital for inpatient hospital services rendered to Medi-Cal beneficiaries during the 2004-05 fiscal year, including the following Medi-Cal payments, but excluding payments received under the Medi-Cal Specialty Mental Health Services Consolidation Program:

(1) Base payments under the selective provider contracting program as provided for under Article 2.6 (commencing with Section 14081).

(2) Emergency Services and Supplemental Payments Fund payments as provided for under Section 14085.6.

(3) Medi-Cal Medical Education Supplemental Payment Fund payments and Large Teaching Emphasis Hospital and Children's Hospital

Medi-Cal Medical Education Supplemental Payment Fund payments as provided for under Sections 14085.7 and 14085.8, respectively.

(4) Disproportionate share hospital payment adjustments as provided for under Section 14105.98.

(5) Administrative day payments as provided for under Section 51542 of Title 22 of the California Code of Regulations.

(b) The baseline funding amount for each designated public hospital shall reflect a reduction for the total amount of intergovernmental transfers made pursuant to Sections 14085.6, 14085.7, 14085.8, 14085.9, and 14163 for the 2004-05 state fiscal year by the designated public hospital, or the governmental entity with which it is affiliated.

(c) With respect to each project year beginning after the 2005-06 project year, the department shall determine an adjusted baseline funding amount for each designated public hospital to reflect any increase or decrease in volume. The adjustment for designated public hospitals shall be calculated as follows:

(1) Applying the cost-finding methodology approved under the demonstration project, and applying accounting and reporting practices consistent with those applied in paragraph (2), the department shall determine the total allowable costs incurred by the hospital, or the governmental entity with which it is affiliated, in rendering hospital services that would be recognized under the demonstration project to Medi-Cal beneficiaries and the uninsured during the 2004-05 state fiscal year.

(2) Applying the cost-finding methodology approved under the demonstration project, and applying accounting and reporting practices consistent with those applied in paragraph (1), the department shall determine the total allowable costs incurred by the hospital, or the governmental entity with which it is affiliated, in rendering hospital services under the demonstration project to Medi-Cal beneficiaries and the uninsured during the state fiscal year preceding the project year for which the volume adjustment is being calculated.

(3) The department shall:

(A) Calculate the difference between the amount determined under paragraph (1) and the amount determined under paragraph (2).

(B) Determine the percentage increase or decrease by dividing the difference in subparagraph (A) by the amount in paragraph (1).

(C) Apply the percentage determined in subparagraph (B) to that amount that results from the hospital's baseline funding amount determined under subdivision (a) as adjusted by subdivision (b) minus the amount of disproportionate share hospital payments in paragraph (4) of subdivision (a).

(4) The designated public hospital's adjusted baseline for the project year is the amount determined for the hospital in subdivision (a) as adjusted by subdivision (b), plus the amount in subparagraph (C) of paragraph (3).

(5) Notwithstanding paragraphs (3) and (4), when, as determined by the department, in consultation with the designated public hospital, there has been a material reduction in patient services at the designated public hospital during the project year, and the reduction has resulted in a diminution of access for Medi-Cal and uninsured patients and a related reduction in total costs at the designated public hospital of at least 20 percent, the department may utilize current or adjusted data that are reflective of the diminution of access, even if the data are not annual data, to determine the hospital's adjusted baseline amount.

(d) The aggregate designated public hospital baseline funding amount for each project year shall be the sum of all baseline funding amounts determined under subdivisions (a) and (b), as adjusted in subdivision (c), as appropriate, for all designated public hospitals.

(e) (1) The adjustments set forth in subdivision (c) of Section 14166.13 and in subdivision (c) shall not apply if either of the following conditions exist:

(A) The difference between the percentage adjustment in subparagraph (B) of paragraph (3) of subdivision (c) of this section, computed in the aggregate for designated public hospitals, and subparagraph (B) of paragraph (3) of subdivision (c) of Section 14166.13 is greater than 3 percentage points.

(B) The stabilization funding amount from the Health Care Support Fund, established pursuant to Section 14166.21, as determined in Section 14166.20 for any project year is less than one hundred fifty-three million dollars (\$153,000,000).

(2) Notwithstanding paragraph (1), the department may apply the adjustments set forth in paragraph (5) of subdivision (c).

14166.6. (a) For the 2005-06 project year and subsequent project years, each designated public hospital described in subdivision (c) of Section 14166.3 shall be eligible to receive an allocation of federal Medicaid funding from the applicable federal disproportionate share hospital allotment pursuant to this section. The department shall establish the allocations in a manner that maximizes federal Medicaid funding to the state during the term of the demonstration project, and shall consider, at a minimum, all of the following factors, taking into account all other payments to each hospital under this article:

(1) The optimal use of intergovernmental transfer-funded payments described in subdivision (d).

(2) Each hospital's pro rata share of the applicable aggregate designated public hospital baseline funding amount described in subdivision (d) of Section 14166.5.

(3) That the allocation under this section, in combination with the federal share of certified public expenditures for Medicaid inpatient hospital services for the project year determined under subdivision (a) of Section 14166.4, any supplemental reimbursement for professional services rendered to hospital inpatients determined for the project year under subdivision (e) of Section 14166.4, and the distribution of safety net care pool funds from the Health Care Support Fund determined under subdivision (a) of Section 14166.7, shall not exceed the baseline funding amount or adjusted baseline funding amount, as appropriate, for the hospital.

(4) Minimizing the need to redistribute federal funds that are based on the certified public expenditures of designated public hospitals as described in subdivision (c).

(b) Each designated public hospital shall receive its allocation of federal disproportionate share hospital payments in one or both of the following forms:

(1) Distributions from the Demonstration Disproportionate Share Hospital Fund established pursuant to subdivision (d) of Section 14166.9, consisting of federal funds claimed and received by the department, pursuant to subparagraphs (A) and (C) of paragraph (2) of subdivision (a) of Section 14166.9 based on designated public hospitals' certified public expenditures up to 100 percent of uncompensated Medi-Cal and uninsured costs.

(2) Intergovernmental transfer-funded payments, as described in subdivision (d). For purposes of determining whether the hospital has received its allocation of federal disproportionate share hospital payments established under this section, only the federal share of intergovernmental transfer-funded payments shall be considered.

(c) The distributions described in paragraph (1) of subdivision (b) may be made to a designated public hospital independent of the amount of uncompensated Medi-Cal and uninsured costs certified as public expenditures by that hospital pursuant to Section 14166.8, provided that, in accordance with the Special Terms and Conditions for the demonstration project, the recipient hospital does not return any portion of the funds received to any unit of government, excluding amounts recovered by the state or federal government.

(d) Designated public hospitals that meet the requirement of Section 1396r-4(b)(1)(A) of Title 42 of the United States Code regarding the Medicaid inpatient utilization rate or Section 1396r-4(b)(1)(B) of Title 42 of the United States Code regarding the low-income utilization rate,

may receive intergovernmental transfer-funded disproportionate share hospital payments as follows:

(1) The department shall establish the amount of the hospital's intergovernmental transfer-funded disproportionate share hospital payment. The total amount of that payment, consisting of the federal and nonfederal components, shall in no case exceed that amount equal to 75 percent of the hospital's uncompensated Medi-Cal and uninsured costs of hospital services, determined in accordance with the Special Terms and Conditions for the demonstration project.

(2) A transfer amount shall be determined for each hospital that is subject to this subdivision, equal to the nonfederal share of the payment amount established for the hospital pursuant to paragraph (1). The transfer amount so determined shall be paid by the hospital, or the public entity with which the hospital is affiliated, and deposited into the Medi-Cal Inpatient Payment Adjustment Fund established pursuant to subdivision (b) of Section 14163. The sources of funds utilized for the transfer amount shall not include impermissible provider taxes or donations as defined under Section 1396b(w) of Title 42 of the United States Code or other federal funds. For this purpose, federal funds do not include patient care revenue received as payment for services rendered under programs such as Medicare or Medicaid.

(3) The department shall pay the amounts established pursuant to paragraph (1) to each hospital using the transfer amounts deposited pursuant to paragraph (2) as the nonfederal share of those payments. The total intergovernmental transfer-funded payment amount, consisting of the federal and nonfederal share, paid to a hospital shall be retained by the hospital in accordance with the Special Terms and Conditions for the demonstration project.

(e) The total federal disproportionate share hospital funds allocated under this section to designated public hospitals with respect to each project year, in combination with the federal share of disproportionate share hospital payment adjustments made to nondesignated public hospitals pursuant to Section 14166.16 for the same project year, shall not exceed the applicable federal disproportionate share hospital allotment.

(f) Each designated public hospital shall receive quarterly interim payments of its disproportionate share hospital allocation during the project year. The determinations set forth in subdivisions (a) to (e), inclusive, shall be made on an interim basis prior to the start of each project year, except that, with respect to the 2005-06 project year, the interim determinations shall be made prior to January 1, 2006. The department shall use the same cost and statistical data used in determining the interim payments for Medi-Cal inpatient hospital services under

Section 14166.4, and available payments and uncompensated and uninsured cost data, including data from the Medi-Cal paid claims file and the hospital's books and records, for the corresponding period.

(g) No later than April 1 following the end of the project year, the department shall undertake an interim reconciliation of payments based on Medicare and other cost, payment, and statistical data submitted by the hospital for the project year, and shall adjust payments to the hospital accordingly.

(h) Each designated public hospital shall receive its disproportionate share hospital allocation, as computed pursuant to subdivisions (a) to (e), inclusive, subject to final audits of all applicable Medicare and other cost, payment, and statistical data for the project year.

14166.7. (a) (1) With respect to each project year, designated public hospitals, or governmental entities with which they are affiliated, shall be eligible to receive safety net care pool payments from the Health Care Support Fund established pursuant to Section 14166.21. The total amount of these payments, in combination with the federal share of certified public expenditures for Medicaid inpatient hospital services determined for the project year under subdivision (a) of Section 14166.4, any supplemental reimbursement for physician and nonphysician practitioner services rendered to hospital inpatients determined for the project year under subdivision (e) of Section 14166.4, and the federal disproportionate share hospital allocation determined under Section 14166.6, shall not exceed the hospital's baseline funding amount or adjusted baseline funding amount, as appropriate.

(2) The department shall establish the amount of the safety net care pool payment described in paragraph (1) for each designated public hospital in a manner that maximizes federal Medicaid funding to the state during the term of the demonstration project.

(3) A safety net care pool payment amount may be paid to a designated public hospital, or governmental entity with which it is affiliated, pursuant to this section independent of the amount of uncompensated Medi-Cal and uninsured costs that is certified as public expenditures pursuant to Section 14166.8, provided that, in accordance with the Special Terms and Conditions for the demonstration project, the recipient hospital does not return any portion of the funds received to any unit of government, excluding amounts recovered by the state or federal government.

(4) In establishing the amount to be paid to each designated public hospital under this subdivision, the department shall minimize to the extent possible the redistribution of federal funds that are based on certified public expenditures as described in paragraph (3).

(b) Each designated public hospital, or governmental entity with which it is affiliated, shall receive the amount established pursuant to

subdivision (a) in quarterly interim payments during the project year. The determination of the interim payments shall be made on an interim basis prior to the start of each project year, except that, with respect to the 2005-06 project year, the determination of the interim payments shall be made prior to January 1, 2006. The department shall use the same cost and statistical data that is used in determining the interim payments for Medi-Cal inpatient hospital services under Section 14166.4 and for the disproportionate share hospital allocations under Section 14166.6, for the corresponding period.

(c) (1) No later than April 1 following the end of the project year, the department shall undertake an interim reconciliation of the payment amount established pursuant to subdivision (a) for each designated public hospital using Medicare and other cost, payment, and statistical data submitted by the hospital for the project year, and shall adjust payments to the hospital accordingly.

(2) The final payment to a designated public hospital for purposes of subdivision (b) and paragraph (1) of this subdivision, shall be subject to final audits of all applicable Medicare and other cost, payment, and statistical data for the project year, and the distribution priorities set forth in Section 14166.20.

(d) (1) Each designated public hospital, or governmental entity with which it is affiliated, shall be eligible to receive additional safety net care pool payments above the baseline funding amount or adjusted baseline funding amount, as appropriate, from the Health Care Support Fund, established pursuant to Section 14166.21, for the project year in accordance with the stabilization funding determination for the hospital made pursuant to Section 14166.75.

(2) Payment of the additional safety net care pool amounts shall be subject to the distribution priorities set forth in Section 14166.21.

14166.75. (a) For services provided during the 2005-06 project year, the amount allocated to designated public hospitals pursuant to subparagraph (A) of paragraph (2) and subparagraph (A) of paragraph (5) of subdivision (b) of Section 14166.20 shall be allocated, in accordance with this section, among the designated public hospitals and paid as direct grants, which shall not constitute Medi-Cal payments.

(b) The baseline funding amount, as determined under Section 14166.5, for San Mateo Medical Center shall be increased by eight million dollars (\$8,000,000) for purposes of this section.

(c) The following payments shall be made from the amount identified in subdivision (a), in addition to any other payments due to the University of California hospitals and health system and County of Los Angeles hospitals under this section:

(1) The lower of eleven million dollars (\$11,000,000) or 3.67 percent of the amount identified in subdivision (a) to the University of California hospitals and health system.

(2) In the event that the one hundred eighty million dollars (\$180,000,000) identified in paragraph 41 of the Special Terms and Conditions for the demonstration project is available in the safety net care pool for the project year, the lower of twenty-three million (\$23,000,000) or 7.67 percent of the amount identified in subdivision (a) to the County of Los Angeles, Department of Health Services, hospitals. If an amount less than the one hundred eighty million dollars (\$180,000,000) is available during the project year, the amount determined under this paragraph shall be reduced proportionately.

(d) The amount identified in subdivision (a), as reduced by the amounts identified in subdivision (c), shall be distributed among the designated public hospitals as follows:

(1) Designated public hospitals that are donor hospitals, and their associated donated certified public expenditures, shall be identified as follows:

(A) An initial pro rata allocation of the amount subject to this subdivision shall be made to each designated public hospital, based upon the hospital's baseline funding amount determined pursuant to Section 14166.5, and as further adjusted in subdivision (b). This initial allocation shall be used for purposes of the calculations under subparagraph (C) and paragraph (3).

(B) The federal financial participation amount arising from the certified public expenditures of each designated public hospital, including the expenditures of the governmental entity, nonhospital clinics, and other provider types to which it is affiliated, that were claimed by the department from the federal disproportionate share hospital allotment pursuant to subparagraphs (A) and (C) of paragraph (2) of subdivision (a) of Section 14166.9, and from the safety net care pool funds pursuant to paragraph (3) of subdivision (a) of Section 14166.9, shall be determined.

(C) The amount of federal financial participation received by each designated public hospital, and by the governmental entity, nonhospital clinics, and other provider types to which it is affiliated, based on certified public expenditures from the federal disproportionate share hospital allotment pursuant to paragraph (1) of subdivision (b) of Section 14166.6, and from the safety net care pool payments pursuant to subdivision (a) of Section 14166.7 shall be identified. The resulting amount shall be increased by amounts distributed to the hospital pursuant to subdivision (c) of this section, paragraph (1) of subdivision (b) of Section 14166.20,

and the initial allocation determined for the hospitals in subparagraph (A).

(D) If the amount in subparagraph (B) is greater than the amount determined in subparagraph (C), the hospital is a donor hospital, and the difference between the two amounts is deemed to be that donor hospital's associated donated certified public expenditures amount.

(2) Seventy percent of the total amount subject to this subdivision shall be allocated pro rata among the designated public hospitals based upon each hospital's baseline funding amount determined pursuant to Section 14166.5, and as further adjusted in subdivision (b).

(3) The lesser of the remaining 30 percent of the total amount subject to this subdivision or the total amounts of donated certified public expenditures for all donor hospitals, shall be distributed pro rata among the donor hospitals based upon the donated certified public expenditures amount determined for each donor hospital. Any amounts not distributed pursuant to this paragraph shall be distributed in accordance with paragraph (2).

(e) The department shall consult with designated public hospital representatives regarding the appropriate distribution of stabilization funding before stabilization funds are allocated and paid to hospitals. No later than 30 days after this consultation, the department shall issue a final allocation of stabilization funding under this section that shall not be modified for any reason other than mathematical errors or mathematical omissions on the part of the department.

14166.8. (a) Within five months after the end of each project year, each of the designated public hospitals shall submit to the department all of the following reports:

(1) The hospital's Medicare cost report for the project year.
(2) Other cost reporting and statistical data necessary for the determination of amounts due the hospital under the demonstration project, as requested by the department.

(b) For each project year, the reports shall identify all of the following:

(1) The costs incurred in providing inpatient hospital services to Medi-Cal beneficiaries on a fee-for-service basis and physician and nonphysician practitioner services costs, as identified in subdivision (e) of Section 14166.4.

(2) The amount of uncompensated costs incurred in providing hospital services to Medi-Cal beneficiaries, including managed care enrollees.

(3) The costs incurred in providing hospital services to uninsured individuals.

(c) Each designated public hospital, or governmental entity with which it is affiliated, that operates nonhospital clinics or provides physician, nonphysician practitioner, or other health care services that are not

identified as hospital services under the Special Terms and Conditions for the demonstration project, may report and certify all, or a portion, of the uncompensated Medi-Cal and uninsured costs of the services furnished. The amount of these uncompensated costs to be claimed by the department shall be determined by the department in consultation with the governmental entity so as to optimize the level of claimable federal Medicaid funding.

(d) Reports submitted under this section shall include all allowable costs.

(e) The appropriate public official shall certify to all of the following:

(1) The accuracy of the reports required under this section.

(2) That the expenditures to meet the reported costs comply with Section 433.51 of Title 42 of the Code of Federal Regulations.

(3) That the sources of funds used to make the expenditures certified under this section do not include impermissible provider taxes or donations as defined under Section 1396b(w) of Title 42 of the United States Code or other federal funds. For this purpose, federal funds do not include patient care revenue received as payment for services rendered under programs such as Medicare or Medicaid.

(f) The certification of public expenditures made pursuant to this section shall be based on a schedule established by the department. The director may require the designated public hospitals to submit quarterly estimates of anticipated expenditures, if these estimates are necessary to obtain interim payments of federal Medicaid funds. All reported expenditures shall be subject to reconciliation to allowable costs, as determined in accordance with applicable demonstration project implementing documents.

(g) Except as provided in subdivision (c), the director shall seek Medicaid federal financial participation for all certified public expenditures recognized under the demonstration project and reported by the designated public hospitals, to the extent consistent with Section 14166.9.

(h) Governmental or public entities other than those that operate a designated public hospital may, at the request of a governmental or public entity, certify uncompensated Medi-Cal and uninsured costs in accordance with this section, subject to the department's discretion and prior approval of the federal Centers for Medicare and Medicaid Services.

14166.9. (a) The department, in consultation with the designated public hospitals, shall determine the mix of sources of federal funds for payments to the designated public hospitals in a manner that provides baseline funding to hospitals and maximizes federal Medicaid funding to the state during the term of the demonstration project. Federal funds shall be claimed according to the following priorities:

(1) The certified public expenditures of the designated public hospitals for inpatient hospital services and physician and nonphysician practitioner services, as identified in subdivision (e) of Section 14166.4, rendered to Medi-Cal beneficiaries.

(2) Federal disproportionate share hospital allotment, subject to the federal-hospital specific limit, in the following order:

(A) Those hospital expenditures that are eligible for federal financial participation only from the federal disproportionate share hospital allotment.

(B) Payments funded with intergovernmental transfers, consistent with the requirements of the demonstration project, up to the hospital's baseline funding amount or adjusted baseline funding amount, as appropriate, for the project year.

(C) Any other certified public expenditures for hospital services that are eligible for federal financial participation from the federal disproportionate share hospital allotment.

(3) Safety net care pool funds, using the optimal combination of hospital certified public expenditures and certified public expenditures of a hospital that operates nonhospital clinics or provides physician, nonphysician practitioner, or other health care services that are identified as hospital services under the Special Terms and Conditions for the demonstration project.

(4) Health care expenditures of the state that represent alternate state funding mechanisms approved by the federal Centers for Medicare and Medicaid Services under the demonstration project as set forth in Section 14166.22.

(b) The department shall implement these priorities, to the extent possible, in a manner that minimizes the redistribution of federal funds that are based on the certified public expenditures of the designated public hospitals.

(c) The department may adjust the claiming priorities to the extent that these adjustments result in additional federal Medicaid funding during the term of the demonstration project or facilitate the objectives of subdivision (b).

(d) There is hereby established in the State Treasury the "Demonstration Disproportionate Share Hospital Fund," consisting of all federal funds received by the department with respect to the certified public expenditures claimed pursuant to subparagraphs (A) and (C) of paragraph (2) of subdivision (a). Notwithstanding Section 13340 of the Government Code, the fund shall be continuously appropriated to the department solely for the purposes specified in Section 14166.6.

(e) All federal safety net care pool funds claimed and received by the department based on health care expenditures incurred by the designated

public hospitals, or the governmental entities with which they are affiliated, shall be deposited in the Health Care Support Fund, established pursuant to Section 14166.21.

14166.10. (a) Payments to private hospitals under the demonstration project shall include, as applicable, all of the following:

(1) Payments under selective provider contracts with the department negotiated by the California Medical Assistance Commission in accordance with Article 2.6 (commencing with Section 14081).

(2) Disproportionate share replacement payments under Section 14166.11.

(3) Supplemental payments under Section 14166.12.

(4) Payments to distressed hospitals as negotiated by the California Medical Assistance Commission pursuant to Section 14166.23.

(b) Payments under subdivision (a) shall be in addition to other payments that may be made in accordance with law.

14166.11. (a) The department shall pay to each project year private DSH hospital the amounts that would have been paid under the disproportionate share hospital program using the formulas and methodology in effect for the 2004-05 fiscal year as more specifically set forth in this section.

(b) For each project year, the department shall develop and issue a tentative and final disproportionate share list in accordance with Section 14105.98.

(c) For each project year, the department shall perform the computations set forth in paragraphs (1) to (4), inclusive, and (6) to (8), inclusive, of subdivision (am) and paragraphs (1) to (3), inclusive, of subdivision (an) of Section 14105.98, subject to the following:

(1) For purposes of these computations, the maximum state disproportionate share hospital allotment for California for each project year shall be the allotment effective during the federal fiscal year beginning during the project year.

(2) All references to October 1 shall be deemed to be references to July 1.

(3) Notwithstanding any other provision of law, the transfer amounts for the Medi-Cal Inpatient Payment Adjustment Fund to the Health Care Deposit Fund, as provided for pursuant to paragraph (2) of subdivision (d) of Section 14163 shall be deemed to be eighty-five million dollars (\$85,000,000) for purposes of the computations under this subdivision.

(4) Notwithstanding any other provision of law, the payments made under this section shall be treated as payment adjustments made under Section 14105.98 for purposes of computing the OBRA 1993 payment limitation, as defined in paragraph (24) of subdivision (a) of Section 14105.98, the low-income utilization rate, and all related computations.

(5) Subdivision (m) of Section 14105.98 shall apply to payments made under this section.

(d) Interim payments shall be made for the first five months of each project year as follows:

(1) Interim payments shall be made to each private hospital identified on a tentative disproportionate share list for the project year that was also on the final disproportionate share list for the prior fiscal year. The interim payment amount per month for each of these hospitals shall equal one-twelfth of the total payments, excluding stabilization funds, made to the hospital for the prior fiscal year under this section or under Section 14105.98. The interim payment amount may be adjusted to reflect any changes in the total payment amounts, excluding stabilization funds, projected to be made under this section for the project year.

(2) The computation of interim payments described in this subdivision shall be made promptly after the department issues the tentative disproportionate share hospital list for the project year.

(3) The first interim payment for a project year shall be made to each hospital no later than 60 days after the issuance of the tentative disproportionate share hospital list for that project year and shall include the interim payment amounts for all prior months in the project year. Subsequent interim payments for a project year shall be made on the last checkwrite of each month made by the Controller until interim payments for the first five months of the project year have been made.

(4) The department may recover any interim payments for a project year made under this subdivision to a hospital that is not on the final disproportionate share hospital list for that project year. These interim payments shall be considered an overpayment. The department shall issue a demand for repayment to a hospital at least 30 days prior to taking action to recover the overpayment. After the 30-day period, the department may recover the overpayment using any of the methods set forth in Section 14115.5 or subdivision (c) of Section 14172.5. Any offset shall be subject to Section 14115.5 or subdivision (d) of Section 14172.5. No other provision of Section 14172.5 shall be applicable with respect to the recovery of overpayments under this subdivision. A hospital may appeal the department's determination of an overpayment under this subdivision pursuant to the appeal procedures set forth in Sections 51016 to 51047, inclusive, of Title 22 of the California Code of Regulations, and seek judicial review of the final administrative decision pursuant to Section 14171, provided that the only issues that may be raised in this appeal are whether the hospital, but for inadvertent error by the department, was on the final disproportionate share list for the project year and whether the department's computation of the overpayment amount is correct. If the hospital is reinstated on the final

disproportionate share list pursuant to Section 14105.98, the department shall promptly refund any amount recovered under this paragraph.

(e) Tentative adjusted monthly payments shall be made for the months of December through March of each project year to each private hospital identified on the final disproportionate share hospital list for the project year, computed and paid as follows:

(1) An adjusted payment amount shall be computed for each hospital equal to the sum of the total payment adjustment amount for the hospital computed pursuant to subdivision (am) of Section 14105.98, plus the supplemental lump-sum payment adjustment amount computed pursuant to subdivision (an) of Section 14105.98, each as most recently computed by the department, plus any applicable interim estimated stabilization funding pursuant to subdivision (b) of Section 14166.14.

(2) A tentative adjusted monthly payment amount shall be computed for each hospital equal to the adjusted payment amount for the hospital, minus the aggregate interim payments made to the hospital for the project year, divided by seven.

(3) The computation of tentative adjusted monthly payments described in this subdivision shall be made promptly after the department issues the final disproportionate share hospital list for the project year.

(4) The first tentative adjusted monthly payment for a project year shall be made to each hospital by January 15 or within 60 days after the issuance of the final disproportionate share hospital list for the project year, whichever is later, and shall include the tentative adjusted monthly payment amounts for all prior months in the project year for which those payments are due. Subsequent tentative adjusted monthly payments for a project year shall be made on the last checkwrite of each month made by the Controller until tentative adjusted monthly payments for December through March of the project year have been made.

(f) Three data corrected payments shall be made on the last checkwrite of the month made by the Controller for the months of April through June of each project year to each private hospital identified on the final disproportionate share hospital list for the project year, computed and paid as follows:

(1) An annual data corrected payment amount shall be computed for each hospital equal to the sum of the total payment adjustment amount for the hospital computed pursuant to subdivision (am) of Section 14105.98, plus the supplemental lump-sum payment adjustment amount computed pursuant to subdivision (an) of Section 14105.98, each as most recently computed by the department, plus any interim estimated stabilization funding. The annual data corrected payment amounts shall reflect data corrections, hospital closures, and other revisions made by

the department to the adjusted payment amounts computed under paragraph (1) of subdivision (e).

(2) A monthly data corrected payment amount shall be computed for each hospital equal to the annual data corrected payment amount for the hospital, minus both the aggregate interim payments made to the hospital for the project year and the aggregate tentative adjusted monthly payments made to the hospital, divided by three.

(g) Payment under subdivisions (d), (e), and (f) for a month shall be made only to private hospitals open for patient care through the 15th day of the month.

(h) The department shall compute a final adjusted payment amount for each private hospital on the final disproportionate share list for a project year after the completion of the project year and the determination of the amount of stabilization funding available to be paid under this section as follows:

(1) An amount shall be computed for each hospital equal to the sum of the total payment adjustment amount for the hospital computed pursuant to subdivision (am) of Section 14105.98, plus the supplemental lump-sum payment adjustment amount computed pursuant to subdivision (an) of Section 14105.98, each as most recently computed by the department. These amounts shall reflect data corrections, hospital closures, and other revisions made by the department to the annual data corrected payment amounts computed under paragraph (1) of subdivision (f) in a manner that ensures that any payments not payable or recouped are redistributed among hospitals eligible for a final adjusted payment amount in accordance with the calculations made pursuant to Section 14105.98.

(2) The department shall add to the amount computed for each hospital under paragraph (1) a pro rata share of any stabilization funding to be allocated and paid under this section, allocated based on the amounts computed under paragraph (1).

(3) The department shall for each hospital for each project year reconcile the total amount paid to the hospital for that project year under subdivisions (d), (e), and (f) with the amount determined under paragraph (2). The department shall issue a report to each hospital setting forth the result of the reconciliation that shall include the department's computation, data, and identification of data sources. The department shall pay to the hospital any underpayment determined as a result of this reconciliation and collect from the hospital any overpayment determined as a result of this reconciliation pursuant to paragraph (4) of subdivision (d) of Section 14166.11.

(4) A hospital may seek to correct the department's data and computations under this section in accordance with the processes

undertaken by the department to implement Section 14105.98 in effect during the 2004-05 state fiscal year.

(i) In accordance with the demonstration project, the following shall apply:

(1) Payments under this section shall satisfy the state's obligation to have a payment adjustment program for disproportionate share hospitals under Section 1923 of the Social Security Act (42 U.S.C. Sec. 1396r-4).

(2) Payments under this section and federal financial participation shall not be counted against the state's allotment of federal funding for Medicaid disproportionate share payment adjustments.

(j) (1) For purposes of this subdivision, "federal disproportionate share allotment" means the federal Medicaid disproportionate share hospital allotment specified for California under Section 1396r-4(f) of Title 42 of the United States Code.

(2) In the event any hospital, or any party on behalf of a hospital, shall initiate a case or proceeding in any state or federal court in which the hospital seeks any relief of any sort whatsoever, including, but not limited to, monetary relief, injunctive relief, declaratory relief, or a writ, based in whole or in part on a contention that the hospital is entitled to, or should receive any portion of, the federal disproportionate share hospital allotment for any or all of federal fiscal years 2006 to 2010, inclusive, all of the following shall apply:

(A) No payments shall be made to the hospital pursuant to this section until the case or proceeding is finally resolved, including the final disposition of all appeals.

(B) Any amount computed to be payable to the hospital pursuant to this section for a project year shall be withheld by the department and shall be paid to the hospital only after the case or proceeding is finally resolved, including the final disposition of all appeals, and only if the case or proceeding does not result in any amount being paid or payable to the hospital from the federal disproportionate share hospital allotment for any portion of the project year.

(C) The hospital shall become ineligible to receive any amount pursuant to this section for any project year for which it is determined that the hospital is entitled to be paid any portion of the federal disproportionate share hospital allotment.

(D) Any amount that would have been payable to the hospital pursuant to this section, but is not paid to the hospital because the hospital has become ineligible to receive payments pursuant to this section shall be returned to the state General Fund.

(E) In the event any portion of the federal disproportionate share hospital allotment is applied to payments to any private hospital, the department shall make any additional payments that may be necessary

from state funds so that the amount of the disproportionate share hospital payments that are made to designated public hospitals or nondesignated public hospitals is not less than the amount that would have been made if the allotment had not been applied to payments to any private hospital.

(F) A hospital's total project year payment amount determined under this section may be subject to reduction by offset pursuant to Section 14115.5 or 14172.5.

14166.12. (a) The California Medical Assistance Commission shall negotiate payment amounts, in accordance with the selective provider contracting program established pursuant to Article 2.6 (commencing with Section 14081), from the Private Hospital Supplemental Fund established pursuant to subdivision (b) for distribution to private hospitals that satisfy the criteria of Section 14085.6, 14085.7, 14085.8, or 14085.9.

(b) The Private Hospital Supplemental Fund is hereby established in the State Treasury. For purposes of this section, "fund" means the Private Hospital Supplemental Fund.

(c) Notwithstanding Section 13340 of the Government Code, the fund shall be continuously appropriated to the department for the purposes specified in this section.

(d) Except as otherwise limited by this section, the fund shall consist of all of the following:

(1) One hundred eighteen million four hundred thousand dollars (\$118,400,000), which shall be transferred annually from General Fund amounts appropriated in the annual Budget Act for the Medi-Cal program.

(2) Any additional moneys appropriated to the fund.

(3) All stabilization funding transferred to the fund pursuant to subdivision (b) of Section 14166.14.

(4) Any moneys that any county, other political subdivision of the state, or other governmental entity in the state may elect to transfer to the department for deposit into the fund, as permitted under Section 433.51 of Title 42 of the Code of Federal Regulations or any other applicable federal Medicaid laws.

(5) All private moneys donated by private individuals or entities to the department for deposit in the fund as permitted under applicable federal Medicaid laws.

(6) Any interest that accrues on amounts in the fund.

(e) Any public agency transferring moneys to the fund may, for that purpose, utilize any revenues, grants, or allocations received from the state for health care programs or purposes, unless otherwise prohibited by law. A public agency may also utilize its general funds or any other public moneys or revenues for purposes of transfers to the fund, unless otherwise prohibited by law.

(f) The department may accept or not accept moneys offered to the department for deposit in the fund. If the department accepts moneys pursuant to this section, the department shall obtain federal financial participation to the full extent permitted by law. With respect to funds transferred or donated from private individuals or entities, the department shall accept only those funds that are certified by the transferring or donating entity that qualify for federal financial participation under the terms of the Medicaid Voluntary Contribution and Provider-Specific Tax Amendments of 1991 (P.L. 102-234) or Section 433.51 of Title 42 of the Code of Federal Regulations, as applicable. The department may return any funds transferred or donated in error.

(g) Moneys in the fund shall be used as the source for the nonfederal share of payments to hospitals under this section.

(h) Any funds remaining in the fund at the end of a fiscal year shall be carried forward for use in the following fiscal year.

(i) Moneys shall be allocated from the fund by the department and shall be applied to obtain federal financial participation in accordance with customary Medi-Cal accounting procedures for purposes of payments under this section. Distributions from the fund shall be supplemental to any other Medi-Cal reimbursement received by the hospitals, including amounts that hospitals receive under the selective provider contracting program (Article 2.6 (commencing with Section 14081)), and shall not affect provider rates paid under the selective provider contracting program.

(j) Each private hospital that was a private hospital during the 2002-03 fiscal year, received payments for the 2002-03 fiscal year from any of the prior supplemental funds, and, during the project year, satisfies the criteria in Section 14085.6, 14085.7, 14085.8, or 14085.9 to be eligible to negotiate for distributions under any of those sections, shall receive no less from the Private Hospital Supplemental Fund for the project year than 100 percent of the amount the hospital received from the prior supplemental funds for the 2002-03 fiscal year. Each private hospital described in this subdivision shall be eligible for additional payments from the fund pursuant to subdivision (k).

(k) All amounts that are in the fund for a project year in excess of the amount necessary to make the payments under subdivision (j) shall be available for negotiation by the California Medical Assistance Commission, along with corresponding federal financial participation, for supplemental payments to private hospitals, which for the project year satisfy the criteria under Section 14085.6, 14085.7, 14085.8, or 14085.9 to be eligible to negotiate for distributions under any of those sections, and paid for services rendered during the project year pursuant

to the selective provider contracting program established under Article 2.6 (commencing with Section 14081).

(l) The amount of any stabilization funding transferred to the fund with respect to a project year may in the discretion of the California Medical Assistance Commission be paid for services furnished in the same project year regardless of when the stabilization funds become available, provided the payment is consistent with other applicable federal or state law requirements and does not result in a hospital exceeding any applicable reimbursement limitations.

(m) The department shall pay amounts due to a private hospital from the fund for a project year, with the exception of stabilization funding, in up to four installment payments, unless otherwise provided in the hospital's contract negotiated with the California Medical Assistance Commission, except that hospitals that are not described in subdivision (j) shall not receive the first installment payment. The first payment shall be made as soon as practicable after the issuance of the tentative disproportionate share hospital list for the project year, and in no event later than January 1 of the project year. The second and subsequent payments shall be made after the issuance of the final disproportionate share hospital list for the project year, and shall be made only to hospitals that are on the final disproportionate share hospital list for the project year. The second payment shall be made by February 1 of the project year or as soon as practicable after the issuance of the final disproportionate share hospital list for the project year. The third payment, if scheduled, shall be made by April 1 of the project year. The fourth payment, if scheduled, shall be made by June 30 of the project year. This subdivision does not apply to hospitals that are scheduled to receive payments from the fund because they meet the criteria under Section 14085.7 and do not meet the criteria under Section 14085.6, 14085.8, or 14085.9, which shall be paid in accordance with the applicable contract or contract amendment negotiated by the California Medical Assistance Commission.

(n) The department shall pay stabilization funding transferred to the fund in amounts negotiated by the California Medical Assistance Commission and shall pay the scheduled payments in accordance with the applicable contract or contract amendment.

(o) Payments to private hospitals may be made using funds transferred from governmental entities to the state, at the option of the governmental entity. Any payments funded by intergovernmental transfers shall remain with the private hospital and shall not be transferred back to any unit of government. An amount equal to 25 percent of the amount of any intergovernmental transfer made in the project year that results in a supplemental payment made during the same project year to a project year private DSH hospital located in the county that made the

intergovernmental transfer shall be deposited in the fund for distribution as determined by the California Medical Assistance Commission. An amount equal to 75 percent shall be deposited in the fund and distributed to the private hospitals designated by the counties.

14166.13. (a) With respect to each project year, the director shall determine a baseline funding amount for each base year private DSH hospital that is also a project year private DSH hospital. A private hospital's baseline funding amount shall be an amount equal to the total amount paid to the hospital for inpatient hospital services rendered to Medi-Cal beneficiaries during the 2004-05 state fiscal year, including the following Medi-Cal payments, but excluding payments received under the Medi-Cal Specialty Mental Health Services Consolidation Program:

(1) Base payments under the selective provider contracting program as provided for under Article 2.6 (commencing with Section 14081), or under the Medi-Cal state plan cost reimbursement system for inpatient hospital services for noncontracting hospitals.

(2) Emergency Services and Supplemental Payments Fund payments as provided for under Section 14085.6.

(3) Medi-Cal Medical Education Supplemental Payment Fund payments and Large Teaching Emphasis Hospital and Children's Hospital Medi-Cal Medical Education Supplemental Payment Fund payments as provided for under Sections 14085.7 and 14085.8, respectively.

(4) Small and Rural Hospital Supplemental Payments Fund payments as provided for under Section 14085.9.

(5) Disproportionate share hospital payment adjustments as provided for under Section 14105.98.

(6) Administrative day payments as provided for under Section 51542 of Title 22 of the California Code of Regulations.

(b) The aggregate project year private DSH hospital baseline funding amount shall be the sum of all baseline funding amounts determined under subdivision (a).

(c) With respect to each project year beginning after the 2005-06 project year, an aggregate project year private hospital adjusted baseline funding amount shall be determined as follows:

(1) The department shall determine the aggregate total Medi-Cal revenue, using amounts determined under subdivision (a), for inpatient hospital services rendered during the 2004-05 fiscal year for project year private hospitals, less the total amount of disproportionate share hospital payments identified in paragraph (5) of subdivision (a) for those hospitals.

(2) The department shall determine the aggregate total Medi-Cal revenue paid or payable under this article, excluding stabilization funding under Section 14166.14, using amounts determined under subdivision

(a) for inpatient hospital services rendered during the fiscal year preceding the project year for which the private hospital adjusted baseline funding amount is being calculated for project year private hospitals, less the total amount of disproportionate share hospital replacement payments in Section 14166.11 for those hospitals.

(3) The department shall:

(A) Calculate the difference between the amount determined under paragraph (1) and the amount determined under paragraph (2).

(B) Determine the percentage increase or decrease by dividing the difference in subparagraph (A) by the amount in paragraph (1).

(C) Apply the percentage in subparagraph (B) to the aggregate project year private DSH hospital baseline funding amount determined under subdivision (b), less the total amount of disproportionate share hospital replacement payments in Section 14166.11 for those hospitals.

(4) The aggregate private hospital adjusted baseline funding amount is the amount determined in paragraph (1), plus the amount determined in subparagraph (C), plus the amount in paragraph (5) of subdivision (a).

14166.14. The amount of any stabilization funding payable to the project year private DSH hospitals under Section 14166.20 for a project year, which amount shall not include the amount of stabilization funding paid or payable to hospitals prior to the computation of the stabilization funding under Section 14166.20 plus any amount payable to project year private DSH hospitals under paragraph (1) of subdivision (b) of Section 14166.21, shall be allocated as follows:

(a) (1) To fund any shortfall due under Section 14166.11.

(2) An amount shall be transferred to the Private Hospital Supplemental Fund established pursuant to Section 14166.20, as may be necessary so that the amount for the Private Hospital Supplemental Fund for the project year, including all funds previously transferred to, or deposited in, the Private Hospital Supplemental Fund for the project year, is not less than the Private Hospital Supplemental Fund base amount determined pursuant to subdivision (j) of Section 14166.12.

(3) The amounts paid or transferred under paragraphs (1) and (2) shall be reduced pro rata if there is not sufficient funding described under paragraphs (1) and (2).

(b) Of the stabilization funding remaining, after allocations pursuant to subdivision (a), that are payable to project year private DSH hospitals, 66.4 percent shall be allocated and distributed among those hospitals pro rata based on the amounts determined in accordance with Section 14166.11, and 33.6 percent shall be transferred to the Private Hospital Supplemental Fund.

14166.15. (a) Payments to nondesignated public hospitals under the demonstration project shall include, as applicable, the following:

(1) Payments under selective provider contracts with the department negotiated by the California Medical Assistance Commission in accordance with Article 2.6 (commencing with Section 14081).

(2) Disproportionate share hospital payments under Section 14166.16.

(3) Supplemental payments under Section 14166.17.

(4) Payments to distressed hospitals as negotiated by the California Medical Assistance Commission pursuant to Section 14166.23.

(5) Payment of amounts described in Section 14166.19.

(b) Payments under subdivision (a) shall be in addition to other payments that may be made in accordance with law.

14166.16. (a) The department shall compute for each nondesignated public hospital for a project year, that is an eligible hospital for the project year as determined under Section 14105.98, payment adjustment amounts as determined under subdivision (am) of Section 14105.98 and supplemental payment adjustment amounts as determined under subdivision (an) of Section 14105.98.

(b) Nondesignated public hospitals shall comply with subdivisions (a), (b), (d), (e), and (f) of Section 14166.8.

(c) Interim payments shall be made for the first five months of each project year as follows:

(1) Interim payments shall be made to each nondesignated public hospital identified on a tentative disproportionate share list for the project year that was also on the final disproportionate share list for the prior fiscal year. The interim payment amount per month for the hospital shall be equal to one-twelfth of the total payments, excluding stabilization funds, made to the hospital for the prior fiscal year under this section or under Section 14105.98. The interim payment amount may be adjusted to reflect any changes in the total amount payments, excluding stabilization funds, projected to be made under this section for the project year.

(2) The computation of interim payments described in this subdivision shall be made promptly after the department issues the tentative disproportionate share hospital list for the project year.

(3) The first interim payment to each hospital for a project year shall be made no later than 60 days after the issuance of the tentative disproportionate share hospital list for the project year and shall include the interim payment amounts for all prior months in the project year. Subsequent interim payments for a project year shall be made on the last checkwrite of each month made by the Controller until interim payments for the first five months of the project year have been made.

(4) The department may recover any interim payments made under this subdivision for a project year to a hospital that is not on the final disproportionate share hospital list for the project year. These interim payments shall be considered an overpayment. The department shall issue a demand for repayment to a hospital at least 30 days prior to taking action to recover the overpayment. After the 30-day period, the department may recover the overpayment using any of the methods set forth in Section 14115.5 or subdivision (c) of Section 14172.5. Any offset shall be subject to Section 14115.5 or subdivision (d) of Section 14172.5. No other provision of Section 14172.5 shall be applicable with respect to the recovery of overpayments under this subdivision. A hospital may appeal the department's determination of an overpayment under this subdivision pursuant to the appeal procedures set forth in Sections 51016 to 51047, inclusive, of Title 22 of the California Code of Regulations, and seek judicial review of the final administrative decision pursuant to Section 14171, provided that the only issues that may be raised in the appeal are whether the hospital, but for inadvertent error by the department, was on the final disproportionate share list for the project year and whether the department's computation of the overpayment amount is correct. If the hospital is reinstated on the final disproportionate share list pursuant to Section 14105.98, the department shall promptly refund any amount recovered under this paragraph.

(d) Tentative adjusted monthly payments shall be made for December through March of each project year to each nondesignated public hospital identified on the final disproportionate share hospital list for the project year, computed and paid as follows:

(1) An adjusted payment amount shall be computed for each hospital equal to the sum of the total payment adjustment amount for the hospital computed pursuant to subdivision (am) of Section 14105.98, plus the supplemental lump-sum payment adjustment amount computed pursuant to subdivision (an) of Section 14105.98, each as most recently computed by the department.

(2) A tentative adjusted monthly payment amount shall be computed for each hospital equal to the adjusted payment amount for the hospital, minus the aggregate interim payments made to the hospital for the project year, divided by seven.

(3) The computation of tentative adjusted monthly payments described in this subdivision shall be made promptly after the department issues the final disproportionate share hospital list for the project year.

(4) The first tentative adjusted monthly payment to each hospital for a project year shall be made by January 15 or within 60 days after the issuance of the final disproportionate share hospital list for the project year, whichever is later, and shall include the tentative adjusted monthly

payment amounts for all prior months in the project year for which those payments are due. Subsequent tentative adjusted monthly payments for a project year shall be made on the last checkwrite of each month made by the Controller until tentative adjusted monthly payments for December through March of the project year have been made.

(e) Three data corrected payments shall be made on the last checkwrite of the month made by the Controller for the months of April through June of each project year to each nondesignated public hospital identified on the final disproportionate share hospital list for the project year, computed and paid as follows:

(1) An annual data corrected payment amount shall be computed for each hospital equal to the sum of the total payment adjustment amount for the hospital computed pursuant to subdivision (am) of Section 14105.98, plus the supplemental lump-sum payment adjustment amount computed pursuant to subdivision (an) of Section 14105.98, each as most recently computed by the department. The annual data corrected payment amounts shall reflect data corrections, hospital closures, and other revisions made by the department to the adjusted payment amounts computed under paragraph (1) of subdivision (d).

(2) A monthly data corrected payment amount shall be computed for each hospital equal to the annual data corrected payment amount for the hospital, minus both the aggregate interim payments made to the hospital for the project year and the aggregate tentative adjusted monthly payments made to the hospital, divided by three.

(f) Payment under subdivisions (c), (d), and (e) for a month shall be made only to hospitals open for patient care through the 15th day of the month.

(g) The department shall compute a final adjusted payment amount for each nondesignated public hospital on the final disproportionate share list for a project year after the completion of the project year and the determination of the amount of stabilization funding available to be paid under this section as follows:

(1) An amount shall be computed for each hospital equal to the sum of the total payment adjustment amount for the hospital computed pursuant to subdivision (am) of Section 14105.98, plus the supplemental lump-sum payment adjustment amount computed pursuant to subdivision (an) of Section 14105.98, each as most recently computed by the department. These amounts shall reflect data corrections, hospital closures, and other revisions made by the department to the annual data corrected payment amounts computed under paragraph (1) of subdivision (e) in a manner that ensures that any payments not payable or recouped are redistributed among hospitals eligible for a final adjusted payment

amount in accordance with the calculations made pursuant to Section 14105.98.

(2) The department shall add to the amount computed for each hospital under paragraph (1) a pro rata share of any stabilization funding to be allocated and paid under this section allocated based on the amounts computed under paragraph (1).

(3) The department shall for each hospital for each project year reconcile the total amount computed for the hospital for the project year under subdivisions (c), (d), and (e) with the amount determined under paragraph (2). The department shall issue a report to each hospital setting forth the result of the reconciliation that shall include the department's computation, data, and identification of data sources. The department shall pay to the hospital any underpayment determined as a result of this reconciliation and collect from the hospital any overpayment determined as a result of this reconciliation.

(4) A hospital may seek to correct the department's data and computations under this section in accordance with the processes undertaken by the department to implement Section 14105.98 in effect during the 2004-05 fiscal year.

14166.17. (a) The California Medical Assistance Commission shall negotiate payment amounts in accordance with the selective provider contracting program established pursuant to Article 2.6 (commencing with Section 14081) from the Nondesignated Public Hospital Supplemental Fund established pursuant to subdivision (b) for distribution to nondesignated public hospitals that satisfy the criteria of Section 14085.6, 14085.7, 14085.8, or 14085.9.

(b) The Nondesignated Public Hospital Supplemental Fund is hereby established in the State Treasury. For purposes of this section, "fund" means the Nondesignated Public Hospital Supplemental Fund.

(c) Notwithstanding Section 13340 of the Government Code, the fund shall be continuously appropriated to the department for the purposes specified in this section.

(d) Except as otherwise limited by this section, the fund shall consist of all of the following:

(1) One million nine hundred thousand dollars (\$1,900,000), which shall be transferred annually from General Fund amounts appropriated in the annual Budget Act for the fund.

(2) Any additional moneys appropriated to the fund.

(3) All stabilization funding transferred to the fund.

(4) All private moneys donated by private individuals or entities to the department for deposit in the fund as permitted under applicable federal Medicaid laws.

(5) Any interest that accrues on amounts in the fund.

(e) The department may accept or not accept moneys offered to the department for deposit in the fund. If the department accepts moneys pursuant to this section, the department shall obtain federal financial participation to the full extent permitted by law. With respect to funds transferred or donated from private individuals or entities, the department shall accept only those funds that are certified by the transferring or donating entity as qualifying for federal financial participation under the terms of the Medicaid Voluntary Contribution and Provider-Specific Tax Amendments of 1991 (P.L. 102-234) or Section 433.51 of Title 42 of the Code of Federal Regulations, as applicable. The department may return any funds transferred or donated in error.

(f) Moneys in the funds shall be used as the source for the nonfederal share of payments to hospitals under this section.

(g) Any funds remaining in the fund at the end of a fiscal year shall be carried forward for use in the following fiscal year.

(h) Moneys shall be allocated from the fund by the department and shall be applied to obtain federal financial participation in accordance with customary Medi-Cal accounting procedures for purposes of payments under this section. Distributions from the fund shall be supplemental to any other Medi-Cal reimbursement received by the hospitals, including amounts that hospitals receive under the selective provider contracts negotiated under Article 2.6 (commencing with Section 14081), and shall not affect provider rates paid under the selective provider contracting program.

(i) Each nondesignated public hospital that was a nondesignated public hospital during the 2002-03 fiscal year, received payments for the 2002-03 fiscal year from any of the prior supplemental funds, and, during the project year satisfies the criteria in Section 14085.6, 14085.7, 14085.8, or 14085.9 to be eligible to negotiate for distributions under any of those sections shall receive no less from the Nondesignated Public Hospital Supplemental Fund for the project year than 100 percent of the amount the hospital received from the prior supplemental funds for the 2002-03 fiscal year. Each hospital described in this subdivision shall be eligible for additional payments from the fund pursuant to subdivision (j).

(j) All amounts that are in the fund for a project year in excess of the amount necessary to make the payments under subdivision (i) shall be available for negotiation by the California Medical Assistance Commission, along with corresponding federal financial participation, for supplemental payments to nondesignated public hospitals that for the project year satisfy the criteria under Section 14085.6, 14085.7, 14085.8, or 14085.9 to be eligible to negotiate for distributions under any of those sections, and paid for services rendered during the project

year pursuant to the selective provider contracting program under Article 2.6 (commencing with Section 14081).

(k) The amount of any stabilization funding transferred to the fund with respect to a project year may in the discretion of the California Medical Assistance Commission to be paid for services furnished in the same project year regardless of when the stabilization funds become available, provided the payment is consistent with other applicable federal or state legal requirements and does not result in a hospital exceeding any applicable reimbursement limitations.

(l) The department shall pay amounts due to a nondesignated hospital from the fund for a project year, with the exception of stabilization funding, in up to four installment payments, unless otherwise provided in the hospital's contract negotiated with the California Medical Assistance Commission, except that hospitals that are not described in subdivision (i) shall not receive the first installment payment. The first payment shall be made as soon as practicable after the issuance of the tentative disproportionate share hospital list for the project year, and in no event later than January 1 of the project year. The second and subsequent payments shall be made after the issuance of the final disproportionate hospital list for the project year, and shall be made only to hospitals that are on the final disproportionate share hospital list for the project year. The second payment shall be made by February 1 of the project year or as soon as practicable after the issuance of the final disproportionate share hospital list for the project year. The third payment, if scheduled, shall be made by April 1 of the project year. The fourth payment, if scheduled, shall be made by June 30 of the project year. This subdivision does not apply to hospitals that are scheduled to receive payments from the fund because they meet the criteria under Section 14085.7 but do not meet the criteria under Section 14085.6, 14085.8, or 14085.9.

(m) The department shall pay stabilization funding transferred to the fund in amounts negotiated by the California Medical Assistance Commission and paid in accordance with the applicable contract or contract amendment.

14166.18. (a) With respect to each project year, the director shall determine a baseline funding amount for each nondesignated public hospital that was an eligible hospital under paragraph (3) of subdivision (a) of Section 14105.98 for both the 2004-05 fiscal year and the project year. A hospital's baseline funding amount shall be an amount equal to the total amount paid to the hospital for inpatient hospital services rendered to Medi-Cal beneficiaries during 2004-05 fiscal year, including the following Medi-Cal payments, but excluding payments received

under the Medi-Cal Specialty Mental Health Services Consolidation Program:

(1) Base payments under the selective provider contracting program as provided for under Article 2.6 (commencing with Section 14081) or the Medi-Cal state plan cost reimbursement system for inpatient hospital services for noncontracting hospitals.

(2) Emergency Services and Supplemental Payments Fund payments as provided for under Section 14085.6.

(3) Medi-Cal Medical Education Supplemental Payment Fund payments and Large Teaching Emphasis Hospital and Children's Hospital Medi-Cal Medical Education Supplemental Payment Fund payments as provided for under Sections 14085.7 and 14085.8, respectively.

(4) Small and Rural Hospital Supplemental Payments Fund payments as provided for under Section 14085.9.

(5) Disproportionate share hospital payment adjustments as provided for under Section 14105.98.

(6) Administrative day payments as provided for under Section 51542 of Title 22 of the California Code of Regulations.

(b) The aggregate nondesignated public hospital baseline funding amount shall be the sum of all baseline funding amounts determined under subdivision (a).

(c) With respect to each project year beginning after the 2005-06 project year, an aggregate nondesignated public hospital adjusted baseline funding amount shall be determined as follows:

(1) The department shall determine the aggregate total Medi-Cal revenue, using amounts determined under subdivision (a), with respect to inpatient hospital services rendered during the 2004-05 fiscal year for nondesignated public hospitals that were eligible hospitals under paragraph (3) of subdivision (a) of Section 14105.98 on the last day of the project year less the total amount of disproportionate share hospital payments identified in paragraph (5) of subdivision (a) for those hospitals.

(2) The department shall determine the aggregate total Medi-Cal revenue, using amounts determined under subdivision (a), with respect to inpatient hospital services rendered during the fiscal year preceding the project year for which the nondesignated public hospital adjusted baseline funding amount is being calculated for the nondesignated public hospitals described in paragraph (1), less the total amount of disproportionate share hospital payments in paragraph (5) of subdivision (a) for those hospitals.

(3) The department shall:

(A) Calculate the difference between the amount determined under paragraph (1) and the amount determined under paragraph (2).

(B) Determine the percentage increase or decrease by dividing the difference in subparagraph (A) by the amount in paragraph (1).

(C) Apply the percentage in subparagraph (B) to the aggregate nondesignated public hospital baseline funding amount determined under subdivision (b) less the total amount of disproportionate share hospital payments in paragraph (5) of subdivision (a) for those hospitals.

(D) The aggregate nondesignated public hospital adjusted baseline funding amount is the amount determined in subdivision (b), plus the amount determined in subparagraph (C).

14166.19. The amount of any stabilization funding payable to the nondesignated public hospitals under paragraph (4) of subdivision (b) of Section 14166.20 for a project year, which amount shall not include the amount of stabilization funding paid or payable to hospitals prior to the computation of the stabilization funding under Section 14166.20, shall be allocated in the following priority:

(a) An amount shall be transferred to the Nondesignated Public Hospital Supplemental Fund, as may be necessary so that the amount for the Nondesignated Public Hospital Supplemental Fund for the project year, including all funds previously transferred to, or deposited in, the Nondesignated Public Hospital Supplemental Fund for the project year, is not less than one million nine hundred thousand dollars (\$1,900,000).

(b) Of the remaining stabilization funding payable to nondesignated public hospitals, 75 percent shall be allocated, distributed, and paid in accordance with Section 14166.16, and 25 percent shall be transferred to the Nondesignated Public Hospital Supplemental Fund.

14166.20. (a) With respect to each project year, the total amount of stabilization funding shall be the sum of the following:

(1) Federal Medicaid funds available in the Health Care Support Fund, established pursuant to Section 14166.21, reduced by the amount necessary to meet the baseline funding amount, or the adjusted baseline funding amount, as appropriate, for project years after the 2005-06 project year for each designated public hospital, project year private DSH hospitals in the aggregate, and nondesignated public hospitals in the aggregate as determined in Sections 14166.5, 14166.13, and 14166.18, respectively, taking into account all other payments to each hospital under this article. This amount shall be not less than zero.

(2) The state general funds that were made available due to the receipt of federal funding for previously state-funded programs through the safety net care pool and any federal Medicaid hospital reimbursements resulting from these expenditures, unless otherwise recognized under paragraph (1).

(3) To the extent not included in paragraph (1) or (2), the amount of the increase in state General Fund expenditures for Medi-Cal inpatient

hospital services for the project year for project year private DSH hospitals and nondesignated public hospitals, including amounts expended in accordance with paragraph (1) of subdivision (c) of Section 14166.23 that exceeds the expenditure amount for the same purpose and the same hospitals in the 2004-05 state fiscal year, and any direct grants to designated public hospitals for services under the demonstration project.

(4) To the extent not included in paragraph (2), federal Medicaid funds received by the state as a result of the General Fund expenditures described in paragraph (3).

(5) The federal Medicaid funds received by the state as a result of federal financial participation with respect to Medi-Cal payments for inpatient hospital services made to project year private DSH hospitals for services rendered during the project year, the state share of which was derived from intergovernmental transfers or certified public expenditures of any public entity that does not own or operate a public hospital.

(b) With respect to the 2005-06 and 2006-07 project years, the stabilization funding determined under subdivision (a) shall be allocated as follows:

(1) Eight million dollars (\$8,000,000) shall be paid to San Mateo Medical Center.

(2) (A) Ninety-six million five hundred thousand dollars (\$96,500,000) shall be allocated to designated public hospitals to be paid in accordance with Section 14166.75.

(B) Forty-two million five hundred thousand dollars (\$42,500,000) shall be allocated to private DSH hospitals to be paid in accordance with Section 14166.14.

(C) In the event that stabilization funding is less than one hundred forty-seven million dollars (\$147,000,000), the amounts allocated to designated public hospitals and private DSH hospitals under this paragraph shall be reduced proportionately.

(3) An amount equal to the lesser of 10 percent of the total amount determined under subdivision (a) of Section 14166.20 or twenty-three million five hundred thousand dollars (\$23,500,000) shall be made available for additional payments to distressed hospitals that participate in the selective provider contracting program under Article 2.6 (commencing with Section 14081), including designated public hospitals, in amounts to be determined by the California Medical Assistance Commission. The additional payments to designated public hospitals shall be negotiated by the California Medical Assistance Commission, but shall be paid by the department in the form of a direct grant rather than as Medi-Cal payments.

(4) An amount equal to 0.56 percent of the total amount determined under subdivision (a), to nondesignated public hospitals to be paid in accordance with Section 14166.19.

(5) The amount remaining after subtracting the amount determined in paragraphs (1) to (4), inclusive, shall be allocated as follows:

(A) Sixty percent to designated public hospitals to be paid in accordance with Section 14166.75.

(B) Forty percent to project year private DSH hospitals to be paid in accordance with Section 14166.14.

(c) By April 1 of the year following the project year for which the payment is made, and after taking into account final amounts otherwise paid or payable to hospitals under this article, the director shall calculate in accordance with subdivision (a), allocate in accordance with subdivision (b), and pay to hospitals in accordance with Sections 14166.75, 14166.14, and 14166.19, as applicable, the stabilization funding.

(d) For purposes of determining amounts paid or payable to hospitals under subdivision (c), the department shall apply the following:

(1) In determining amounts paid or payable to designated public hospitals that are based on allowable costs incurred by the hospital, or the governmental entity with which it is affiliated, the following shall apply:

(A) If the final payment amount is based on the hospital's Medicare cost report, the department shall rely on the cost report filed with the Medicare fiscal intermediary for the project year for which the calculation is made, reduced by a percentage that represents the average percentage change from total reported costs to final costs for the three most recent cost reporting periods for which final determinations have been made, taking into account all administrative and judicial appeals. Protested amounts shall not be considered in determining the average percentage change unless the same or similar costs are included in the project year cost report.

(B) If the final payment amount is based on costs not included in subparagraph (A), the reported costs as of the date the determination is made under subdivision (c), shall be reduced by 10 percent.

(C) In addition to adjustments required in subparagraphs (A) and (B), the department shall adjust amounts paid or payable to designated public hospitals by any applicable deferrals or disallowances identified by the federal Centers for Medicare and Medicaid Services as of the date the determination is made under subdivision (c) not otherwise reflected in subparagraphs (A) and (B).

(2) Amounts paid or payable to project year private DSH hospitals and nondesignated public hospitals shall be determined by the most

recently available Medi-Cal paid claims data increased by a percentage to reflect an estimate of amounts remaining unpaid.

(e) The department shall consult with hospital representatives regarding the appropriate calculation of stabilization funding before stabilization funds are paid to hospitals. No later than 30 days after this consultation, the department shall establish a final determination of stabilization funding that shall not be modified for any reason other than mathematical errors or mathematical omissions on the part of the department.

(f) The department shall distribute 75 percent of the estimated stabilization funding on an interim basis throughout the project year.

14166.21. (a) The Health Care Support Fund is hereby established in the State Treasury. Notwithstanding Section 13340 of the Government Code, the fund shall be continuously appropriated to the department for the purposes specified in this article.

(b) Amounts in the Health Care Support Fund shall be paid in the following order of priority:

(1) To hospitals for services rendered to Medi-Cal beneficiaries and the uninsured in an amount necessary to meet the aggregate baseline funding amount, or the adjusted aggregate baseline funding amount for project years after the 2005-06 project year, as specified in subdivision (d) of Section 14166.5, subdivision (b) of Section 14166.13, and Section 14166.18, taking into account all other payments to each hospital under this article. If the amount in the Health Care Support Fund is inadequate to provide full aggregate baseline funding, or adjusted aggregate baseline funding, to all designated public hospitals, project year private DSH hospitals, and nondesignated public hospitals, each group's payments shall be reduced pro rata.

(2) To the extent necessary to maximize federal funding under the demonstration project and consistent with Section 14166.22, the department may obtain safety net care pool funds based on health care expenditures incurred by the department for uncompensated medical care costs of medical services provided to uninsured individuals, as approved by the federal Centers for Medicare and Medicaid Services.

(3) Stabilization funding, allocated and paid in accordance with Sections 14166.75, 14166.14, and 14166.19.

(4) Any amounts remaining after final reconciliation of all amounts due at the end of a project year shall remain available for payments in accordance with this section in the next project year.

(5) The fund shall include any interest that accrues on amounts in the fund.

14166.22. (a) To the extent required to maximize available federal funds under the demonstration project and to the extent authorized by

the Special Terms and Conditions for the demonstration project, the department may claim federal reimbursement for expenditures, consistent with the equitable distribution established under this article, in the following priority order:

- (1) The medically indigent adults long-term care program.
- (2) The Genetically Handicapped Person's Program established pursuant to Article 1 (commencing with Section 125125) of Chapter 2 of Part 5 of Division 106 of the Health and Safety Code.
- (3) The Breast and Cervical Cancer Treatment Program established pursuant to Article 1.5 (commencing with Section 104160) of Chapter 2 of Part 1 of Division 103 of the Health and Safety Code.
- (4) The California Children's Services Program established pursuant to Article 5 (commencing with Section 123800) of Chapter 3 of Part 2 of Division 106 of the Health and Safety Code.

(b) Notwithstanding any other state law, the federal reimbursement received as a result of a claim made pursuant to subdivision (a) shall be used to create General Fund savings solely for the department for use in support of safety net hospitals under the demonstration project.

(c) The federal reimbursement received as a result of a claim made pursuant to subdivision (a) is hereby appropriated to the department for the program in which the claimed expenditures were made.

(d) An amount of General Fund moneys appropriated to the department for programs specified in subdivision (a) equal to the amount of federal reimbursement identified pursuant to subdivision (c) is hereby reappropriated to the Health Care Deposit Fund to be used for the purposes set forth in this article.

14166.23. (a) For purposes of this section, "distressed hospitals" are hospitals that participate in selective providers contracting under Article 2.6 (commencing with Section 14081) and that meet all of the following requirements, as determined by the California Medical Assistance Commission in its discretion:

(1) The hospital serves a substantial volume of Medi-Cal patients measured either as a percentage of the hospital's overall volume or by the total volume of Medi-Cal services furnished by the hospital.

(2) The hospital is a critical component of the Medi-Cal program's health care delivery system, such that the Medi-Cal health care delivery system would be significantly disrupted if the hospital reduced its Medi-Cal services or no longer participated in the Medi-Cal program.

(3) The hospital is facing a significant financial hardship that may impair its ability to continue its range of services for the Medi-Cal program.

(b) The Distressed Hospital Fund is hereby created in the State Treasury.

(c) Notwithstanding Section 13340 of the Government Code, the fund shall be continuously appropriated to the department for the purposes specified in this section.

(d) Except as otherwise limited by this section, the fund shall consist of all of the following:

(1) The amounts transferred to the fund pursuant to subdivision (e).

(2) Any additional amounts appropriated to the fund by the Legislature.

(3) Any interest that accrues on amounts in the fund.

(e) The following amounts shall be transferred to the fund from the prior supplemental funds at the beginning of each project year.

(1) Twenty percent of the amount in the prior supplemental funds on the effective date of this article, less any and all payments for services rendered prior to July 1, 2005, but paid after July 1, 2005.

(2) Interest that accrued on the prior supplemental funds during the prior project year.

(f) No distributions, payments, transfers, or disbursements shall be made from the prior supplemental funds except as set forth in this section.

(g) Moneys in the fund shall be used as the source for the nonfederal share of payments to hospitals under this section.

(h) Except as otherwise provided in subdivision (j), moneys shall be applied to obtain federal financial participation to the extent available in accordance with customary Medi-Cal accounting procedures for purposes of payments under this section. Distributions from the fund shall be supplemental to any other Medi-Cal reimbursement received by the hospitals, including amounts that hospitals receive under the selective provider contracting program, and shall not affect provider rates paid under the selective provider contracting program.

(i) Subject to subdivision (j), all amounts that are in the fund shall be available for negotiation by the California Medical Assistance Commission, along with corresponding federal financial participation, for additional payments to distressed hospitals. These amounts shall be paid under contracts entered into by the department and negotiated by the California Medical Assistance Commission pursuant to Article 2.6 (commencing with Section 14081), provided that any amounts payable to a designated public hospital shall be paid in the form of a direct grant of state general funds pursuant to a contract negotiated by the California Medical Assistance Commission.

(j) After April 1, 2007, in the event that funding under this article is insufficient to make payments to hospitals under Section 14166.5, 14166.13, or 14166.18, funds under this section shall first be available for use under contracts negotiated by the California Medical Assistance Commission for hospitals contracting under the selective provider

contracting program under Article 2.6 (commencing with Section 14081) that fall below their 2005-06 project year baseline to the extent funds are available.

(k) Any funds remaining in the fund at the end of a fiscal year shall be carried forward for use in the following fiscal year.

14166.24. (a) Any determination of the amount due a designated public hospital that is based in whole or in part on costs reported to or audited by a Medicare fiscal intermediary shall not be deemed final for purposes of this article unless the hospital has received a final determination of Medicare payment for the cost reporting for Medicare purposes. Designated public hospitals shall be entitled to pursue all administrative and judicial review available under the Medicare program and any final determination shall be incorporated into the department's final determination of payment due the hospital under this article.

(b) If as a result of an audit performed by the department or any state or federal agency, the department determines that any hospital participating in the demonstration project has been overpaid under the demonstration project, the department shall recoup the overpayment in accordance with Sections 14172.5 or 14115.5. The hospital may appeal the overpayment determinations and any related audit determination in accordance with the appeal procedures set forth in Sections 51016 to 51047, inclusive, of Title 22 of the California Code of Regulations. The hospital may seek judicial review of the final administrative decision as set forth in Section 14171.

(c) The department shall promptly consult with the affected governmental entity regarding a dispute between a designated public hospital and the department regarding the validity of the hospital's certified public expenditures. If the department determines that the hospital's certification is valid, the department shall submit the claim to obtain federal reimbursement for the certified expenditure in question.

(d) (1) Upon receipt of a notice of disallowance or deferral from the federal government related to the certified public expenditures or intergovernmental transfers of any governmental entity participating in the demonstration project, the department shall promptly notify the affected governmental entity. The governmental entity that certified the public expenditure shall be the entity responsible for the federal portion of that expenditure.

(2) The department and the affected governmental entity shall promptly consult regarding the proposed disallowance or deferral.

(3) After consulting with the governmental entity, the department shall determine whether the disallowance or response to a deferral should be filed with the federal government. If the department determines the appeal or response has merit, the department shall timely appeal. If

necessary, the department may request an extension of the deadline to file an appeal or response to a deferral. The affected governmental entity may provide the department with the legal and factual basis for the appeal or response.

14166.25. Unless this article is repealed pursuant to subdivision (b) or (g) of Section 14166.2, this article shall become inoperative on the date that the director executes a declaration, which shall be retained by the director and provided to the fiscal and appropriate policy committees of the Legislature, stating that the federal demonstration project provided for in this article has been terminated by the federal Centers for Medicare and Medicaid Services, and shall, six months after the date the declaration is executed, be repealed.

SEC. 2. There is hereby appropriated the following amounts to the State Department of Health Services for expenditure for purposes of the Medi-Cal Hospital/Uninsured Care Demonstration Project created pursuant to Article 5.2 (commencing with Section 14166) of Chapter 7 of Part 3 of Division 9 of the Welfare and Institutions Code, to fund State Department of Health Services staff positions to support activities related to ensuring the availability of adequate resources for implementation, monitoring, and continuous operation of the demonstration project, including education, outreach, and enrollment, maintaining eligibility systems, compliance with cost sharing, and reporting on financial and other demonstration project components:

(a) One million seven hundred thousand (\$1,700,000) from the General Fund.

(b) One million seven hundred thousand (\$1,700,000) from the Federal Trust 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 make the necessary statutory changes to implement the Medi-Cal Hospital/Uninsured Care Demonstration Project, to preserve the financial viability of the state's safety net hospitals, as soon as possible, it is necessary that this act take effect immediately.

CHAPTER 561

An act to amend Section 8690.6 of the Government Code, relating to emergencies, and making an appropriation therefor.

[Approved by Governor October 5, 2005. Filed with
Secretary of State October 5, 2005.]

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

SECTION 1. Section 8690.6 of the Government Code is amended to read:

8690.6. (a) The Disaster Response-Emergency Operations Account is hereby established in the Special Fund for Economic Uncertainties. Notwithstanding Section 13340, moneys in the account are continuously appropriated, subject to the limitations specified in subdivisions (c) and (d), without regard to fiscal years, for allocation by the Director of Finance to state agencies for disaster response operation costs incurred by state agencies as a result of a proclamation by the Governor of a state of emergency, as defined in subdivision (b) of Section 8558. These allocations may be for activities that occur within 120 days after a proclamation of emergency by the Governor.

(b) It is the intent of the Legislature that the Disaster Response-Emergency Operations Account have an unencumbered balance of one million dollars (\$1,000,000) at the beginning of each fiscal year. If this account requires additional moneys to meet claims against the account, the Director of Finance may transfer moneys from the Special Fund for Economic Uncertainties to the account in an amount sufficient to pay the amount of the claims that exceed the unencumbered balance in the account.

(c) Funds shall be allocated from the account subject to the conditions of this section and upon notification by the Director of Finance to the chairperson of the Joint Legislative Budget Committee and the chairpersons of the fiscal committees in each house.

(d) Notwithstanding any other provision of law, authorizations for acquisitions, relocations, and environmental mitigations related to activities, as described in subdivision (a), shall be authorized pursuant to this section. However, these funds may only be authorized for needs that are a direct consequence of the proclaimed emergency where failure to undertake the project may interrupt essential state services or jeopardize public health or safety. In addition, any acquisition accomplished under this subdivision shall comply with any otherwise applicable law, except as provided in the first sentence of this subdivision.

(e) No funds allocated under this section shall be used to supplant federal funds otherwise available in the absence of state financial relief.

(f) The amount of financial assistance provided to an individual, business, or governmental entity under this section, or pursuant to any other program of state-funded disaster assistance, shall be deducted from

sums received in payment of damage claims asserted against the state, its agents, or employees, for causing or contributing to the effects of the proclaimed disaster.

(g) No public entity administering disaster assistance to individuals shall receive funds under this section unless it administers that assistance pursuant to the following criteria:

(1) All applications, forms, and other written materials presented to persons seeking assistance shall be available in English and in the same language as that used by the major non-English-speaking group within the disaster area.

(2) Bilingual staff who reflect the demographics of the disaster area shall be available to applicants.

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

CHAPTER 562

An act to amend Section 2827.10 of, and to add Section 747 to, the Public Utilities Code, relating to energy.

[Approved by Governor October 6, 2005. Filed with
Secretary of State October 6, 2005.]

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

SECTION 1. Section 747 is added to the Public Utilities Code, to read:

747. (a) It is the intent of the Legislature that the commission reduce rates for electricity and natural gas to the lowest amount possible.

(b) The president of the commission shall annually appear before the appropriate policy committees of the Senate and Assembly to report on the costs of programs and activities conducted by each electrical corporation and gas corporation that is subject to this section, including activities conducted to comply with their duty to serve. The report shall identify, clearly and concisely, all of the following:

(1) Each program mandated by statute and its annual cost to ratepayers.

(2) Each program mandated by the commission and its annual cost to ratepayers.

(3) Energy purchase contract costs and bond-related costs incurred pursuant to Division 27 (commencing with Section 80000) of the Water Code.

(4) All other aggregated categories of costs currently recovered in retail rates as determined by the commission.

(c) As used in this section, the reporting requirements apply to electrical corporations with at least 1,000,000 retail customers in California and gas corporations with at least 500,000 retail customers in California.

SEC. 2. Section 2827.10 of the Public Utilities Code, as added by Section 2 of Chapter 661 of the Statutes of 2003, is amended to read:

2827.10. (a) As used in this section, the following terms have the following meanings:

(1) "Electrical corporation" means an electrical corporation, as defined in Section 218.

(2) "Eligible fuel cell electrical generating facility" means a facility that includes the following:

(A) Integrated powerplant systems containing a stack, tubular array, or other functionally similar configuration used to electrochemically convert fuel to electric energy.

(B) An inverter and fuel processing system where necessary.

(C) Other plant equipment, including heat recovery equipment, necessary to support the plant's operation or its energy conversion.

(3) "Eligible fuel cell customer-generator" means a customer of an electrical corporation that meets all the following criteria:

(A) Uses a fuel cell electrical generating facility with a capacity of not more than one megawatt that is located on or adjacent to the customer's owned, leased, or rented premises, is interconnected and operates in parallel with the electric grid while the grid is operational or in a grid independent mode when the grid is nonoperational, and is sized to offset part or all of the eligible fuel cell customer-generator's own electrical requirements.

(B) Is the recipient of local, state, or federal funds, or who self-finances projects designed to encourage the development of eligible fuel cell electrical generating facilities.

(C) Uses technology that meets the definition of an "ultra-clean and low-emission distributed generation" in subdivision (a) of Section 353.2.

(4) "Net energy metering" has the same meaning as that term is defined in Section 2827.9.

(b) Every electrical corporation shall, not later than March 1, 2004, file with the commission a standard tariff providing for net energy metering for eligible fuel cell customer-generators, consistent with this section. Every electrical corporation shall make this tariff available to

eligible fuel cell customer-generators upon request, on a first-come-first-served basis, until the total cumulative rated generating capacity used by the eligible fuel cell customer-generators equals 45 megawatts within the service territory of the electrical corporation for an electrical corporation with a peak demand above 10,000 megawatts, or equals 22.5 megawatts within the service territory of the electrical corporation for an electrical corporation with a peak demand of 10,000 megawatts or below. The combined statewide cumulative rated generating capacity used by the eligible fuel cell customer-generators in the service territories of all electrical corporations in the state may not exceed 112.5 megawatts.

(c) In determining the eligibility for the cumulative rated generating capacity within an electrical service area, preference shall be given to facilities which, at the time of installation, are located in a community with significant exposure to air contaminants or localized air contaminants, or both, including, but not limited to, communities of minority populations or low-income populations, or both, based on the ambient air quality standards established pursuant to Section 39607 of the Health and Safety Code.

(d) Each net energy metering contract or tariff shall be identical, with respect to rate structure, all retail rate components, and any monthly charges, to the contract or tariff to which the customer would be assigned if the customer was not an eligible fuel cell customer-generator. Any new or additional demand charge, standby charge, customer charge, minimum monthly charge, interconnection charge, or other charge that would increase an eligible fuel cell customer-generator's costs beyond those of other customers in the rate class to which the eligible fuel cell customer-generator would otherwise be assigned are contrary to the intent of the Legislature in enacting the act adding this section, and may not form a part of net energy metering tariffs.

(e) The net metering calculation shall be carried out in accordance with Section 2827.9.

(f) A fuel cell electrical generating facility shall not be eligible for participation in the tariff established pursuant to this section unless it commenced operation before January 1, 2010. A fuel cell customer-generator shall be eligible for the tariff established pursuant to this section only for the operating life of the eligible fuel cell electrical generating facility.

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 563

An act to add Section 1122.5 to the Fish and Game Code, relating to fish and game.

[Approved by Governor October 6, 2005. Filed with
Secretary of State October 6, 2005.]

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

SECTION 1. The Legislature finds and declares that the leasing of a portion of the Mount Whitney Fish Hatchery will serve a statewide public purpose by keeping the hatchery open and running.

SEC. 2. Section 1122.5 is added to the Fish and Game Code, to read:

1122.5. Notwithstanding any other provision of law, the Director of General Services, with the consent of the department, may lease to the Friends of the Mount Whitney Hatchery, at no cost, and subject to any other terms and conditions that the director deems appropriate, for a term not to exceed 25 years, and with the possibility of renewal, the Mount Whitney Fish Hatchery facilities, or any portion thereof, situated in the County of Inyo. The leased portion of the building shall be used for environmental education purposes and other related activities designed to benefit the hatchery and the community. The lease shall require the Friends of the Mount Whitney Fish Hatchery to permit reasonable public access to the facility, to obtain and maintain liability insurance for the leased portion of the facility, and to maintain the leased portion of the facility at all times. The lease shall provide that any work done on the facility shall be performed in consultation with the State Office of Historic Preservation. The lease shall also provide that the state, agents of the state, the department, and agents of the department shall be held harmless from, and indemnified against, any liability resulting from the acts or omissions of the Friends of the Mount Whitney Fish Hatchery performed in the course of the lease agreement.

CHAPTER 564

An act to amend Sections 25828 and 25831 of, and to add Section 25832 to, the Government Code, relating to solid waste.

[Approved by Governor October 6, 2005. Filed with
Secretary of State October 6, 2005.]

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

SECTION 1. Section 25828 of the Government Code is amended to read:

25828. If services are provided, or arranged for, by a county pursuant to Section 25827, or pursuant to Section 40059 of the Public Resources Code, and the service is compulsory or provided at the request of the property owner, the cost of service that remains unpaid for a period of 60 or more days after the close of the period for which it was billed may be collected by the county as provided in this section.

(a) At least once a year, the board of supervisors shall cause to be prepared a report of delinquent charges. Upon receipt of the report, the board shall fix a time, date, and place for hearing the report and any protests or objections to the report.

(b) The board shall cause notice of the hearing to be mailed to the owners of property listed on the report not less than 10 days prior to the date of the hearing.

(c) At the hearing, the board shall hear any objections or protests of property owners liable to be assessed for delinquent charges. The board may make revisions or corrections to the report as it deems just, after which, by resolution, the report shall be confirmed.

(d) The delinquent charges set forth in the report as confirmed shall constitute special assessments against the respective parcels of land and are a lien on the property for the amount of the delinquent charges. A certified copy of the confirmed report shall be filed with the county auditor, on or before August 10, for the amounts of the respective assessments against the respective parcels of land as they appear on the current assessment roll. The lien created attaches upon recordation in the office of the county recorder of the county in which the property is situated of a certified copy of the resolution of confirmation. The assessment may be collected at the same time and in the same manner as ordinary county ad valorem taxes are collected and shall be subject to the same penalties and the same procedure and sale in case of delinquency as provided for those taxes. All laws applicable to the levy, collection, and enforcement of county ad valorem taxes shall be

applicable to the assessment, except that if any real property to which the lien would attach has been transferred or conveyed to a bona fide purchaser for value, or if a lien of a bona fide encumbrancer for value has been created and attaches thereon, prior to the date on which the first installment of the taxes would become delinquent, then the lien that would otherwise be imposed by this section shall not attach to the real property and the delinquent charges, as confirmed, relating to the property shall be transferred to the unsecured roll for collection.

SEC. 2. Section 25831 of the Government Code is amended to read:

25831. Any fees authorized pursuant to Section 25830, or pursuant to Section 40059 of the Public Resources Code, that remain unpaid for a period of 60 or more days after the date upon which they were billed may be collected thereafter by the county as provided in this section.

(a) At least once a year, the board of supervisors shall cause to be prepared a report of delinquent fees. The board shall fix a time, date, and place for hearing the report and any objections or protests to the report.

(b) The board shall cause notice of the hearing to be mailed to the landowners listed on the report not less than 10 days prior to the date of the hearing.

(c) At the hearing, the board shall hear any objections or protests of landowners liable to be assessed for delinquent fees. The board may make revisions or corrections to the report as it deems just, after which, by resolution, the report shall be confirmed.

(d) The delinquent fees set forth in the report as confirmed, or the list prepared pursuant to subdivision (e), shall constitute special assessments against the respective parcels of land and are a lien on the property for the amount of the delinquent fees. A certified copy of the confirmed report, or the list prepared pursuant to subdivision (e), shall be filed with the county auditor for the amounts of the respective assessments against the respective parcels of land as they appear on the current assessment roll. The lien created attaches upon recordation, in the office of the county recorder of the county in which the property is situated, of a certified copy of the resolution of confirmation or the list prepared pursuant to subdivision (e). The assessment may be collected at the same time and in the same manner as ordinary county ad valorem property taxes are collected and shall be subject to the same penalties and the same procedure and sale in case of delinquency as provided for those taxes. All laws applicable to the levy, collection, and enforcement of county ad valorem property taxes shall be applicable to the assessment, except that if any real property to which the lien would attach has been transferred or conveyed to a bona fide purchaser for value, or if a lien of a bona fide encumbrancer for value has been created and attaches

thereon, prior to the date on which the first installment of the taxes would become delinquent, then the lien that would otherwise be imposed by this section shall not attach to the real property and the delinquent fees, as confirmed, relating to the property shall be transferred to the unsecured roll for collection.

(e) The requirements of subdivisions (a), (b), and (c) may be waived only if the county has adopted an alternative administrative procedure that allows property owners to appeal the solid waste fee and property owners are notified of their right to appeal. A list of delinquent fees shall be prepared showing the assessments of each respective parcel and shall be filed with the auditor.

SEC. 3. Section 25832 is added to the Government Code, to read:

25832. Notwithstanding any other provision of law, solid waste handling service provided by, or arranged for provision by, a county under Section 25827 or 25830, or under Section 40059 of the Public Resources Code, is not a public utility within the meaning of Section 10001 of the Public Utilities Code.

CHAPTER 565

An act to amend Section 44062.1 of the Health and Safety Code, relating to air pollution.

[Approved by Governor October 6, 2005. Filed with
Secretary of State October 6, 2005.]

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

SECTION 1. Section 44062.1 of the Health and Safety Code is amended to read:

44062.1. (a) The department shall offer a repair assistance program through entities authorized to perform referee functions.

(b) (1) The repair assistance program shall be available to the following eligible individuals:

(A) An individual who has a maximum income level of 200 percent of the federal poverty level, as published quarterly in the Federal Register by the Department of Health and Human Services, and who is either or both of the following:

(i) The owner of a motor vehicle that has failed a smog check inspection.

(ii) The owner of a motor vehicle who was issued a notice to correct for an alleged violation of Section 27153 or 27153.5 of the Vehicle Code

involving that vehicle, if the vehicle subject to that notice has failed a smog check inspection subsequent to receiving the notice.

On and after January 1, 2009, the maximum income level prescribed for this subparagraph shall be set at 185 percent of the federal poverty level, as published quarterly in the Federal Register by the United States Department of Health and Human Services.

(B) An individual who is the owner of a motor vehicle that has failed a smog check inspection and is directed to a test-only facility pursuant to Section 44010.5 or 44014.7. If the department determines that applications for repair assistance exceed the amount of funds available, to the maximum extent possible, applications from low-income motor vehicle owners shall be given priority over other applications.

(2) The department shall offer repair cost assistance, funded by the High Polluter Repair or Removal Account in the Vehicle Inspection and Repair Fund created pursuant to subdivision (a) of Section 44091, to individuals based on the cost-effectiveness and air quality benefit of the needed repair. Repair assistance may include retesting costs and the costs of repairs to remedy the violation of Section 27153 or 27153.5 of the Vehicle Code.

(3) An applicant for repair assistance shall file an application on a form prescribed by the department and shall certify under penalty of perjury that the applicant meets the applicable eligibility standards.

(4) Verification of income eligibility shall be based on at least one form of documentation, as determined by the department, including, but not limited to, (A) an income tax return, (B) an employment warrant, or (C) a form of public assistance verification.

(c) The repair assistance program shall be funded by the High Polluter Repair or Removal Account.

(d) Repairs to motor vehicles that fail smog check inspections and are subsidized by the state through the program shall be performed at a repair station licensed and certified pursuant to Sections 44014 and 44014.2. Repair shall be based upon a preapproved list of repairs for cost-effective emission reductions or repairs to remedy a violation of Section 27153 or 27153.5 of the Vehicle Code.

(e) The qualified low-income motor vehicle owner receiving repair assistance pursuant to this section shall contribute a copayment, as determined by the department as specified in Section 44017.1, either in cash, or in emissions-related partial repairs as verified by a test-only station pursuant to paragraph (2) of subdivision (c) of Section 44015, or a combination thereof. For an owner of a motor vehicle described in subparagraph (B) of paragraph (1) of subdivision (b), the department shall impose a copayment at least equivalent to the amount imposed on a low-income individual receiving assistance under this section. If the

repair cost exceeds the applicable repair cost limit, the department shall inform a motor vehicle owner of all options for compliance at the time of testing and repair.

(f) The department may increase its contribution toward the repair of a motor vehicle under this program in excess of the amount authorized for the repair of a high-polluter pursuant to paragraph (1) of subdivision (b) of Section 44094, if the department determines that the expenditure is cost-effective.

(g) Notwithstanding subparagraph (A) of subdivision (b), the department may increase the maximum income level of a low-income motor vehicle owner under this program from the amount specified in this section, not to exceed 225 percent of the federal poverty level, if the department determines that the increase is capable of being supported within existing budget allocations.

(h) The department shall collect data from the program to provide information on how to improve the program. Data collection shall include all of the following:

(1) The number of motor vehicle owners that are eligible for repair assistance.

(2) The number of eligible motor vehicle owners that use repair assistance funds.

(3) The potential for fraud.

(4) The average repair bills.

(5) The types of repairs being done.

(6) The amount of partial repairs done prior to receipt of repair assistance.

(7) The emissions benefits of providing repair assistance.

(i) The department shall collect data and develop information and shall report to the Legislature on or before April 1, 1999, on eligibility criteria, program participation, the cost of vehicle repairs, and the funding resources needed to implement the program.

(j) For purposes of this section, "low-income motor vehicle owner" means a person whose income does not exceed 200 percent of the federal poverty level.

CHAPTER 566

An act to add Section 17610.1 to the Education Code, relating to schoolsites.

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

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

(a) The maintenance of a safe, clean, healthy environment for pupils is essential to learning and is a goal of the state.

(b) The use of toxic chemicals to control pests and weeds may itself threaten pupil health and ability.

(c) The National Education Association and numerous other national and local public interest organizations support the reduction or elimination of pesticide use in schools.

(d) Pesticides contain toxic substances, many of which have a detrimental effect on human health and the environment and, in particular, have a developmental effect on children. Children are more susceptible to hazardous impacts from pesticides than are adults.

(e) Information regarding the utilization of pesticides in schools that have a conditional registration or an experimental use permit is not maintained in a manner that is useful to the public, making it difficult to assess and address the potential health and environmental impact of their use in schools.

(f) Historically, pesticide products that have conditional registration or experimental use permits are sold and used for years without completing outstanding data requirements. This significant flaw can allow for chemicals with incomplete databases to be used in schools, increasing undue exposure potential to pupils.

(g) Schools regularly endeavor to control and eliminate recognized and suspected hazards, including nonagricultural pesticides, as an integral part of school safety programs in order to protect the health and well-being of pupils and school staff.

SEC. 2. Section 17610.1 is added to the Education Code, to read:

17610.1. (a) (1) The use of a pesticide on a schoolsite is prohibited if that pesticide is granted a conditional registration, an interim registration, or an experimental use permit by the Department of Pesticide Regulation, or if the pesticide is subject to an experimental registration issued by the United States Environmental Protection Agency, and either of the following is applicable:

(A) The pesticide contains a new active ingredient.

(B) The pesticide is for a new use. This paragraph does not apply to a conditionally registered pesticide that is approved for other uses that has fulfilled all registration requirements that relate to human health, including, but not limited to, the completion of mandatory health effect studies pursuant to the Birth Defect Prevention Act of 1984 (Art. 14 (commencing with Sec. 13121), Ch. 2, Div. 7, F.& A.C.). The

requirements of this section are not intended to impose any new labeling requirements.

(2) The use of a pesticide on a schoolsite is prohibited if the Department of Pesticide Regulation cancels or suspends registration, or requires phase out of use, of that pesticide.

(b) Vendors or manufacturers of pesticides that are prohibited for use on a schoolsite pursuant to subdivision (a) are prohibited from furnishing those pesticides to school districts either by sale or by gift.

(c) This section does not apply to public health pesticides or antimicrobial pesticides registered pursuant to Section 12836 of the Food and Agricultural Code.

CHAPTER 567

An act to amend Section 12997.5 of, and to add and repeal Section 79452.3 of, the Water Code, relating to natural resources, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 6, 2005. Filed with
Secretary of State October 6, 2005.]

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

SECTION 1. Section 12997.5 of the Water Code is amended to read:
12997.5. This part shall be carried out only to the extent funding is made available from the federal government or private sources to carry out this part. The state may expend funds to carry out this part if the state funds are used to provide a matching cost share, as required by the federal government for the use of federal funds.

SEC. 2. Section 79452.3 is added to the Water Code, to read:

79452.3. (a) Notwithstanding any other provision of law, the lead scientist of the California Bay-Delta Authority, as appointed pursuant to Section 79452 of the Water Code, may, in collaboration with the Director of Fish and Game, directly or indirectly enter into contracts with scientific experts for the purpose of conducting studies of delta fisheries. A contract entered into pursuant to this section shall terminate no later than January 1, 2008, and shall be exempt from Part 2 (commencing with Section 10100) of Division 2 of the Public Contract Code, Section 19130 of the Government Code, and any rules or regulations adopted pursuant to any of those provisions.

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

SEC. 3. The sum of two million six hundred thirty-seven thousand dollars (\$2,637,000) is hereby appropriated from the General Fund to the Department of Fish and Game for the Biodiversity Conservation Program to continue the development of a comprehensive conservation plan for the development of the University of California, Merced project in eastern Merced County.

SEC. 4. Contingent upon the receipt of one hundred fifty thousand dollars (\$150,000) by the Department of Fish and Game from the San Francisco Public Utilities Commission, that same sum is hereby appropriated from the funds reimbursed in Schedule (9) of Item 3600-001-0001 of Section 2.00 of the Budget Act of 2005 to the Department of Fish and Game for use during the 2005-06 fiscal year for associated wages, benefits, operating expenses, equipment, and department overhead associated with a full-time person-year, or equivalent, of an environmental scientist, dedicated to the planning, review, and permitting of projects related to the San Francisco Public Utilities Commission Water System Improvement Program.

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

In order to make urgently needed funds available to the Department of Fish and Game for conservation in eastern Merced County and for the support of the San Francisco Public Utilities Commission Water System Improvement Program, and to authorize the lead scientist of the California Bay-Delta Authority, in collaboration with the Director of Fish and Game, to contract for vital studies of delta fisheries, as soon as possible, it is necessary for this act to take effect immediately.

CHAPTER 568

An act to amend Section 44241 of the Health and Safety Code, relating to air resources.

[Approved by Governor October 6, 2005. Filed with
Secretary of State October 6, 2005.]

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

SECTION 1. Section 44241 of the Health and Safety Code is amended to read:

44241. (a) Fee revenues generated under this chapter in the bay district shall be subvended to the bay district by the Department of Motor Vehicles after deducting its administrative costs pursuant to Section 44229.

(b) Fee revenues generated under this chapter shall be allocated by the bay district to implement the following mobile source and transportation control projects and programs that are included in the plan adopted pursuant to Sections 40233, 40717, and 40919:

- (1) The implementation of ridesharing programs.
- (2) The purchase or lease of clean fuel buses for school districts and transit operators.
- (3) The provision of local feeder bus or shuttle service to rail and ferry stations and to airports.
- (4) Implementation and maintenance of local arterial traffic management, including, but not limited to, signal timing, transit signal preemption, bus stop relocation and "smart streets."
- (5) Implementation of rail-bus integration and regional transit information systems.
- (6) Implementation of demonstration projects in telecommuting and in congestion pricing of highways, bridges, and public transit. No funds expended pursuant to this paragraph for telecommuting projects shall be used for the purchase of personal computing equipment for an individual's home use.
- (7) Implementation of vehicle-based projects to reduce mobile source emissions, including, but not limited to, engine repowers, engine retrofits, fleet modernization, alternative fuels, and advanced technology demonstrations.
- (8) Implementation of a smoking vehicles program.
- (9) Implementation of an automobile buy-back scrappage program operated by a governmental agency.
- (10) Implementation of bicycle facility improvement projects that are included in an adopted countywide bicycle plan or congestion management program.
- (11) The design and construction by local public agencies of physical improvements that support development projects that achieve motor vehicle emission reductions. The projects and the physical improvements shall be identified in an approved area-specific plan, redevelopment plan, general plan, or other similar plan.

(c) (1) Fee revenue generated under this chapter shall be allocated by the bay district for projects and programs specified in subdivision (b) to cities, counties, the Metropolitan Transportation Commission, transit districts, or any other public agency responsible for implementing one or more of the specified projects or programs. Fee revenue generated under this chapter may also be allocated by the bay district for projects and programs specified in paragraph (7) of subdivision (b) to entities that include, but are not limited to, public agencies, consistent with applicable policies adopted by the governing board of the bay district. Those policies shall include, but are not limited to, requirements for cost-sharing for projects subject to the policies. Fee revenues shall not be used for any planning activities that are not directly related to the implementation of a specific project or program.

(2) The bay district shall adopt cost-effectiveness criteria for fee revenue generated under this chapter that projects and programs are required to meet. The cost-effectiveness criteria shall maximize emissions reductions and public health benefits.

(d) Not less than 40 percent of fee revenues shall be allocated to the entity or entities designated pursuant to subdivision (e) for projects and programs in each county within the bay district based upon the county's proportionate share of fee-paid vehicle registration.

(e) In each county, one or more entities may be designated as the overall program manager for the county by resolutions adopted by the county board of supervisors and the city councils of a majority of the cities representing a majority of the population in the incorporated area of the county. The resolution shall specify the terms and conditions for the expenditure of funds. The entities so designated shall be allocated the funds pursuant to subdivision (d) in accordance with the terms and conditions of the resolution.

(f) Any county, or entity designated pursuant to subdivision (e), that receives funds pursuant to this section, at least once a year, shall hold one or more public meetings for the purpose of adopting criteria for expenditure of the funds and to review the expenditure of revenues received pursuant to this section by any designated entity. If any county or entity designated pursuant to subdivision (e) that receives funds pursuant to this section has not allocated all of those funds within six months of the date of the formal approval of its expenditure plan by the bay district, the bay district shall allocate the unallocated funds in accordance with subdivision (c).

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district are the result of a program for which legislative authority was requested by that local

agency or school district, within the meaning of Section 17556 of the Government Code and Section 6 of Article XIII B of the California Constitution.

CHAPTER 569

An act to add Section 40607 to the Health and Safety Code, relating to air quality.

[Approved by Governor October 6, 2005. Filed with
Secretary of State October 6, 2005.]

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

SECTION 1. Section 40607 is added to the Health and Safety Code, to read:

40607. The district shall install one or more monitors for monitoring airborne fine particles smaller than 2.5 microns in diameter (PM 2.5) in primarily low-income and underserved areas in the western region of the County of Fresno.

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 unique air quality issues faced by the County of Fresno.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act, within the meaning of Section 17556 of the Government Code.

CHAPTER 570

An act to add Chapter 6.9.1 (commencing with Section 25400.10) to Division 20 of the Health and Safety Code, relating to contaminated property.

[Approved by Governor October 6, 2005. Filed with
Secretary of State October 6, 2005.]

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

SECTION 1. Chapter 6.9.1 (commencing with Section 25400.10) is added to Division 20 of the Health and Safety Code, to read:

CHAPTER 6.9.1. METHAMPHETAMINE CONTAMINATED PROPERTY
CLEANUP ACT OF 2005

Article 1. Findings and Definitions

25400.10. (a) The Legislature finds and declares all of the following:

(1) Methamphetamine use and production are growing throughout the state. Properties may be contaminated by hazardous chemicals used or produced in the manufacture of methamphetamine where those chemicals remain and where the contamination has not been remediated.

(2) Initial cleanup actions may be limited to the removal of bulk hazardous materials and associated glassware that pose an immediate threat to public health and the environment. Where methamphetamine production has occurred, significant levels of contamination may be found throughout residential properties if the contamination is not remediated.

(3) Once methamphetamine laboratories have been closed, the public may be harmed by the materials and residues that remain.

(4) There is no statewide standardization of standards for determining when a site of a closed methamphetamine laboratory has been successfully remediated.

(b) This chapter shall be known, and may be cited as, the “Methamphetamine Contaminated Property Cleanup Act of 2005.”

25400.11. For purposes of this chapter, the following definitions shall apply:

(a) “Authorized contractor” means a person who has been trained or received other qualifications pursuant to Section 25400.40.

(b) “Contaminated” or “contamination” means property polluted by a hazardous chemical related to methamphetamine laboratory activities.

(c) “Controlled substance” has the same meaning as defined in Section 11007.

(d) “Decontamination” means the process of reducing the level of a known contaminant to a level that is deemed safe for human reoccupancy, as established pursuant to Section 25400.16 using currently available methods and processes.

(e) “Department” means the Department of Toxic Substances Control.

(f) “Designated local agency” means a city, county, or city and county agency designated by the local health officer to carry out all, or any

portion of, responsibilities assigned to the local health officer as specified by this chapter. The local health officer may authorize any of the following to serve as a designated local agency:

(1) The Certified Unified Program Agency or CUPA as certified pursuant to Chapter 6.11 (commencing with Section 25404), except in a jurisdiction where the state is acting as the CUPA pursuant to subdivision (f) of Section 25404.3.

(2) The fire department or environmental health department.

(3) The local agency responsible for enforcement of the State Housing Law (Part 1.5 (commencing with Section 17910) of Division 13).

(g) "Disposal of contaminated property" means the disposal of property that is a hazardous waste in accordance with Chapter 6.5 (commencing with Section 25100).

(h) "Hazardous chemical" means a chemical that is determined by the local health officer to be toxic, carcinogenic, explosive, corrosive, or flammable that was used in the manufacture or storage of methamphetamine that is prohibited by Section 11383.

(i) "Illegal methamphetamine manufacturing or storage site" or "site" means property where a person manufactures methamphetamine or stores methamphetamine or a hazardous chemical used in connection with the manufacturing or storage and in violation of Section 11383.

(j) "Local health officer" means a county health officer, a city health officer, or an authorized representative of that local health officer.

(k) "Methamphetamine laboratory activity" means the illegal manufacturing or storage of methamphetamine.

(l) "Office" means the Office of Environmental Health Hazard Assessment.

(m) "Posting" means attaching a written or printed announcement conspicuously on property that is determined to be contaminated by a methamphetamine laboratory activity or the storage of methamphetamine or a hazardous chemical.

(n) "Preliminary site assessment work plan" or "PSA work plan" means a plan to conduct activities to determine the extent and level of contamination of an illegal methamphetamine manufacturing or storage site and that is prepared in accordance with the requirements of Section 25400.36.

(o) "Preliminary site assessment" or "PSA" means the activities taken to determine the extent and level of contamination of an illegal methamphetamine manufacturing or storage site that are conducted in accordance with an approved PSA work plan.

(p) "Preliminary site assessment report" or "PSA report" means a determination that the levels of contamination at an illegal methamphetamine manufacturing or storage site require remediation,

including a recommendation for the remedial actions required for the site to meet human occupancy standards, and that is prepared in accordance with Section 25400.37.

(q) (1) “Property” means any parcel of land, structure, or part of a structure where the manufacture of methamphetamine or storage of methamphetamine or a hazardous chemical that is prohibited by Section 11383, occurred, including, manufactured housing and mobilehomes.

(2) Notwithstanding paragraph (1), “property” does not include any of the following:

(A) A mobilehome park or manufactured housing park, as defined, respectively, in Section 798.4 or 798.6 of the Civil Code.

(B) A manufactured housing community, as defined in Section 18801.

(C) A mobilehome park or park, as defined, respectively, in Section 18214 or 18214.5.

(D) A mobilehome or manufactured housing located in a mobilehome park, manufactured housing park, or manufactured housing community, or park, as defined in this paragraph.

(3) Paragraph (2) shall become inoperative on January 1, 2008, unless a later enacted statute that is enacted before January 1, 2008, deletes or extends that date.

(r) (1) “Property owner” means a person owning property by reason of obtaining it by purchase, exchange, gift, lease, inheritance, or legal action.

(2) Notwithstanding paragraph (1), “property owner” does not include any of the following:

(A) The manager or owner of a mobilehome park, manufactured housing park, manufactured housing community, or park, as defined in paragraph (2) of subdivision (q).

(B) An agent or representative authorized to act on behalf of a manager or owner specified in subparagraph (A).

(C) A person who owns a mobilehome located in a mobilehome park, manufactured housing park, manufactured housing community, or park.

(3) Paragraph (2) shall become inoperative on January 1, 2008, unless a later enacted statute that is enacted before January 1, 2008, deletes or extends that date.

(s) “Storage site” means any property used for the storage of a hazardous chemical or methamphetamine that is prohibited by Section 11383.

(t) “Warning” means a sign posted by the local health officer conspicuously on property where methamphetamine was manufactured or stored, informing occupants that hazardous chemicals exist on the premises and that entry is unsafe.

25400.12. Any term not defined expressly by this article shall have the same meaning as defined in Chapter 6.8 (commencing with Section 25300).

Article 2. Establishment of Remediation and Reoccupancy Standards

25400.16. (a) Except as provided in subdivision (c), property contaminated by methamphetamine laboratory activity is safe for human occupancy for purposes of this chapter only if the level of methamphetamine on any indoor surface is less than, or equal to, 0.1 micrograms per 100 square centimeters.

(b) Except as provided in subdivision (c), if property is contaminated by methamphetamine laboratory activity that included the use of lead or mercury compounds, in addition to the requirements of subdivision (a), property is safe for human occupancy for purposes of this chapter only if both of the following standards are met with regard to that property:

(1) The total level of lead is less than, or equal to, 20 micrograms per square foot.

(2) The level of mercury is less than, or equal to, 50 nanograms per cubic meter in air.

(c) Subdivisions (a) and (b) shall become inoperative on the effective date that the department, in consultation with the office, adopts a health-based target remediation standard for methamphetamine to determine when a property contaminated by methamphetamine laboratory activity only is safe for human occupancy, in which case any reference in this chapter to a human-occupancy standard specified in this section shall mean only the health-based target remediation standard for methamphetamine adopted by the department.

(d) The department shall conduct two public workshops, one in northern California and one in southern California, for the purpose of discussing with affected stakeholders the actions needed to further implement the goals of this chapter. The department may include, as topics for discussion, possible funding sources for local governments for the purposes of implementing this chapter, whether this chapter should be revised to address the contamination of properties by the illegal manufacturing of other controlled substances, and the results of the Illegal Drug Lab Risk Reduction Project conducted by the California Environmental Protection Agency pursuant to its adopted environmental justice action plan.

Article 3. Local Health Officer Responsibilities

25400.17. (a) Notwithstanding any other provision of law, a city, county, or city and county shall comply with the uniform regulations and standards established pursuant to this chapter.

(b) A local health officer may delegate all or part of the duties specified in this chapter to a designated local agency.

(c) If a methamphetamine laboratory activity has taken place at a property, the local health officer shall assume that the methamphetamine manufacturing process has led to some degree of chemical contamination and shall take action pursuant to this chapter.

25400.18. Within 48 hours after receiving notification from a law enforcement agency of potential contamination of property by a methamphetamine laboratory activity, the local health officer shall post a written notice in a prominent location on the premises of the property. At a minimum, the notice shall include all of the following information:

(a) The word “WARNING” in large bold type at the top and bottom of the notice.

(b) A statement that a methamphetamine laboratory was seized on or inside the property.

(c) The date of the seizure.

(d) The address or location of the property including the identification of any dwelling unit, room number, apartment number, or mobilehome or manufactured home identification number.

(e) The name and contact telephone number of the agency posting the property.

(f) A statement specifying that hazardous substances, toxic chemicals, or other hazardous waste products may have been present and may remain on or inside the property.

(g) A statement that it is unlawful for an unauthorized person to enter the contaminated portion of the property until advised that it is safe to do so by the local health officer or designated local agency.

(h) A statement that a person disturbing or destroying the posted notice is subject to a civil penalty in an amount of up to five thousand dollars (\$5,000).

(i) A statement that a person violating the posted notice is subject to a civil penalty in an amount of up to five thousand dollars (\$5,000).

25400.19. Within five working days after receiving a notification from a law enforcement agency of known or suspected contamination of a property by a methamphetamine laboratory activity, or upon notification from the property owner, the local health officer shall inspect the property pursuant to this section.

(a) The property inspection shall include, but not be limited to, obtaining evidence of hazardous chemical use or storage and documentation of evidence of any chemical stains, cooking activity and release or spillage of hazardous chemicals used to manufacture methamphetamine.

(b) In conducting an inspection pursuant to this section, the local health officer may request copies of any law enforcement reports, forensic chemist reports, and any hazardous waste manifests, to evaluate all of the following:

(1) The length of time the property was used as an illegal methamphetamine manufacturing or storage site.

(2) The extent of the property actually used and contaminated in the manufacture of methamphetamine or the storage of methamphetamine or a hazardous chemical.

(3) The chemical process that was involved in the illegal methamphetamine manufacturing.

(4) The chemicals that were removed from the scene.

(5) The location of the illegal methamphetamine manufacturing or storage site in relation to the habitable areas of the property.

25400.20. (a) Upon completing an inspection pursuant to Section 25400.19, the local health officer shall immediately determine whether the property is contaminated.

(b) If the local health officer determines the property is contaminated, the local health officer shall take the actions specified in Section 25400.22.

(c) If the local health officer determines that the property is not contaminated, within three working days after making that determination, the local health officer shall remove all notices posted pursuant to Section 25400.18 and prepare a written documentation of this determination, which shall include all of the following:

(1) Findings and conclusions.

(2) Name of the property owner, and, if applicable, mailing and street address of the property, or vehicle identification number, if applicable.

(3) Parcel identification number, if applicable.

(d) Within 10 working days after preparing a written documentation of the determination made pursuant to subdivision (c) that the property is not contaminated, the local health officer shall send a copy of the documentation to the property owner, and to the local agency responsible for enforcement of the State Housing Law (Part 1.5 (commencing with Section 17910) of Division 13).

25400.22. (a) No later than 10 working days after the date when a local health officer determines that property is contaminated pursuant

to subdivision (b) of Section 25400.20, the local health officer shall do both of the following:

(1) If the property is real property, record with the county recorder a lien on the property. The lien shall specify all of the following:

- (A) The name of the agency on whose behalf the lien is imposed.
- (B) The date on which the property is determined to be contaminated.
- (C) The legal description and the assessor's parcel number.
- (D) The record owner of the property.

(E) The amount of the lien, which shall be the greater of two hundred dollars (\$200) or the costs incurred by the local health officer in compliance with this chapter, including, but not limited to, the cost of inspection performed pursuant to Section 25400.20 and the county recorder's fee.

(2) Issue to persons specified in subdivisions (d), (e), and (f) an order prohibiting the use or occupancy of the property.

(b) The county recorder's fees for recording and indexing documents provided for in this subdivision shall be in the amount specified in Article 5 (commencing with Section 27360) of Chapter 6 of Part 3 of Title 3 of the Government Code.

(c) The lien recorded pursuant to subdivision (a) shall have the force, effect, and priority of a judgment lien. The local health officer shall not release the lien until either of the following occurs:

(1) The property owner satisfies the lien and the local health officer issues a release pursuant to Section 25400.27.

(2) The lien is otherwise released under applicable law.

(d) Except as otherwise specified in this section, an order issued pursuant to this section shall be served, either personally or by certified mail, return receipt requested, to all known occupants of the property and to all persons who have an interest in the property, as contained in the records of the recorder's office of the county in which the property is located.

(e) If the whereabouts of the person described in subdivision (d) are unknown and cannot be ascertained by the local health officer, in the exercise of reasonable diligence, and the local health officer makes an affidavit to that effect, the local health officer shall serve the order by personal service or by mailing a copy of the order by certified mail, postage prepaid, return receipt requested, as follows:

(1) The order shall be served to each person at the address appearing on the last equalized tax assessment roll of the county where the property is located, and to all occupants of the affected unit.

(2) The order shall be served at the address contained in the record of the county recorder.

(f) The local health officer shall also mail a copy of the order required by this section to the address of each person or party having a recorded right, title, estate, lien, or interest in the property and to the association of a common interest development, as defined in Section 1351 of the Civil Code.

(g) The order issued pursuant to this section shall include all of the following information:

- (1) A description of the property.
- (2) The parcel identification number, if applicable.
- (3) The vehicle identification number, if applicable.
- (4) A description of the local health officer's intended course of action.
- (5) A specification of the penalties for noncompliance with the order.
- (6) A prohibition on the use of all or portions of the property that are contaminated.
- (7) A description of the measures the property owner is required to take to decontaminate the property.
- (8) An indication of the potential health hazards involved.
- (9) A statement that a property owner who fails to provide a notice or disclosure that is required by this chapter is subject to a civil penalty of up to five thousand dollars (\$5,000).

(h) The local health officer shall provide a copy of the order to the local building or code enforcement agency or other appropriate agency responsible for the enforcement of the State Housing Law (Part 1.5 (commencing with Section 17910) of Division 13).

(i) The local health officer shall post the order in a conspicuous place on the property within one working day of the date that the order is issued.

Article 4. Site Assessment and Remediation

25400.25. (a) A property owner who receives an order issued pursuant to Section 25400.22 that property owned by that person is contaminated by a methamphetamine laboratory activity, a property owner who owns property that is the subject of an order posted pursuant to subdivision(i) of Section 25400.22, and a person occupying property that is the subject of the order, shall immediately vacate the affected unit that is determined to be in a hazardous zone by the local health officer.

(b) No later than 30 days after receipt of an order issued pursuant to Section 25400.22, the property owner shall demonstrate to the local health officer that the property owner has retained a methamphetamine laboratory site remediation firm that is an authorized contractor to remediate the contamination caused by the methamphetamine laboratory activity.

25400.26. (a) A property owner who receives an order issued pursuant to Section 25400.22 that property owned by that person is contaminated by a methamphetamine laboratory activity, or a property owner who owns property that is the subject of an order posted pursuant to subdivision (i) of Section 25400.22, shall utilize the services of an authorized contractor to remediate the contamination caused by the methamphetamine laboratory activity, in accordance with the procedures specified in this section.

(b) The property owner and the local health officer shall keep all required records documenting decontamination procedures for three years following certification that the property is habitable.

(c) The property owner or the property owner's authorized contractor shall submit a preliminary site assessment work plan to the local health officer for review no later than 30 days after demonstrating to the local health officer that an authorized contractor has been retained to remediate the contamination caused by the methamphetamine laboratory activity.

(d) (1) No later than 10 working days after the date the PSA work plan is submitted by the property owner, the local health officer shall review the PSA work plan to determine whether the PSA work plan complies with this chapter, including the procedures established pursuant to Section 25400.35.

(2) If there are any deficiencies in a submitted PSA work plan, the local health officer shall inform the property owner and authorized contractor, in writing, of those deficiencies no later than 15 days of the date that the PSA work plan was submitted to the local health officer.

(3) If the local health officer approves the plan, the local health officer shall inform in writing, the property owner and authorized contractor no later than 15 days of the date that the PSA work plan was submitted to the local health officer.

(e) (1) After a PSA is completed in accordance with the PSA work plan, the property owner and authorized contractor shall prepare a PSA report in accordance with Section 25400.37 and submit the PSA report to the local health officer.

(2) If after a PSA is completed in accordance with a PSA work plan, and the local health officer, upon review of the PSA report, determines there is no level of contamination at a site that requires remediation, the local health officer shall take the actions specified in Section 25400.27.

(f) The property owner shall complete remediation of all applicable portions of the contaminated property in accordance with this chapter no later than 90 days after the date that the PSA work plan has been approved by the local health officer. The local health officer may extend the date for completion of the remediation, in writing.

25400.27. (a) If a local health officer determines that property that has been the subject of a PSA report has been remediated in accordance with this chapter, or if the local health officer makes the determination specified in paragraph (2) of subdivision (e) of Section 25400.26, the local health officer shall issue a no further action determination.

(b) For real property, within 10 working days of the date of making the determination or of receiving payment for the amount of the lien recorded pursuant to paragraph (1) of subdivision (a) of Section 25400.22, whichever is later, the local officer shall do both of the following:

(1) Release the lien recorded with the county recorder. The release shall specify all of the following:

- (A) The name of the agency on whose behalf the lien is imposed.
- (B) The recording date of the lien being released.
- (C) The legal description and the assessor's parcel number.
- (D) The record owner of the property.
- (E) The recording instrument, or book and page, of the lien being released.

(2) Send a copy of the release stating that the property was remediated in accordance with this chapter, does not violate the standard for human occupancy established pursuant to this chapter, and is habitable, to the property owner, local agency responsible for the enforcement of the State Housing Law (Part 1.5 (commencing with Section 17910) of Division 13), and all recipients pursuant to this section and Section 25400.22.

25400.28. Until a property owner subject to Section 25400.25 receives a notice from a local health officer pursuant to Section 25400.27 that the property identified in an order requires no further action, all of the following shall apply to that property:

(a) Except as otherwise required in Section 1102.3 or 1102.3a of the Civil Code, the property owner shall notify the prospective buyer in writing of the pending order, and provide the prospective buyer with a copy of the pending order. The prospective buyer shall acknowledge, in writing, the receipt of a copy of the pending order.

(b) The property owner shall provide written notice to all prospective tenants that have completed an application to rent an affected dwelling unit or other property of the remediation order, and shall provide the prospective tenant with a copy of the order. The prospective tenant shall acknowledge, in writing, the receipt of the notice and pending order before signing a rental agreement. The notice shall be attached to the rental agreement. If the property owner does not comply with this subdivision, the prospective tenant may void the rental agreement.

Article 5. Remediation of Contaminated Property by a City or County

25400.30. (a) If a property owner does not initiate or complete the remediation of property in compliance with an order issued by a local health officer pursuant to this chapter, the city, county, or city and county in which the property is located may, at its discretion, take action to remediate the residually contaminated portion of the property pursuant to this chapter or may seek a court order to require the property owner to remediate the property in compliance with this chapter.

(b) If a local health officer is unable to locate a property owner within 10 days after the date the local health officer issues an order pursuant to Section 25400.22, the city, county, or city and county in which the property is located may remediate the property in accordance with this article. The city or county or its contractors may remove contaminated property as part of this remediation activity.

(c) If a city, county, or city and county elects to remediate contaminated property pursuant to this article, the property owner is liable for, and shall pay the city or county for, all actual costs related to the remediation, including, but not limited to, all of the following:

- (1) Posting and physical security of the contaminated site.
- (2) Notification of affected people, businesses or any other entity.
- (3) Actual expenses related to the recovery of cost, laboratory fees, cleanup services, removal costs, and administrative and filing fees.

(d) If a property owner does not pay the city, county, or city and county for the costs of remediation specified in subdivision (c), the city, county, or city and county may record a nuisance abatement lien pursuant to Section 38773.1 of the Government Code against the property for the actual costs related to the remediation or bring an action against the property owner for the remediation costs. The nuisance abatement lien shall have the effect, priority, and enforceability of a judgment lien from the date of its recordation.

Article 6. Requirements for Property Assessment and Cleanup

25400.35. A local health officer shall establish a written plan consistent with this chapter outlining the procedures to be followed for conducting the remediation to property for purposes of this chapter. The procedures shall comply with this article and any regulations adopted pursuant to this chapter, and shall include, but not be limited to, procedures for the preparation of a preliminary site assessment work plan, the conduct of a preliminary site assessment to determine the extent and level of contamination, in accordance with that PSA work plan, and the preparation of a PSA report containing the results of the preliminary

site assessment and recommendations for remediation to meet the occupancy standards specified in Section 25400.16.

25400.36. The PSA work plan shall include, but is not limited to, all of the following:

- (a) The physical location of the property.
- (b) A summary of the information obtained from law enforcement, the local health officer, and other involved local agencies. The summary shall include a discussion of the information's relevance to the contamination, including areas suspected of being contaminated, and may include all of the following information:
 - (1) Duration of laboratory operation and number of batches cooked or processed.
 - (2) Hazardous chemicals known to have been manufactured.
 - (3) Recipes and methods used.
 - (4) Chemicals and equipment found, by location, used in connection with the manufacture or storage of the hazardous chemicals.
 - (5) Location of contaminated cooking and storage areas.
 - (6) Visual assessment of the severity of contamination inside and outside of the structure where the laboratory was located.
 - (7) Assessment of contamination of adjacent rooms, units, apartments, or structures.
 - (8) Disposal methods observed at or near the site, including dumping, burning, burial, venting, or drain disposal.
 - (9) A comparison of the chemicals on the manifest with known methods of manufacture in order to identify other potential contaminants.
 - (10) A determination as to whether the methamphetamine manufacturing method included the use of chemicals containing mercury or lead, including lead acetate, mercuric chloride, mercuric nitrate.
- (c) A description of the areas to be sampled and the basis for the selection of the areas. This element of the PSA work plan shall also document the decision process used in determining not to sample particular areas. The PSA work plan shall consider both primary and secondary areas of concern.
 - (1) The primary areas of concern included in the work plan shall include all the following areas:
 - (A) Any area that has obvious staining caused by the use or manufacture of hazardous chemicals.
 - (B) Any processing or cooking area, with contamination caused by spills, boilovers, explosions, or by chemical fumes and gases created during cooking. The area may include floors, walls, ceilings, glassware, and containers, working surfaces, furniture, carpeting, draperies and other textile products, plumbing fixtures and drains, heating and air-conditioning vents.

(C) Any disposal area, including such indoor areas as sinks, toilets, bathtubs, plumbing traps and floor drains, vents, vent fans, and chimney flues and such outdoor areas that may be contaminated by dumping or burning on or near soil, surface water, groundwater, sewer or storm systems, septic systems, and cesspools.

(D) Chemical storage areas that may be contaminated by spills, leaks, or open containers.

(2) The secondary areas of concern shall include all of the following:

(A) Any location where contamination may have migrated, including hallways or other high traffic areas.

(B) Common areas in multiple dwellings, and adjacent apartments or rooms, including floors, walls, ceilings, furniture, carpeting, light fixtures, blinds, draperies and other textile products.

(C) Common ventilation or plumbing systems in hotels and multiple dwellings.

(d) Sampling protocols, analytical methods and laboratories to use and their relevant certifications or accreditations.

(e) A description of areas and items that will be remediated in lieu of sampling, if any.

25400.37. After a preliminary site assessment is completed in accordance with the PSA work plan, a PSA report shall be prepared and submitted to the local health officer. The PSA report shall be thorough and specific in reporting findings and recommendations and shall include all of the following:

(a) The location of the site, including the street address and mailing address of the contaminated property, the owner of record and mailing address, legal description, and clear directions for locating the property.

(b) A site map, including a diagram of the contaminated property. The diagram shall include floor plans of affected buildings and local drinking water wells and nearby streams or other surface waters, if potentially impacted, and shall show the location of damage and contamination and the location of sampling points used in the preliminary site assessment. All sampling point locations shall be keyed to the sampling results and remediation recommendations.

(c) A description of the sampling methods and analytical protocols used in the preliminary site assessment.

(d) A description of the sampling results.

(e) Information regarding the background samples and results obtained.

(f) Specific recommendations, including methods, for remedial actions required to meet the human occupancy standards specified in Section 25400.16, including, but not limited to, any required decontamination, demolition, or disposal.

(g) A plan for postremediation site assessment, including specific sampling requirements and methodologies, and locations at which samples are to be obtained.

25400.38. The PSA work plan and PSA report shall be signed and notarized by the contractor responsible for the completion of the preliminary site assessment and by a certified industrial hygienist for sufficiency and completeness.

25400.40. (a) A person shall not perform a preliminary site assessment or any remediation work pursuant to this chapter, including a decontamination, demolition, or disposal, unless the person has completed all of the following:

(1) Initial training pursuant to subparagraph (A) of paragraph (3) of, or paragraph (4) of, subdivision (e) of Section 5192 of Title 8 of the California Code of Regulations, as applicable. That training shall include elements listed pursuant to subparagraphs (A) to (G), inclusive, of paragraph (2) of subdivision (e) of Section 5192 of Title 8 of the California Code of Regulations.

(2) Annual refresher training pursuant to paragraph (8) of subdivision (e) of Section 5192 of Title 8 of the California Code of Regulations.

(3) Additional requirements as determined by the local health officer, or other applicable law.

(b) Training specified in paragraphs (1) and (2) of subdivision (a) shall be certified pursuant to paragraph (6) of subdivision (e) of Section 5192 of Title 8 of the California Code of Regulations.

Article 7. Enforcement and Liability

25400.45. (a) A property owner who does not provide a notice or disclosure required by this chapter is subject to a civil penalty in an amount of up to five thousand dollars (\$5,000). A property owner shall also be assessed the full cost of all harm to public health or to the environment resulting from the property owner's failure to comply with this chapter.

(b) A person who violates an order issued by a local health officer pursuant to this chapter prohibiting the use or occupancy of a property contaminated by a methamphetamine laboratory activity is subject to a civil penalty in an amount of up to five thousand dollars (\$5,000).

25400.46. (a) A property owner who receives an order issued by a local health officer pursuant to Section 25400.22, or a property owner who owns property that is the subject of a notice posted pursuant to subdivision (i) of Section 25400.22, is liable for, and shall pay all of the following costs if it is determined that the property is contaminated:

(1) The cost of any testing.

(2) Any cost related to maintaining records with regard to the property.
(3) The cost of remediating the property, including any decontamination or disposal expenses.

(4) Any actual cost incurred by the local health officer or any other local or state agency resulting from the enforcement of this chapter and oversight of the implementation of the PSA work plan and the PSA report, with regard to that property.

(b) A person who conducts a methamphetamine laboratory activity on or at property, and who is not the owner of that property, is liable for, and shall reimburse the owner of the property for, any cost the property owner may incur pursuant to subdivision (a).

SEC. 2. 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.

SEC. 3. This act shall become operative only if Senate Bill 536 of the 2005–06 Regular Session of the Legislature is enacted and becomes effective on or before January 1, 2006.

CHAPTER 571

An act to amend Sections 1803, 1807, and 12810 of, and to add Section 38301.3 to, the Vehicle Code, relating to vehicles.

[Approved by Governor October 6, 2005. Filed with
Secretary of State October 6, 2005.]

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

SECTION 1. Section 1803 of the Vehicle Code, as amended by Section 2 of Chapter 551 of the Statutes of 2004, is amended to read:

1803. (a) The clerk of a court in which a person was convicted of any violation of this code, was convicted of any violation of subdivision (a), (b), (c), (d), (e), or (f) of Section 655 of the Harbors and Navigation Code pertaining to a mechanically propelled vessel but not to manipulating any water skis, an aquaplane, or similar device, was convicted of any violation of Section 655.2, 655.6, 658, or 658.5 of the Harbors and Navigation Code, or any violation of Section 191.5 of the Penal Code when the conviction resulted from the operation of a vessel, was convicted of any offense involving use or possession of controlled substances under Division 10 (commencing with Section 11000) of the

Health and Safety Code, was convicted of any felony offense when a commercial motor vehicle, as defined in subdivision (b) of Section 15210, was involved in or incidental to the commission of the offense, or was convicted of any violation of any other statute relating to the safe operation of vehicles, shall prepare within 10 days after conviction and immediately forward to the department at its office at Sacramento an abstract of the record of the court covering the case in which the person was so convicted. If sentencing is not pronounced in conjunction with the conviction, the abstract shall be forwarded to the department within 10 days after sentencing and the abstract shall be certified by the person so required to prepare it to be true and correct.

For the purposes of this section, a forfeiture of bail shall be equivalent to a conviction.

(b) The following violations are not required to be reported under subdivision (a):

- (1) Division 3.5 (commencing with Section 9840).
- (2) Section 21113, with respect to parking violations.
- (3) Chapter 9 (commencing with Section 22500) of Division 11, except Section 22526.
- (4) Division 12 (commencing with Section 24000), except Sections 24002, 24004, 24250, 24409, 24604, 24800, 25103, 26707, 27151, 27315, 27360, 27800, and 27801 and Chapter 3 (commencing with Section 26301).
- (5) Division 15 (commencing with Section 35000), except Chapter 5 (commencing with Section 35550).
- (6) Violations for which a person was cited as a pedestrian or while operating a bicycle or a motorized scooter.
- (7) Division 16.5 (commencing with Section 38000), except Section 38301.3.
- (8) Subdivision (b) of Section 23221, subdivision (b) of Section 23223, subdivision (b) of Section 23225, and subdivision (b) of Section 23226.
- (c) If the court impounds a license, or orders a person to limit his or her driving pursuant to subdivision (d) of Section 40508, the court shall notify the department concerning the impoundment or limitation on an abstract prepared pursuant to subdivision (a) of this section or on a separate abstract, which shall be prepared within 10 days after the impoundment or limitation was ordered and immediately forwarded to the department at its office in Sacramento.
- (d) If the court determines that a prior judgment of conviction of a violation of Section 23152 or 23153 is valid or is invalid on constitutional grounds pursuant to Section 41403, the clerk of the court in which the determination is made shall prepare an abstract of that determination

and forward it to the department in the same manner as an abstract of record pursuant to subdivision (a).

(e) Within 10 days of an order terminating or revoking probation under Section 23602, the clerk of the court in which the order terminating or revoking probation was entered shall prepare and immediately forward to the department at its office in Sacramento an abstract of the record of the court order terminating or revoking probation and any other order of the court to the department required by law.

SEC. 2. Section 1807 of the Vehicle Code is amended to read:

1807. (a) The department is not required to maintain records relating to drivers of motor vehicles after the records are, in the opinion of the director, no longer necessary, except as follows:

(1) Records of convictions shall be maintained so long as they may form the basis of license suspensions or revocations as prior convictions or with other records of conviction constitute a person a “negligent driver.”

(2) Records of convictions of violating Section 38301.3 shall be maintained for seven years.

(b) Records that are not required to be maintained may be destroyed with the approval of the Department of General Services.

SEC. 3. Section 12810 of the Vehicle Code is amended to read:

12810. In determining the violation point count, the following shall apply:

(a) Any conviction of failure to stop in the event of an accident in violation of Section 20001 or 20002 shall be given a value of two points.

(b) Any conviction of a violation of Section 23152 or 23153 shall be given a value of two points.

(c) Any conviction of reckless driving shall be given a value of two points.

(d) (1) Any conviction of a violation of subdivision (c) of Section 192 of the Penal Code, or of Section 2800.2 or 2800.3, subdivision (b) of Section 21651, subdivision (b) of Section 22348, subdivision (a) or (c) of Section 23109, or Section 31602 of this code, shall be given a value of two points.

(2) Any conviction of a violation of subdivision (a) or (b) of Section 23140 shall be given a value of two points.

(e) Any conviction of a violation of Section 14601, 14601.1, 14601.2, 14601.3, or 14601.5 shall be given a value of two points.

(f) Except as provided in subdivision (i), any other traffic conviction involving the safe operation of a motor vehicle upon the highway shall be given a value of one point.

(g) Any traffic accident in which the operator is deemed by the department to be responsible shall be given a value of one point.

(h) Any conviction of a violation of Section 27360 or 27360.5 shall be given a value of one point.

(i) (1) A violation of paragraph (1), (2), (3), or (5) of subdivision (b) of Section 40001 shall not result in a violation point count being given to the driver if the driver is not the owner of the vehicle.

(2) Any conviction of a violation of paragraph (1) or (2) of subdivision (b) of Section 12814.6, subdivision (a) of Section 21116, Section 21207.5, 21708, 21710, 21716, 23120, 24800, or 26707 shall not be given a violation point count.

(3) A violation of Section 23136 shall not result in a violation point count.

(4) A violation of Section 38301.3 shall not result in a violation point count.

(j) A conviction for only one violation arising from one occasion of arrest or citation shall be counted in determining the violation point count for the purposes of this section.

SEC. 4. Section 38301.3 is added to the Vehicle Code, to read:

38301.3. Notwithstanding subdivision (d) of Section 5008 of the Public Resources Code, or any other provision of state law, and to the extent authorized under federal law, a person who violates a state or federal regulation that prohibits entry of a motor vehicle into all or portions of an area designated as a federal or state wilderness area is guilty of a public offense and shall be punished as follows:

(a) Except as provided in subdivisions (b) and (c), the offense is an infraction punishable by a fine not exceeding one hundred fifty dollars (\$150).

(b) For a second offense committed within seven years after a prior violation for which there was a conviction punishable under subdivision (a), the offense is an infraction punishable by a fine not exceeding two hundred twenty-five dollars (\$225).

(c) (1) For a third or subsequent offense committed within seven years after two or more prior violations for which there were convictions punishable under this section, the offense is a misdemeanor punishable by a fine not exceeding three hundred dollars (\$300) or by imprisonment in the county jail not exceeding 90 days, or by both that fine and imprisonment.

(2) In addition to the fine imposed under paragraph (1), the court may order impoundment of the vehicle used in the offense under the following conditions:

(A) The person convicted under this subdivision is the owner of the vehicle.

(B) The vehicle is subject to Section 4000 or 38010.

(3) The period of impoundment imposed pursuant to this subdivision shall be not less than one day nor more than 30 days. The impoundment shall be at the owner's expense.

SEC. 5. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

CHAPTER 572

An act to add Chapter 8.4 (commencing with Section 42451) to Part 3 of Division 30 of the Public Resources Code, relating to solid waste.

[Approved by Governor October 6, 2005. Filed with
Secretary of State October 6, 2005.]

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

SECTION 1. Chapter 8.4 (commencing with Section 42451) is added to Part 3 of Division 30 of the Public Resources Code, to read:

CHAPTER 8.4. RECHARGEABLE BATTERY RECYCLING ACT OF 2006

Article 1. General Provisions

42451. (a) This chapter shall be known, and may be cited, as the Rechargeable Battery Recycling Act of 2006.

(b) The Legislature finds and declares all of the following:

(1) The Department of Toxic Substances Control has determined that, due to their hazardous material content, the solid waste disposal of all household and rechargeable batteries should be prohibited. A regulation authorizing a temporary householder exemption to this prohibition will expire, by its own terms, in February 2006.

(2) The purpose of this chapter is to enact a comprehensive and innovative system for the reuse, recycling, and proper and legal disposal of previously used rechargeable batteries.

(3) It is the further purpose of this chapter to enact a law that establishes a program that is convenient for consumers and the public to return, recycle, and ensure the safe and environmentally sound disposal of used rechargeable batteries, and that provides for a system that does not charge the consumer when a rechargeable battery is returned.

(4) It is the intent of the Legislature that the cost associated with the handling, recycling, and disposal of used rechargeable batteries be the responsibility of the producers and consumers of rechargeable batteries, and not local government or their service providers, state government, or taxpayers.

(5) In order to reduce the likelihood of illegal disposal of hazardous materials, it is the intent of this chapter to ensure that all costs associated with the proper management of used rechargeable batteries is internalized by the producers and consumers of rechargeable batteries at or before the point of purchase, and not at the point of discard.

(6) Manufacturers and retailers of rechargeable batteries, in working to achieve the goals and objectives of this chapter, should have the flexibility to partner with each other and with those private and nonprofit business enterprises that currently provide collection and processing services to develop and promote a safe and effective used rechargeable battery recycling system for California.

(7) The producers of household and rechargeable batteries should reduce and, to the extent feasible, ultimately phase out the use of hazardous materials in household and rechargeable batteries.

(8) Household and rechargeable batteries, to the greatest extent feasible, should be designed for extended life and reuse.

(9) The purpose of this chapter is to provide for the safe, cost free, and convenient collection, reuse, and recycling of 100 percent of the rechargeable batteries discarded or offered for recycling in the state.

(10) In establishing a cost-effective system for the recovery, reuse, recycling, and proper disposal of used rechargeable batteries, it is the intent of the Legislature to encourage manufacturers and retailers to build on the retailer take-back systems initiated by the Rechargeable Battery Recycling Corporation and others.

Article 2. Definitions

42452. For the purposes of this chapter, the following terms have the following meanings, unless the context clearly requires otherwise:

(a) “Consumer” means a purchaser or owner of a rechargeable battery. “Consumer” also includes a business, corporation, limited partnership, nonprofit organization, or governmental entity, but does not include an

entity involved in a wholesale transaction between a distributor and retailer.

(b) “Department” means the Department of Toxic Substances Control.

(c) “Rechargeable battery” means a small, nonvehicular, rechargeable nickel-cadmium, nickel metal hydride, lithium ion, or sealed lead-acid battery, or a battery pack containing these types of batteries.

(d) “Retailer” means a person who makes a retail sale of a rechargeable battery to a consumer in this state, including a manufacturer of a rechargeable battery who sells that rechargeable battery directly to a consumer. A sale includes, but is not limited to, transactions conducted through sales outlets, catalogs, or the Internet, or any other similar electronic means, but does not include a sale that is a wholesale transaction with a distributor or retailer. “Retailer” does not include a person who sells primarily food and is listed in the Progressive Marketing Grocers Guidebook. “Retailer” does not include a person who has less than one million dollars (\$1,000,000) annually in gross sales.

(e) (1) “Sell” or “sale” means a transfer for consideration of title or of the right to use, by lease or sales contract, including, but not limited to, transactions conducted through sales outlets, catalogs, or the Internet or any other similar electronic means, but does not include a wholesale transaction with a distributor or a retailer.

(2) For purposes of this subdivision and subdivision (d), “distributor” means a person who sells a rechargeable battery to a retailer.

(f) “Used rechargeable battery” means a rechargeable battery that has been previously used and is made available, by a consumer, for reuse, recycling, or proper disposal.

Article 3. Rechargeable Battery Recycling

42453. (a) (1) On and after July 1, 2006, every retailer shall have in place a system for the acceptance and collection of used rechargeable batteries for reuse, recycling, or proper disposal.

(2) A retailer is not subject to the requirements of this chapter for the sale of rechargeable batteries that are contained in or packaged with a battery-operated device.

(b) A system for the acceptance and collection of used rechargeable batteries for reuse, recycling, or proper disposal shall, at a minimum, include all of the following elements:

(1) (A) The take-back at no cost to the consumer of a used rechargeable battery, the type or brand of which the retailer sold or previously sold.

(B) A retailer's no-cost take-back obligation may be limited to a quantity equal to the number sold at the time of the take-back or previously sold to the consumer.

(2) If the retailer sells a rechargeable battery through a catalog order, telephone order, or other method that does not involve in-store sales, the retailer shall be deemed in compliance with this article if the retailer provides a reasonable notice either at the time of purchase or delivery to the consumer of an opportunity to return used rechargeable batteries at no cost for reuse, recycling, or proper disposal.

(A) The opportunity to return the rechargeable batteries shall be either through the retailer's take-back program established pursuant to paragraph (1) or through participation with the Rechargeable Battery Recycling Corporation or similar take-back and recycling program.

(B) The notice shall include informational materials, including, but not limited to, Internet Web site links or a telephone number, placed on the invoice or purchase order, or packaged with the battery, that provide consumers access to obtain more information about the opportunities and locations for no-cost battery recycling.

(3) Making information available to consumers about rechargeable battery recycling opportunities provided by the retailer and encouraging consumers to utilize those opportunities. This information may include, but is not limited to, one or more of the following:

(A) Signage that is prominently displayed and easily visible to the consumer.

(B) Written materials provided to the consumer at the time of purchase or delivery, or both.

(C) Reference to the rechargeable batteries recycling opportunity in retailer advertising or other promotional materials, or both.

(D) Direct communications with the consumer at the time of purchase.

(c) An individual retailer location that is actively participating in the Rechargeable Battery Recycling Corporation's or similar battery take-back and recycling program, and has implemented one or more of the public education components described in paragraph (3) of subdivision (b) shall be deemed in compliance with this article.

(d) If a retailer is participating in an existing battery recycling system that includes rechargeable batteries, in addition to any other type of batteries, and the system otherwise complies with the requirements of this article, the retailer may continue to participate in that existing system and is not required to implement or participate in a system that only includes rechargeable batteries.

42454. On and after July 1, 2006, it is unlawful for a retailer to sell a rechargeable battery to a consumer unless the retailer complies with this chapter.

Article 4. Annual Return Data

42456. (a) On or before July 1, 2007, and each July 1 thereafter, the department shall survey battery handling or battery recycling facilities, or both, for the data required for subdivision (b). The survey shall be a representative sample of facilities, as determined by the department.

(b) From the data obtained pursuant to subdivision (a), the department shall post on its Internet Web site the estimated amount, by weight, of each type of rechargeable batteries returned for recycling in California during the previous calendar year.

CHAPTER 573

An act to add Sections 139.2 and 139.4 to the Water Code, relating to water.

[Approved by Governor October 6, 2005. Filed with
Secretary of State October 6, 2005.]

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

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

(a) Substantial water supplies are derived from the Sacramento-San Joaquin Delta for the greater Silicon Valley area, Alameda County, eastern Contra Costa County, Napa County, Solano County, the San Joaquin Valley, and southern California.

(b) In a document entitled "Seismic Stability of Delta Levees," the Department of Water Resources estimated that a single 100-year earthquake would result in three to 10 delta levee breaks and that a single 1,000-year earthquake would result in 18 to 82 delta levee breaks.

(c) A report to the California Bay-Delta Authority Independent Science Board estimated that sea-level rise caused by climate change, continuing subsidence of delta lands, floods, and earthquakes have a 64 percent probability of resulting in catastrophic flooding of delta islands over the next 50 years.

(d) The state's economy, and the governmental programs that are dependent on a healthy economy and a healthy environment, cannot afford a catastrophic disruption of the water supplies derived from the delta.

SEC. 2. Section 139.2 is added to the Water Code, to read:

139.2. The department shall evaluate the potential impacts on water supplies derived from the Sacramento-San Joaquin Delta based on 50-,

100-, and 200-year projections for each of the following possible impacts on the delta:

- (1) Subsidence.
- (2) Earthquakes.
- (3) Floods.
- (4) Changes in precipitation, temperature, and ocean levels.
- (5) A combination of the impacts specified in paragraphs (1) to (4), inclusive.

SEC. 3. Section 139.4 is added to the Water Code, to read:

139.4. (a) The department and the Department of Fish and Game shall determine the principal options for the delta.

(b) The department shall evaluate and comparatively rate each option determined in subdivision (a) for its ability to do the following:

(1) Prevent the disruption of water supplies derived from the Sacramento-San Joaquin Delta.

(2) Improve the quality of drinking water supplies derived from the delta.

(3) Reduce the amount of salts contained in delta water and delivered to, and often retained in, our agricultural areas.

(4) Maintain delta water quality for delta users.

(5) Assist in preserving delta lands.

(6) Protect water rights of the “area of origin” and protect the environments of the Sacramento-San Joaquin river systems.

(7) Protect highways, utility facilities, and other infrastructure located within the delta.

(8) Preserve, protect, and improve delta levees.

(c) The Department of Fish and Game shall evaluate and comparatively rate each option determined in subdivision (a) for its ability to restore salmon and other fisheries that use the San Francisco Bay/Sacramento-San Joaquin Delta Estuary.

(d) On or before January 1, 2008, the department and the Department of Fish and Game shall jointly report to the Legislature and Governor, in writing, with regard to the results of the evaluation required by Section 139.2 and the comparative ratings required by subdivisions (b) and (c).

CHAPTER 574

An act to add Chapter 8 (commencing with Section 39940) to Part 2 of Division 26 of the Health and Safety Code, relating to air pollution.

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

SECTION 1. Chapter 8 (commencing with Section 39940) is added to Part 2 of Division 26 of the Health and Safety Code, to read:

CHAPTER 8. REMOTE SENSING PILOT PROGRAM

39940. (a) The state board shall implement a pilot program to determine emissions from locomotives, using wayside remote sensing devices. The objectives of the pilot program are to determine whether remote sensing devices can accurately and replicably determine, with a reasonable level of precision:

(1) The levels of nitrogen oxides, particulate matter, and carbon monoxide emissions from locomotives.

(2) Whether a locomotive is subject to tier 0, 1, or 2 federal certification standards.

(3) Whether the measured results can be calibrated to determine whether the locomotive emissions are above or below the applicable federal emissions certification levels.

(b) The state board shall design and implement the pilot program in consultation with the advisory group established pursuant to Section 39941.

(c) The pilot program shall collect sufficient data to ensure that a representative sample of locomotives operating in the state are tested, so that there is a sufficient basis for the state board to meet the objectives and to make the determinations that are set forth in subdivision (a). Data collection shall, at a minimum, be performed under representative conditions in northern and southern California.

39941. The state board shall establish an advisory group to make recommendations to the state board regarding the design and implementation of the pilot program.

(a) The advisory group shall consist of an even number of members, not to exceed 14, as determined by the boards of the South Coast Air Quality Management District and the Sacramento Metropolitan Air Quality Management District.

(b) The advisory group shall consist of recognized experts in the field of remote sensing and locomotive engine technology, and representatives of citizen community groups, representatives of the South Coast Air Quality Management District, and representatives of the Sacramento Metropolitan Air Quality Management District. The advisory committee may also include representatives of the Union Pacific Railroad and the Burlington Northern Santa Fe Railway.

(2) The advisory group shall be appointed by the South Coast Air Quality Management District and the Sacramento Metropolitan Air Quality Management District. If the Union Pacific Railroad and Burlington Northern Santa Fe Railway choose to participate, 50 percent of the members of the advisory group shall be appointed by the Union Pacific Railroad and Burlington Northern Santa Fe Railway and 50 percent shall be appointed by the South Coast Air Quality Management District and the Sacramento Metropolitan Air Quality Management District.

39942. The state board may contract with an independent entity to conduct the pilot program specified in Section 39940, and shall oversee the work of the independent entity. The state board shall implement the pilot program in consultation with the advisory group established pursuant to Section 39941 to review the design of the pilot program and to ensure quality control in collection, reporting, and evaluation of data.

39943. (a) On or before December 31, 2006, the state board shall submit a report to the Legislature that includes both of the following:

- (1) A summary of data acquired through the pilot program.
- (2) The state board's determination as to whether the remote sensing devices can meet the objectives of the pilot program stated in Section 39940.

(b) If the state board determines that remote sensing devices can be expected to meet objectives of the pilot program stated in Section 39940 to an extent reasonably sufficient to allow the state board to make the following projections and recommendations, the report shall also include both of the following:

(1) To the extent feasible, a projection of the amount, location, and timing of emission reductions that could be expected from the use of remote sensing devices to identify locomotives to be repaired or maintained.

(2) A projection of the cost to deploy, maintain, and use data from, a system of remote sensing devices in areas of high priority in the state, as determined by the state board, recommendations regarding the funding of such a program, and the expected cost-effectiveness of such a program compared to other opportunities for air quality improvement in the covered areas.

39944. The South Coast Air Quality Management District, the Union Pacific Railroad, and the Burlington Northern Santa Fe Railway shall each reimburse the state board for its costs of implementing the pilot program established pursuant to this chapter. The Union Pacific Railroad and the Burlington Northern Santa Fe Railway shall reimburse the state board for 25 percent of those costs, but the reimbursement shall not to exceed a total of two hundred thousand dollars (\$200,000) for both

railroads. The South Coast Air Quality Management District shall reimburse the state board for the balance of the costs of implementing the pilot program, but the reimbursement shall not exceed a total of three hundred thousand dollars (\$300,000). Funds provided by the Union Pacific Railroad and Burlington Northern Santa Fe Railway shall be used only to reimburse the state board for the costs of planning, implementing, evaluating, and reporting the results of, the pilot program as it relates to the testing of locomotives operated by those railroads.

SEC. 2. No reimbursement shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code for costs mandated by the state pursuant to this act. It is recognized, however, that a local agency or school district may pursue any remedies to obtain reimbursement available to it under Part 7 (commencing with Section 17500) and any other provisions of law.

CHAPTER 575

An act to amend Section 43200 of, and to add Section 43200.1 to, the Health and Safety Code, relating to air pollution.

[Approved by Governor October 6, 2005. Filed with
Secretary of State October 6, 2005.]

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

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

(a) The use of fossil fuels in motor vehicles is one of the primary human sources of global warming gases that trap heat in the Earth's atmosphere, leading to a warming effect on the planet.

(b) Increasing concentrations of global warming gases in the atmosphere are likely to accelerate the rate of climate change in California.

(c) Scientific research indicates that the impact of global warming on our environment will be profound. Global warming will significantly impact the state's air quality, water resources, forests, agricultural regions, coastal regions, and the health of the state's residents.

(d) Air pollution can cause or aggravate a wide range of serious health problems, including cancer, birth defects, respiratory illnesses such as asthma and emphysema, heart and blood ailments, nervous system toxicity, and premature death.

(e) Even after years of improvements in vehicle emissions technologies and effective emissions regulations, many residents of California are exposed to unhealthy air.

(f) Emissions from motor vehicles contribute over half of California's smog-forming pollution.

(g) New motor vehicles offered for sale in the state vary substantially in terms of smog-forming and global warming emissions.

SEC. 2. Section 43200 of the Health and Safety Code is amended to read:

43200. (a) The state board may adopt a regulation to prohibit the sale and registration in this state of any new motor vehicle certified by the state board to which there has not been securely and conspicuously affixed on the driver's side window or, if it cannot be so placed, to the windshield of the motor vehicle in accordance with paragraph (3) of subdivision (b) of Section 26708 of the Vehicle Code, by the manufacturer a label on which the manufacturer shall endorse clearly, distinctly, and legibly true and correct entries disclosing the following information concerning the motor vehicle:

(1) The emission standards adopted by the state board pursuant to Section 43101 that are applicable to that motor vehicle.

(2) The information required by Section 43200.1 and related air pollution emissions information as specified by the state board.

(b) A regulation may be adopted pursuant to this section only if the state board finds that the regulation is necessary for either of the following:

(1) To enforce or ensure compliance with applicable statutes, standards, or procedures relating to vehicle emissions.

(2) For the protection or information of consumers.

(c) Nothing in this division or in any other statute shall be construed as prohibiting a purchaser from removing the decal required by this section, after the purchaser has taken possession of the vehicle.

SEC. 3. Section 43200.1 is added to the Health and Safety Code, to read:

43200.1. (a) The Legislature finds and declares that since 1998, the state board has imposed smog index label specifications on new passenger cars and light-duty trucks that are sold and registered in the state to inform consumers about emissions of air pollutants from the use of new vehicles.

(b) (1) (A) The state board, not later than July 1, 2007, shall revise the regulations adopted pursuant to Section 43200 to rename the existing label required by those regulations, and to require the renamed label to include, for model year 2009 and subsequent model year motor vehicles,

information on the emissions of global warming gases from motor vehicles for the same model year.

(B) This subdivision applies to, at a minimum, all passenger cars and light-duty trucks with a gross vehicle weight of 8,500 pounds or less, and to all motor vehicles subject to regulation pursuant to Section 43018.5.

(C) Emissions of global warming gases shall include emissions, as determined by the state board, from vehicle operation and upstream emissions.

(2) The label shall include all of the following:

(A) A smog index that contains quantitative information presented in a continuous, easy-to-read scale, unless the state board determines, after at least one public workshop, that an alternative graphical representation will more effectively convey the information to consumers, and that compares the emissions from the vehicle with the average projected emissions from all vehicles of the same model year sold in the state for which a label is required. For reference purposes, the index shall also identify the emissions from the vehicle model of that same model year that has the lowest smog-forming emissions.

(B) A global warming index that contains quantitative information presented in a continuous, easy-to-read scale, unless the state board determines, after at least one public workshop, that an alternative graphical representation will more effectively convey the information to consumers, and that compares the emissions of global warming gases from the vehicle with the average projected emissions of global warming gases from all vehicles of the same model year sold in the state for which a label is required. For reference purposes, the index shall also identify the emissions of global warming gases from the vehicle model of that same model year that has the lowest emissions of global warming gases.

(C) A brief explanation, prepared by the state board, of the indices required by this section, including the identification of motor vehicle usage as a primary cause of global warming, and how emissions of those gases from motor vehicles may be reduced.

(D) The use of at least one color ink, as determined by the state board, in addition to black.

(c) In order to ensure that the label is useful and informative to consumers, the state board, shall, to the extent feasible within its existing resources, do both of the following in designing the label:

(1) Seek input from automotive consumers, graphic design professionals, and persons with expertise in environmental labeling.

(2) Consider other relevant label formats consistent with paragraph (2) of subdivision (b).

(d) The indices included in the label pursuant to paragraph (2) of subdivision (b) shall be updated as determined necessary by the state board to ensure that the differences in emissions among vehicles are readily apparent to the consumer.

(e) The state board, in consultation with other agencies as appropriate, may recommend to the Legislature additional sources of air pollution that emit significant amounts of global warming gases for which the disclosure of information regarding those emissions would be an effective means of educating the public about the sources of global warming and its impacts.

(f) The state board shall, as it determines appropriate and to the extent feasible within its existing resources, incorporate information from the label into existing programs designed to educate motor vehicle consumers about emissions of global warming gases and other air pollutants.

(g) The state board may accept donations or grants of funds from any person for the purposes of the program established pursuant to this section, and shall deposit amounts received from donations or grants into the Air Pollution Control Fund. The source of any funds received pursuant to this section shall be disclosed at all public hearings and workshops to implement this section. Donations, grants, or other commitments of money to the fund may be dedicated for specific purposes consistent with the goals of this section.

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

(1) "Global warming gases" has the same meaning as greenhouse gases given in subdivision (h) of Section 42801.1.

(2) "Upstream emissions" means emissions of global warming gases that occur during the extraction, refining, transport, and local distribution of motor vehicle fuels as determined by the state board.

CHAPTER 576

An act to amend Sections 5093.54 and 5093.545 of the Public Resources Code, relating to rivers.

[Approved by Governor October 6, 2005. Filed with
Secretary of State October 6, 2005.]

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

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

(a) Cache Creek contains extraordinary scenic, recreational, fishery, and wildlife values of statewide significance that deserve to be preserved

in their free-flowing state for the benefit and enjoyment of the people of this state.

(b) In designating Cache Creek as a component of the California Wild and Scenic River system, it is the intent of the Legislature that this act will accomplish the preservation of those values without the necessity of having Cache Creek added to the national wild and scenic rivers system (16 U.S.C. Sec. 1271 et seq.).

(c) As the waters of the Cache Creek watershed are the sole source of supply within that watershed for the County of Lake, special provision must be made to ensure that serving the reasonable water supply and flood control needs of the County of Lake are balanced with protection of the designated segments of Cache Creek.

(d) As the waters of the Cache Creek watershed are an important source of supply for the County of Yolo, special provision must be made to ensure that serving the reasonable water supply and flood control needs of the County of Yolo are balanced with protection of the designated segments of Cache Creek.

(e) The designation of Cache Creek is not intended to impair or affect in any way projects or activities in the segment of Cache Creek downstream of Camp Haswell that are undertaken pursuant to and in accordance with the County of Yolo's Cache Creek Resources Management Plan, as amended from time to time.

(f) The designation of Cache Creek is not intended to impair or affect in any way projects or activities in the segment of Cache Creek downstream of Camp Haswell that are intended to provide flood control for downstream landowners and communities.

SEC. 2. Section 5093.54 of the Public Resources Code is amended to read:

5093.54. The following rivers and segments thereof are designated as components of the system:

(a) Klamath River. The main stem from 100 yards below Iron Gate Dam to the Pacific Ocean; the Scott River from the mouth of Shackelford Creek west of Fort Jones to the river mouth near Hamburg; the Salmon River from Cecilville Bridge to the river mouth near Somesbar; the North Fork of the Salmon River from the intersection of the river with the south boundary of the Marble Mountain Wilderness Area to the river mouth; Wooley Creek from the western boundary of the Marble Mountain Wilderness Area to its confluence with the Salmon River.

(b) Trinity River. The main stem from 100 yards below Lewiston Dam to the river mouth at Weitchpec; the North Fork of the Trinity from the intersection of the river with the southern boundary of the Salmon-Trinity Primitive Area downstream to the river mouth at Helena; New River from the intersection of the river with the southern boundary

of the Salmon-Trinity Primitive Area downstream to the river mouth near Burnt Ranch; South Fork of the Trinity from the junction of the river with State Highway Route 36 to the river mouth near Salver.

(c) Smith River. The main stem from the confluence of the Middle and South Forks to its mouth at the Pacific Ocean; the Middle Fork from its source about three miles south of Sanger Lake as depicted on 1956 USGS 15' "Preston Peak" topographic map to the middle of Section 7 T17N R5E; the Middle Fork from the middle of Section 7 T17N R5E to the middle of Section 6 T17N R5E; the Middle Fork from the middle of Section 6 T17N R5E to one-half mile upstream from the confluence with Knopki Creek; the Middle Fork from one-half mile upstream from the confluence with Knopki Creek to the confluence with the South Fork; Myrtle Creek from its source in Section 9 T17N R1E as depicted on 1952 USGS 15' "Crescent City" topographic map to the middle of Section 28 T17N R1E; Myrtle Creek, from the middle of Section 28 T17N R1E to the confluence with the Middle Fork; Shelly Creek from its source in Section 1 T18N R3E as depicted on 1951 USGS 15' "Gasquet" topographic map to the confluence with Patrick Creek; Kelly Creek from its source in Section 32 T17N R3E as depicted on 1951 USGS 15' "Gasquet" topographic map to the confluence with the Middle Fork; Packsaddle Creek from its source about 0.8 miles southwest of Broken Rib Mountain as depicted on 1956 USGS 15' "Preston Peak" topographic map to the eastern boundary of Section 3 T17N R1E; Packsaddle Creek from the eastern boundary of Section 3 T17N R4E to the northern boundary of Section 3 T17N R4E; Packsaddle Creek from the northern boundary of Section 3 T17N R4E to the confluence with the Middle Fork; East Fork Patrick Creek from its source in Section 10 T18N R3E as depicted on 1951 USGS 15' "Gasquet" topographic map to the confluence with West Fork Patrick Creek; West Fork Patrick Creek from its source in Section 18 T18N R3E as depicted on 1951 15' "Gasquet" topographic map to the confluence with East Fork Patrick Creek; Griffin Creek from its source about 0.2 miles southwest of Hazel View Summit as depicted on 1956 USGS 15' "Preston Peak" topographic map to the confluence with the Middle Fork; Knopki Creek from its source about 0.4 miles west of Sanger Peak as depicted on 1956 USGS 15' "Preston Peak" topographic map to the confluence with Middle Fork; Monkey Creek from its source in the northeast quadrant of Section 12 T18N R3E as depicted on 1951 USGS 15' "Gasquet" topographic map to the northern boundary of Section 26 T18N R3E; Monkey Creek from the northern boundary of Section 26 T18N R3E to the confluence with the Middle Fork; Patrick Creek from the junction of the East and West Forks of Patrick Creek to the confluence with Middle Fork; the North Fork from the California-Oregon boundary to the confluence with an

unnamed tributary in the northern quarter Section 5 T18N R2E as depicted on 1951 USGS 15' "Gasquet" topographic map; the North Fork from the confluence with an unnamed tributary in northern quarter of Section 5 T18N R2E to the southernmost intersection of eastern boundary Section 5 T18N R2E as depicted on 1951 USGS 15' "Gasquet" topographic map; the North Fork from the southern-most intersection of the eastern boundary Section 5 T18N R2E as depicted on 1951 USGS 15' "Gasquet" topographic map to the confluence with Stony Creek; the North Fork from the confluence with Stony Creek to the confluence with the Middle Fork; Diamond Creek from the California-Oregon state boundary to the confluence with High Plateau Creek; Diamond Creek from the confluence with High Plateau Creek to the confluence with the North Fork; Bear Creek from its source in Section 24 T18N R2E as depicted on 1951 USGS 15' "Gasquet" topographic map to the confluence with Diamond Creek; Still Creek from its source in Section 11 T18N R1E as depicted on 1952 USGS 15' "Crescent City" topographic map to the confluence with the North Fork Smith River; North Fork Diamond Creek from the California-Oregon state boundary to the confluence with Diamond Creek; High Plateau Creek from its source in Section 26 T18N R2E as depicted on 1951 USGS 15' "Gasquet" topographic map to northern boundary Section 23 T18N R2E; High Plateau Creek from the northern boundary Section 23 T18N R2E to the confluence with Diamond Creek; the Siskiyou Fork from its source about 0.7 miles southeast of Broken Rib Mountain as depicted on 1956 USGS 15' "Preston Peak" topographic map to the confluence with the South Siskiyou Fork; the Siskiyou Fork from its confluence with the South Siskiyou Fork to the confluence with the Middle Fork; the South Siskiyou Fork from its source about 0.6 miles southwest of Buck Lake as depicted on 1956 USGS 15' "Preston Peak" topographic map to the confluence with the Siskiyou Fork; the South Fork from its source about 0.5 miles southwest of Bear Mountain as depicted on 1956 USGS 15' "Preston Peak" topographic map to Blackhawk Bar; the South Fork from Blackhawk Bar to the confluence with the Middle Fork; Williams Creek from its source in Section 31 T14N R4E as depicted on 1952 USGS 15' "Ship Mountain" topographic map to the confluence with Eight Mile Creek; Eight Mile Creek from its source in Section 29 T14N R4E as depicted on 1955 USGS 15' "Dillon Mountain" topographic map to the confluence with the South Fork; the Prescott Fork from its source about 0.5 miles southeast of Island Lake as depicted on 1955 USGS 15' "Dillon Mountain" topographic map to the confluence with the South Fork; Quartz Creek from its source in Section 31 T16N R4E as depicted on 1952 USGS 15' "Ship Mountain" topographic map to the confluence with the South Fork; Jones Creek from its source in Section 36 T16N

R3E as depicted on 1952 USGS 15' "Ship Mountain" topographic map to the middle of Section 5 T15N R3E; Jones Creek from the middle of Section 5 T15N R3E to the confluence with the South Fork; Hurdygurdy Creek from its source about 0.4 miles southwest of Bear Basin Butte as depicted on 1956 USGS 15' "Preston Peak" topographic map to the confluence with the South Fork; Gordon Creek from its source in Section 18 T16N R3E as depicted on 1951 USGS 15' "Gasquet" topographic map to the confluence with the South Fork; Coon Creek from the junction of the two-source tributaries in the southwest quadrant of Section 31 T17N R3E as depicted on 1951 USGS 15' "Gasquet" topographic map to the western boundary Section 14 T16N R2E; Coon Creek from the western boundary Section 14 T16N R2E to the confluence with the South Fork; Craigs Creek from its source in Section 36 T17N R2E as depicted on 1951 USGS 15' "Gasquet" topographic map to the confluence with the South Fork; Buck Creek from its source at Cedar Camp Spring as depicted on 1952 USGS 15' "Ship Mountain" topographic map to the confluence with the South Fork; Muzzleloader Creek from its source in Section 2 T15N R3E as depicted on 1952 USGS 15' "Ship Mountain" topographic map to the confluence with Jones Creek; Canthook Creek from its source in Section 2 T15N R2E as depicted on 1952 USGS 15' "Ship Mountain" topographic map to the confluence with South Fork.

(d) Eel River. The main stem from 100 yards below Van Arsdale Dam to the Pacific Ocean; the South Fork of the Eel from the mouth of Section Four Creek near Branscomb to the river mouth below Weott; Middle Fork of the Eel from the intersection of the river with the southern boundary of the Middle Eel-Yolla Bolly Wilderness Area to the river mouth at Dos Rios; North Fork of the Eel from the Old Gilman Ranch downstream to the river mouth near Ramsey; Van Duzen River from Dinsmores Bridge downstream to the river mouth near Fortuna.

(e) American River. The North Fork from its source to the Iowa Hill Bridge; the Lower American from Nimbus Dam to its junction with the Sacramento River.

(f) (1) West Walker River. The main stem from its source to the confluence with Rock Creek near the town of Walker; Leavitt Creek from Leavitt Falls to the confluence with the main stem of the West Walker River.

(2) Carson River. The East Fork from the Hangman's Bridge crossing of State Highway Route 89 to the California-Nevada border.

(3) The Legislature finds and declares that, because the East Fork Carson River and West Walker River are interstate streams, and a source of agricultural water and domestic water for communities within the counties of Alpine and Mono where they originate, it is necessary that the following special provisions apply:

(A) Nothing in this subdivision shall be construed to prohibit the replacement of diversions or changes in the purpose of use, place of use, or point of diversion under existing water rights, except that (i) no replacement or change shall operate to increase the adverse effect, if any, of the preexisting diversion facility or place or purpose of use, upon the free-flowing condition and natural character of the stream, and (ii) after January 1, 1990, no new diversion shall be constructed unless and until the secretary determines that the facility is needed to supply domestic water to the residents of any county through which the river or segment flows and that the facility will not adversely affect the free-flowing condition and natural character of the stream.

(B) Nothing in this chapter shall be construed as quantifying or otherwise affecting any equitable apportionment, or as establishing any upper limit, between the State of California and the State of Nevada of the waters of these streams.

(g) (1) The South Yuba River: From Lang Crossing to its confluence with Kentucky Creek below Bridgeport.

(2) Nothing in this subdivision shall prejudice, alter, delay, interfere with, or affect in any way, the existing rights of the Placer County Water Agency, the implementation of those rights; any historic water use practices; the replacement, maintenance, repair, operation, or future expansion of existing diversions, storage, powerhouses, or conveyance facilities or other works by the Placer County Water Agency; or changes in the purpose of use, places of use, points of diversion, or ownership of those existing water rights; nor shall anything in this subdivision preclude the issuance of any governmental authorization needed for utilization of those rights, except that no changes shall operate to increase the adverse effect, if any, of the preexisting facilities or places, or the purposes of use upon the free-flowing and natural character of the river segment designated herein.

(3) This subdivision shall become operative on January 1, 2001.

(h) Albion River. The Albion River from one-fourth mile upstream of its confluence with Deadman Gulch downstream to its mouth at the Pacific Ocean.

(i) Gualala River. The main stem Gualala River from the confluence of the North and South Forks to the Pacific Ocean.

(j) (1) Cache Creek from one-fourth mile below Cache Creek Dam to Camp Haswell.

(2) North Fork Cache Creek from the Highway 20 bridge to the confluence with the mainstem.

(3) The designation of Cache Creek under paragraphs (1) and (2) shall not prejudice, alter, delay, interfere with, or affect in any way, the existing water rights of the Yolo County Flood Control and Water Conservation

District, or public water agencies within the Cache Creek watershed lying in the County of Lake, including the range of operations permitted under these existing water rights; any historic water use practices within existing water rights; or the replacement, maintenance, repair, or future expansion within existing water rights of existing diversion, storage, powerhouse, or conveyance facilities or other works by the Yolo County Flood Control and Water Conservation District or public water agencies within the Cache Creek watershed lying in the County of Lake.

(4) The designation of Cache Creek under paragraphs (1) and (2) shall not prejudice, alter, delay, interfere with, or affect any changes to the existing water rights of the Yolo County Flood Control and Water Conservation District, including changes to the purpose of use, place of use, points of diversion, quantity of water diverted, or ownership, or applications by the district for new water rights; provided, that the changes or applications do not involve the construction of a dam, reservoir, diversion, or other water impoundment facility within the segments of Cache Creek designated in paragraphs (1) and (2). Any such change or application shall be subject to all applicable constitutional, statutory, and judicial requirements, including the public trust doctrine.

(5) As the waters of the Cache Creek watershed are the sole source of supply within that watershed for the County of Lake, the designation of Cache Creek under paragraphs (1) and (2) shall not prejudice, alter, delay, interfere with, or affect any changes to the existing water rights of the public water agencies within the Cache Creek watershed lying in the County of Lake, including changes to the purpose of use, place of use, points of diversion, quantity of water diverted, or ownership, or applications by these agencies for new water rights; provided, that the changes or applications do not involve the construction of a dam, reservoir, diversion, or other water impoundment facility within the segments of Cache Creek designated in paragraphs (1) and (2). Any such change or application shall be subject to all applicable constitutional, statutory, and judicial requirements, including the public trust doctrine.

(6) (A) The designation of Cache Creek under paragraphs (1) and (2) shall not impair or affect in any way activities to manage or remove invasive or nonnative plants and animal species.

(B) The designation of Cache Creek under paragraphs (1) and (2) shall not impair or affect in any way activities to remediate mercury pollution; provided, that this activity does not involve the construction of a dam, reservoir, diversion, or other water impoundment facility within the segments of Cache Creek designated in paragraphs (1) and (2).

(7) (A) Neither the Governor nor an employee of a state agency or department shall apply to a secretary, department, agency, or other entity of the federal government for the designation of any portion of Cache

Creek as a component of the national wild and scenic rivers system under the federal Wild and Scenic Rivers Act (16 U.S.C. Sec. 1271 et seq.).

(B) Neither the Governor nor an employee of a state agency or department shall expend funds preparing, filing, or otherwise submitting an application to a secretary, department, or other entity of the federal government for the designation of any portion of Cache Creek as a component of the national wild and scenic rivers system under the federal Wild and Scenic Rivers Act (16 U.S.C. Sec. 1271 et seq.).

(8) To the extent that this subdivision conflicts with other provisions of this chapter, this subdivision shall control.

(k) Other rivers which qualify for inclusion in the system may be recommended to the Legislature by the secretary.

SEC. 3. Section 5093.545 of the Public Resources Code is amended to read:

5093.545. The classifications heretofore established by the secretary for the rivers or segments of rivers included in the system are revised and adopted as follows:

	Rivers	Classification
(a)	Klamath River: The Klamath River from the FERC Project 2082 downstream boundary in Section 17 T47N R5W as shown on Exhibit K-7 sheet 1 dated May 25, 1962, to the river mouth at the Pacific Ocean	Recreational
(b)	Scott River:	
(1)	The Scott River from Shackleford Creek to McCarthy Creek	Recreational
(2)	The Scott River from McCarthy Creek to Scott Bar	Scenic
(3)	The Scott River from Scott Bar to the confluence with the Klamath River	Recreational
(c)	Salmon River:	
(1)	The Salmon River from the Forks of Salmon to the Lewis Creek confluence	Recreational
(2)	The Salmon River from the Lewis Creek confluence to the Wooley Creek confluence	Scenic
(3)	The Salmon River from the Wooley Creek confluence to the confluence with the Klamath River	Recreational
(4)	The South Fork of the Salmon River from Cecilville to St. Claire Creek confluence	Recreational

(5)	The South Fork from St. Claire Creek confluence to the Matthews Creek confluence	Scenic
(6)	The South Fork from Matthews Creek confluence to the Forks of Salmon	Recreational
(7)	The North Fork of the Salmon River from Marble Mountain Wilderness boundary to Mule Bridge Campground in Section 35 T12N R11W and Section 12 T11N R11W	Wild
(8)	The North Fork from Mule Bridge Campground to the Forks of Salmon	Recreational
(9)	Wooley Creek from the Marble Mountain Wilderness Area boundary to ½ mile upstream of the confluence with Salmon River	Wild
(10)	Wooley Creek downstream ½ mile above the confluence with the Salmon River	Recreational
(d)	Trinity River:	
(1)	The Trinity River from 100 yards below Lewiston Dam to Cedar Flat Creek confluence	Recreational
(2)	The Trinity River from Cedar Flat Creek confluence to Gray Falls	Scenic
(3)	The Trinity River from Gray Falls to the west boundary of Section 2 T8N R4E	Recreational
(4)	The Trinity River from the west boundary of Section 2 T8N R4E to the confluence with the Klamath River at Weitchpec	Scenic
(5)	The North Fork of the Trinity River from the Trinity Alps Primitive Area boundary to north boundary Section 20 T34N R11W	Wild
(6)	The North Fork from the north boundary Section 20 T34N R11W to mouth	Recreational
(7)	The South Fork Trinity River from Forest Glen to Hidden Valley Ranch	Wild
(8)	The South Fork from Hidden Valley Ranch to the Naufus Creek confluence in Section 8 T1N R7E	Scenic
(9)	The South Fork from the Naufus Creek confluence in Section 8 T1N R7E to Johnson Creek confluence near the boundary of Sections 13 and 14 T2N R6E	Wild

(10)	The South Fork from Johnson Creek confluence near the boundary of Sections 13 and 14 T2N R6E to the boundary of Sections 25 and 36 T2N R6E	Scenic
(11)	The South Fork from the boundary of Sections 25 and 36 T2N R6E to the footbridge near the mouth of Underwood Creek in Section 17 T4N R6E Humboldt Base and Meridian	Recreational
(12)	The South Fork from the footbridge near the mouth of Underwood Creek in Section 17 T4N R6E to Todd Ranch in Section 18 T5N R5E	Wild
(13)	The South Fork from Todd Ranch in Section 18 T5N R5E to the confluence with Main Trinity	Scenic
(14)	New River from the Salmon Trinity Primitive Area boundary to the junction with the East Fork New River in Section 23 T7N R7E	Wild
(15)	New River from the junction with the East Fork New River in Section 23 T7N R7E to 100 yards below Panther Creek Campground in Section 18 T6N R7E	Recreational
(16)	New River from 100 yards below Panther Creek Campground in Section 18 T6N R7E to Dyer Creek confluence in Section 25 T26N R6E	Scenic
(17)	New River from Dyer Creek confluence in Section 25 T26N R6E to the confluence with Trinity River	Wild
(e)	Smith River:	
(1)	Smith River from the confluence of the Middle and South Forks to its mouth at the Pacific Ocean	Recreational
(2)	Middle Fork Smith River from its source about 3 miles south of Sanger Lake as depicted on 1956 USGS 15' "Preston Peak" topographic map to the middle of Section 7 T17N R5E	Wild
(3)	Middle Fork Smith River from the middle of Section 7 T17N R5E to the middle of Section 6 T17N R5E	Scenic

(4)	Middle Fork Smith River from middle of Section 6 T17N R5E to one-half mile upstream from the confluence with Knopki Creek	Wild
(5)	Middle Fork Smith River from one-half mile upstream from the confluence with Knopki Creek to the confluence with South Fork Smith River	Recreational
(6)	Myrtle Creek from its source in Section 9 T17N R1E as depicted on 1952 USGS 15' "Crescent City" topographic map to the middle of Section 28 T17N R1E	Recreational
(7)	Myrtle Creek from the middle of Section 28 T17N R1E to the confluence with the Middle Fork Smith River	Recreational
(8)	Shelly Creek from its source in Section 1 T18N R3E as depicted on 1951 USGS 15' "Gasquet" topographic map to the confluence with Patrick Creek	Recreational
(9)	Kelly Creek from its source in Section 32 T17N R3E as depicted on 1951 USGS 15' "Gasquet" topographic map to the confluence with the Middle Fork Smith River	Recreational
(10)	Packsaddle Creek from its source about 0.8 miles southwest of Broken Rib Mountain as depicted on 1956 USGS 15' "Preston Peak" topographic map to the eastern boundary of Section 3 T17N R1E	Recreational
(11)	Packsaddle Creek from the eastern boundary of Section 3 T17N R4E to the northern boundary of Section 3 T17N R4E	Recreational
(12)	Packsaddle Creek from the northern boundary of Section 3 T17N R4E to the confluence with the Middle Fork of Smith River	Recreational
(13)	East Fork Patrick Creek from its source in Section 10 T18N R3E as depicted on 1951 USGS 15' "Gasquet" topographic map to the confluence with the West Fork Patrick Creek	Recreational

(14)	West Fork Patrick Creek from its source in Section 18 T18N R3E as depicted on 1951 USGS 15' "Gasquet" topographic map to the confluence with the East Fork Patrick Creek	Recreational
(15)	Griffin Creek from its source about 0.2 miles southwest of Hazel View Summit as depicted on 1956 USGS 15' "Preston Peak" topographic map to the confluence with the Middle Fork Smith River	Recreational
(16)	Knopki Creek from its source about 0.4 miles west of Sanger Peak as depicted on 1956 USGS 15' "Preston Peak" topographic map to the confluence with the Middle Fork Smith River	Recreational
(17)	Monkey Creek from its source in the northeast quadrant of Section 12 T18N R3E as depicted on 1951 USGS 15' "Gasquet" topographic map to the northern boundary of Section 26 T18N R3E	Recreational
(18)	Monkey Creek from the northern boundary of Section 26 T18N R3E to the confluence with the Middle Fork of Smith River	Recreational
(19)	Patrick Creek from the junction of East and West Forks of Patrick Creek to the confluence with the Middle Fork Smith River	Recreational
(20)	North Fork Smith River from the California-Oregon boundary to the confluence with an unnamed tributary in the northern quarter Section 5 T18N R2E as depicted on 1951 USGS 15' "Gasquet" topographic map	Wild
(21)	North Fork Smith River from the confluence with an unnamed tributary in the northern quarter of Section 5 T18N R2E to the southernmost intersection of the eastern boundary of Section 5 T18N R2E as depicted on 1951 USGS 15' "Gasquet" topographic map	Scenic

(22)	North Fork Smith River from the southernmost intersection of the eastern boundary Section 5 T18N R2E as depicted on 1951 USGS 15' "Gasquet" topographic map to the confluence with Stony Creek	Wild
(23)	North Fork Smith River from the confluence with Stony Creek to the confluence with the Middle Fork of the Smith River	Recreational
(24)	Diamond Creek from the California-Oregon state boundary to the confluence with High Plateau Creek	Recreational
(25)	Diamond Creek from the confluence with High Plateau Creek to the confluence with the North Fork Smith River	Recreational
(26)	Bear Creek from its source in Section 24 T18N R2E as depicted on 1951 USGS 15' "Gasquet" topographic map to the confluence with Diamond Creek	Recreational
(27)	Still Creek from its source in Section 11 T18N R1E as depicted on 1952 USGS 15' "Crescent City" topographic map to the confluence with the North Fork Smith River	Recreational
(28)	North Fork Diamond Creek from the California-Oregon state boundary to the confluence with Diamond Creek	Recreational
(29)	High Plateau Creek from its source in Section 26 T18N R2E as depicted on 1951 USGS 15' "Gasquet" topographic map to the northern boundary Section 23 T18N R2E	Recreational
(30)	High Plateau Creek from the northern boundary Section 23 T18N R2E to the confluence with Diamond Creek	Recreational
(31)	Siskiyou Fork of Smith River from its source about 0.7 miles southeast of Broken Rib Mountain as depicted on 1956 USGS 15' "Preston Peak" topographic map to the confluence with the South Siskiyou Fork of the Smith River	Wild

(32)	Siskiyou Fork of the Smith River from the confluence with the South Siskiyou Fork of the Smith River to the confluence with the Middle Fork of the Smith River	Recreational
(33)	South Siskiyou Fork of the Smith River from its source about 0.6 miles southwest of Buck Lake as depicted on 1956 USGS 15' "Preston Peak" topographic map to the confluence with the Siskiyou Fork of the Smith River	Wild
(34)	South Fork Smith River from its source about 0.5 miles southwest of Bear Mountain as depicted on 1956 USGS 15' "Preston Peak" topographic map to Blackhawk Bar	Wild
(35)	South Fork Smith River from Blackhawk Bar to the confluence with the Middle Fork Smith River	Recreational
(36)	Williams Creek from its source in Section 31 T14N R4E as depicted on 1952 USGS 15' "Ship Mountain" topographic map to the confluence with Eight Mile Creek	Recreational
(37)	Eight Mile Creek from its source in Section 29 T14N R4E as depicted on 1955 USGS 15' "Dillon Mtn." topographic map to the confluence with the South Fork Smith River	Recreational
(38)	Prescott Fork of the Smith River from its source about 0.5 miles southeast of Island Lake as depicted on 1955 USGS 15' "Dillon Mtn." topographic map to the confluence with the South Fork Smith River	Recreational
(39)	Quartz Creek from its source in Section 31 T16N R4E as depicted on 1952 USGS 15' "Ship Mountain" topographic map to the confluence with the South Fork Smith River	Recreational
(40)	Jones Creek from its source in Section 36 T16N R3E as depicted on 1952 USGS 15' "Ship Mountain" topographic map to the middle of Section 5 T15N R3E	Recreational
(41)	Jones Creek from the middle of Section 5 T15N R3E to the confluence with the South Fork of the Smith River	Recreational

(42)	Hurdygurdy Creek from its source about 0.4 miles southwest of Bear Basin Butte as depicted on 1956 USGS 15' "Preston Peak" topographic map to the confluence with the South Fork Smith River	Recreational
(43)	Gordon Creek from its source in Section 18 T16N R3E as depicted on 1951 USGS 15' "Gasquet" topographic map to the confluence with the South Fork Smith River	Recreational
(44)	Coon Creek from the junction of the two source tributaries in the southwest quadrant of Section 31 T17N R3E as depicted on 1951 USGS 15' "Gasquet" topographic map to the western boundary of Section 14 T16N R2E	Recreational
(45)	Coon Creek from the western boundary of Section 14 T16N R2E to the confluence with the South Fork Smith River	Recreational
(46)	Craigs Creek from its source in Section 36 T17N R2E as depicted on 1951 USGS 15' "Gasquet" topographic map to the confluence with the South Fork Smith River	Recreational
(47)	Buck Creek from its source at Cedar Camp Spring as depicted on 1952 USGS 15' "Ship Mountain" topographic map to the confluence with the South Fork Smith River	Recreational
(48)	Muzzleloader Creek from its source in Section 2 T15N R3E as depicted on 1952 USGS 15' "Ship Mountain" topographic map to the confluence with Jones Creek	Recreational
(49)	Canthook Creek from its source in Section 2 T15N R2E as depicted on 1952 USGS 15' "Ship Mountain" topographic map to the confluence with the South Fork Smith River	Recreational
(f)	Eel River:	
(1)	The Eel River from 100 yards below Van Arsdale Dam to the confluence with Tomki Creek	Recreational
(2)	The Eel River from the confluence with Tomki Creek to the middle of Section 22 T19N R12W	Scenic

(3)	The Eel River from the middle of Section 22 T19N R12W to the boundary between Sections 7 and 8 T19N R12W	Recreational
(4)	The Eel River from the boundary between Sections 7 and 8 T19N R12W to the confluence with Outlet Creek	Wild
(5)	The Eel River from the confluence with Outlet Creek to the mouth at the Pacific Ocean	Recreational
(6)	The South Fork of the Eel River from the mouth of Section Four Creek near Branscomb	Recreational
(7)	The South Fork of the Eel River from Horseshoe Bend to the middle of Section 29 T23N R16W	Wild
(8)	The South Fork of the Eel River from the middle of Section 29 T23N R16W to the confluence with the main Eel near Weott	Recreational
(9)	Middle Fork of the Eel River from the intersection of the river with the southern boundary of the Middle Eel-Yolla Bolly Wilderness Area to the Eel River Ranger Station	Wild
(10)	The Middle Fork of the Eel River from Eel River Ranger Station to Williams Creek	Recreational
(11)	The Middle Fork of the Eel River from Williams Creek to the southern boundary of the northern quarter of Section 25 T22N R12W	Scenic
(12)	The Middle Fork of the Eel River from the southern boundary of the northern quarter of Section 25 T22N R12W to the boundary between Sections 4 and 5 T21N R13W	Wild
(13)	The Middle Fork of the Eel River from the boundary between Sections 4 and 5 T21N R13W to the confluence with main Eel at Dos Rios	Recreational
(14)	The North Fork of the Eel River from the Old Gilman Ranch to the middle of Section 8 T24N R13W	Wild

(15)	The North Fork of the Eel River from the middle of Section 8 T24N R13W to the boundary between Sections 12 and 13 T24N R14W	Recreational
(16)	The North Fork of the Eel River from the boundary between Sections 12 and 13 T24N R14W to the confluence with main Eel	Wild
(g)	Van Duzen River:	
(1)	The Van Duzen River from the Dinsmore Bridge to the powerline crossing above Little Larabee Creek	Scenic
(2)	The Van Duzen River from the powerline crossing above Little Larabee Creek to the confluence with Eel River	Recreational
(h)	Lower American River: The Lower American River from Nimbus Dam to its junction with the Sacramento River	Recreational
(i)	North Fork American River:	
(1)	The North Fork from the source of the North Fork American River to two and one-half miles above the Forest Hill-Soda Springs Road	Wild
(2)	The North Fork from two and one-half miles above the Forest Hill-Soda Springs Road to one-half mile below the Forest Hill-Soda Springs Road	Scenic
(3)	The North Fork from one-half mile below the Forest Hill-Soda Springs Road to one-quarter mile above the Iowa Hill Bridge	Wild
(4)	The North Fork from one-quarter mile above the Iowa Hill Bridge to the Iowa Hill Bridge	Scenic
(j)	West Walker River:	
(1)	West Walker River from Tower Lake to northern boundary of Section 10 (T5N, R22E)	Wild
(2)	West Walker River From northern boundary of Section 10 (T5N, R22E) to the eastern boundary of Section 23 (T6N, R22E)	Scenic

- (3) West Walker River from the eastern boundary of Section 23 (T6N, R22E) to the eastern boundary of Section 24 (T6N, R22E) Recreational
- (4) West Walker River from the eastern boundary of Section 24 (T6N, R22E) to the confluence with Little Walker River Scenic
- (5) West Walker River from the confluence with Little Walker River to the confluence with Rock Creek Recreational
- (6) Leavitt Creek from Leavitt Falls to the confluence with West Walker River Scenic
- (k) East Fork Carson River: East Fork Carson River from Hangman's Bridge crossing of state Highway 89 to the California-Nevada border Scenic
- (l) (1) The South Yuba River:
 - (A) The South Yuba River from Lang Crossing to the confluence with Fall Creek Scenic
 - (B) The South Yuba River from the confluence with Fall Creek to the confluence with Jefferson Creek below the Town of Washington Recreational
 - (C) The South Yuba River from the confluence with Jefferson Creek to Edwards Crossing Scenic
 - (D) The South Yuba River from Edwards Crossing to its confluence with Kentucky Creek below Bridgeport Scenic
- (2) This subdivision shall become operative January 1, 2001.
- (m) Albion River: The Albion River from one-fourth mile upstream of its confluence with Deadman Gulch downstream to its mouth at the Pacific Ocean Recreational
- (n) Gualala River: The main stem Gualala River from the confluence of the North and South Forks to the Pacific Ocean Recreational
- (o) Cache Creek:

- (1) North Fork Section:
From Highway 20 two miles downstream to
the confluence of Cache Creek and the North
Fork Cache Creek Scenic
- (2) Mainstem Section:
 - (A) $\frac{1}{4}$ mile downstream of Cache Creek
Dam to the confluence with Davis Creek Wild
 - (B) Davis Creek confluence to 1 mile
downstream of Davis Creek confluence Scenic
 - (C) 1 mile downstream of Davis Creek
confluence to western boundary of
Section 6 T12N R4W Wild
 - (D) Western boundary of Section 6
to the confluence with Bear Creek Scenic
 - (E) Bear Creek confluence to Camp
Haswell Recreational

CHAPTER 577

An act to amend Sections 25200.15, 25247, and 25360.2 of, and to add Section 25201.6.1 to, the Health and Safety Code relating to hazardous material.

[Approved by Governor October 6, 2005. Filed with
Secretary of State October 6, 2005.]

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

SECTION 1. Section 25200.15 of the Health and Safety Code is amended to read:

25200.15. (a) The owner or operator of a facility that has a hazardous waste facilities permit issued pursuant to Section 25200 or 25201.6 may change facility structures or equipment without modifying the facility's hazardous waste facilities permit, if either of the following apply:

(1) The change to structures or equipment is not within a permitted unit.

(2) Both of the following apply to the change to the structures or equipment:

(A) The change to structures or equipment is within the boundary of a permitted unit, and the structure or equipment is certified by the owner or operator not to be actively related to the treatment, storage, or disposal

of hazardous waste, or the secondary containment of those hazardous wastes.

(B) The department, within 30 days from the date of receipt of notice from the owner or operator, does not determine any of the following:

(i) The change is related to the treatment, storage, or disposal of hazardous waste or the secondary containment of those hazardous wastes.

(ii) The change may otherwise significantly increase risks to human health and safety or the environment related to the management of the hazardous wastes.

(iii) The regulations adopted pursuant to the federal act require a permit modification for the change.

(b) (1) To the extent consistent with the federal act, and the regulations adopted pursuant to the federal act, the owner or operator of a facility that has a hazardous waste facilities permit issued pursuant to Section 25200 or 25201.6 may change the facility structure or equipment utilizing the Class 1* permit modification, specified in Chapter 20 (commencing with Section 66270.1) of Division 4.5 of Title 22 of the California Code of Regulations, as adopted by the department, if the department determines that all of the following apply:

(A) The change to the structure or equipment is necessary to comply with requirements or the request of a state or federal agency or an air quality management district or air pollution control district.

(B) The change to the structure or equipment will decrease one or more risks, and will not result in any increased risks to human health and safety or the environment related to the management of the hazardous wastes in the structure or equipment.

(C) The owner or operator has submitted sufficient information for the department to make the determinations required by subparagraphs (A) and (B) to comply with the requirements of Division 13 (commencing with Section 21000) of the Public Resources Code, the California Environmental Quality Act.

(2) A change to a facility structure or equipment that is authorized by this subdivision may not result in an increase in the permitted capacity of a hazardous waste management unit affected by the change.

(3) This subdivision does not apply to changes for which no permit modification is required pursuant to subdivision (a) and the regulations adopted to implement that subdivision.

(4) This subdivision does not apply to changes classified as Class 1 or Class 1* under the department's regulations pursuant to Chapter 20 (commencing with Section 66270.1) of Division 4.5 of Title 22 of the California Code of Regulations.

(5) The owner or operator of a facility applying for a "Class 1* permit modification" pursuant to this subdivision shall enter into a written

agreement with the department pursuant to which that person shall reimburse the department, pursuant to Article 9.2 (commencing with Section 25206.1), for the costs incurred by the department in processing the application.

(c) (1) To the extent consistent with the federal act, the owner or operator of a facility operating under a hazardous waste facilities permit issued pursuant to Section 25200 or 25201.6 may make a Class 1 permit modification for minor equipment replacement or upgrade with functionally equivalent components of equipment such as pipes, valves, pumps, conveyors, controls, or other similar equipment, as specified in Section (A)(3) of Appendix I of Chapter 20 (commencing with Section 66270.1) of Division 4.5 of Title 22 of the California Code of Regulations, without providing prior notification as long as the modification is exempt from the requirements of the California Environmental Quality Act, Division 13 (commencing with Section 21000) of the Public Resources Code, and if the owner or operator complies with both of the following conditions:

(A) The owner or operator notifies the department concerning the replacement or upgrade by certified mail or other means that establish proof of delivery within seven calendar days after the change is commenced. The notice shall specify the replacement or upgrade being made to the equipment referenced in the permit and shall explain why the replacement or upgrade is necessary.

(B) Except as otherwise specified in this subdivision, the owner or operator complies with the requirements of Chapter 20 (commencing with Section 66270.1) and Chapter 21 (commencing with Section 66271.1) of Division 4.5 of Title 22 of the California Code of Regulations, as adopted by the department, that are applicable to a Class 1 modification.

(2) Misapplication of the Class 1 modification allowed under this subdivision is subject to enforcement by the department under this chapter.

(3) This subdivision shall remain in effect until the time when the department amends its regulations to provide for replacement or upgrade of equipment without prior notification, subject to those conditions and limitations determined to be necessary by the department.

(d) Any determination made pursuant to this section, including, but not limited to, any determination by the department regarding the classification of a permit modification, may be appealed by the owner or operator in the manner provided for appeal of a permit determination pursuant to the regulations adopted by the department.

SEC. 2. Section 25201.6.1 is added to the Health and Safety Code, to read:

25201.6.1. The department shall seek a determination from the United States Environmental Protection Agency as to the conditions, if any, under which the department may authorize a storage facility that is authorized under Section 25201.6 to transfer bulk liquids to and from railcars, to store railcars holding a residual heel from prior loads of RCRA hazardous waste in excess of 10 days without obtaining a RCRA-equivalent hazardous waste facility permit. Upon receipt of a written determination from the United States Environmental Protection Agency, the department shall initiate whatever administrative actions are necessary to enable the department to authorize this activity, subject to any regulatory or permit conditions that are required by the United States Environmental Protection Agency or are determined to be necessary by the department. Those administrative actions may include, but are not limited to, one or more of the following, as determined necessary:

- (a) Adopting regulations.
- (b) Processing permit modification requests.
- (c) Seeking authorization from the United States Environmental Protection Agency to allow the department to authorize this activity.

SEC. 3. Section 25247 of the Health and Safety Code is amended to read:

25247. (a) The department shall review each plan submitted pursuant to Section 25246 and shall approve the plan if it finds that the plan complies with the regulations adopted by the department and complies with all other applicable state and federal regulations.

(b) The department shall not approve the plan until at least one of the following occurs:

(1) The plan has been approved pursuant to Section 13227 of the Water Code.

(2) Sixty days expire after the owner or operator of an interim status facility submits the plan to the department. If the department denies approval of a plan for an interim status facility, this 60-day period shall not begin until the owner or operator resubmits the plan to the department.

(3) The director finds that immediate approval of the plan is necessary to protect public health, safety, or the environment.

(c) Any action taken by the department pursuant to this section is subject to Section 25204.5.

(d) (1) To the extent consistent with the federal act, the department shall impose the requirements of a hazardous waste facility postclosure plan on the owner or operator of a facility through the issuance of an enforcement order, entering into an enforceable agreement, or issuing a postclosure permit.

(A) A hazardous waste facility postclosure plan imposed or modified pursuant to an enforcement order, a permit, or an enforceable agreement shall be approved in compliance with the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code).

(B) Before the department initially approves or significantly modifies a hazardous waste facility postclosure plan pursuant to this subdivision, the department shall provide a meaningful opportunity for public involvement, which, at a minimum, shall include public notice and an opportunity for public comment on the proposed action.

(C) For the purposes of subparagraph (B), a “significant modification” is a modification that the department determines would constitute a class 3 permit modification if the change were being proposed to a hazardous waste facilities permit. In determining whether the proposed modification would constitute a class 3 modification, the department shall consider the similarity of the modification to class 3 modifications codified in Appendix I of Chapter 20 (commencing with Section 66270.1) of Division 4.5 of Title 22 of the California Code of Regulations. In determining whether the proposed modification would constitute a class 3 modification, the department shall also consider whether there is significant public concern about the proposed modification, and whether the proposed change is so substantial or complex in nature that the modification requires the more extensive procedures of a class 3 permit modification.

(2) This subdivision does not limit or delay the authority of the department to order any action necessary at a facility to protect public health or safety.

(3) If the department imposes a hazardous waste facility postclosure plan in the form of an enforcement order or enforceable agreement, in lieu of issuing or renewing a postclosure permit, the owner or operator who submits the plan for approval shall, at the time the plan is submitted, pay the same fee specified in subparagraph (F) of paragraph (1) of subdivision (d) of Section 25205.7, or enter into a cost reimbursement agreement pursuant to subdivision (a) of Section 25205.7 and upon commencement of the postclosure period shall pay the fee required by paragraph (9) of subdivision (c) of Section 25205.4. For purposes of this paragraph and paragraph (9) of subdivision (c) of Section 25205.4, the commencement of the postclosure period shall be the effective date of the postclosure permit, enforcement order, or enforceable agreement.

(4) In addition to any other remedy available under state law to enforce a postclosure plan imposed in the form of an enforcement order or enforcement agreement, the department may take any of the following actions:

(A) File an action to enjoin a threatened or continuing violation of a requirement of the enforcement order or agreement.

(B) Require compliance with requirements for corrective action or other emergency response measures that the department deems necessary to protect human health and the environment.

(C) Assess or file an action to recover civil penalties and fines for a violation of a requirement of an enforcement order or agreement.

(e) Subdivision (d) does not apply to a postclosure plan for which a final or draft permit has been issued by the department on or before December 31, 2003, unless the department and the facility mutually agree to replace the permit with an enforcement order or enforceable agreement pursuant to the provisions of subdivision (d).

(f) (1) Except as provided in paragraphs (2) and (3), the department may only impose postclosure plan requirements through an enforcement order or an enforceable agreement pursuant to subdivision (d) until January 1, 2009.

(2) This subdivision does not apply to an enforcement order or enforceable agreement issued prior to January 1, 2009, or an order or agreement for which a public notice is issued on or before January 1, 2009.

(3) This subdivision does not apply to the modification on or after January 1, 2009, of an enforcement order or enforceable agreement that meets the conditions in paragraph (2).

(g) If the department determines that a postclosure permit is necessary to enforce a postclosure plan, the department may, at any time, rescind and replace an enforcement order or an enforceable agreement issued pursuant to this section by issuing a postclosure permit for the hazardous waste facility, in accordance with the procedures specified in the department's regulations for the issuance of postclosure permits.

(h) Nothing in this section may be construed to limit or delay the authority of the department to order any action necessary at a facility to protect public health or safety, or the environment.

SEC. 4. Section 25360.2 of the Health and Safety Code is amended to read:

25360.2. (a) For purposes of this section, the following definitions apply:

(1) "Owner" means either (A) the owner of property who occupies a single-family residence or one-half of a duplex constructed on the property, or (B) the owner of common areas within a residential common interest development who owns those common areas for the benefit of the residential homeowners. This paragraph does not include the developer of the common interest development.

(2) "Property" means either (A) real property of five acres or less which is zoned for, and on which has been constructed, a single-family residence, or (B) common areas within a residential common interest development.

(b) (1) Notwithstanding any other provision of this chapter, an owner of property that is the site of a hazardous substance release is presumed to have no liability pursuant to this chapter for either of the following:

(A) A hazardous substance release that has occurred on the property.

(B) A release of a hazardous substance to groundwater underlying the property if the release occurred at a site other than the property.

(2) The presumption may be rebutted as provided in subdivision (d).

(c) An action for recovery of costs or expenditures incurred from the state account or the Hazardous Substance Cleanup Fund pursuant to this chapter in response to a hazardous substance release may not be brought against an owner of property unless the department first certifies that, in the opinion of the department, one of the following applies:

(1) The hazardous substance release that occurred on the property occurred after the owner acquired the property.

(2) The hazardous substance release that occurred on the property occurred before the owner acquired the property and at the time of acquisition the owner knew or had reason to know of the hazardous substance release.

(3) The owner of property where there has been a release of a hazardous substance to groundwater underlying the property took, or is taking, one or more of the following actions:

(A) Caused or contributed to a release of a hazardous substance to the groundwater.

(B) Fails to provide the department, or its authorized representative, with access to the property.

(C) Interferes with response action activities.

(d) In an action brought against an owner of property to recover costs or expenditures incurred from the state account or the Hazardous Substance Cleanup Fund pursuant to this chapter in response to a hazardous substance release, the presumption established in subdivision (b) may be rebutted if it is established by a preponderance of the evidence that the facts upon which the department made the certification pursuant to paragraph (1), (2), or (3) of subdivision (c) are true.

(e) Notwithstanding any other provision of this chapter, this section governs liability pursuant to this chapter for an owner of property, as defined in subdivision (a).

SEC. 5. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred

because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

CHAPTER 578

An act to amend Section 25214.8.1 of, to amend the heading of Article 10.2.1 (commencing with Section 25214.8.1) of Chapter 6.5 of Division 20 of, and to add Sections 25214.8.3, 25214.8.4, 25214.8.5, and 25214.8.6 to, the Health and Safety Code, relating to hazardous waste.

[Approved by Governor October 6, 2005. Filed with
Secretary of State October 6, 2005.]

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

SECTION 1. The heading of Article 10.2.1 (commencing with Section 25214.8.1) of Chapter 6.5 of Division 20 of the Health and Safety Code is amended to read:

Article 10.2.1. Mercury-Added Thermostats, Relays, Switches, and
Measuring Devices

SEC. 2. Section 25214.8.1 of the Health and Safety Code is amended to read:

25214.8.1. (a) The Legislature finds and declares all of the following:

(1) Once mercury is released into the environment it can change to methyl mercury, a highly toxic compound. Methyl mercury is easily taken up in living tissue and bioaccumulates over time, causing serious health effects, including neurological and reproductive disorders in humans and wildlife. Since mercury does not break down in the environment, it has become a significant health threat to humans and wildlife.

(2) Due to the bioaccumulation of mercury and other contaminants in fish, the California Environmental Protection Agency has issued a warning advising that adults and women who are pregnant or who may become pregnant should limit their fish intake from several state waterways.

(3) Increasingly stringent mercury discharge limits for wastewater treatment plants make the identification and elimination of unnecessary

sources of mercury a critical task, because the cost of mercury removal at a wastewater treatment plant is far greater than the societal benefits of continuing use of mercury-containing products, as currently formulated.

(4) Thermostats and other switches and relays are among the largest remaining sources of mercury in consumer products that can be legally sold in California.

(5) Most thermostats contain 3,000 milligrams of mercury and have a 35-year lifespan.

(6) Many other mercury-containing switches hold up to 4 grams of mercury, and mercury-containing relays hold as much as 153 grams.

(7) Esophageal dilators contain as much as two pounds of mercury.

(8) Mercury thermostats, switches, relays, measuring devices, esophageal dilators, and gastrointestinal tubes are hazardous waste when discarded, and on and after January 1, 2006, all mercury thermostat, switch, relay, measuring device, esophageal dilator, and gastrointestinal tube wastes will be prohibited from disposal in a solid waste landfill under the regulations adopted pursuant to this chapter.

(9) Economical alternatives to mercury thermostats, relays, switches, measuring devices, esophageal dilators, and gastrointestinal tubes are available for commercial and, when applicable, residential applications.

(b) For purposes of this article the following definitions shall apply:

(1) "Mercury-added product" means any product or device that contains mercury.

(2) "Mercury-added thermostat" means a product or device that uses a mercury switch to sense and control room temperature through communication with heating, ventilating, or air-conditioning equipment. A mercury-added thermostat includes thermostats used to sense and control room temperature in residential, commercial, industrial, and other buildings but does not include a thermostat used to sense and control temperature as part of a manufacturing process.

(3) "Mercury relay" means a mercury-added product or device that opens or closes electrical contacts to effect the operation of other devices in the same or another electrical circuit. "Mercury relay" includes, but is not limited to, mercury displacement relays, mercury wetted reed relays, and mercury contact relays.

(4) "Mercury switch" means a mercury-added product or device that opens or closes an electrical circuit or gas valve.

(A) A mercury switch includes, but is not limited to, mercury float switches actuated by rising or falling liquid levels, mercury tilt switches actuated by a change in the switch position, mercury pressure switches actuated by a change in pressure, mercury temperature switches actuated by a change in temperature, and mercury flame sensors.

(B) A mercury switch does not include a mercury-added thermostat or a mercury diostat.

(C) “Mercury diostat” means a mercury switch that controls a gas valve in an oven or oven portion of a gas range.

SEC. 3. Section 25214.8.3 is added to the Health and Safety Code, to read:

25214.8.3. (a) Except as provided in subdivision (b), on or after July 1, 2006, a person shall not sell, offer to sell, or distribute for promotional purposes in this state, any of the following new or refurbished mercury-added products:

- (1) A barometer.
- (2) An esophageal dilator, bougie tube, or gastrointestinal tube.
- (3) A flow meter.
- (4) A hydrometer.
- (5) A hydrometer or psychrometer.
- (6) A manometer.
- (7) A pyrometer.
- (8) A sphygmomanometer.
- (9) A thermometer.

(b) Subdivision (a) does not apply to the sale of a mercury-added product if the use of the product is required under a federal law or federal contract specification or if the only mercury-added component in the product is a button cell battery.

SEC. 4. Section 25214.8.4 is added to the Health and Safety Code, to read:

25214.8.4. (a) Except as provided in subdivisions (b) to (e), inclusive, and Section 25214.8.5, on or after July 1, 2006, a person shall not sell, offer to sell, or distribute for promotional purposes in this state, a new or refurbished mercury switch or mercury relay individually or as a product component.

(b) Subdivision (a) does not apply if the switch or relay is used to replace a switch or relay that is a component in a larger product in use prior to July 1, 2006, and one of the following applies:

- (1) The larger product is used in manufacturing.
- (2) The switch or relay is integrated in and not physically separate from other components of the larger product.

(c) Subdivision (a) does not apply to the sale of a mercury switch or mercury relay if use of the switch or relay is required under federal law or federal contract specification.

(d) Subdivision (a) does not apply to a mercury switch or a mercury relay that contains less than 1 milligram of mercury, if the manufacturer of the mercury switch or relay has notified the department of its plans to operate under an exemption pursuant to this subdivision. The

notification shall be resubmitted to the department every three years. The initial and subsequent notifications shall be signed and dated, and shall include all of the following:

(1) The name of the manufacturer and the name, position, and contact information for the person who is the manufacturer's contact person on all matters concerning the exemption.

(2) An identification and description of the mercury switch or mercury relay to which the exemption applies.

(3) A statement that the manufacturer certifies all of the following:

(A) The mercury switch or relay is hermetically sealed by the manufacturer.

(B) The mercury switch or relay is intended for industrial use in test and measurement instruments or in systems for monitoring and control applications.

(C) There is no substantially equivalent nonmercury alternative technology for the intended use of the switch or relay, considering all aspects of electrical performance, size, power consumption, product life, and cost.

(D) (1) The manufacturer, individually, or in conjunction with an industry or trade group, has developed and implemented an ongoing program for the proper end-of-life collection, transportation, and management of exempted mercury switches or relays sold in this state, including the removal of the mercury switch or mercury relay from the product in which it is contained.

(2) The program includes a consumer information component to ensure that users of the mercury switch or relay, and the products that contain the mercury switches or relays, are aware of available collection opportunities and legal requirements for management of the mercury switch or relay, once the switch or relay or the product becomes a waste.

(E) The manufacturer recognizes that the exemption provided by this subdivision becomes null and void if and when either of the following occurs:

(i) The manufacturer fails to submit a new exemption notification, meeting the requirements of this subdivision, within three years following submission of the prior exemption notification.

(ii) Any of the conditions set forth in subparagraphs (A) to (D), inclusive, are no longer satisfied.

(e) Subdivision (a) does not apply to the resale of a refurbished imaging and therapy system utilized for medical diagnostic purposes that includes a mercury switch or relay if the manufacturer of the imaging and therapy system has notified the department of its plans to operate under an exemption pursuant to this subdivision. The notification shall be signed and dated, and shall include all of the following:

(1) The name of the manufacturer and the name, position, and contact information for the person who is the manufacturer's contact person on all matters concerning the exemption.

(2) An identification and description of the imaging and therapy system to which the exemption applies.

(3) A statement that the manufacturer certifies all of the following:

(A) The mercury switch or relay is integrated in, and not physically separate from, other components of the larger product.

(B) The larger product was initially manufactured prior to July 1, 2006.

(C) (1) The manufacturer, individually, or in conjunction with an industry or trade group, has developed and implemented an ongoing program for the proper end-of-life collection, transportation, and management of mercury switches or relays contained in exempted imaging and therapy systems sold in this state, including the removal of the mercury switch or mercury relay from the product in which it is contained.

(2) The program includes a consumer information component to ensure that users of the products that contain the mercury switches or relays are aware of available collection opportunities and legal requirements for management of the mercury switch or relay, and the products that contain the mercury switches or relays, once the switch or relay or the product becomes a waste.

(D) The manufacturer recognizes that the exemption provided by this subdivision becomes null and void if and when any of the conditions set forth in subparagraphs (A) and (B) are no longer satisfied.

SEC. 5. Section 25214.8.5 is added to the Health and Safety Code, to read:

25214.8.5. (a) A product containing a mercury switch or a mercury relay is exempt from subdivision (a) of Section 25214.8.4, if the manufacturer of the product, or a trade group representing the manufacture, has obtained an exemption, pursuant to the process described in subdivision (b), for the product. An exemption granted under subdivision (b) may apply to all or only to limited uses of the product. An exemption granted under subdivision (b) also applies to the sale to the product manufacturer of the mercury switch or relay to be contained in the product covered by the exemption.

(b) The department shall grant, or renew, an exemption from subdivision (a) of Section 25214.8.4 for a period of three years only if all of the following conditions are met:

(1) The manufacturer of the product, or a trade group representing the manufacturer, submits a request for an initial or renewed exemption to the department that specifies the use or uses of the product for which

an exemption is requested along with supporting information that complies with the requirements set forth in subdivision (c). A manufacturer or trade group may submit a request only for a product and use for which there is no technical feasible alternative, available at a reasonable cost, to the use of the mercury switch or mercury relay in the product for purposes of that use.

(2) The supporting information submitted by the manufacturer or trade group demonstrates that the product is eligible for the exemption.

(3) The manufacturer or trade group requesting the exemption enters into a cost reimbursement agreement with the department, pursuant to subdivision (d), and complies with the terms of that agreement.

(c) The supporting information that a manufacturer or trade group submits to the department, before the department may grant an exemption pursuant to subdivision (b), shall include all of the following:

(1) The name of the manufacturer, or the trade group and the manufacturers represented by the trade group, requesting the exemption and the name, position, and contact information for the person who is the manufacturer's or trade group's contact person on all matters concerning the exemption.

(2) An identification and description of the product, and the use or uses of the product, for which the exemption is requested.

(3) An identification and description of the mercury switch or mercury relay, including identification of the manufacturer of the switch or relay, and an explanation of the need for, and functioning of, the mercury switch or mercury relay in the product.

(4) For each use for which an exemption is requested, information that fully and clearly demonstrates that there is no technically feasible alternative, available at a reasonable cost, to the use of the mercury switch or mercury relay in the product for purposes of that use. This shall include, but is not limited to, a description of past, current, and planned future efforts to seek or develop those alternatives, and a description of all alternatives that have been considered and an explanation of the technical or economic reasons as to why each alternative is not satisfactory.

(5) Information that fully and clearly demonstrates that the switch or relay or the product is constructed so as to prevent the release of mercury to the environment.

(6) A feasible, effective, detailed and complete plan for the proper collection, transportation, and management of the product at the end of its useful life, including removal and proper management of the mercury switch or mercury relay contained in the product, and information fully and clearly demonstrating that the manufacturer, individually, or in conjunction with an industry or trade group, is committed to and capable

of implementing the plan. The plan shall include an education and outreach component to ensure that users of the product are aware of available collection opportunities and legal requirements for management of the product once it becomes a waste. An exemption granted pursuant to subdivision (b) shall become null and void if the manufacturer, individually, or in conjunction with an industry or trade group, has not implemented the plan submitted in support of the exemption request within six months of the effective date of the exemption.

(7) A copy of all similar exemption requests, including supporting documentation, submitted by the applicant to another state, and a copy of that state's response to the exemption request.

(d) A manufacturer or trade group that requests an exemption, or an exemption renewal, pursuant to subdivision (b) shall enter into a written agreement with the department pursuant to the procedures set fourth in Article 9.2 (commencing with Section 25206.1), for reimbursement of all costs incurred by the department in processing and responding to the request.

(e) Trade secrets, as defined in Section 25173, that are identified at the time of submission by a manufacturer or trade group, shall be treated as confidential as required by department procedures established pursuant to Section 25173. Any information that is not a trade secret, as defined in Section 25173, or that has not been identified by the manufacturer as a trade secret, shall be made available to the public upon request pursuant to the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code).

(f) (1) The department shall grant or deny an exemption requested pursuant to subdivision (b) no later than 180 calendar days after receiving the exemption request and all information determined by the department to be necessary to determine if all of the conditions specified in subdivision (b) are met.

(2) An exemption shall not be deemed to be granted if the department fails to grant or deny the exemption request within the time limit specified in paragraph (1)

(3) Nothing in this subdivision shall preclude the applicant and the department from mutually agreeing to an extension of the time limit specified in paragraph (1).

SEC. 6. Section 25214.8.6 is added to the Health and Safety Code, to read:

25214.8.6. On or after January 1, 2008, a person shall not sell, offer to sell, or distribute for promotional purposes in this state, a mercury diostat or a new or refurbished oven or gas range containing a mercury diostat.

SEC. 7. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

CHAPTER 579

An act to add and repeal Section 25305.2 of the Public Resources Code, relating to energy resources.

[Approved by Governor October 6, 2005. Filed with
Secretary of State October 6, 2005.]

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

SECTION 1. Section 25305.2 is added to the Public Resources Code, to read:

25305.2. (a) In addition to the assessments required by Section 25305, the public interest energy strategies portion of the integrated energy policy report to be adopted November 1, 2007, shall include a review of the feasibility of increasing the target for electricity to be procured from an eligible renewable energy resource, as defined in Section 399.12 of the Public Utilities Code, to 33 percent by the year 2020. The review shall consider and report on all of the following:

(1) Deliverability of electricity from eligible renewable energy resources to end users and any needed additions or upgrades to the transmission grid system.

(2) Dispatchability of electricity from eligible renewable energy resources and the consequences for the reliability of the electrical system.

(3) Long-term planning requirements identified in the 2006 procurement plans for electrical corporations approved by the Public Utilities Commission pursuant to Section 454.5 of the Public Utilities Code.

(4) Potential impacts upon the rates of electrical corporations and whether or not a renewable energy public goods charge is necessary to fund the above-market costs of electricity generated from eligible renewable energy resources.

(5) The progress made by electrical corporations toward meeting the goal of procuring 20 percent of the electricity sold to retail customers per year by the year 2010, and the results of electrical corporation bid solicitations pursuant to a renewable energy procurement plan approved by the Public Utilities Commission pursuant to Section 399.14 of the Public Utilities Code.

(6) The progress made by all load-serving entities other than electrical corporations, including the progress made by local publicly owned electric utilities as defined in subdivision (d) of Section 9604 of the Public Utilities Code, toward meeting the goal of procuring 20 percent of the electricity sold to retail customers per year by the year 2010.

(b) The commission shall use existing resources to comply with this section.

(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.

SEC. 2. This act shall become operative only if Senate Bill 107 of the 2005–06 Regular Session is also enacted and becomes operative on or before January 1, 2006.

CHAPTER 580

An act to add Article 1.5 (commencing with Section 43810) to Chapter 4 of Part 5 of Division 26 of the Health and Safety Code, and to add Chapter 8.4 (commencing with Section 25725) to Division 15 of the Public Resources Code, relating to air pollution.

[Approved by Governor October 6, 2005. Filed with
Secretary of State October 6, 2005.]

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

SECTION 1. Article 1.5 (commencing with Section 43810) is added to Chapter 4 of Part 5 of Division 26 of the Health and Safety Code, to read:

Article 1.5. Energy-Efficient Vehicle Group Purchase Program

43810. This article shall be known, and may be cited as, the California Energy-Efficient Vehicle Group Purchase Program.

43811. It is the intent of the Legislature that the state encourage the purchase of energy-efficient vehicles by local and state agencies through

a group-purchasing program that uses the purchasing leverage of state and local agencies to lower the purchase price of those vehicles.

43812. For the purposes of this article, the following definitions apply:

- (a) "Department" means the Department of General Services.
- (b) "Director" means the Director of General Services.
- (c) "Energy-efficient vehicle" means either of the following:
 - (1) A vehicle that meets California's super ultra-low emission vehicle (SULEV) standard for exhaust emissions and the federal inherently low-emission vehicle (ILEV) evaporative emission standard, as defined in Part 88 (commencing with Section 88.101-94) of Title 40 of the Code of Federal Regulations.
 - (2) A hybrid vehicle or an alternative fuel vehicle that meets California's advanced technology partial zero-emission vehicle (AT PZEV) standard for criteria pollutant emissions.
- (d) "Local agency" means any governmental subdivision, district, public and quasi-public corporation, joint powers agency, public agency or public service corporation, authority, agency, board, commission, town, city, county, city and county, fire district, special district, school district, public utility, community college, or municipal corporation, whether incorporated or not or whether chartered or not, or any other public entity.
- (e) "State agency" means any department, division, board, bureau, commission, or other authority of the State of California the University of California, or the California State University.

43813. (a) There is established in the Department of General Services an energy-efficient vehicle group purchase program. The department shall negotiate the lowest possible purchase price, with one or more vendors, for energy-efficient vehicles on behalf of state and local agencies that are interested in obtaining those vehicles.

(b) In administering the program, the Director of General Services shall do all of the following:

(1) No later than April 1, 2006, establish an advisory committee, in cooperation with local and state agencies as defined in Section 43812.

(A) The committee shall meet at least once no later than 30 days after all members are appointed.

(B) The committee shall consult with the department regarding the design of the program and other matters relating to the purchase of energy-efficient vehicles, no later than July 30, 2006.

(2) Notify all affected agencies about the purchasing program through the department's Internet Web site and publications, the Internet Web sites of appropriate associations, governing boards of local agency associations, and other cost-effective means.

(3) After consultation with the committee pursuant to subparagraph (B) of paragraph (1) of subdivision (b), the director shall negotiate contracts, through competitive means and other appropriate strategies, for the purchase of energy-efficient vehicles at the lowest possible price from one or more reliable vendors.

(4) Include a provision in the vendor contract allowing any state or local agency to purchase energy-efficient vehicles directly from the vendor at the contract price.

(c) The department may recover its actual administrative costs from program participants.

(d) Nothing in this article shall be construed as superseding or precluding any similar program that is administered by a district, any other public agency, or any other person.

SEC. 2. Chapter 8.4 (commencing with Section 25725) is added to Division 15 of the Public Resources Code, to read:

CHAPTER 8.4. LOCAL VEHICLE FLEET

25725. On and after January 1, 2006, when awarding a vehicle procurement contract, every city, county, city and county, and special district, including a school district and a community college district, may evaluate and score fuel economy, in addition to other life cycle factors, in choosing passenger cars or light-duty trucks, or both, with the lowest life cycle cost.

25726. (a) On and after January 1, 2006, when awarding a vehicle procurement contract, every city, county, city and county, and special district, including a school district and a community college district, may require that 75 percent of the passenger cars or light-duty trucks, or both, to be acquired be energy-efficient vehicles.

(b) "Energy-efficient vehicle" means either of the following:

(1) A vehicle that meets California's super ultra-low emission vehicle (SULEV) standard for exhaust emissions and the federal inherently low-emission vehicle (ILEV) evaporative emission standard, as defined in Part 88 (commencing with Section 88.101-94) of Title 40 of the Code of Federal Regulations.

(2) A hybrid vehicle or an alternative fuel vehicle that meets California's advanced technology partial zero-emission vehicle (AT PZEV) standard for criteria pollutant emissions.

CHAPTER 581

An act to amend Section 60041 of the Education Code, to amend Sections 71301, 71302, 71303, 71304, and 71305 of the Public Resources Code, and to add Section 13383.6 to the Water Code, relating to environmental education.

[Approved by Governor October 6, 2005. Filed with
Secretary of State October 6, 2005.]

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

SECTION 1. Section 60041 of the Education Code is amended to read:

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

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

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

SEC. 2. Section 71301 of the Public Resources Code is amended to read:

71301. (a) As part of the unified education strategy, the office, under the direction of the Secretary for Environmental Protection and the board, in cooperation with the Resources Agency, the State Department of Education, the State Board of Education, and the Secretary for Education, shall develop education principles for the environment for elementary and secondary school pupils. The principles may be updated every four years beginning July 1, 2008. The principles shall be aligned to the academic content standards adopted by the State Board of Education pursuant to Section 60605 of the Education Code. The principles shall be used to do all of the following:

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

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

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

(1) Environmental sustainability.

(2) Water.

- (3) Air.
- (4) Energy.
- (5) Forestry.
- (6) Fish and wildlife resources.
- (7) Oceans.
- (8) Toxics and hazardous waste.
- (9) Integrated waste management.
- (10) Integrated pest management.
- (11) Public health and the environment.
- (12) Pollution prevention.
- (13) Resource conservation and recycling.
- (14) Environmental justice.

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

(d) (1) The education principles for the environment shall be incorporated, as the State Board of Education determines to be appropriate, in criteria developed for textbook adoption required pursuant to Section 60200 or 60400 of the Education Code in Science, Mathematics, English/Language Arts, and History/Social Sciences.

(2) If the State Board of Education determines that the education principles for the environment are not appropriate for inclusion in the textbook adoption criteria cited in paragraph (1), the State Board of Education shall collaborate with the office to make the changes necessary to ensure that the principles are included in the textbook adoption criteria in Science, Mathematics, English/Language Arts, and History/Social Sciences.

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

SEC. 3. Section 71302 of the Public Resources Code is amended to read:

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

History/Social Sciences, to the extent that any of those content areas are addressed in the model curriculum.

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

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

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

SEC. 4. Section 71303 of the Public Resources Code is amended to read:

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

(b) If the Superintendent of Public Instruction determines that materials developed by the office that provide information on the education principles for the environment are not appropriate for inclusion in publications that provide examples of curriculum resources for teacher use, the Superintendent of Public Instruction shall collaborate with the office to make the changes necessary to ensure that the materials are included in that information.

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

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

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

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

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

SEC. 5. Section 71304 of the Public Resources Code is amended to read:

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

(b) All California Environmental Protection Agency or Resources Agency boards, departments, or offices that take regulatory actions or take enforcement actions requiring the development of or encouraging the promotion of environmental education for elementary and secondary school pupils shall, prior to adoption or approval of the action, seek comments on the action from the office in order to promote consistency with this part and cross-media coordination.

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

SEC. 6. Section 71305 of the Public Resources Code is amended to read:

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

(b) Notwithstanding any other provision of law to the contrary, the agency may accept and receive federal, state, and local funds and contributions of funds from a public or private organization or individual. The account may also receive proceeds from a judgment in state or

federal court, when the funds are contributed or the judgment specifies that the proceeds are to be used for the purposes if this part. The account may receive those funds, contributions, or proceeds from judgments, that are specifically designated for use for environmental education purposes. Private contributors shall not have the authority to further influence or direct the use of their contributions.

(c) Notwithstanding any other provision of law, a state agency that requires the development of, or encourages the promotion of, environmental education for elementary and secondary school pupils, may contribute to the account.

(d) The agency shall immediately deposit any funds contributed pursuant to subdivision (b) into the account.

SEC. 7. Section 13383.6 is added to the Water Code, to read:

13383.6. On and after January 1, 2007, if a regional board or the state board issues a municipal stormwater permit pursuant to Section 402(p) of the Clean Water Act (33 U.S.C. Sec. 1342(p)) that includes a requirement to provide elementary and secondary public schools with educational materials on stormwater pollution, the permittee may satisfy the requirement, upon approval by the regional board or state board, by contributing an equivalent amount of funds to the Environmental Education Account established pursuant to subdivision (a) of Section 71305 of the Public Resources Code.

CHAPTER 582

An act to amend Section 14581 of the Public Resources Code, relating to beverage containers, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 6, 2005. Filed with
Secretary of State October 6, 2005.]

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

SECTION 1. Section 14581 of the Public Resources Code is amended to read:

14581. (a) Subject to the availability of funds, and pursuant to subdivision (c), the department shall expend the moneys set aside in the fund, pursuant to subdivision (c) of Section 14580, for the purposes of this section:

(1) (A) On and after July 1, 2004, to June 30, 2005, inclusive, up to thirty million dollars (\$30,000,000) may be expended for that fiscal year for the payment of handling fees pursuant to Section 14585.

(B) For each fiscal year commencing July 1, 2005, twenty-six million five hundred thousand dollars (\$26,500,000) shall be expended each fiscal year for the payment of handling fees required pursuant to Section 14585.

(2) Fifteen million dollars (\$15,000,000) shall be expended annually for payments for curbside programs and neighborhood dropoff programs pursuant to Section 14549.6.

(3) (A) Fifteen million dollars (\$15,000,000), plus the proportional share of the cost-of-living adjustment, as provided in subdivision (b), shall be expended annually in the form of grants for beverage container litter reduction programs and recycling programs issued to either of the following:

(i) Certified community conservation corps that were in existence on September 30, 1999, or that are formed subsequent to that date, that are designated by a city or a city and county to perform litter abatement, recycling, and related activities, if the city or the city and county has a population, as determined by the most recent census, of more than 250,000 persons.

(ii) Community conservation corps that are designated by a county to perform litter abatement, recycling, and related activities, and are certified by the California Conservation Corps as having operated for a minimum of two years and as meeting all other criteria of Section 14507.5.

(B) Any grants provided pursuant to this paragraph shall not comprise more than 75 percent of the annual budget of a community conservation corps.

(4) (A) Ten million five hundred thousand dollars (\$10,500,000) may be expended annually for payments of five thousand dollars (\$5,000) to cities and ten thousand dollars (\$10,000) for payments to counties for beverage container recycling and litter cleanup activities, or the department may calculate the payments to counties and cities on a per capita basis, and may pay whichever amount is greater, for those activities.

(B) Eligible activities for the use of these funds may include, but are not necessarily limited to, support for new or existing curbside recycling programs, neighborhood dropoff recycling programs, public education promoting beverage container recycling, litter prevention, and cleanup, cooperative regional efforts among two or more cities or counties, or both, or other beverage container recycling programs.

(C) These funds may not be used for activities unrelated to beverage container recycling or litter reduction.

(D) To receive these funds, a city, county, or city and county shall fill out and return a funding request form to the Department of Conservation. The form shall specify the beverage container recycling or litter reduction activities for which the funds will be used.

(E) The Department of Conservation shall annually prepare and distribute a funding request form to each city, county, or city and county. The form shall specify the amount of beverage container recycling and litter cleanup funds for which the jurisdiction is eligible. The form shall not exceed one double-sided page in length, and may be submitted electronically. If a city, county, or city and county does not return the funding request form within 90 days of receipt of the form from the department, the city, county, or city and county is not eligible to receive the funds for that funding cycle.

(F) For the purposes of this paragraph, per capita population shall be based on the population of the incorporated area of a city or city and county and the unincorporated area of a county. The department may withhold payment to any city, county, or city and county that has prohibited the siting of a supermarket site, caused a supermarket site to close its business, or adopted a land use policy that restricts or prohibits the siting of a supermarket site within its jurisdiction.

(5) One million five hundred thousand dollars (\$1,500,000) may be expended annually in the form of grants for beverage container recycling and litter reduction programs.

(6) (A) The department shall expend the amount necessary to pay the processing payment and supplemental processing payment established pursuant to Sections 14575 and 14575.5 and pay processing fee rebates pursuant to Section 14575.2. The department shall establish separate processing fee accounts in the fund for each beverage container material type for which a processing payment and processing fee is calculated pursuant to Section 14575, or for which a processing payment is calculated pursuant to Section 14575 and a voluntary artificial scrap value is calculated pursuant to Section 14575.1, into which account shall be deposited all of the following:

(i) All amounts paid as processing fees for each beverage container material type pursuant to Section 14575.

(ii) Funds equal to the difference between the amount in clause (i) and the amount of the processing payments established in subdivision (b) of Section 14575, and adjusted pursuant to paragraphs (2) and (3) of subdivision (c) of, and subdivision (f) of, Section 14575, to reduce the processing fee to the level provided in subdivision (f) of Section 14575,

or to reflect the agreement by a willing purchaser to pay a voluntary artificial scrap value pursuant to Section 14575.1.

(iii) Funds equal to an amount sufficient to pay the total amount of the supplemental processing payments established pursuant to Section 14575.5.

(B) Notwithstanding Section 13340 of the Government Code, the money in each processing fee account is hereby continuously appropriated to the department for expenditure without regard to fiscal years, for purposes of making processing payments and supplemental processing payments, and reducing processing fees, pursuant to Sections 14575 and 14575.5 and paying processing fee rebates pursuant to Section 14575.2.

(7) Up to five million dollars (\$5,000,000) may be annually expended by the department for the purposes of undertaking a statewide public education and information campaign aimed at promoting increased recycling of beverage containers.

(8) Up to three million dollars (\$3,000,000) shall be expended annually for the payment of quality glass incentive payments pursuant to Section 14549.1.

(9) Up to ten million dollars (\$10,000,000) may be expended annually by the department, until January 1, 2007, to issue grants for recycling market development and expansion-related activities aimed at increasing the recycling of beverage containers, including, but not limited to, the following:

(A) Research and development of collecting, sorting, processing, cleaning, or otherwise upgrading the market value of recycled beverage containers.

(B) Identification, development, and expansion of markets for recycled beverage containers.

(C) Research and development for products manufactured using recycled beverage containers.

(D) Payments to California manufacturers who recycle beverage containers that are marked by resin type identification code "3," "4," "5," "6," or "7," pursuant to Section 18015.

(10) Up to ten million dollars (\$10,000,000) may be transferred on a one-time basis by the department to the Recycling Infrastructure Loan Guarantee Account, for expenditure pursuant to Section 14582.

(b) The fifteen million dollars (\$15,000,000) that is set aside pursuant to paragraph (3) of subdivision (a) is a base amount that the department shall adjust annually to reflect any increases or decreases in the cost of living, as measured by the Department of Labor, or a successor agency, of the federal government.

(c) (1) The department shall review all funds on a quarterly basis to ensure that there are adequate funds to make the payments specified in this section and the processing fee reductions required pursuant to Section 14575.

(2) If the department determines, pursuant to a review made pursuant to paragraph (1), that there may be inadequate funds to pay the payments required by this section and the processing fee reductions required pursuant to Section 14575, the department shall immediately notify the appropriate policy and fiscal committees of the Legislature regarding the inadequacy.

(3) On or before 180 days after the notice is sent pursuant to paragraph (2), the department may reduce or eliminate expenditures, or both, from the funds as necessary, according to the procedure set forth in subdivision (d).

(d) If the department determines that there are insufficient funds to make the payments specified pursuant to this section and Section 14575, the department shall reduce all payments proportionally.

(e) Prior to making an expenditure pursuant to paragraph (7) of subdivision (a), the department shall convene an advisory committee consisting of representatives of the beverage industry, beverage container manufacturers, environmental organizations, the recycling industry, nonprofit organizations, and retailers, to advise the department on the most cost-effective and efficient method of the expenditure of the funds for that education and information campaign.

SEC. 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 a sufficient amount of handling fees to supermarket sites that redeem beverage containers, while continuing to implement the California Beverage Container Recycling and Litter Reduction Act with existing funds, thereby protecting public health and safety and the environment, it is necessary that this act take effect immediately.

CHAPTER 583

An act to amend Section 12301 of the Water Code, relating to water.

[Approved by Governor October 6, 2005. Filed with
Secretary of State October 6, 2005.]

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

SECTION 1. Section 12301 of the Water Code is amended to read:
12301. The Delta Flood Protection Fund is hereby abolished on July 1, 2008, and all unencumbered moneys in the fund are transferred to the General Fund.

CHAPTER 584

An act to amend Section 12670.11 of the Water Code, relating to water.

[Approved by Governor October 6, 2005. Filed with
Secretary of State October 6, 2005.]

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

SECTION 1. Section 12670.11 of the Water Code is amended to read:

12670.11. (a) (1) The project for flood damage reduction and environmental restoration in the American River watershed in Sacramento County is adopted and authorized substantially in accordance with Congressional approval and the final report of the Chief of Engineers dated November 5, 2002, as authorized by Section 128 of the Energy and Water Development Appropriations Act, 2004 (P.L. 108-137), at an estimated cost to the state of the sum that may be appropriated for state cooperation by statute, upon the recommendation and advice of the department or the Reclamation Board.

(2) The project includes the construction of a new bridge with an estimated cost of sixty-six million dollars (\$66,000,000), of which thirty-six million dollars (\$36,000,000) is allocated to flood damage reduction and dam safety.

(3) The state's share of the bridge project cost shall be at least five million, two hundred thousand dollars (\$5,200,000), but not more than nine million dollars (\$9,000,000), of the project amount that is allocated to flood damage reduction.

(4) The calculation of the state's share of the funding pursuant to paragraph (3) shall be determined by the federal government's allocation of the costs of the bridge to the dam safety features of the project.

(b) The Sacramento Area Flood Control Agency shall enter into an agreement with the department pursuant to which the agency agrees to indemnify and hold and save harmless the state, its officers, agents, and

employees for any and all liability for damages that may arise out of the planning, design, construction, operation, maintenance, repair, and rehabilitation of the project.

(c) The City of Folsom shall serve as the nonfederal sponsor of the bridge authorized as part of the project and shall enter into an agreement with the department to receive the state's proportionate share of the cost of the bridge and to indemnify and hold and save harmless the state, its officers, agents, and employees for any and all liability for damages that may arise out of the planning, design, construction, operation, maintenance, repair, and rehabilitation of the bridge.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district are the result of a program for which legislative authority was requested by that local agency or school district, within the meaning of Section 17556 of the Government Code and Section 6 of Article XIII B of the California Constitution.

CHAPTER 585

An act to repeal and add Section 6307 of the Public Resources Code, relating to tidelands and submerged lands, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 6, 2005. Filed with
Secretary of State October 6, 2005.]

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

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

(a) Section 25 of Article I and Sections 3 and 4 of Article X of the California Constitution were adopted to protect and promote public access to the state's waterways.

(b) The state's sovereign interests in tidelands, submerged lands, and the beds of nontidal navigable waters, whether filled or unfilled, are entrusted to the State Lands Commission to be protected as public trust lands pursuant to the California Constitution and the common law public trust doctrine.

(c) As trustee of public trust lands, the commission has a duty to protect and promote the public's access to and use of these lands for trust purposes, including commerce, navigation, and fishing.

(d) As trustee of public trust lands, the commission also has a duty to protect and promote other public trust values, such as preserving waterways and adjacent lands in their natural state as open space and as environments that provide food and habitat for wildlife.

(e) Since 1850, many of the lands in and along the state's waterways have been altered by natural or human actions changing the location of the waterways and their shorelines. Thus, in some areas current conditions no longer reflect the ownership and boundaries of the waterways and adjacent uplands, leaving parcels of land with little or no utility for public trust purposes, while other lands can be used more effectively for public trust purposes.

(f) Waterways and lands nearby are often subject to unresolved boundary and title issues that impair the use of public lands for public trust purposes and burden other lands with a cloud on the title.

(g) In certain cases, and with appropriate findings, it will further public trust purposes to acquire lands not currently subject to the public trust or to settle title to lands subject to conflicting title claims.

(h) To provide the commission with the necessary authority to address these situations and continue to implement the authority set forth in Division 7 (commencing with Section 8600) of the Public Resources Code, without resort to protracted and costly litigation, and to promote public trust values and uses and public access to the state's waterways, the Legislature finds it necessary to reenact Section 6307 of the Public Resources Code as provided in Section 3 of this act.

SEC. 2. Section 6307 of the Public Resources Code is repealed.

SEC. 3. Section 6307 is added to the Public Resources Code, to read:

6307. (a) The commission may enter into an exchange, with any person or any private or public entity, of filled or reclaimed tide and submerged lands or beds of navigable waterways, or interests in these lands, that are subject to the public trust for commerce, navigation, and fisheries, for other lands or interests in lands, if the commission finds that all of the following conditions are met:

(1) The exchange is for one or more of the purposes listed in subdivision (c).

(2) The lands or interests in lands to be acquired in the exchange will provide a significant benefit to the public trust.

(3) The exchange does not substantially interfere with public rights of navigation and fishing.

(4) The monetary value of the lands or interests in lands received by the trust in exchange is equal to or greater than that of the lands or interests in lands given by the trust in exchange.

(5) The lands or interest in lands given in exchange have been cut off from water access and no longer are in fact tidelands or submerged lands

or navigable waterways, by virtue of having been filled or reclaimed, and are relatively useless for public trust purposes.

(6) The exchange is in the best interests of the state.

(b) Pursuant to an exchange agreement, the commission may free the lands or interest in lands given in exchange from the public trust and shall impose the public trust on the lands or interests in lands received in exchange.

(c) An exchange made by the commission pursuant to subdivision (a) shall be for one or more of the following purposes, as determined by the commission:

(1) To improve navigation or waterways.

(2) To aid in reclamation or flood control.

(3) To enhance the physical configuration of the shoreline or trust land ownership.

(4) To enhance public access to or along the water.

(5) To enhance waterfront and nearshore development or redevelopment for public trust purposes.

(6) To preserve, enhance, or create wetlands, riparian or littoral habitat, or open space.

(7) To resolve boundary or title disputes.

(d) The commission may release the mineral rights in the lands or interests in lands given in exchange if it obtains the mineral rights in the lands or interests in lands received in exchange.

(e) The grantee of any lands or interests in lands given in exchange may bring a quiet title action under Chapter 7 (commencing with Section 6461) of Part 1 of Division 6 of this code or Chapter 4 (commencing with Section 760.010) of Title 10 of Part 2 of the Code of Civil Procedure.

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 recognize the benefits to the public trust from enhancing the configuration of public ownership of and the improvement of public access to and along the shoreline for public trust uses, and to clarify the authority of the State Lands Commission to conduct exchanges involving major projects throughout the state, some of which involve hazardous waste sites, that could otherwise be mired in costly and protracted litigation or otherwise delayed, it is necessary that this act take effect immediately.

CHAPTER 586

An act to amend Section 25401.1 of the Health and Safety Code, relating to hazardous substances.

[Approved by Governor October 6, 2005. Filed with
Secretary of State October 6, 2005.]

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

SECTION 1. Section 25401.1 of the Health and Safety Code is amended to read:

25401.1. For purposes of this chapter, the following terms have the following meanings:

(a) "Department" means the Department of Toxic Substances Control.
(b) "Hazardous material" means a substance or waste that because of its physical, chemical, or other characteristics may pose a risk of endangering human health or safety or of degrading the environment. "Hazardous material" includes, but is not limited to, all of the following:

(1) A hazardous substance, as defined in Section 25281 or 25316.
(2) A hazardous waste, as defined in Section 25117.
(3) A waste, as defined in Section 13050 of the Water Code or as defined in paragraph (2) of subdivision (b) of Section 101075.

(c) "Local agency" means the local department, office, or other agency of a city or county designated pursuant to subdivision (a) of Section 25401.2.

(d) "Oversight agency" means the department or the regional board, as appropriate, that oversees a site investigation and remedial action pursuant to this chapter.

(e) "Person" means an individual, trust, firm, joint stock company, business concern, partnership, limited liability company, association, or corporation, including, but not limited to, a government corporation. "Person" also includes any city, county, city and county, district, commission, or the state, or any department, agency, or political subdivision thereof, any interstate body, and the United States and its agencies and instrumentalities to the extent permitted by law.

(f) "Phase I environmental assessment" means a preliminary assessment of a property to determine whether there has been, or may have been, a release of hazardous material on or near the property, based on reasonably available information about the property and the area in its vicinity. A phase I environmental assessment may include, but is not limited to, a review of public and private records of current and historical land uses, historical aerial photographs of the property and the area in

its vicinity, relevant files of federal, state, and local agencies, regulatory correspondence, records of prior releases of hazardous materials and environmental reports, database searches, visual and other surveys of the property, and interviews with available current and previous owners and operators of the property. A phase I environmental assessment does not require sampling or testing on or around a property.

(g) “Preliminary endangerment assessment” means an activity that is performed to determine whether current or past hazardous material management practices or waste management practices have resulted in a release or threatened release of hazardous materials that pose a threat to public health or the environment. A preliminary endangerment assessment shall be conducted in a manner that complies with the guidelines published by the department entitled “Preliminary Endangerment Assessment: Guidance Manual,” and that evaluates whether any hazardous material has been discharged, threatens to discharge, or is discharging, to waters of the state. A preliminary endangerment assessment requires sampling and analysis of a property, a preliminary determination of the type and extent of hazardous materials release or threatened release on contamination of the property, and a preliminary evaluation of the risks that hazardous materials contamination of the property may pose to public health or the environment, including waters of the state.

(h) (1) “Property” means real property, as defined in Section 658 of the Civil Code.

(2) “Property” does not include any of the following:

(A) A site listed on the National Priorities List pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. Sec. 9601 et seq.) or proposed for, and ranked as, qualifying for this list.

(B) A site on the list maintained by the department pursuant to Section 25356.

(C) An active or former federal military base or property that is or was owned by any department, agency, or instrumentality of the United States.

(D) A property for which a no-further-action determination has been issued by the department or a regional board, under applicable statutes or regulations.

(E) A site that is, or becomes, subject to an enforcement action or order issued by a regional board pursuant to Division 7 (commencing with Section 13000) of the Water Code, or an enforcement action by the department pursuant to Chapter 6.5 (commencing with Section 25100) or Chapter 6.8 (commencing with Section 25300).

(F) A site that is, or becomes, subject to a corrective action requirement, or for which a no-further-action determination has been issued, by a regional board or a local oversight program pursuant to Section 25297.1 or Chapter 6.75 (commencing with Section 25299.10), unless the local agency makes one of the findings described in subdivision (b) of Section 25401.3 for a hazardous material other than petroleum.

(G) A site that is, or becomes, subject to a corrective action order issued pursuant to Section 25187, or a site that is, or becomes, authorized or permitted pursuant to Chapter 6.5 (commencing with Section 25100) for the treatment, storage, or disposal of hazardous waste.

(H) A site that is, or becomes, subject to a response or cleanup operation under Chapter 7.4 (commencing with Section 8670.1) of Division 1 of Title 2 of the Government Code.

(I) A site that is, or becomes, subject to an order for corrective action issued pursuant to Part 5 (commencing with Section 45000) of Division 30 of the Public Resources Code.

(J) A site located within a redevelopment area established pursuant to Division 24 (commencing with Section 33000).

(K) A site that is larger than five acres of contiguous property under the same ownership, unless the site is an infill site, as defined in Section 21061.0.5 of the Public Resources Code.

(i) For purposes of this subparagraph, a “qualified urban use,” as defined in Section 21072 of the Public Resources Code, includes an industrial use.

(ii) For purposes of this subparagraph, a parcel is adjoining or immediately adjacent to the site, as required by subdivision (a) of Section 21061.0.5 of the Public Resources Code, if the parcel is separated from the site only by an improved public right-of-way.

(L) A site that is owned by any state or local public agency.

(M) A site that is being used for productive agriculture.

(N) A site for which the owner or operator, within 60 days following receipt of a notice from a local agency issued pursuant to Section 25401.3 or 25401.4, enters into a voluntary agreement with an oversight agency to commence and complete a site investigation and remediation of the property under that oversight agency’s oversight and jurisdiction.

(O) A site for which the owner or operator, within 60 days following receipt of a notice from a local agency issued pursuant to Section 25401.3 or 25401.4, requests the designation of an administering agency to oversee a site investigation and remedial action at the site pursuant to Chapter 6.65 (commencing with Section 25260).

(P) Property that is the subject of continuous expansion or improvement, and is owned or operated by an operating industrial or commercial activity.

(Q) Residential property with an owner-occupied dwelling.

(R) Property occupied by a family-owned business that has no employees other than members of the family or a business that has no employees other than the owners.

(S) Property that is dedicated to a public use by a public utility, as provided in Section 1007 of the Civil Code.

(T) Property acquired, to be acquired or proposed for use as a schoolsite, prior to its occupancy for a school, if a school district has entered into an enforceable environmental oversight agreement with the department to conduct a preliminary endangerment assessment or other response action at the property pursuant to Section 17213.1 of the Education Code. The exclusion provided in this subparagraph shall not apply if the school district determines, after entering into that agreement, not to pursue the use of the site as a school, or if the agreement between the department and the school district is terminated or expires.

(i) (1) "Qualified person" means one of the following:

(A) For activities conducted under Section 25401.6, an environmental assessor, as defined in paragraph (2).

(B) For activities conducted under Section 25401.7, an environmental assessor, as defined in paragraph (2), who also has demonstrated expertise in hazardous materials site investigation and cleanup.

(2) "Environmental assessor" means a class II environmental assessor registered by the Office of Environmental Health Hazard Assessment pursuant to Chapter 6.98 (commencing with Section 25570), a professional engineer registered in this state, a geologist registered in this state, a certified engineering geologist registered in this state, or a licensed hazardous substance contractor certified pursuant to Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code. A licensed hazardous substance contractor shall hold the equivalent of a degree from an accredited public or private college or university or from a private postsecondary educational institution approved by the Bureau for Private Postsecondary and Vocational Education with at least 60 units in environmental, biological, chemical, physical, or soil science, engineering geology, or environmental or public health, or a directly related science field. In addition, any person who conducts a phase I environmental assessment shall have at least two years of experience in the preparation of those assessments and any person who conducts a preliminary endangerment assessment shall have at least three years of experience in conducting those assessments.

(j) “Reasonably foreseeable uses” means land uses that are authorized under the applicable general plan and zoning code, and any additional uses that are identified by the local land use agency as reasonably foreseeable uses for a property at the time the preliminary endangerment assessment for that property is being prepared pursuant to Section 25401.4 or 25401.6.

(k) “Remedial action” means a remedial action, as defined in subdivision (g) of Section 25260.

(l) “Remediation plan” means a proposal to complete a site investigation and a remedial action on a property, a schedule for the conduct of that site investigation and remedial action, the method for the oversight of those actions, and the state and local laws, ordinances, regulations, and standards that are applicable to those actions, for approval by the oversight agency pursuant to Section 25401.5 or 25401.7.

(m) “Regional board” means a California regional water quality control board.

(n) “Release” has the same meaning as defined in Section 25320, but with respect to a hazardous material.

(o) “Responsible party” means a “responsible party” or “liable person” as defined in subdivision (a) of Section 25323.5, or a person subject to an order pursuant to subdivision (a) of Section 13304 of the Water Code.

(p) “Site investigation” has the same meaning as defined in Section 25260.

(q) “Written determination of completion” means a document issued by the oversight agency that certifies that a remedial action carried out pursuant to this chapter has been satisfactorily completed, in accordance with an approved remediation plan, that applicable remedial action standards and objectives have been achieved, that financial assurance for all operation and maintenance activities, if applicable, has been obtained, and that the property for which the written determination of completion is issued does not pose a significant risk to human health or the environment, does not impact the beneficial uses of waters of the state, and is in a condition that allows it permanently to be used for its reasonably foreseeable uses without any significant risk to human health or any significant potential for future environmental damage. The written determination of completion shall also specifically describe any conditions, restrictions, or limitations imposed on the site, including financial assurance, if applicable, and any land use controls placed on the property. The written determination of completion shall specifically identify the locations where the remediation plan that formed the basis

of the determination is kept on file by the oversight agency and the local agency. These files shall be made available to the public upon request.

CHAPTER 587

An act to amend Section 25354.5 of the Health and Safety Code, relating to hazardous substances, and making an appropriation therefor.

[Approved by Governor October 6, 2005. Filed with
Secretary of State October 6, 2005.]

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

SECTION. 1. Section 25354.5 of the Health and Safety Code is amended to read:

25354.5. (a) A state or local law enforcement officer or investigator or other law enforcement agency employee who, in the course of an official investigation or enforcement action regarding the manufacture of any illegal controlled substance, comes in contact with, or is aware of, the presence of a substance that the person suspects is a hazardous substance at a site where an illegal controlled substance is or was manufactured, shall notify the department for the purpose of taking removal action, as necessary, to prevent, minimize, or mitigate damage that might otherwise result from the release or threatened release of the hazardous substance, except for samples required under Section 11479.5 to be kept for evidentiary purposes.

(b) (1) Notwithstanding any other provision of law, upon receipt of a notification pursuant to subdivision (a), the department shall take removal action, as necessary, with respect to any hazardous substance that is an illegal controlled substance, a precursor of a controlled substance, a material intended to be used in the unlawful manufacture of a controlled substance and any container for such a material, a waste material from the unlawful manufacture of a controlled substance, or any other item contaminated with a hazardous substance used or intended to be used in the manufacture of a controlled substance. The department may expend funds appropriated from the Illegal Drug Lab Cleanup Account created pursuant to subdivision (f) to pay the costs of removal actions required by this section. The department may enter into oral contracts, not to exceed ten thousand dollars (\$10,000) in obligation, when, in the judgment of the department, immediate corrective action to a hazardous substance subject to this section is necessary to remedy or prevent an emergency.

(2) The department shall, as soon as the information is available, report the location of any removal action that will be carried out pursuant to paragraph (1), and the time that the removal action will be carried out, to the local environmental health officer within whose jurisdiction the removal action will take place, if the local environmental officer does both of the following:

(A) Requests, in writing, that the department report this information to the local environmental health officer.

(B) Provides the department with a single 24-hour telephone number to which the information can be reported.

(c) (1) For purposes of Chapter 6.5 (commencing with Section 25100), Chapter 6.9.1 (commencing with Section 25400.10), or this chapter, any person who is found to have operated a site for the purpose of manufacturing an illegal controlled substance or a precursor of an illegal controlled substance is the generator of any hazardous substance at, or released from, the site that is subject to removal action pursuant to this section.

(2) During the removal action, for purposes of complying with the manifest requirements in Section 25160, the department, the county health department, the local environmental health officer, or their designee may sign the hazardous waste manifest as the generator of the hazardous waste. In carrying out that action, the department, the county health department, the local environmental health officer, or their designee shall be considered to have acted in furtherance of their statutory responsibilities to protect the public health and safety and the environment from the release, or threatened release, of hazardous substances, and the department, the county health department, the local environmental health officer, or their designee are not responsible parties for the release or threatened release of the hazardous substances.

(3) The officer, investigator, or agency employee specified in subdivision (a) is not a responsible party for the release or threatened release of any hazardous substances at, or released from, the site.

(d) The department may adopt regulations to implement this section in consultation with appropriate law enforcement and local environmental agencies.

(e) (1) The department shall develop sampling and analytical methods for the collection of methamphetamine residue.

(2) On or before October 1, 2007, the department, using guidance developed by the Office of Environmental Health Hazard Assessment, shall develop a health-based target remediation standard for methamphetamine.

(3) On or before October 1, 2008, the department shall, to the extent funding is available, develop health-based target remediation standards for iodine, methyl iodide, and phosphine.

(4) To the extent that funding is available, the department, using guidance developed by the Office of Environmental Health Hazard Assessment, may develop additional health-based target remediation standards for additional precursors and byproducts of methamphetamine.

(5) On or before October 1, 2009, the department shall adopt investigation and cleanup procedures for use in the remediation of sites contaminated by the illegal manufacturing of methamphetamine. The procedures shall assure that contamination by the illegal manufacturing of methamphetamine can be remediated to meet the standards adopted pursuant to paragraphs (2) to (4), inclusive, to protect the health and safety of all future occupants of the site.

(6) The department shall implement this subdivision in accordance with subdivision (d).

(f) The Illegal Drug Lab Cleanup Account is hereby created in the General Fund and the department may expend any money in the account, upon appropriation by the Legislature, to carry out the removal actions required by this section and to implement subdivision (e), including, but not limited to, funding any interagency agreement entered into with the Office of Environmental Health Hazard Assessment to provide guidance services. The account shall be funded by moneys appropriated directly from the General Fund.

(g) The responsibilities assigned to the department by this section apply only to the extent that sufficient funding is made available for that purpose.

SEC. 2. This act shall become operative only if Assembly Bill 1078 of the 2005-06 Regular Session of the Legislature is enacted and becomes effective on or before January 1, 2006.

CHAPTER 588

An act to amend Sections 39630, 39631, and 39632 of, and to amend the heading of Chapter 3.3 (commencing with Section 39630) of Part 2 of Division 26 of, the Health and Safety Code, and to amend Sections 72410, 72420, 72440, and 72441 of, to amend the heading of Division 38 (commencing with Section 72400) of, to amend and repeal Sections 72400 and 72430 of, to add Sections 72420.2, 72423, and 72440.1 to, to add and repeal Sections 72401 and 72420.1 of, to repeal Division 39 (commencing with Section 72500) of, and to repeal and add Sections 72421 and 72425 to, the Public Resources Code, relating to vessels.

[Approved by Governor October 6, 2005. Filed with
Secretary of State October 6, 2005.]

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

SECTION 1. This act shall be known and may be cited as the California Clean Coast Act.

SEC. 1.5. The heading of Chapter 3.3 (commencing with Section 39630) of Part 2 of Division 26 of the Health and Safety Code is amended to read:

CHAPTER 3.3. CRUISE SHIPS AND OCEANGOING SHIPS

SEC. 2. Section 39630 of the Health and Safety Code is amended to read:

39630. The Legislature finds and declares that it is in the interests of all Californians to protect the air quality from increasing volumes of cruise ship engine and oceangoing ship engine emissions.

SEC. 3. Section 39631 of the Health and Safety Code is amended to read:

39631. (a) The state board shall enforce this chapter, and may adopt standards, rules, and regulations for that purpose pursuant to Section 39601.

(b) As used in this division, "cruise ship" means a commercial vessel that has the capacity to carry 250 or more passengers for hire. "Cruise ship" does not include the following:

(1) Vessels without berths or overnight accommodations for passengers.

(2) Noncommercial vessels, warships, vessels operated by nonprofit entities as determined by the Internal Revenue Service, and vessels operated by the state, United States, or a foreign government.

(3) Oceangoing ships, as defined in subdivision (c).

(c) As used in this division, "oceangoing ship" means a private, commercial, government, or military vessel of 300 gross registered tons or more calling on California ports or places.

SEC. 4. Section 39632 of the Health and Safety Code is amended to read:

39632. Commencing on January 1, 2005, a cruise ship, and commencing on January 1, 2006, an oceangoing ship, shall not conduct onboard incineration while operating within three miles of the California coast, to the extent allowed by federal law.

SEC. 5. The heading of Division 38 (commencing with Section 72400) of the Public Resources Code is amended to read:

DIVISION 38. CALIFORNIA CLEAN COAST ACT

SEC. 6. Section 72400 of the Public Resources Code, as amended by Section 1 of Chapter 764 of the Statutes of 2004, is amended to read:

72400. The Legislature finds and declares both of the following:

(a) California is home to four of the 13 national marine sanctuaries. These areas support some of the world's most diverse marine ecosystems and are home to numerous mammals, seabirds, fish, invertebrates, and plants.

(b) The protection and enhancement of the quality of the marine waters of the state and marine sanctuaries, and the protection of public health and the environment, requires that the release from large passenger vessels and oceangoing ships of hazardous waste, other waste, sewage sludge, and oily bilgewater, into the marine waters of the state and marine sanctuaries, and the release of graywater by large passenger ships into the marine waters of the state, should be prohibited.

SEC. 7. Section 72400 of the Public Resources Code, as added by Chapter 764 of the Statutes of 2004, is repealed.

SEC. 8. Section 72401 is added to the Public Resources Code, to read:

72401. (a) The Legislature finds and declares that the protection and enhancement of the quality of the marine waters of the state requires that the release of sewage from large passenger vessels, and the release of sewage and graywater from oceangoing ships with sufficient holding tank capacity, into the marine waters of the state should be prohibited.

(b) The Legislature intends to request the Congress of the United States to amend the Federal Water Pollution Control Act (33 U.S.C. Sec. 1251 and following) to provide California with authority similar to that granted to the State of Alaska by Public Law 106-554, to regulate the release of sewage from large passenger vessels and oceangoing ships in the marine waters of the state.

(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. 9. Section 72410 of the Public Resources Code is amended to read:

72410. (a) Unless the context otherwise requires, the definitions set forth in this section govern this division.

(b) "Board" means the State Water Resources Control Board.

(c) "Commission" means the State Lands Commission.

(d) "Graywater" means drainage from dishwasher, shower, laundry, bath, and washbasin drains, but does not include drainage from toilets, urinals, hospitals, or cargo spaces.

(e) "Hazardous waste" has the meaning set forth in Section 25117 of the Health and Safety Code, but does not include sewage.

(f) "Large passenger vessel" or "vessel" means a vessel of 300 gross registered tons or greater that is engaged in the carrying of passengers for hire, excluding all of the following vessels:

(1) Vessels without berths or overnight accommodations for passengers.

(2) Noncommercial vessels, warships, vessels operated by nonprofit entities as determined by the Internal Revenue Service, and vessels operated by the state, the United States, or a foreign government.

(3) Oceangoing ships, as defined in subdivision (j).

(g) "Marine waters of the state" means "coastal waters" as defined in Section 13181 of the Water Code.

(h) "Marine sanctuary" means marine waters of the state in the Channel Islands National Marine Sanctuary, Cordell Bank National Marine Sanctuary, Gulf of the Farallones National Marine Sanctuary, or Monterey Bay National Marine Sanctuary.

(i) "Medical waste" means medical waste subject to regulation pursuant to Part 14 (commencing with Section 117600) of Division 104 of the Health and Safety Code.

(j) "Oceangoing ship" means a private, commercial, government, or military vessel of 300 gross registered tons or more calling on California ports or places.

(k) "Oil" has the meaning set forth in Section 8750.

(l) "Oily bilgewater" includes bilgewater that contains used lubrication oils, oil sludge and slops, fuel and oil sludge, used oil, used fuel and fuel filters, and oily waste.

(m) "Operator" has the meaning set forth in Section 651 of the Harbors and Navigation Code.

(n) "Other waste" means photography laboratory chemicals, dry cleaning chemicals, or medical waste.

(o) "Owner" has the meaning set forth in Section 651 of the Harbors and Navigation Code.

(p) "Release" means discharging or disposing of wastes into the environment.

(q) "Sewage" has the meaning set forth in Section 775.5 of the Harbors and Navigation Code, including material that has been collected or treated through a marine sanitation device as that term is used in Section 312 of the Clean Water Act (33 U.S.C. Sec. 1322) or material that is a byproduct of sewage treatment.

(r) "Sewage sludge" has the meaning set forth in Section 122.2 of Title 40 of the Code of Federal Regulations.

(s) "Sufficient holding tank capacity" means a holding tank of sufficient capacity to contain sewage and graywater while the oceangoing ship is within the marine waters of the state.

(t) "Waste" means hazardous waste and other waste.

SEC. 10. Section 72420 of the Public Resources Code is amended to read:

72420. (a) If the appropriate federal agencies approve an application made pursuant to subdivision (a) of Section 72440, or if the board determines that an application is not required, an owner or operator of a large passenger vessel or oceangoing ship may not release, or permit anyone to release, any sewage sludge from the vessel into the marine waters of the state or a marine sanctuary.

(b) If the Administrator of the United States Environmental Protection Agency approves the application for sewage release made pursuant to subdivision (a) of Section 72440, or if the board determines that an application is not required, an owner or operator of an oceangoing ship with sufficient holding tank capacity may not release, or permit anyone to release, any sewage from the vessel into the marine waters of the state.

SEC. 11. Section 72420.1 is added to the Public Resources Code, to read:

72420.1. (a) If the Administrator of the United States Environmental Protection Agency approves the application for sewage release made pursuant to subdivision (a) of Section 72440, or if the board determines that an application is not required, an owner or operator of a large passenger vessel may not release, or permit anyone to release, any sewage from the vessel into the marine waters of the state.

(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. 12. Section 72420.2 is added to the Public Resources Code, to read:

72420.2. (a) An owner or operator of a large passenger vessel shall not release, or permit anyone to release, from the vessel, graywater into the marine waters of the state.

(b) An owner or operator of a large passenger vessel or oceangoing ship shall not release, or permit anyone to release, from the vessel, hazardous waste, other waste, or oily bilgewater into the marine waters of the state or a marine sanctuary.

(c) An owner or operator of an oceangoing ship with sufficient holding tank capacity shall not release, or permit anyone to release, from the vessel, graywater into the marine waters of the state.

SEC. 13. Section 72421 of the Public Resources Code, as amended by Section 3 of Chapter 764 of the Statutes of 2004, is repealed.

SEC. 14. Section 72421 of the Public Resources Code, as added by Section 4 of Chapter 764 of the Statutes of 2004, is repealed.

SEC. 15. Section 72421 is added to the Public Resources Code, to read:

72421. (a) The owner or operator shall immediately, but no later than 24 hours after a release, notify the board of any of the following:

(1) A large passenger vessel release of graywater into the marine waters of the state.

(2) Until January 1, 2010, a large passenger vessel release of sewage into the marine waters of the state or a marine sanctuary.

(3) A large passenger vessel or ocean going ship release of hazardous waste, other waste, sewage sludge, or oily bilgewater into the marine waters of the state or a marine sanctuary.

(4) An oceangoing ship with sufficient holding tank capacity release of sewage or graywater into the marine waters of the state or a marine sanctuary.

(b) The owner or operator shall include all of the following in the notification required pursuant to subdivision (a):

(1) Date of the release.

(2) Time of the release.

(3) Location of the release.

(4) Volume of the release.

(5) Source of the release.

(6) Remedial action taken to prevent future releases.

SEC. 16. Section 72423 is added to the Public Resources Code, to read:

72423. An oceangoing ship with sufficient holding tank capacity and capability for transfer shall either hold on board or shall transfer sewage and graywater to a pumpout facility, if that facility is available and accessible for the oceangoing ship where the ship is docked, and shall not discharge sewage or graywater within California's waters.

SEC. 17. Section 72425 of the Public Resources Code is repealed.

SEC. 18. Section 72425 is added to the Public Resources Code, to read:

72425. (a) (1) If the master, owner, operator, agent, or person in charge of an oceangoing ship has operated, or has caused to be operated, the oceangoing ship in the marine waters of the state during 2006, that master, owner, operator, agent, or person in charge shall provide the information described in subdivision (b) in electronic or written form to the commission upon the vessel's departure from its first port or place of call in California beginning in 2006.

(2) The information described in subdivision (b) shall be submitted on a form developed by the commission.

(b) The master, owner, operator, or person in charge of the oceangoing vessel shall maintain on board the vessel, in written or electronic form, records that include all of the following information:

- (1) Vessel information, including all of the following:
 - (A) Name.
 - (B) International Maritime Organization number or official number if the International Maritime Organization number has not been assigned.
 - (C) Vessel type.
 - (D) Owner or operator.
 - (E) Gross tonnage.
 - (F) Keel laid date.
 - (G) Port of registry.
 - (H) Typical or required number of crew.
- (2) Graywater information, including the vessel's ability to store graywater while in California waters and size and capacity of any graywater holding tanks, as measured in metric tons.
- (3) Blackwater information, including the vessel's ability to store blackwater while in California waters and size and capacity of any blackwater holding tanks, as measured in metric tons.
- (4) Marine sanitation devices information, including number, size, and nature of devices on the vessel treating sewage prior to discharge.
- (5) Connections to ensure transfer of sewage and graywater to pumpout facilities.
- (6) California port of call information, including expected number of calls, in days, in ports within the state during 2006.
- (7) Certification of accurate information, including the printed name, title, and signature of the master, owner, operator, or person in charge, or responsible officer attesting to the accuracy of the information provided.

(c) The commission shall submit the reported information to the board on or before February 1, 2007. The board shall submit the reported information to the Legislature on or before October 1, 2007. The board may submit the report to the Legislature in an electronic form.

SEC. 19. Section 72430 of the Public Resources Code, as amended by Section 6 of Chapter 764 of the Statutes of 2004, is amended to read:

72430. (a) A person who violates Section 72420 or 72420.2, or until January 1, 2010, Section 72420.1, is subject to a civil penalty of not more than twenty-five thousand dollars (\$25,000) for each violation.

(b) The civil penalty imposed for each separate violation pursuant to this section is separate from, and in addition to, any other civil penalty imposed for a separate violation pursuant to this section or any other provision of law.

(c) In determining the amount of a civil penalty imposed pursuant to this section, the court shall take into consideration all relevant circumstances, including, but not limited to, the nature, circumstance, extent, and gravity of the violation. In making this determination, the court shall consider the degree of toxicity and volume of the release, the extent of harm caused by the violation, whether the effects of the violation may be reversed or mitigated, and with respect to the defendant, the ability to pay, the effect of a civil penalty on the ability to continue in business, all voluntary cleanup efforts undertaken, the prior history of violations, the gravity of the behavior, the economic benefit, if any, resulting from the violation, and all other matters the court determines justice may require.

(d) (1) A civil action brought under this section may only be brought in accordance with this subdivision. That civil action may be brought by the Attorney General upon complaint or request by the Department of Fish and Game or the appropriate California regional water quality control board, or by a district attorney or city attorney.

(2) Notwithstanding Section 13223 of the Water Code, a regional water quality control board may delegate to its executive officer authority to request the Attorney General for judicial enforcement under this section.

(3) If a district attorney or city attorney brings an action under this section, the action shall be in the name of the people of the State of California.

(4) An action relating to the same violation may be joined or consolidated.

SEC. 20. Section 72430 of the Public Resources Code, as added by Section 7 of Chapter 764 of the Statutes of 2004, is repealed.

SEC. 21. Section 72440 of the Public Resources Code, as amended by Section 8 of Chapter 764 of the Statutes of 2004, is amended to read:

72440. (a) (1) The board shall determine whether it is necessary to apply to the federal government for the state to prohibit the release of sewage or sewage sludge from large passenger vessels, and oceangoing ships with sufficient holding tank capacity, into the marine waters of the state or to prohibit the release of sewage sludge from large passenger vessels and oceangoing ships into marine sanctuaries, as described in subdivision (a) of Section 72420, subdivision (a) of Section 72420.1, and Section 72420.2. If the board determines that application is necessary for either sewage or sewage sludge, or both, it shall apply to the appropriate federal agencies, as determined by the board, to authorize the state to prohibit the release of sewage or sewage sludge, or both, as necessary, from large passenger vessels, and oceangoing ships with sufficient holding tank capacity, into the marine waters of the state and,

if necessary, to authorize the state to prohibit the release of sewage sludge from large passenger vessels and oceangoing ships into marine sanctuaries.

(2) It is not the Legislature's intent to establish for the marine waters of the state a no discharge zone for sewage from all vessels, but only for a class of vessels.

(b) The board shall request the appropriate federal agencies, as determined by the board, to prohibit the release of sewage sludge and oily bilgewater, except under the circumstances specified in Section 72441, by large passenger vessels and oceangoing ships, in all of the waters that are in the Channel Islands National Marine Sanctuary, Cordell Bank National Marine Sanctuary, Gulf of the Farallones National Marine Sanctuary, and Monterey Bay National Marine Sanctuary, that are not in the state waters.

(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. 22. Section 72440.1 is added to the Public Resources Code, to read:

72440.1. The board shall request the appropriate federal agencies, as determined by the board, to prohibit the release of waste by large passenger vessels or oceangoing ships in all of the waters in the Channel Islands National Marine Sanctuary, Cordell Bank National Marine Sanctuary, Gulf of the Farallones National Marine Sanctuary, and Monterey Bay National Marine Sanctuary; and, request, if necessary, approval of the state's prohibition of the release of waste in the marine sanctuaries.

SEC. 23. Section 72441 of the Public Resources Code is amended to read:

72441. (a) This division does not apply to either of the following:

(1) A large passenger vessel or oceangoing ship that operates in the marine waters of the state solely in innocent passage.

(2) Discharges made for the purpose of securing the safety of the large passenger vessel or oceangoing ship or saving life at sea, if reasonable precautions are taken for the purpose of preventing or minimizing the discharge.

(b) For the purposes of this section, a vessel is engaged in innocent passage if its operation in state waters would constitute innocent passage under either the Convention on the Territorial Sea and Contiguous Zone, dated April 29, 1958, or the United Nations Convention on the Law of the Sea, dated December 10, 1982.

SEC. 24. Division 39 (commencing with Section 72500) of the Public Resources Code is repealed.

CHAPTER 589

An act to amend Section 5901 of the Fish and Game Code, and to add Article 3.5 (commencing with Section 156) to Chapter 1 of Division 1 of, the Streets and Highways Code, relating to fish passages.

[Approved by Governor October 6, 2005. Filed with
Secretary of State October 6, 2005.]

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

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

(a) The decline of naturally spawning salmon and steelhead trout is primarily a result of the loss of appropriate stream habitat and the inability of fish to get access to habitat, according to recent reports to the Fish and Game Commission and by the Department of Fish and Game.

(b) Increasing the naturally spawning salmon and steelhead trout populations in California would provide a valuable public resource, employment opportunities, and substantial economic benefits to the state.

(c) Federal, state and local governments and nonprofit organizations are spending hundreds of millions of public dollars in California protecting and restoring habitat for salmon and steelhead trout through watershed and fishery restoration programs, with the state alone spending over two hundred million dollars (\$200,000,000) for these purposes in the past five years.

(d) The California Department of Transportation has maintenance, construction, and oversight responsibility for the state's roads, including approximately 5,000 stream crossings on coastal streams.

(e) Stream crossings on roads frequently present barriers to the migration of fish, and there is an extensive lack of information regarding the number and extent of existing barriers to fish migration at state road stream crossings.

(f) Having this information would enable the department to better predict the time and funding required to complete transportation projects.

(g) Substantial savings to the state would result from improved ability to deliver transportation projects within their budgets and on time, and substantial benefit to the state's salmon and steelhead trout populations would result from remediation of barriers to fish passage at stream crossings

SEC. 2. Section 5901 of the Fish and Game Code is amended to read: 5901. Except as otherwise provided in this code, it is unlawful to construct or maintain in any stream in Districts 1, 1 $\frac{3}{8}$, 1 $\frac{1}{2}$, 1 $\frac{7}{8}$, 2, 2 $\frac{1}{4}$, 2 $\frac{1}{2}$, 2 $\frac{3}{4}$, 3, 3 $\frac{1}{2}$, 4, 4 $\frac{1}{8}$, 4 $\frac{1}{2}$, 4 $\frac{3}{4}$, 11, 12, 13, 23, and 25, any device or contrivance that prevents, impedes, or tends to prevent or impede, the passing of fish up and down stream.

SEC. 3. Article 3.5 (commencing with Section 156) is added to Chapter 1 of Division 1 of the Streets and Highways Code, to read:

Article 3.5. Barriers to Fish Passage

156. For purposes of this article, the following definitions shall apply:

(a) "Fish passage" means the ability of an anadromous fish to access appropriate habitat at all points in its life cycle, including spawning and rearing.

(b) "Department" means the Department of Transportation.

156.1. The Director of Transportation shall prepare an annual report describing the status of the department's progress in locating, assessing, and remediating barriers to fish passage. This report shall be given to the Legislature by October 31 of each year through the year 2020.

156.2. The department shall pursue development of a programmatic environmental review process with appropriate state and federal regulatory agencies for remediating barriers to fish passage that will streamline the permitting process for projects. The department shall include a description of its progress on this review process in the report specified in Section 156.1.

156.3. For any project using state or federal transportation funds programmed after January 1, 2006, the department shall insure that, if the project affects a stream crossing on a stream where anadromous fish are, or historically were, found, an assessment of potential barriers to fish passage is done prior to commencing project design. The department shall submit the assessment to the Department of Fish and Game and add it to the CALFISH database. If any structural barrier to passage exists, remediation of the problem shall be designed into the project by the implementing agency. New projects shall be constructed so that they do not present a barrier to fish passage. When barriers to fish passage are being addressed, plans and projects shall be developed in consultation with the Department of Fish and Game.

156.4. For any repair or construction project using state or federal transportation funds that affects a stream crossing on a stream where anadromous fish are, or historically were, found, the department shall

perform an assessment of the site for potential barriers to fish passage and submit the assessment to the Department of Fish and Game.

CHAPTER 590

An act to amend Section 12200 of, to amend the heading of Chapter 4 (commencing with Section 12150) of Part 2 of Division 2 of, to add Sections 6615, 12201, 12203, 12207, 12209, 12211, 12215, and 12217 to, to add Chapter 3.5 (commencing with Section 22150) to Part 3 of Division 2 of, to repeal Sections 10233, 10308.5, 10354, 10507, 12150, 12155, 12157, 12158, 12159, 12160, 12161, 12162, 12162.5, 12163, 12164, 12168, 12169, 12181, 12182, 12185, 12210, 12213, 12225, and 12226 of, to repeal Article 8.5 (commencing with Section 10855) of Chapter 2.5 of, and Article 2.1 (commencing with Section 12170) of Chapter 4 of, Part 2 of Division 2 of, and to repeal and add Section 12205 of, the Public Contract Code, and to amend Sections 40183, 42920, 49120, and 49300 of, and to repeal Chapter 4 (commencing with Section 42200) of, and Chapter 6 (commencing with Section 42360) of, Part 3 of Division 30 of, the Public Resources Code, relating to public contracts.

[Approved by Governor October 6, 2005. Filed with
Secretary of State October 6, 2005.]

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

SECTION 1. Section 6615 is added to the Public Contract Code, to read:

6615. For all state contracts, and, to the extent feasible, all federally funded contracts awarded pursuant to Chapter 1 (commencing with Section 10100), Chapter 2 (commencing with Section 10290), Chapter 2.5 (commencing with Section 10700), Chapter 3 (commencing with Section 12100), Chapter 3.5 (commencing with Section 12120), and Chapter 3.6 (commencing with Section 12125) of Part 2 of Division 2 shall be in compliance with Section 12205.

SEC. 2. Section 10233 of the Public Contract Code is repealed.

SEC. 3. Section 10308.5 of the Public Contract Code is repealed.

SEC. 4. Section 10354 of the Public Contract Code is repealed.

SEC. 5. Section 10507 of the Public Contract Code is repealed.

SEC. 6. Article 8.5 (commencing with Section 10855) of Chapter 2.5 of Part 2 of the Public Contract Code is repealed.

SEC. 7. The heading of Chapter 4 (commencing with Section 12150) of Part 2 of Division 2 of the Public Contract Code is amended to read:

CHAPTER 4. STATE AGENCY BUY RECYCLED CAMPAIGN

- SEC. 8. Section 12150 of the Public Contract Code is repealed.
- SEC. 9. Section 12155 of the Public Contract Code is repealed.
- SEC. 10. Section 12157 of the Public Contract Code is repealed.
- SEC. 11. Section 12158 of the Public Contract Code is repealed.
- SEC. 12. Section 12159 of the Public Contract Code is repealed.
- SEC. 13. Section 12160 of the Public Contract Code is repealed.
- SEC. 14. Section 12161 of the Public Contract Code is repealed.
- SEC. 15. Section 12162 of the Public Contract Code is repealed.
- SEC. 16. Section 12162.5 of the Public Contract Code is repealed.
- SEC. 17. Section 12163 of the Public Contract Code is repealed.
- SEC. 18. Section 12164 of the Public Contract Code is repealed.
- SEC. 19. Section 12168 of the Public Contract Code is repealed.
- SEC. 20. Section 12169 of the Public Contract Code is repealed.
- SEC. 21. Article 2.1 (commencing with Section 12170) of Chapter 4 of Part 2 of Division 2 of the Public Contract Code is repealed.
- SEC. 22. Section 12181 of the Public Contract Code is repealed.
- SEC. 23. Section 12182 of the Public Contract Code is repealed.
- SEC. 24. Section 12185 of the Public Contract Code is repealed.
- SEC. 25. Section 12200 of the Public Contract Code is amended to read:
12200. For the purpose of this article, the following definitions shall apply:
- (a) "Board" means the California Integrated Waste Management Board, as defined pursuant to Section 40110 of the Public Resources Code.
- (b) "Business" includes bidders, contractors, and other interested parties that provide services to, or sell products to, the state.
- (c) "Department" means the Department of General Services.
- (d) "Director" means the Director of General Services.
- (e) "Postconsumer material" means a finished material that would have been disposed of as a solid waste, having completed its life cycle as a consumer item, and does not include manufacturing wastes.
- (f) "Product categories" include paper products, printing, and writing papers, compost, cocompost, or mulch, glass, oil, plastic, paint, tires, tire-derived products, antifreeze, and metal.
- (g) "Purchase" means any contractual agreement that state agencies use to obtain goods or materials.
- (h) "Recycled products" mean goods or materials that meet the requirements identified in Section 12209, including any good or material that has been reused or refurbished without substantial alteration of its original form.

(i) "Reportable purchase" means the purchase of any goods or materials, with recycled content or not, that may be reported or categorized or classified within one of the product categories identified in Section 12207.

(j) "Reportable recycled product purchase" means the purchase of any goods or materials that meet the requirements identified in Section 12209, that may be reported or categorized or classified within one of the product categories identified in Section 12207, including any good or material that has been reused or refurbished without substantial alteration of its original form.

(k) "SABRC" means the State Agency Buy Recycled Campaign.

(l) "Secondary material" means fragments of finished products or finished products of a manufacturing process, that has converted a resource into a commodity of real economic value, but does not include excess virgin resources of the manufacturing process, such as fibers recovered from wastewater, trimmings of paper machine rolls, mill broke, plastic, or metal trimmings, or shavings, or other residue from a manufacturing process. Secondary material does not include postconsumer material, so that the secondary material plus the postconsumer material plus the virgin material adds up to 100 percent of the product.

(m) "State agency" means each entity identified in Section 11000 of the Government Code, and includes the California State University.

SEC. 26. Section 12201 is added to the Public Contract Code, to read:

12201. (a) The Legislature finds and declares that it is the policy of the state to conserve and protect its resources. The Legislature further finds and declares that the use of recycled products produced as the result of the superior waste management efforts by the state and local governmental entities will help conserve resources.

(b) It is the intent of the Legislature that the state pursue all feasible measures to improve markets for recycled products including, but not limited to, bid evaluation preferences for purchases made by the state.

(c) If fitness and quality are equal, each state agency shall purchase recycled products instead of nonrecycled products whenever recycled products are available at the same or a lesser total cost than nonrecycled products.

SEC. 27. Section 12203 is added to the Public Contract Code, to read:

12203. Each state agency shall ensure each of the following:

(a) At least 50 percent of reportable purchases are recycled products.

(b) The requirements specified in this article apply to all reportable purchases of state agencies for product categories listed in this article.

(c) The reportable purchases of state agencies shall meet each requirement for, and be applied to the total dollar amount of, each specified product category as defined in this article. The purchase of a recycled product from one category may not be applied toward the requirements for, or the total dollar amount of, any other category listed in this article.

(d) Each state agency shall require the businesses with whom it contracts to use, to the maximum extent economically feasible in the performance of the contract work, recycled products.

SEC. 28. Section 12205 of the Public Contract Code is repealed.

SEC. 29. Section 12205 is added to the Public Contract Code, to read:

12205. (a) (1) All state agencies shall require all businesses to certify in writing the minimum percentage, if not the exact percentage, of postconsumer material in the products, materials, goods, or supplies offered or sold to the state regardless of whether the product meets the requirements of Section 12209. The certification shall be furnished under penalty of perjury. The certification shall be provided regardless of content, even if the product contains no recycled material.

(2) With respect to printer or duplication cartridges that comply with the requirements of subdivision (e) of Section 12156, the certification required by this subdivision shall specify that the cartridges so comply.

(3) A state agency may waive the certification requirement if the percentage of postconsumer material in the products, materials, goods, or supplies can be verified in a written advertisement, including, but not limited to, a product label, a catalog, or a manufacturer or vendor Internet Web site.

(b) (1) All businesses shall certify in writing to the contracting officer or his or her representative the minimum percentage, if not the exact percentage, of postconsumer material in the products, materials, goods, or supplies being offered or sold to the state regardless of whether the product meets the requirements of Section 12209. The certification shall be furnished under penalty of perjury. The certification shall be provided regardless of content, even if the product contains no recycled material.

(2) With respect to printer or duplication cartridges that comply with the requirements of subdivision (e) of Section 12156, the certification required by this subdivision shall specify that the cartridges so comply.

(3) A state agency may waive the certification requirement if the percentage of postconsumer material in the products, materials, goods, or supplies can be verified in a written advertisement, including, but not limited to, a product label, a catalog, or a manufacturer or vendor Internet Web site.

SEC. 30. Section 12207 is added to the Public Contract Code, to read:

12207. This article applies to the purchase of goods and materials from the following product categories:

(a) Paper products, including, but not limited to, paper janitorial supplies, cartons, wrapping, packaging, file folders, and hanging files, building insulation and panels, corrugated boxes, tissue, and toweling.

(b) Printing and writing papers including, but not limited to, copy, xerographic, watermark, cotton fiber, offset, forms, computer printout paper, white wove envelopes, manila envelopes, book paper, note pads, writing tablets, newsprint, and other uncoated writing papers, posters, index cards, calendars, brochures, reports, magazines, and publications.

(c) Mulch, compost, and cocompost products including soil amendments, erosion controls, soil toppings, ground covers, weed suppressants, and organic materials used for water conservation.

(1) "Compost" means a product that meets the following requirements:

(A) It results from the controlled biological decomposition of organic materials, including, but not limited to, yard trimmings and wood byproducts that are separated from the municipal solid waste stream at the source of generation or at a centralized facility, or other source of organic materials.

(B) It is produced by a public or private supplier that is in compliance with the board's composting operations regulatory requirements.

(2) "Cocompost" means a product that meets the following requirements:

(A) It results from the controlled biological decomposition of a blend of organic materials, including, but not limited to, yard trimmings and wood byproducts that are separated from the municipal solid waste stream at the source of generation or at a centralized facility, and also including, but not limited to, biosolids or other comparable substitutes such as livestock, horse, or other animal manure, food residues, or fish processing byproducts.

(B) It is produced by a public or private supplier that is in compliance with the board's composting operations regulatory requirements.

(3) "Mulch" means a product that meets the following requirements:

(A) It results from the mechanical breakdown (chipping and grinding) of materials, including, but not limited to, yard trimmings and wood byproducts that are separated from the municipal solid waste stream at the source of generation or at a centralized facility.

(B) It is produced by a public or private supplier that is in compliance with the board's composting operations regulatory requirements.

(d) Glass products including, but not limited to, windows, test tubes, beakers, laboratory or hospital supplies, fiberglass (insulation), reflective

beads, tiles, construction blocks, desktop accessories, flat glass sheets, loose-grain abrasives, deburring media, liquid filter media, and containers.

(e) Lubricating oils including, but not limited to, any oil intended for use in a crankcase, transmission, engine, power steering, gearbox, differential chainsaw, transformer dielectric fluid, cutting, hydraulic, industrial, or automobile, bus, truck, vessel, plane, train, heavy equipment, or machinery powered by an internal combustion engine.

(f) (1) Plastic products including, but not limited to, printer or duplication cartridges, diskette, carpet, office products, plastic lumber, buckets, wastebaskets, containers, benches, tables, fencing, clothing, mats, packaging, signs, posts, binders, sheet, buckets, building products, garden hose, and trays.

(2) For purposes of this subdivision, “printer or duplication cartridges” has the same meaning as described in paragraph (2) of subdivision (f) of Section 12209.

(g) Paint, including, but not limited to, water-based paint, graffiti abatement, interior and exterior, and maintenance.

(h) Antifreeze, including recycled antifreeze, and antifreeze containing a bittering agent or made from polypropylene or other similar nontoxic substance.

(i) Tires including, but not limited to, truck and bus tires, and those used on fleet vehicles and passenger cars.

(j) Tire-derived products including, but not limited to, flooring, mats, wheelchair ramps, playground cover, parking bumpers, bullet traps, hoses, bumpers, truck bedliners, pads, walkways, tree ties, road surfacing, wheel chocks, rollers, traffic control products, mudflaps, and posts.

(k) Metal including, but not limited to, staplers, paper clips, steel furniture, desks, pedestals, scissors, jacks, rebar, pipe, plumbing fixtures, chairs, ladders, file cabinets, shelving, containers, lockers, sheet metal, girders, building and construction products, bridges, braces, nails, and screws.

SEC. 31. Section 12209 is added to the Public Contract Code, to read:

12209. For purposes of this article, the following minimum content requirements apply:

(a) Recycled paper products shall consist of at least 30 percent, by fiber weight, postconsumer fiber.

(b) (1) Recycled printing and writing paper shall consist of at least 30 percent, by fiber weight, postconsumer fiber.

(2) Printed newspapers that meet the requirements of Chapter 15 (commencing with Section 42750) of Part 3 of Division 30 of the Public

Resources Code shall be considered in compliance with the requirements of this section.

(c) For recycled compost, cocompost, and mulch, at least 80 percent of the product shall consist of materials, including, but not limited to, the materials listed in subdivision (c) of Section 12207, that would otherwise be normally disposed of in landfills.

(d) For recycled glass, the total weight shall consist of at least 10 percent postconsumer material.

(e) Rerefined lubricating oil shall have a base oil content consisting of at least 70 percent rerefined oil.

(f) (1) For recycled plastic products, other than printer or duplication cartridges, the total weight shall consist of at least 10 percent postconsumer material.

(2) Recycled printer or duplication cartridges shall comply with either the requirements set forth in subdivision (e) of Section 12156 or the general requirement for recycled plastic products set forth in paragraph (1).

(g) Recycled paint shall have a recycled content consisting of at least 50 percent postconsumer paint. Preconsumer or secondary paint does not qualify as "recycled paint" pursuant to this subdivision. If paint containing 50 percent postconsumer content is unavailable, or is restricted by a local air quality management district, a state agency may substitute paint with at least 10 percent postconsumer content.

(h) Recycled antifreeze fluid shall have a recycled content of at least 70 percent postconsumer materials.

(i) Retreaded tires must use an existing casing that has undergone an approved or accepted recapping or retreading process, in accordance with Chapter 7 (commencing with Section 42400) of Part 3 of Division 30 of the Public Resources Code.

(j) For tire-derived products, the total content shall consist of at least 50 percent recycled used tires.

(k) For recycled metal products, the total weight shall consist of at least 10 percent postconsumer material.

(l) For reused or refurbished products, there is no minimum content requirement.

SEC. 32. Section 12210 of the Public Contract Code is repealed.

SEC. 33. Section 12211 is added to the Public Contract Code, to read:

12211. (a) Each state agency shall report annually to the board their progress in meeting the recycled product purchasing requirements using the SABRC report format provided by the board.

(b) On or before October 31 of each year, the department shall provide to the board the following information:

(1) A list, by category, of individual reportable recycled products, materials, goods, and supplies that were available for purchase by state agencies from a statewide-use contract, agreement, or schedule during the previous fiscal year.

(2) A list, by category, of all reportable products, materials, goods, and supplies that were available for purchase by state agencies from a statewide-use contract, agreement, or schedule, including contract, agreement, or schedule tracking numbers, during the previous fiscal year.

(c) The board shall annually provide an agency-specific report to the Legislature identifying all state agency SABRC reporting figures.

(d) Every three years, the board shall provide, as part of the report described in subdivision (c), recommendations to the Legislature for changes necessary to increase the purchase of recycled content products, materials, goods, and supplies and improve SABRC program efficiency.

SEC. 34. Section 12213 of the Public Contract Code is repealed.

SEC. 35. Section 12215 is added to the Public Contract Code, to read:

12215. Each state agency may, at the discretion of the individual agency director or his or her designee, print a statement on recycled products selected by the agency director. This statement shall be determined by the department, in consultation with the board, and shall be similar to the following: "Contains at least ____ percent postconsumer material."

SEC. 36. Section 12217 is added to the Public Contract Code, to read:

12217. (a) If at any time a requirement has not been met, the department, in consultation with the board, shall review purchasing policies and shall make recommendations for immediate revisions to ensure that the recycled product purchasing requirements are met.

(b) In determining purchasing specifications, with the exception of any specifications that have been established to preserve the public health and safety, all state purchasing specifications shall be established in a manner that results in the maximum state purchase of recycled products.

(c) If a recycled product, as defined in subdivision (h) of Section 12200, costs more than the same product made with virgin material, the state agency shall, if feasible, purchase fewer of those more costly products or apply the cost savings, if any, gained from buying other recycled products towards the purchase of those more costly products to meet the solid waste diversion goals of Section 41780.

(d) Each state agency shall establish purchasing practices that ensure the purchase of goods and materials that may be recycled or reused. Each state agency shall continue activities for the collection, separation, and

recycling of recyclable materials and may appoint a recycling coordinator to assist in implementing this section.

(e) To assist the state in meeting the requirements of this article, each state agency, and the department, in consultation with the board, may also establish recycled product-only bids, cooperative purchasing arrangements, or other mechanisms to meet the requirements for recycled products and to encourage the maximum state purchase of recycled products.

(f) The department, in consultation with the board, shall review and revise the purchasing specifications used by state agencies in order to eliminate restrictive specifications and discrimination against the purchase of recycled products and to ensure that they are drafted in a manner that results in the maximum state purchase of recycled products. All contract provisions impeding the consideration of recycled products shall be deleted in favor of performance standards.

(g) Any state agency that is required to submit an SABRC report to the board, pursuant to Section 12211, is subject to a review conducted by the board or its designee.

SEC. 37. Section 12225 of the Public Contract Code is repealed.

SEC. 38. Section 12226 of the Public Contract Code is repealed.

SEC. 39. Chapter 3.5 (commencing with Section 22150) is added to Part 3 of Division 2 of the Public Contract Code, to read:

CHAPTER 3.5. RECYCLED PRODUCT PROCUREMENT MANDATES PERTAINING TO LOCAL GOVERNMENTS

22150. (a) If fitness and quality are equal, each local public entity shall purchase recycled products, as defined in Section 12200, instead of nonrecycled products whenever recycled products are available at the same or a lesser total cost than nonrecycled items.

(b) A local public entity may give preference to suppliers of recycled products.

(c) A local public entity may define the amount of this preference.

22151. In bids in which the local government has reserved the right to make multiple awards, the recycled product preference cost shall be applied, to the extent possible, so as to maximize the dollar participation of firms offering recycled products in the contract award.

22152. (a) All local public entities shall require all business, as defined in Section 12200, to certify in writing the minimum, if not exact, percentage of postconsumer materials in the products, materials, goods, or supplies, offered or sold. All contract provisions impeding the consideration of recycled products shall be deleted in favor of performance standards.

(b) With respect to printer or duplication cartridges that comply with the requirements of subdivision (e) of Section 12156, the certification required by this subdivision shall specify that the cartridges so comply.

22153. All printing contracts made by any local public entity shall provide that the paper used shall meet the recycled content requirements of Section 12209.

22154. (a) All business shall certify in writing to the contracting officer, or his or her representative, the minimum, if not exact, percentage of postconsumer material in the products, materials, goods, or supplies being offered or sold to any local public entity.

(b) With respect to printer or duplication cartridges that comply with the requirements of subdivision (e) of Section 12156, the certification required by this subdivision shall specify that the cartridges so comply.

(c) A state agency may waive the certification requirement if the percentage of postconsumer material in the products, materials, goods, or supplies can be verified in a written advertisement, including, but not limited to, a product label, a catalog, or a manufacturer or vendor Internet Web site.

SEC. 40. Section 40183 of the Public Resources Code is amended to read:

40183. (a) "Rural city" means either of the following:

(1) A city that has a geographic area of less than three square miles, has a current waste disposal rate of less than 100 cubic yards per day, or 60 tons per day, and is located in a rural area.

(2) A city that has a population density of less than 1,500 people per square mile, has a current waste disposal rate of less than 100 cubic yards per day, or 60 tons per day, and is located in a rural area.

(b) Nothing in this section shall affect any reduction granted to a rural city or rural county by the board pursuant to Section 41787 prior to September 1, 1994.

SEC. 41. Chapter 4 (commencing with Section 42200) of Part 3 of Division 30 of the Public Resources Code is repealed.

SEC. 42. Chapter 6 (commencing with Section 42360) of Part 3 of Division 30 of the Public Resources Code is repealed.

SEC. 43. Section 42920 of the Public Resources Code is amended to read:

42920. (a) On or before February 15, 2000, the board shall adopt a state agency model integrated waste management plan for source reduction, recycling, and composting activities.

(b) (1) On or before July 1, 2000, each state agency shall develop and adopt, in consultation with the board, an integrated waste management plan, in accordance with the requirements of this chapter. The plan shall build upon existing programs and measures, including

the state agency model integrated waste management plan adopted by the board pursuant to subdivision (a), that will reduce solid waste, reuse materials whenever possible, recycle recyclable materials, and procure products with recycled content in all state agency offices and facilities, including any leased locations. It is the intent of the Legislature that the local jurisdiction and the state agency or large state facility located within that jurisdiction work together to implement the state agency integrated waste management plan.

(2) Each state agency shall submit an adopted integrated waste management plan to the board for review and approval on or before July 15, 2000. The board shall adopt procedures for reviewing and approving those integrated waste management plans. The board shall complete its plan review process on or before January 1, 2001.

(3) If a state agency has not submitted an adopted integrated waste management plan or the model integrated waste management plan with revisions to the board by January 1, 2001, or if the board has disapproved the plan that was submitted, then the model integrated waste management plan, as revised by the board in consultation with the agency, shall take effect on that date, or on a later date as determined by the board, and shall have the same force and effect as if adopted by the state agency.

(c) Notwithstanding subdivision (e) of Section 12217 of the Public Contract Code, at least one solid waste reduction and recycling coordinator shall be designated by each state agency. The coordinator shall perform the duties imposed pursuant to this chapter using existing resources. The coordinator shall be responsible for implementing the integrated waste management plan and shall serve as a liaison to other state agencies and coordinators.

(d) The board shall provide technical assistance to state agencies for the purpose of implementing the integrated waste management plan.

SEC. 44. Section 49120 of the Public Resources Code is amended to read:

49120. (a) Within 30 days after the filing with the Secretary of State of the certified copy of the order of formation, a governing board of trustees for the district shall be appointed.

(b) The governing board of a district is a board of directors of not less than three members. The district board shall be appointed as follows:

(1) If the district includes only one city, two members of the governing body shall be selected by the board of supervisors and one member of the governing body shall be selected by the city council.

(2) If the district includes two or more cities, only one member of the governing body of the district shall be selected by the board of supervisors to represent the unincorporated area. The legislative body of each city within the district shall appoint one member to represent

each incorporated city within the district. If the selection of members pursuant to this subdivision results in the governing body having an even number of members, those members may appoint an additional member from the district at large.

(c) A vacancy shall be filled in the same manner as an original appointment. The person appointed shall reside within the area he or she represents.

SEC. 45. Section 49300 of the Public Resources Code is amended to read:

49300. The legislative body of a city may contract for the collection or disposal, or both, of garbage, waste, refuse, rubbish, offal, trimmings, or other refuse matter under the terms and conditions that are prescribed by the legislative body of the city by resolution or ordinance.

CHAPTER 591

An act to amend Sections 311 and 311.5 of the Public Utilities Code, relating to the Public Utilities Commission.

[Approved by Governor October 6, 2005. Filed with
Secretary of State October 6, 2005.]

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

SECTION 1. Section 311 of the Public Utilities Code is amended to read:

311. (a) The commission, each commissioner, the executive director, and the assistant executive directors may administer oaths, certify to all official acts, and issue subpoenas for the attendance of witnesses and the production of papers, waybills, books, accounts, documents, and testimony in any inquiry, investigation, hearing, or proceeding in any part of the state.

(b) The administrative law judges may administer oaths, examine witnesses, issue subpoenas, and receive evidence, under rules that the commission adopts.

(c) The evidence in any hearing shall be taken by the commissioner or the administrative law judge designated for that purpose. The commissioner or the administrative law judge may receive and exclude evidence offered in the hearing in accordance with the rules of practice and procedure of the commission.

(d) Consistent with the procedures contained in Sections 1701.1, 1701.2, 1701.3, and 1701.4, the assigned commissioner or the

administrative law judge shall prepare and file an opinion setting forth recommendations, findings, and conclusions. The opinion of the assigned commissioner or the administrative law judge is the proposed decision and a part of the public record in the proceeding. The proposed decision of the assigned commissioner or the administrative law judge shall be filed with the commission and served upon all parties to the action or proceeding without undue delay, not later than 90 days after the matter has been submitted for decision. The commission shall issue its decision not sooner than 30 days following filing and service of the proposed decision by the assigned commissioner or the administrative law judge, except that the 30-day period may be reduced or waived by the commission in an unforeseen emergency situation or upon the stipulation of all parties to the proceeding or as otherwise provided by law. The commission may, in issuing its decision, adopt, modify, or set aside the proposed decision or any part of the decision. Where the modification is of a decision in an adjudicatory hearing it shall be based upon the evidence in the record. Every finding, opinion, and order made in the proposed decision and approved or confirmed by the commission shall, upon that approval or confirmation, be the finding, opinion, and order of the commission.

(e) Any item appearing on the commission's public agenda as an alternate item to a proposed decision or to a decision subject to subdivision (g) shall be served upon all parties to the proceeding without undue delay and shall be subject to public review and comment before it may be voted upon. For purposes of this subdivision, "alternate" means either a substantive revision to a proposed decision that materially changes the resolution of a contested issue or any substantive addition to the findings of fact, conclusions of law, or ordering paragraphs. The commission shall adopt rules that provide for the time and manner of review and comment and the rescheduling of the item on a subsequent public agenda, except that the item may not be rescheduled for consideration sooner than 30 days following service of the alternative item upon all parties. The alternate item shall be accompanied by a digest that clearly explains the substantive revisions to the proposed decision. The commission's rules may provide that the time and manner of review and comment on an alternate item may be reduced or waived by the commission in an unforeseen emergency situation.

(f) The commission may specify that the administrative law judge assigned to a proceeding involving an electrical, gas, telephone, railroad, or water corporation, or a highway carrier, initiated by customer or subscriber complaint need not prepare, file, and serve an opinion, unless the commission finds that to do so is required in the public interest in a particular case.

(g) (1) Prior to voting on any commission decision not subject to subdivision (d), the decision shall be served on parties and subject to at least 30 days public review and comment. Any alternate to any commission decision shall be subject to the same requirements as provided for alternate decisions under subdivision (e). For purposes of this subdivision, “decision” also includes resolutions, including resolutions on advice letter filings.

(2) The 30-day period may be reduced or waived in an unforeseen emergency situation, upon the stipulation of all parties in the proceeding, for an uncontested matter in which the decision grants the relief requested, or for an order seeking temporary injunctive relief.

(3) This subdivision does not apply to uncontested matters that pertain solely to water corporations, or to orders instituting investigations or rulemakings, categorization resolutions under Sections 1701.1 to 1701.4, inclusive, or orders authorized by law to be considered in executive session. Consistent with regulatory efficiency and the need for adequate prior notice and comment on commission decisions, the commission may adopt rules, after notice and comment, establishing additional categories of decisions subject to waiver or reduction of the time period in this section.

(h) Notwithstanding any other provision of law, amendments, revisions, or modifications by the commission of its Rules of Practice and Procedure, shall be submitted to the Office of Administrative Law for prior review in accordance with Sections 11349, 11349.3, 11349.4, 11349.5, 11349.6, and 11350.3 of, and subdivisions (a) and (b) of Section 11349.1 of, the Government Code. If the commission adopts an emergency revision to its Rules of Practice and Procedure based upon a finding that the revision is necessary for the preservation of the public peace, health and safety, or general welfare, this emergency revision shall only be reviewed by the Office of Administrative Law in accordance with subdivisions (b) to (d), inclusive, of Section 11349.6 of the Government Code. The emergency revision shall become effective upon filing with the Secretary of State and shall remain in effect for no more than 120 days. A petition for writ of review pursuant to Section 1756 of a commission decision amending, revising, or modifying its Rules of Practice and Procedure shall not be filed until the regulation has been approved by the Office of Administrative Law, the Governor, or a court pursuant to Section 11350.3 of the Government Code. If the period for filing the petition for writ of review would otherwise have already commenced under Section 1733 or 1756 at the time of that approval, then the period for filing the petition for writ of review shall continue until 30 days after the date of that approval. Nothing in this subdivision shall require the commission to comply with Article 5 (commencing

with Section 11346) of Chapter 3.5 of Part 1 of Division 3 of Title 2 of the Government Code. This subdivision is only intended to provide for the Office of Administrative Law review of procedural commission decisions relating to commission Rules of Practice and Procedure, and not general orders, resolutions, or other substantive regulations.

(i) The commission shall immediately notify the Legislature whenever the commission reduces or waives the time period for public review and comment due to an unforeseen emergency situation, as provided in subdivision (d), (e), or (g).

SEC. 2. Section 311.5 of the Public Utilities Code is amended to read:

311.5. (a) (1) Prior to commencement of any meeting at which commissioners vote on items on the public agenda the commission shall make available to the public copies of the agenda, and upon request, any agenda item documents that are proposed to be considered by the commission for action or decision at a commission meeting.

(2) In addition, the commission shall publish the agenda, agenda item documents, and adopted decisions in a manner that makes copies of them easily available to the public, including publishing those documents on the Internet. Publication of the agenda and agenda item documents shall occur on the Internet at the same time as the written agenda and agenda item documents are made available to the public.

(b) The commission shall publish and maintain the following documents on the Internet:

(1) Each of the commission's proposed and alternate proposed decisions and resolutions, until the decision or resolution is adopted and published.

(2) Each of the commission's adopted decisions and resolutions. The publication shall occur within 10 days of the adoption of each decision or resolution by the commission.

(3) The then-current version of the commission's general orders and Rules of Practice and Procedure.

(4) Each of the commission's rulings. The commission shall maintain those rulings on its Internet Web site until final disposition, including disposition of any judicial appeals, of the respective proceedings in which the rulings were issued.

(5) A docket card that lists, by title and date of filing or issuance, all documents filed and all decisions or rulings issued in those proceedings. The commission shall maintain the docket card until final disposition, including disposition of any judicial appeals, of the corresponding proceedings.

CHAPTER 592

An act relating to public postsecondary education, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 6, 2005. Filed with
Secretary of State October 6, 2005.]

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

SECTION 1. (a) The sum of three million four hundred forty thousand dollars (\$3,440,000) is hereby appropriated from the General Fund for the 2005-06 fiscal year in accordance with the following schedule:

(1) One million seven hundred twenty thousand dollars (\$1,720,000) to the Regents of the University of California for one-time expenditures for instructional equipment, classroom and laboratory renovations, curriculum development, and faculty recruitment.

(2) One million seven hundred twenty thousand dollars (\$1,720,000) to the Trustees of the California State University for one-time expenditures for instructional equipment, classroom and laboratory renovations, curriculum development, and faculty recruitment.

(c) Pursuant to funding to be appropriated in the Budget Act of 2006, the Regents of the University of California and the Trustees of the California State University shall increase, by at least 130, the number of full-time equivalent students in entry-level master's degree nursing programs in their respective segments, beginning in the 2006-07 fiscal year. This increased number of students shall be in addition to the number of master's nursing students in each segment in the 2005-06 fiscal year. Each segment may also increase the number of bachelor's nursing students.

(d) The Regents of the University of California and the Trustees of the California State University shall each provide a report to the Governor and the Legislature on or before February 1, 2006. These reports shall relate to the proposed expenditure of the funds appropriated in subdivision (a) by the respective segments in the 2005-06 fiscal year.

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 funding available in time for the beginning of the 2005-06 academic year, it is necessary that this act take effect immediately.

CHAPTER 593

An act to add Section 10214.9 to the Unemployment Insurance Code, relating to unemployment compensation.

[Approved by Governor October 6, 2005. Filed with
Secretary of State October 6, 2005.]

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

SECTION 1. Section 10214.9 is added to the Unemployment Insurance Code, to read:

10214.9. (a) (1) The panel may fund up to five licensed nurse training programs to train individuals who are currently working as nurse assistants or caregivers in a health facility, as defined in Section 1250 of the Health and Safety Code.

(2) It is the intent of the Legislature that the panel allocate these funds in a manner consistent with the objectives of this chapter as provided in Section 10200.

(b) Notwithstanding any other provisions of this chapter, the panel shall waive the minimum wage provisions, pursuant to subdivision (f) of Section 10201, if all of the following conditions are met:

(1) The employee is enrolled in an approved licensed nurse training program that consists of not less than 1,000 hours of training.

(2) The employer pays the employee not less than 120 percent of the state minimum wage for not less than the first 20 hours of work per week during each week the employee is enrolled in the training program.

(3) Each program results in full-time employment customary for the occupation for which the individuals are being trained.

(c) Notwithstanding any other provisions of this chapter, the panel shall waive any limitation on the hourly length of training programs to allow approval and funding for up to 750 hours of a licensed nurse training program; provided, however, that those funds be used to pay for up to 750 training hours that remain in the licensed nurse training program after the employee has completed the first 800 hours of that program.

(d) Notwithstanding any other provision of this chapter, employers that participate in the nurse training programs funded pursuant to this

section, are not required to meet the eligibility criteria set forth in paragraph (1) of subdivision (a) of Section 10200.

CHAPTER 594

An act to amend Sections 374 and 411 of the Streets and Highways Code, relating to highways.

[Approved by Governor October 6, 2005. Filed with
Secretary of State October 6, 2005.]

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

SECTION 1. Section 374 of the Streets and Highways Code is amended to read:

374. (a) Route 74 is from:

- (1) Route 5 near San Juan Capistrano to Route 15 near Lake Elsinore.
- (2) Route 15 near Lake Elsinore to Route 215 near Perris.
- (3) Route 215 near Perris to Route 10 near Thousand Palms via Hemet and Palm Desert.

(b) (1) The commission may relinquish to the City of Palm Desert the portion of Route 74 that is located within the city limits of that city, upon terms and conditions the commission finds to be in the best interests of the state, if the department and the city enter into an agreement providing for that relinquishment.

(2) A relinquishment under this subdivision shall become effective immediately following the county recorder's recordation of the relinquishment resolution containing the commission's approval of the terms and conditions of the relinquishment.

(3) On and after the effective date of the relinquishment, the relinquished portion of Route 74 shall cease to be a state highway.

(4) The portion of Route 74 relinquished under this subdivision shall be ineligible for future adoption under Section 81.

(5) For the portion of Route 74 that is relinquished under this subdivision, the City of Palm Desert shall maintain within its jurisdiction signs directing motorists to the continuation of Route 74.

SEC. 2. Section 411 of the Streets and Highways Code is amended to read:

411. (a) Route 111 is from:

- (1) The international border south of Calexico to Route 78 near Brawley, passing east of Heber.

(2) Route 78 near Brawley to Route 86 via the north shore of the Salton Sea.

(3) Route 10 near Indio to the southeastern city limits of Rancho Mirage.

(4) The western city limits of Cathedral City to Route 10 near Whitewater.

(b) (1) The commission may relinquish to the Cities of Indian Wells, Indio, and Palm Desert the respective portions of Route 111 that are located within the city limits of those cities, upon terms and conditions the commission finds to be in the best interests of the state, if the department and the applicable city enter into an agreement providing for that relinquishment.

(2) A relinquishment under this subdivision shall become effective immediately following the county recorder's recordation of the relinquishment resolution containing the commission's approval of the terms and conditions of the relinquishment.

(3) On and after the effective date of the relinquishment, the relinquished portions of Route 111 shall cease to be a state highway.

(4) The portions of Route 111 relinquished under this subdivision shall be ineligible for future adoption under Section 81.

(5) For the portions of Route 111 that are relinquished under this subdivision, the Cities of Indian Wells, Indio, and Palm Desert, as applicable, shall maintain within their respective jurisdiction signs directing motorists to the continuation of Route 111.

(c) The relinquished former portions of Route 111 within the Cities of Cathedral City and Rancho Mirage are not a state highway and are not eligible for adoption under Section 81.

CHAPTER 595

An act to amend Sections 798.3 and 1942.3 of the Civil Code, to amend Sections 568.2 and 568.3 of the Code of Civil Procedure, to amend Sections 65400, 65584.1, and 66016 of, and to repeal Sections 65586 and 65588.1 of, the Government Code, to amend Sections 18070.3, 18070.6, 18400.3, and 18867 of, and to repeal Section 33334.20 of, the Health and Safety Code, and to amend Section 3692.4 of the Revenue and Taxation Code, relating to housing.

[Approved by Governor October 6, 2005. Filed with
Secretary of State October 6, 2005.]

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

SECTION 1. Section 798.3 of the Civil Code is amended to read:

798.3. (a) "Mobilehome" is a structure designed for human habitation and for being moved on a street or highway under permit pursuant to Section 35790 of the Vehicle Code. Mobilehome includes a manufactured home, as defined in Section 18007 of the Health and Safety Code, and a mobilehome, as defined in Section 18008 of the Health and Safety Code, but, except as provided in subdivision (b), does not include a recreational vehicle, as defined in Section 799.29 of this code and Section 18010 of the Health and Safety Code or a commercial coach as defined in Section 18001.8 of the Health and Safety Code.

(b) "Mobilehome," for purposes of this chapter, other than Section 798.73, also includes trailers and other recreational vehicles of all types defined in Section 18010 of the Health and Safety Code, other than motor homes, truck campers, and camping trailers, which are used for human habitation if the occupancy criteria of either paragraph (1) or (2), as follows, are met:

(1) The trailer or other recreational vehicle occupies a mobilehome site in the park, on November 15, 1992, under a rental agreement with a term of one month or longer, and the trailer or other recreational vehicle occupied a mobilehome site in the park prior to January 1, 1991.

(2) The trailer or other recreational vehicle occupies a mobilehome site in the park for nine or more continuous months commencing on or after November 15, 1992.

"Mobilehome" does not include a trailer or other recreational vehicle located in a recreational vehicle park subject to Chapter 2.6 (commencing with Section 799.20).

SEC. 2. Section 1942.3 of the Civil Code is amended to read:

1942.3. (a) In any unlawful detainer action by the landlord to recover possession from a tenant, a rebuttable presumption affecting the burden of producing evidence that the landlord has breached the habitability requirements in Section 1941 is created if all of the following conditions exist:

(1) The dwelling substantially lacks any of the affirmative standard characteristics listed in Section 1941.1, is deemed and declared substandard pursuant to Section 17920.3 of the Health and Safety Code, or contains lead hazards as defined in Section 17920.10 of the Health and Safety Code.

(2) A public officer or employee who is responsible for the enforcement of any housing law has notified the landlord, or an agent of the landlord, in a written notice issued after inspection of the premises which informs the landlord of his or her obligation to abate the nuisance

or repair the substandard or unsafe conditions identified under the authority described in paragraph (1).

(3) The conditions have existed and have not been abated 60 days beyond the date of issuance of the notice specified in paragraph (2) and the delay is without good cause.

(4) The conditions were not caused by an act or omission of the tenant or lessee in violation of Section 1929 or 1941.2.

(b) The presumption specified in subdivision (a) does not arise unless all of the conditions set forth therein are proven, but failure to so establish the presumption shall not otherwise affect the right of the tenant to raise and pursue any defense based on the landlord's breach of the implied warranty of habitability.

(c) The presumption provided in this section shall apply only to rental agreements or leases entered into or renewed on or after January 1, 1986.

SEC. 3. Section 568.2 of the Code of Civil Procedure is amended to read:

568.2. (a) A receiver of real property containing rental housing shall notify the court of the existence of any order or notice to correct any substandard or unsafe condition, as defined in Section 17920.3 or 17920.10 of the Health and Safety Code, with which the receiver cannot comply within the time provided by the order or notice.

(b) The notice shall be filed within 30 days after the receiver's appointment or, if the substandard condition occurs subsequently, within 15 days of its occurrence.

(c) The notice shall inform the court of all of the following:

(1) The substandard conditions that exist.

(2) The threat or danger that the substandard conditions pose to any occupant of the property or the public.

(3) The approximate cost and time involved in abating the conditions. If more time is needed to approximate the cost, then the notice shall provide the date on which the approximate cost will be filed with the court and that date shall be within 10 days of the filing.

(4) Whether the receivership estate is likely to contain sufficient funds to abate the conditions.

(d) If the receivership estate does not contain sufficient funds to abate the conditions, the receiver shall request further instructions or orders from the court.

(e) The court, upon receipt of a notice pursuant to subdivision (d), shall consider appropriate orders or instructions to enable the receiver to correct the substandard conditions or to terminate or limit the period of receivership.

SEC. 4. Section 568.3 of the Code of Civil Procedure is amended to read:

568.3. Any tenant of real property that is subject to receivership, a tenant association or organization, or any federal, state, or local enforcement agency, may file a motion in a receivership action for the purpose of seeking further instructions or orders from the court, if either of the following is true:

(a) Substandard conditions exist, as defined by Section 17920.3 or 17920.10 of the Health and Safety Code.

(b) A dispute or controversy exists concerning the powers or duties of the receiver affecting a tenant or the public.

SEC. 5. Section 65400 of the Government Code is amended to read:

65400. After the legislative body has adopted all or part of a general plan, the planning agency shall do both of the following:

(a) Investigate and make recommendations to the legislative body regarding reasonable and practical means for implementing the general plan or element of the general plan, so that it will serve as an effective guide for orderly growth and development, preservation and conservation of open-space land and natural resources, and the efficient expenditure of public funds relating to the subjects addressed in the general plan.

(b) Provide by April 1 of each year an annual report to the legislative body, the Office of Planning and Research, and the Department of Housing and Community Development that includes all of the following:

(1) The status of the plan and progress in its implementation.

(2) The progress in meeting its share of regional housing needs determined pursuant to Section 65584 and local efforts to remove governmental constraints to the maintenance, improvement, and development of housing pursuant to paragraph (3) of subdivision (c) of Section 65583.

The housing element portion of the annual report, as required by this paragraph, shall be prepared through the use of forms and definitions adopted by the Department of Housing and Community Development pursuant 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).

(3) The degree to which its approved general plan complies with the guidelines developed and adopted pursuant to Section 65040.2 and the date of the last revision to the general plan.

(c) For the 2006 calendar year, the planning agency may provide the report required pursuant to subdivision (b) by October 1, 2006.

SEC. 6. Section 65584.1 of the Government Code is amended to read:

65584.1. Councils of government may charge a fee to local governments to cover the projected reasonable, actual costs of the council in distributing regional housing needs pursuant to this article. Any fee

shall not exceed the estimated amount required to implement its obligations pursuant to Sections 65584, 65584.01, 65584.02, 65584.03, 65584.04, 65584.05, and 65584.07. A city, county, or city and county may charge a fee, not to exceed the amount charged in the aggregate to the city, county, or city and county by the council of governments, to reimburse it for the cost of the fee charged by the council of government to cover the council's actual costs in distributing regional housing needs. The legislative body of the city, county, or city and county shall impose the fee pursuant to Section 66016, except that if the fee creates revenue in excess of actual costs, those revenues shall be refunded to the payers of the fee.

SEC. 7. Section 66016 of the Government Code is amended to read:

66016. (a) Prior to levying a new fee or service charge, or prior to approving an increase in an existing fee or service charge, a local agency shall hold at least one open and public meeting, at which oral or written presentations can be made, as part of a regularly scheduled meeting. Notice of the time and place of the meeting, including a general explanation of the matter to be considered, and a statement that the data required by this section is available, shall be mailed at least 14 days prior to the meeting to any interested party who files a written request with the local agency for mailed notice of the meeting on new or increased fees or service charges. Any written request for mailed notices shall be valid for one year from the date on which it is filed unless a renewal request is filed. Renewal requests for mailed notices shall be filed on or before April 1 of each year. The legislative body may establish a reasonable annual charge for sending notices based on the estimated cost of providing the service. At least 10 days prior to the meeting, the local agency shall make available to the public data indicating the amount of cost, or estimated cost, required to provide the service for which the fee or service charge is levied and the revenue sources anticipated to provide the service, including General Fund revenues. Unless there has been voter approval, as prescribed by Section 66013 or 66014, no local agency shall levy a new fee or service charge or increase an existing fee or service charge to an amount which exceeds the estimated amount required to provide the service for which the fee or service charge is levied. If, however, the fees or service charges create revenues in excess of actual cost, those revenues shall be used to reduce the fee or service charge creating the excess.

(b) Any action by a local agency to levy a new fee or service charge or to approve an increase in an existing fee or service charge shall be taken only by ordinance or resolution. The legislative body of a local agency shall not delegate the authority to adopt a new fee or service charge, or to increase a fee or service charge.

(c) Any costs incurred by a local agency in conducting the meeting or meetings required pursuant to subdivision (a) may be recovered from fees charged for the services which were the subject of the meeting.

(d) This section shall apply only to fees and charges as described in Sections 51287, 56383, 57004, 65104, 65456, 65584.1, 65863.7, 65909.5, 66013, 66014, and 66451.2 of this code, Sections 17951, 19132.3, and 19852 of the Health and Safety Code, Section 41901 of the Public Resources Code, and Section 21671.5 of the Public Utilities Code.

(e) Any judicial action or proceeding to attack, review, set aside, void, or annul the ordinance, resolution, or motion levying a fee or service charge subject to this section shall be brought pursuant to Section 66022.

SEC. 8. Section 65586 of the Government Code is repealed.

SEC. 9. Section 65588.1 of the Government Code is repealed.

SEC. 10. Section 18070.3 of the Health and Safety Code is amended to read:

18070.3. (a) When any person (1) who has purchased a manufactured home for a personal or family residential or investment purpose or (2) who has sold a manufactured home for a personal or family residential or investment purpose, obtains a final judgment against any manufactured home manufacturer, manufactured home dealer or salesperson, or other seller or purchaser, and the judgment is based on the grounds of (1) failure to honor warranties or guarantees, (2) fraud or willful misrepresentation related to any financial provision, (3) fraud or willful misrepresentation of the kind or quality of the product sold or purchased, (4) conversion, (5) any willful violation of any other provision of this part, including the provisions regulating escrow accounts, or regulations adopted pursuant to this part, or (6) violation of Chapter 3 (commencing with Section 1797) of Title 1.7 of Part 4 of Division 3 of the Civil Code, resulting in an actual and direct loss directly arising out of any transaction that occurs on or after January 1, 1985, the person, upon termination of all proceedings, including appeals, may file a claim with the department for an order directing payment out of the fund for the amount of actual and direct loss in the transaction.

(b) If any person either purchases a manufactured home used for a personal or family residential or investment purpose from, or sells a manufactured home used for a personal or family residential or investment purpose to, a person or entity who is or has been the subject of a bankruptcy proceeding, the person may file a claim with the department for an order directing payment out of the fund for the actual and direct loss in the transaction based on (1) the failure to honor warranties or guarantees, (2) fraud or willful misrepresentation related to any financial provision, (3) fraud or willful misrepresentation of the kind or quality of product purchased or sold, (4) conversion, (5) willful

violation of any other provision in this part, including the provisions regulating escrow accounts, or (6) violation of Chapter 3 (commencing with Section 1797) of Title 1.7 of Part 4 of Division 3 of the Civil Code, resulting in an actual and direct loss directly arising out of any transaction that occurs on or after January 1, 1985.

(c) (1) The total amount of the claim shall not exceed the amount of actual and direct loss that remains unreimbursed from any source.

(2) The maximum payment ordered under this section, with respect to any one sales transaction on a new or used manufactured home, shall be the amount of the actual and direct loss, as determined by the department based on information in the possession of the department and information provided by the claimant or claimants. In no event shall the actual payment relating to a single transaction exceed seventy-five thousand dollars (\$75,000).

(3) Notwithstanding any other provision of this chapter, a person who purchases or sells a manufactured home for an investment purpose may receive payment from the fund for that purpose only once. A person who has received payment from the fund for the purchase or sale of a manufactured home for an investment purpose shall henceforth be ineligible to make a claim under this chapter, either as a natural person or as a member of a partnership, as an officer or director of a corporation, as a member of a marital community, or in any other capacity.

(d) Prior to payment of any claim against the fund, the claimant or claimants shall have first:

(1) If the claim is based on a final judgment, diligently pursued collection efforts against all the assets of the judgment debtor, or presented evidence satisfactory to the department that the debtor is judgment proof, or demonstrated evidence satisfactory to the department that the costs of collection are likely to be in excess of the amounts that could be collected. This evidence may include, but is not limited to, a description of the searches and inquiries conducted by or on behalf of the claimant with respect to the judgment debtor's assets liable to be sold or applied to the satisfaction of the judgment, an itemized valuation of the assets discovered, and the results of actions by the claimant to have assets applied to satisfy the judgment.

(2) If the claim is not based on a final judgment, presented evidence satisfactory to the department of either of the following:

(A) That the licensee is or has been the subject of bankruptcy proceedings and, for purposes of any civil litigation or claims in bankruptcy proceedings, has assigned to the department any interest in the actual and direct loss described in subdivision (c) in the amount that the claimant or claimants recover from the fund.

(B) That the claimant's claim is consistent with this chapter and the claimant had presented evidence satisfactory to the department that the debtor is judgment proof, or demonstrated evidence satisfactory to the department that the costs of collection are likely to be in excess of the amounts that could be collected. This evidence may include, but not be limited to, a description of searches and inquiries conducted by or on behalf of the claimant with respect to the judgment debtor's assets eligible to be sold or applied to the satisfaction of the judgment, an itemized valuation of the assets discovered, and the results of actions by the claimant to have the assets applied to satisfaction of the judgment.

(3) If the claim is based upon a violation of a provision within a warranty provided pursuant to Chapter 3 (commencing with Section 1797) of Title 1.7 of Part 4 of Division 3 of the Civil Code, demonstrated evidence satisfactory to the department that the claimant has been denied full compensation or correction under the warranty after the claimant has attempted to exercise his or her rights pursuant to the warranty.

(e) A claim against the fund shall be filed with the department within the following time periods:

(1) If the claim is based on a final judgment, within two years from the date of the judgment.

(2) If the claim is not based on a final judgment, within two years from the termination of bankruptcy proceedings or two years from the date of sale as determined by subdivision (a) of Section 18070.2, or within two years of discovery of the violations causing actual and direct losses pursuant to this article but no longer than five years after the date of sale as determined by subdivision (a) of Section 18070.2, whichever event occurs later.

(f) When any person files a claim for an order directing payment from the fund, the claimant shall mail, by first-class mail, a copy of that claim to the last known address of the judgment debtor. The department shall conduct a review of the application and other pertinent information in its possession, and it may issue an order directing payment out of the fund as provided in subdivisions (a) to (e), inclusive, subject to the limitations of subdivisions (a) to (e), inclusive, if the claimant or claimants show all of the following:

(1) That he or she is not a spouse of the judgment debtor, the bankrupt licensee, or a person representing the spouse.

(2) That he or she is making an application within the time specified in subdivision (e).

(3) That the claimant has satisfied the applicable requirements of subdivision (d).

(4) That, if the claimant is a seller of a manufactured home used by the seller for personal, family, or household purposes, the claimant made

a good faith effort to adequately secure the debt resulting from the sale of the manufactured home and with respect to which the claim is made. For purposes of this paragraph, a good faith effort to secure the debt may be demonstrated by, but shall not be limited to, providing the department with a promissory note signed by the debtor and which, pursuant to the terms thereof, is secured by collateral with a reasonable value at least equal to the debt evidenced by the promissory note.

(g) Upon an order of the department directing that payment be made out of the fund, the Controller is authorized to draw a warrant for the payment of the amount of the claim approved by the department pursuant to this section.

(h) In dispersing moneys from the fund, the department is authorized to give priority to claimants who have attempted to purchase or sell a manufactured home for a personal or family residential purpose.

(i) All claims to the fund that are received on or after January 1, 1993, shall be processed, and a determination made, within one year of submission of a properly completed application.

(j) The department, upon request by a Member of the Legislature, shall provide the following information: the number of claims to the fund, number of claims processed and decided within one year of their application date and submission of a properly completed application, the amount of fund money paid to claimants, and the amount of fund money allocated for the department's costs.

SEC. 11. Section 18070.6 of the Health and Safety Code is amended to read:

18070.6. (a) To the extent that department personnel and resources are available, in any administrative action brought by the department pursuant to Article 3 (commencing with Section 18058) of Chapter 7, the department shall make reasonable efforts to plead and prove facts and allegations and request findings and conclusions necessary to support an order of restitution that may be deemed a final judgment.

(b) A person for whose benefit an order of restitution or other financial award has been granted by the director pursuant to this section may waive his or her rights to any additional compensation from the fund arising out of a transaction and submit a claim based on that administrative order to the fund after demonstrating efforts to collect pursuant to subdivision (d) of Section 18070.3.

(c) An order for restitution by the director pursuant to this section shall not exceed the amount of restitution ordered or approved by an administrative law judge in an administrative action brought by the department.

SEC. 12. Section 18400.3 of the Health and Safety Code is amended to read:

18400.3. (a) The department shall convene a task force of representatives of mobilehome owners, mobilehome park operators, local enforcement agencies that conduct mobilehome park inspections, and the Legislature, at least once a year, to provide input to the department on the conduct and operation of the mobilehome park maintenance inspection program.

(b) The Senate Committee on Rules and the Assembly Committee on Rules shall each designate a member of its respective house to be a member of the task force. Each legislative member of the task force may designate an alternate to represent him or her at task force meetings.

(c) With the input of the task force, the department may reorganize violations under this part and the regulations adopted pursuant to this part into the following two categories:

(1) Those constituting imminent hazards representing an immediate risk to life, health, and safety and requiring immediate correction.

(2) Those constituting unreasonable risk to life, health, or safety and requiring correction within 60 days.

(d) Any matter that would have constituted a violation prior to January 1, 2000, that is not categorized in accordance with subdivision (c) on or after January 1, 2000, shall be of a minor or technical nature and shall not be subject to citation or notation on the record of an inspection conducted on or after January 1, 2000.

SEC. 13. Section 18867 of the Health and Safety Code is amended to read:

18867. (a) (1) If, upon inspection, the enforcement agency determines that a special occupancy park is in violation of any provision of this part, or any rule or regulation adopted pursuant thereto, the enforcement agency shall promptly, but not later than 10 days, excluding Saturday, Sunday, and holidays, after the enforcement agency completes the inspection and determines that the alleged violation exists, issue a notice to correct the violation to the owner or operator of the special occupancy park and to the responsible person, as defined in Section 18871.8.

(2) If a violation constitutes an imminent threat to health and safety, the notice of violation shall be issued immediately and served on the owner or operator of the special occupancy park and to the responsible person, as defined in Section 18871.8.

(3) The owner or operator of the park shall be responsible for the correction of any violations for which a notice of violation has been given pursuant to this subdivision.

(b) (1) If, upon inspection, the enforcement agency determines that a recreational vehicle, an accessory building or structure, or lot is in violation of any provision of Chapter 7 (commencing with Section

18870), Chapter 8 (commencing with Section 18871), Chapter 9 (commencing with Section 18872), or any regulation adopted pursuant thereto, the enforcement agency shall promptly, but not later than 10 days, excluding Saturday, Sunday, and holidays, after the enforcement agency completes the inspection and determines that the alleged violation exists, issue a notice to correct the violation to the registered owner of the recreational vehicle, with a copy to the occupant thereof, if different from the registered owner.

(2) If a violation is discovered that constitutes an imminent hazard representing an immediate risk to life, health, and safety and requiring immediate correction, the notice of violation shall be issued immediately and served upon the occupant, with a copy mailed to the registered owner of the recreational vehicle, if different from the occupant, to the owner or operator of the special occupancy park, and to the responsible person, as defined in Section 18871.8.

(3) The registered owner or the occupant of the recreational vehicle shall be responsible for the correction of any violations for which a notice of violation has been given pursuant to this subdivision.

(4) The enforcement agency may issue a notice of violation in accordance with this chapter to the owner and occupant of a recreational vehicle, mobilehome, manufactured home, park trailer, or of factory-built housing which occupies a lot within a special occupancy park.

(c) (1) Service of the notice of violation shall be effected either personally or by first-class mail. Each notice of violation shall be in writing and shall describe with particularity the nature of the violation in as clear language as the technicality of the violation will allow the average layperson to understand what is being cited, including a reference to the statutory provisions or regulation alleged to have been violated, as well as any penalty provided by law for failure to make timely correction.

(2) For violations other than imminent threats to health and safety as provided in paragraph (2) of subdivision (a) and paragraph (2) of subdivision (b), the notice of violation shall allow 30 days from the postmarked date of the notice or date of personal delivery for the elimination of the condition constituting the alleged violation.

(3) If, after the reinspection of a violation described in paragraph (2) of this subdivision, the enforcement agency determines that there is a valid reason why a violation has not been corrected, including, but not limited to, weather conditions, illness, availability of repair persons, or availability of financial resources, the enforcement agency may extend the time for correction, at its discretion, for a reasonable period of time after the 30-day period.

(4) Upon a reinspection after the 30-day period of a violation described in paragraph (2) of this subdivision, if a second notice to correct a violation that is the responsibility of the registered owner of the manufactured home or mobilehome or owner of the recreational vehicle pursuant to paragraph (1) of subdivision (b) is issued to the registered owner of a manufactured home or mobilehome or recreational vehicle, with a copy to the occupant thereof, if different from the registered owner, a copy of the notice shall also be provided to the owner or operator of the special occupancy park, and to the responsible person as defined in Section 18871.8.

(5) If a second notice to correct a park violation pursuant to paragraph (1) of subdivision (a) is issued to the owner or operator of the park and to the responsible person, as defined in Section 18871.8, the enforcement agency shall post a copy of the violation in a conspicuous place in the park common area, and the posted notice shall only be removed by the enforcement agency when the violation is corrected.

(6) All violations described in paragraph (2) of subdivision (a) and paragraph (2) of subdivision (b) shall be corrected within a reasonable time as determined by the enforcement agency. Notices of those violations shall state the time determined by the enforcement agency within which corrections must be made.

(d) Notwithstanding any other provision of law, the enforcement agency may, at its sole discretion, determine not to issue a notice of violation pursuant to this chapter if the condition which violates this part or the regulations adopted pursuant thereto does not constitute an imminent hazard representing an immediate risk to life, health, and safety and requiring immediate correction. If the enforcement agency determines, pursuant to this subdivision, not to issue a notice of violation, the enforcement agency shall include in its inspection report a description of the condition that violates this part and its determination not to issue a notice of violation.

SEC. 14. Section 33334.20 of the Health and Safety Code is repealed.

SEC. 15. Section 3692.4 of the Revenue and Taxation Code is amended to read:

3692.4. (a) Notwithstanding any other provision of law, any county, city, city and county, or any nonprofit organization as defined in Section 3772.5, may request the tax collector to bring to the next scheduled public auction any residential real property that meets all of the following requirements:

- (1) The property taxes have been delinquent for at least three years.
- (2) The real property will serve the public benefit of providing housing directly related to low-income persons.

(3) The real property is not occupied by the owner as his or her principal place of residence.

(b) Every request submitted to the tax collector shall include the following:

(1) A formal resolution of the governing board of the county, city, city and county, or nonprofit organization, requesting the accelerated auction of the real property and stating the public benefit.

(2) A written plan for the development, rehabilitation, or proposed use of the real property and how low-income persons will be served.

(3) If the request is from a nonprofit organization, the request shall have a formal resolution of approval from the city council of the city in which the real property is located, or from the board of supervisors of the county if the real property is located in an unincorporated area.

(c) Upon receiving a request as provided by this section, the tax collector shall include the real property in the next scheduled public auction.

(d) (1) If the real property is acquired by a nonprofit organization at auction, a deed restriction shall be placed on the real property, requiring the real property to be used for low-income housing for a period of at least 30 years.

(2) (A) In lieu of the 30-year restriction required by paragraph (1), the deed may provide for equity sharing upon resale, if the real property is a single-family home that will be sold by the nonprofit organization to a low-income owner-occupant.

(B) To the extent not in conflict with another public funding source or law, all of the following shall apply to an equity-sharing agreement provided for by the deed:

(i) Upon resale by an owner-occupant of the home, the owner-occupant of the home shall retain the market value of any improvements, the downpayment, and his or her proportionate share of appreciation. The nonprofit organization shall recapture any initial subsidy and its proportionate share of appreciation, which shall then be used for the purpose of providing financial assistance to low-income homebuyers.

(ii) For purposes of this subdivision, the initial subsidy shall be equal to the fair market value of the home at the time of initial sale to the nonprofit organization minus the initial sale price to the low-income owner-occupant, plus the amount of any downpayment assistance or mortgage assistance. If upon resale by the owner-occupant the market value is lower than the initial market value, then the value at the time of the resale shall be used as the initial market value.

(iii) For purposes of this subdivision, the nonprofit organization's proportionate share of appreciation shall be equal to the ratio of the initial subsidy to the fair market value of the home at the time of initial sale.

(e) This section may not be construed to preclude the application, to the real property or the current owners of that property, of any other provision of law not in conflict with this section.

SEC. 16. The repeal of Section 33334.20 of the Health and Safety Code by this act does not release any agency that reduced the set-aside to its Low and Moderate Income Housing Fund pursuant to the provisions of that section from the requirement to eliminate the deficit in accordance with that section as it existed on December 31, 2005.

CHAPTER 596

An act to add Article 18.5 (commencing with Section 2418) to Chapter 5 of Division 2 of the Business and Professions Code, relating to physicians and surgeons.

[Approved by Governor October 6, 2005. Filed with
Secretary of State October 6, 2005.]

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

SECTION 1. Article 18.5 (commencing with Section 2418) is added to Chapter 5 of Division 2 of the Business and Professions Code, to read:

Article 18.5. Locum Tenens Services

2418. (a) The Legislature hereby finds and declares all of the following:

(1) The State of California is facing a growing crisis in physician supply due, in part, to difficulties in recruiting and retaining physicians.

(2) This crisis is particularly harsh for facilities operated by the state and local governments due to the difficulties of funding full-time medical staff.

(3) Locum tenens physicians provide a critical source of medical services that virtually all hospitals in California use at one time or another every year.

(4) The great majority of California hospitals, and many medical groups and other providers, including many state-supported facilities, use locum tenens agencies either continuously or from time to time to help fill their medical staffing needs.

(5) Most locum tenens agencies are barred from employing physicians under the corporate practice doctrine (Article 18 (commencing with

Section 2400)) and, thus, do not employ the physicians whose locum tenens services they arrange.

(b) Notwithstanding any other provision of law, a “locum tenens agency” shall not be deemed to be an employer, employment agency, employment counseling service, job listing service, nurse’s registry, temporary services employer, or leasing employer of a licensee.

(c) A locum tenens agency is an individual or entity that meets all of the following requirements:

(1) Contracts with clients or customers to identify licensees willing to perform locum tenens services and to arrange for the licensees to perform locum tenens services for the clients or customers on a temporary, nonpermanent basis .

(2) Arranges for the licensees to perform locum tenens services only to those clients and customers that are legally authorized to enter into independent contractor arrangements with licensees.

(3) Does not determine the rates of payment made to a licensee providing locum tenens services, or determine the hours of work by the licensee.

(4) Receives payment directly from its clients or customers for its services which, to the degree that the payment includes payment for the locum tenens services, remits the payment for the locum tenens services in full directly to the licensee.

(5) Charges fees that are reasonably related to the value of the services that the locum tenens agency provides its clients and customers, and that are in no way related to the quantity or value of locum tenens services provided by the licensee. This section does not prohibit a locum tenens agency from charging its clients and customers based on the number of days or hours that the locum tenens services are provided or based on the particular speciality of the locum tenens services.

(d) A locum tenens agency shall not employ a licensee to perform locum tenens services, nor shall it interfere with or attempt to influence the clinical judgment of a licensee providing locum tenens services.

(e) It shall be a rebuttable presumption that the relationship between the client or customer of the locum tenens agency and the licensee providing locum tenens services is one of an independent contractor, pursuant to Section 656 of the Unemployment Insurance Code.

(f) For purposes of this section, “licensee” means a physician and surgeon licensed under this chapter.

(g) It is the intent of the Legislature that this section confirm and be declaratory of, rather than change, existing law.

(h) Nothing in this section shall apply to a category of health care professionals other than those specified.

CHAPTER 597

An act to add Chapter 24.5 (commencing with Section 78801) to Part 2 of Division 22 of the Food and Agricultural Code, relating to agriculture, and making an appropriation therefor.

[Approved by Governor October 6, 2005. Filed with
Secretary of State October 6, 2005.]

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

SECTION 1. Chapter 24.5 (commencing with Section 78801) is added to Part 2 of Division 22 of the Food and Agricultural Code, to read:

CHAPTER 24.5. MENDOCINO COUNTY WINEGRAPE AND WINE COMMISSION

Article 1. Declarations and General Provisions

78801. The production and distribution of winegrapes and wine in Mendocino County constitute important industries that provide substantial and necessary revenues for the county and state, and employment for citizens of the state. It also furnishes an important food product that benefits the public health and welfare.

78802. The maintenance and expansion of the winegrape and wine industries of Mendocino County and of its local, national, and foreign markets is necessary to assure the consuming public of a continuous supply of these products and needed levels of income for those engaged in the winegrape and wine industries in Mendocino County.

78803. Opportunity exists for continued growth and expansion of the Mendocino County winegrape and wine industries by creating new markets in the state, the county, and abroad. The success of an expansion program is uniquely depending upon effective education, advertising, promotion, and research, since the creation of new markets is essentially a matter of educating and informing people of the use and availability of the commodity. The expansion of the Mendocino County winegrape and wine industries also provides an important source of jobs for many

people in the area, and serves to ensure the preservation of an agrarian society.

78804. The production of winegrapes, wine, and winegrape products in Mendocino County has the potential to be one of the leading segments of the state's winegrape and wine industries. To realize this potential, there is a need to make consumers aware of the high quality of winegrapes, wine, and winegrape products produced in Mendocino County. The activities made possible by the establishment of the commission will meet this need and further the interests of the industries and the state.

78805. The Mendocino County winegrape and wine industries have enjoyed much success due to a commitment by the industries to fund research that has led to significant improvements in the quality and variety of winegrapes and wine available to consumers. It has also led to winegrapes and wine being a better consumer value. The establishment of the commission will continue to enhance this research effort and move the Mendocino County winegrape and wine industries toward its potential, resulting in increased consumer value and enhanced returns to growers and vintners.

78806. The production and marketing of winegrapes, wine, and winegrape products produced in Mendocino County is hereby declared to be of public interest, therefore it is necessary and appropriate that these provisions be specifically applicable to Mendocino County. This chapter is enacted in the exercise of the police power of this state for the purpose of protecting the health, peace, safety, and general welfare of the people of this state.

78807. (a) It shall be the policy of this state to preserve and encourage agricultural activities in the state, promote consumption of agricultural commodities produced and harvested in California, provide for research, governance, and accountability, including the ability for agriculture to act collectively and to assess itself through the process of referenda.

(b) It shall also be the policy of this state that the program authorized in this chapter shall engage in activities that are not more extensive in scope than is necessary to accomplish its purposes, and that the powers and duties of this program are designed to directly and materially advance the state's interest in a stable, thriving agricultural industry. Further, this policy can be implemented most effectively by the collective actions authorized in this chapter while not preventing individuals from additionally engaging in self-help activities.

78808. No action taken by the commission, or by any individual in accordance with this chapter or with the regulations adopted under this chapter, is a violation of the Cartwright Act, Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and

Professions Code, the Unfair Practices Act, Chapter 4 (commencing with Section 17000) of Part 2 of Division 7 of the Business and Professions Code, or any statutory or common law against monopolies or combinations in restraint of trade. Proof that any action complained of was done in compliance with this chapter shall be a complete defense to the action or proceeding. The Legislature intends this program to be among those contemplated by Congress in the enactment of Section 610(i) of Title 7 of the United States Code.

78809. The commission form of administration created by this chapter is uniquely situated to provide those engaged in the production of winegrapes, wine, and other winegrape products in Mendocino County the opportunity to avail themselves of the benefits of collective action in the broad fields of development, maintenance, and expansion of markets, production, marketing, processing, and health-related research, public and trade education, and advertising and promotion necessary to achieve the purposes stated herein.

78810. This chapter shall be liberally construed. If any provision of this chapter or the application thereof to any person or circumstances is held to be invalid, the invalidity shall not affect other provisions or applications of the chapter that can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable.

78811. It is hereby declared as a matter of legislative determination that members of the commission are intended to represent and further the interest of the particular agricultural industry concerned and that this representation and furtherance is intended to serve the public interest. Accordingly, the Legislature finds that, with respect to persons who are elected or appointed to the commission, the particular agricultural industry concerned is tantamount to, and constitutes, the public generally within the meaning of Section 87103 of the Government Code.

Article 2. Definitions

78821. Unless the context otherwise requires, the definitions in this article govern the construction of this chapter.

78822. "Books and records" means books, records, contracts, documents, memoranda, papers, correspondence, or other written data pertaining to matters relating to the activities subject to this chapter.

78823. "Brandy" means an alcoholic distillate or a mixture of distillates obtained from the fermented juice, mash, or wine of whole, sound, ripe grapes or from the residue thereof, distilled at not over 170 degrees proof.

78824. "Commission" means the Mendocino Winegrape and Wine Commission.

78825. "Department" means the Department of Food and Agriculture.

78826. "Grape concentrate" or "concentrate" means unfermented grape juice from which the major portion of the original water content has been removed.

78827. "Grape juice" or "juice" means unfermented crushed grapes without solids containing the major portion of the original water content.

78828. "Ex officio member" means a nonvoting member of the commission.

78829. "High proof" means an alcoholic distillate or a mixture of distillates obtained from the fermented juice, mash, or wine of fresh winegrapes or from the residue thereof.

78830. "Market" means to sell, barter, trade, purchase, acquire, or otherwise distribute wine, winegrapes, or winegrape products.

78831. "Market development" includes, but is not limited to, trade, promotion, public education, dissemination of information on health and social issues, and other matters, and activities for the prevention, modification, or removal of trade barriers that restrict the free flow of winegrapes, wine, or winegrape products to market and may include, but is not limited to, the presentation of facts to local, state, federal, or foreign governmental agencies on matters that affect this chapter.

78832. "Market research" means any investigation, development, analysis, or implementation of information relating to the marketing of winegrapes, wine, and winegrape products including, but not limited to, trade practices, consumer trends, promotion, sales, and advertising.

78833. "Marketing season" or "fiscal year" means the period beginning July 1 of any year and extending through June 30 of the following year.

78834. "Must" means a mixture of unfermented crushed grapes, solid grape particles, and grape juice.

78835. "Person" means any individual, firm, partnership, corporation, limited liability company, association, or any other business entity.

78835.5. "Process" or "processed" means producing must, grape juice, grape concentrate, wine, or other winegrape products, including high proof and brandy from winegrapes.

78836. "Producer" or "grower" means any person who is engaged within Mendocino County in the business of producing, or causing to be produced, winegrapes for market. Producer also includes any person who receives winegrapes as a payment for the use of his or her property in the production of winegrapes.

78837. "Production research" means research relating to the production and processing of winegrapes, including, but not limited to, the development of new winegrape products and uses for these products.

78838. "Secretary" means the Secretary of Food and Agriculture.

78839. "Vintner" and "processor" are synonymous and, except as otherwise specifically provided in this chapter, mean any person engaged in Mendocino County in producing must, grape juice, grape concentrate, wine, or other winegrape products, including high proof and brandy, and includes a "winegrower" in Mendocino County as that term is defined in Section 23013 of the Business and Professions Code, who produces wine from winegrapes. However, a producer does not become a vintner solely by the act of field crushing winegrapes before delivering the winegrapes as must to another person.

78840. "Wine" means the product obtained by the fermentation of winegrapes or juice therefrom, with or without addition or abstracting, and includes any product made from winegrapes that is defined as a wine and permitted under Part III (commencing with Section 5381) of Subchapter E of Chapter 51 of Title 26 of the United States Code, and in the statutes of this state and regulations issued thereunder defining wine produced from grapes.

78841. "Winegrapes" means grapes produced in Mendocino County that are intended to be converted from their fresh form into grape juice, grape concentrate, wine, or products thereof, including, but not limited to, high proof brandy produced from winegrapes.

78842. "Winegrape products" include, but are not limited to, must, grape juice, grape concentrate, wine, high proof, and brandy produced from winegrapes.

Article 3. The Mendocino Winegrape and Wine Commission

78851. (a) There is in the state government the Mendocino Winegrape and Wine Commission. The commission shall be composed of six producers who are not vintners, four vintners, and one public member.

(b) The public member and his or her alternate shall be appointed to the commission by the secretary from nominees recommended by the commission.

(c) The secretary shall be a nonvoting, ex officio member of the commission.

78852. (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 those activities or functions or to make the corrections as 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 committee.

(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, his or her reasons for requiring a cessation or correction of specific existing or proposed activities or functions, and recommendations that will make the activities or functions acceptable.

78853. The commission or 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 may be, in a court of competent jurisdiction, that may issue a temporary restraining order, permanent injunction, or other applicable relief.

78854. 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 secretary's response may be a requirement that additional information be provided.

78855. The commission shall reimburse the secretary for all expenditures incurred 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 the that action.

78856. Each member, except the ex officio members, shall have an alternate member selected by the member, subject to approval by the commission. An alternate shall, in the absence of the member for whom he or she is an alternate, serve in place of the member and shall have and be able to exercise all the rights, privileges, and powers of the member when serving on the commission. In the event of a change in status making a member ineligible to serve, or due to death, removal, resignation, or disqualification, of a member, the alternate shall act as a member of the commission until a qualified successor is elected or appointed.

78857. Any individual serving as a producer member and his or her alternate member shall be a producer who is not also a vintner, or a management-level employee or representative of a producer who is not also a vintner, who has a financial interest in producing, or causing to be produced, winegrapes for market. The qualifications of producer members and alternate members shall be maintained during the entire term of office. No more than one member and his or her alternate member shall be employed by, represent, or be connected in a proprietary capacity with the same producer. However, producer membership in an agricultural nonprofit cooperative association or trade organization shall not be considered employment or being in a proprietary capacity.

78858. Any individual serving as a vintner member and his or her alternate member shall be a vintner, or a management-level employee or representative of a vintner, who has a financial interest in producing winegrapes for market. The qualifications of vintner members and alternate members shall be maintained during the entire term of office. No more than one member and his or her alternate member shall be employed by, represent, or be connected in a proprietary capacity with the same vintner. However, vintner membership in an agricultural nonprofit cooperative association or trade organization shall not be considered employment or being in a proprietary capacity.

78859. The public member and his or alternate member shall have all the rights, privileges, and powers of any other member of the commission. The public member shall not have any financial interest in the winegrape or wine industries.

78860. The term of office of members and alternate members shall be for two years or until their successors have been elected and have qualified. However, of the first members of the commission, a portion of the producer members and their alternate members, and a portion of the vintner members and their alternate members, shall serve for one year so that the terms shall be staggered. The determination of the term of each member and his or her corresponding alternate member shall be made by lot. The commission may establish term limits for members and alternate members pursuant to procedures established by the commission and concurred in by the secretary.

78861. Not less than six voting members shall constitute a quorum of the commission.

78862. The vote of a majority of the members present at a meeting at which there is a quorum shall constitute an act of the commission.

78863. The commission shall be and is hereby declared and created a corporate body. It shall have the power to sue and be sued, to contract and be contracted with, and to have and possess all of the powers of a corporation. It may adopt a corporate seal. Copies of its proceedings,

records, and acts, when authenticated, shall be admissible in evidence in all courts of the state and shall be prima facie evidence of the truth of all statements therein.

78864. The secretary or his or her representatives shall be notified and may attend meetings of the commission and any committee meetings of the commission.

78865. No member or alternate member of the commission, or member of a committee established by the commission who is not a member of the commission, shall receive a salary. Each member of the commission and any alternate member serving in place of his or her member, except ex officio members, and each member of a committee established by the commission who is not a member of the commission, shall receive necessary traveling expenses and meal allowances, as approved by the commission, and may receive an amount not to exceed one hundred dollars (\$100) per day, as established by the commission. This amount shall be paid for each day spent in actual attendance at, or in traveling to and from, meetings of the commission or committees of the commission, or on assignment for the commission, as approved by the commission.

78866. All funds received by the assessments levied pursuant to this chapter or otherwise received by the commission shall be deposited in banks that the commission may designate and shall be disbursed by order of the commission through an agent or agents as it may designate. The agent or agents shall be bonded by a fidelity bond, executed by a surety company authorized to transact business in this state, in favor of the commission, in an amount of not less than twenty-five thousand dollars (\$25,000).

78867. (a) The state is not liable for the acts of the commission or its contracts. Payments of all claims arising by reason of the administration of this chapter or acts of the commission are limited to the funds collected by the commission.

(b) No member, alternate member, or any employee or agent of the commission, is personally liable for the contracts of the commission or for errors in judgment, mistakes, or other acts, either of commission or omission, except for their own individual act of dishonesty or crime. Liability is several and not joint, and no member, alternate member, or any employee or agent of the commission is liable individually for the default, act, or omission of any other member, alternate member, or any employee or agent of the commission.

Article 4. Powers and Duties of the Commission

78881. The powers and duties of the commission shall include, but not be limited to, the following:

(a) Elect a chairperson and other officers as it may deem advisable, and delegate duties as may be advisable.

(b) Adopt and from time to time alter, rescind, modify, and amend all proper and necessary rules, procedures, and orders for the exercise of its powers and the performance of its duties, including rules of procedure for appeals from any rule, procedure, or order of the commission.

(c) Administer and enforce this chapter, and do and perform all acts and exercise all powers incidental to or in connection with or deemed reasonably necessary, proper, or advisable to effectuate the purposes of this chapter.

(d) Employ or retain a person to serve at the pleasure of the commission as president and chief executive officer of the commission, and other personnel, including private legal counsel of its choice, necessary to carry out this chapter. The commission may fix the compensation for all employees of the commission. 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 direction of the commission.

(e) Establish offices and incur expenses, and enter into any and all contracts and agreements, and create liabilities and borrow funds in advance or receipt of assessments as may be necessary, at the discretion of the commission, for the proper administration and enforcement of this chapter and the performance of its duties.

(f) Maintain accurate books, records, and accounts of all 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 persons subject to this chapter, 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.

(g) Present facts to, and negotiate with, local, state, federal, and foreign agencies on matters affecting the winegrape, wine, and winegrape products industries.

(h) Appoint committees composed of both members and nonmembers of the commission.

(i) Promote the sale of winegrapes, wine, and winegrape products by advertising and other similar means for the purpose of maintaining and expanding present markets and creating new and larger intrastate

and foreign markets for winegrapes, assess and address the impact of local, state, federal and foreign regulations on the winegrape products industries, and seek the elimination of tariff and nontariff trade barriers.

(j) Educate and instruct the consuming public with respect to winegrapes, wine, and winegrape products, including, but not limited to, the uses, healthful properties and dietetic value of these commodities, and the environmental protection and conservation issues relating to the production of winegrapes.

(k) Educate and instruct the wholesale, food service, and retail trade with respect to proper methods of handling and marketing of winegrapes, wine, and winegrape products, arrange for the performance of merchandising work providing display and other promotional materials, conduct market surveys and analysis, assist local, state, and federal agencies in negotiating with foreign governments regarding issues affecting market access, including, but not limited to, resolving phytosanitary issues, developing shipping protocols, limiting chemical residues, and addressing packaging, labeling, and other issues raised by countries imposing trade barriers on the import of agricultural products into their markets, and undertake any other similar activities that the commission may determine appropriate for the maintenance and expansion of present markets and the creation of new and larger markets for winegrapes, wine, and winegrape products.

(l) Conduct, and contract with others to conduct, scientific and other research, including the study, analysis, dissemination and accumulation of information obtained from research or elsewhere respecting the production, cultural practices, nutritional and dietetic value, processing, storage, refrigeration, inspection, transportation, marketing and distribution of winegrapes, wine, and winegrape products.

(m) Accept contributions of private, local, state, or federal funds, and make contributions of commission funds, or match contributions, to other persons or to local, state, or federal agencies for purposes of promoting, enhancing and maintaining the Mendocino County winegrape, wine, and winegrape products industries.

(n) Cooperate with governmental or private entities in the resolution of emergencies arising in the industry and impacting the health and safety of the public or the continued stability of the industry.

(o) Collect information, including, but not limited to, industry crop statistics, and publish and distribute without charge, a bulletin or other communication to persons subject to this chapter.

(p) Establish an assessment rate to defray operating costs of the commission.

(q) Establish an annual budget according to generally accepted accounting practices. The budget shall be concurred in by the secretary

prior to disbursement of funds, except for disbursements made for the payment of employees.

(r) Submit to the secretary for his or her concurrence an annual statement of contemplated activities authorized pursuant to this chapter.

(s) Keep confidential and not disclose, except when required by a court order after a hearing in a judicial proceeding involving this chapter, all information deemed proprietary or trade secret by the commission. The Legislature finds and declares that this provision is required to ensure that producer and vintner proprietary and trade secret information shall not be disclosed. The commission shall establish procedures to provide producers and vintners access to communicate with other producers and vintners regarding noncommercial matters affecting the commission so long as the access does not directly or indirectly release proprietary or trade secret information in the possession of the commission.

(t) Investigate and prosecute civil violations of this chapter and file complaints with appropriate law enforcement agencies or officers for suspected criminal violations of this chapter.

(u) Administer any program that is engaged in activities authorized by this chapter upon the request of an authorized agent of the program.

78882. (a) The commission may collect and disseminate to any and all interested parties, vintner market price information based on sales that have occurred in order to prevent unfair trade practices that are detrimental to the Mendocino County winegrape, wine, and winegrape products industries, including, but not limited to, deception and misinformation.

(b) The information reported under this section shall be kept confidential and shall not be made public under any circumstances. Only information that gives industry totals, averages, and other similar data in aggregate, nonindividualized form may be disclosed by the commission. The Legislature finds and declares that this provision is required to ensure that vintner proprietary information shall not be disclosed.

(c) The procedure for the collection and dissemination of information pursuant to this section shall be concurred in by the secretary.

Article 5. Referendum on Implementation of this Chapter

78901. (a) Within 90 days of the effective date of this chapter, the secretary shall establish a list of producers and vintners in Mendocino County eligible to vote on implementation of this chapter. In establishing the list, the secretary may require that all producers and vintners in Mendocino County submit their names and mailing addresses.

(b) The secretary may also require that the information provided include the quantity of winegrapes, wine, or winegrape products produced by each producer and vintner or, in the alternative, may establish procedures for receiving the information at the time of the referendum vote specified in Section 78903. The request for information shall be in writing and shall be submitted to the secretary within 10 days following the receipt of the request.

(c) Any producer or vintner in Mendocino County whose name does not appear on 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 vintner. 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 chapter.

(d) Proponents and opponents of the commission may contact producers and vintners on the lists in a form and manner prescribed by the secretary if all expenses associated with those contacts are paid in advance.

78903. In determining whether this chapter is approved by producers, the secretary shall find both of the following:

(a) That at least 40 percent of the total number of producers from the list established by the secretary participated in the referendum, and that either one of the following has occurred:

(1) Sixty-five percent or more of the producers who voted in the referendum voted in favor of this chapter, and the producers so voting market a majority of the volume of winegrapes in the preceding market season, or in the current marketing season if the harvest is completed prior to the vote, by all 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 volume of winegrapes in the preceding marketing season, or in the current marketing season if the harvest is completed prior to the vote, by all the producers who voted in the referendum.

(b) That at least 40 percent of the total number of vintners from the list established by the secretary participated in the referendum, and that either one of the following has occurred:

(1) Sixty-five percent or more of the vintners who voted in the referendum voted in favor of this chapter, and the vintners so voting either acquired or processed their own production, or a combination thereof, that represents a majority of the volume of winegrapes in the preceding marketing season, or in the current marketing season if the harvest is completed prior to the vote, by all the vintners who voted in the referendum.

(2) A majority of the vintners who voted in the referendum voted in favor of this chapter, and the vintners so voting either acquired or processed their own production, or a combination thereof, that represents 65 percent or more of the volume of winegrapes in the preceding marketing season, or in the current marketing season if the harvest is completed prior to the vote, by all the vintners who voted in the referendum.

78904. The secretary shall establish a period in which to conduct the referendum that shall not be less than 10 days nor more than 60 days in duration, and may prescribe additional procedures 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.

78905. Nonreceipt of a ballot shall not invalidate a referendum.

78906. The secretary shall certify and give notice of a favorable vote to all producers and vintners whose names and addresses are on file with the secretary if he or she finds that a favorable vote has been given as provided in this chapter. The secretary shall certify and declare this chapter inoperative if he or she finds that a favorable vote has not been given as provided in this chapter.

78907. Upon certification of the commission, the secretary shall call meetings of producers and vintners in Mendocino County for the purpose of nominating and electing persons to the commission, or in the alternative, may conduct the elections by mail ballot. All producers and vintners on the secretary's list shall be given written notice of the election meetings at least 15 days prior to the meeting date, or reasonable notice of elections by mail ballot and a reasonable time period in which to return ballots. In any election of producer and vintner members to the commission, only producers who are not also vintners may vote for producer members and alternate members, and only vintners may vote for vintner members and alternate members.

78908. Subsequent to the first members and alternate members elected to the commission, persons to be elected and appointed to the commission shall be selected pursuant to the nomination and election procedures established by the commission with the concurrence of the secretary.

78909. (a) Prior to the implementation referendum conducted by the secretary, the proponents of the commission shall deposit with the secretary the amount that the secretary deems necessary to defray the expenses in creating the commission, including, but not limited to, preparing the necessary producer and vintner lists and conducting the referendum.

(b) Any funds remaining after paying expenses shall be returned to the proponents of the commission who deposited the funds with the secretary.

(c) The commission may reimburse the proponents of the commission for any funds deposited with the secretary that were used in carrying out this article and for any legal or other professional fees and costs incurred in establishing the commission.

Article 6. Assessments

78921. Prior to the beginning of each marketing season, or as soon as possible thereafter, the commission shall establish assessment rates for the marketing season, as follows:

(a) An annual assessment on producers of not less than one hundred dollars (\$100) and not more than one thousand dollars (\$1,000), as determined by the commission, based on the number of tons of winegrapes delivered to vintners during the preceding marketing season.

In addition, producers shall pay an assessment not less than one dollar (\$1) and not greater than twelve dollars (\$12) per ton of winegrapes delivered to vintners by producers. In the discretion of the commission, the producer assessment may be established as a percent of the gross dollar value received by producers from vintners for winegrapes rather than on a per ton basis. The assessment shall be established on a sliding scale that decreases the assessment by two dollars (\$2) per ton, or the percentage equivalent if the assessment is a percent of gross dollar value, for every 500 tons of winegrapes delivered to vintners by producers in excess of 1000 tons.

(b) An annual assessment on vintners of not less than three hundred fifty dollars (\$350) and not more than seven thousand five hundred dollars (\$7,500), as determined by the commission, based on the number of tons of winegrapes processed and marketed by vintners during the preceding marketing season.

In addition, vintners shall pay an assessment not less than one dollar (\$1) and not greater than twelve dollars (\$12) per ton of winegrapes processed by vintners for which an assessment has not already been paid by a producer. The assessment shall be established on a sliding scale that decreases the assessment by two dollars (\$2) per ton for every 500 tons of winegrapes processed by vintners in excess of 1000 tons.

(c) An assessment greater than the amount provided for in this section may not be charged unless and until a greater amount is approved by a majority of the commission and by eligible producers and vintners pursuant to the referendum procedures specified in Section 78903.

78923. This chapter shall not apply to winegrapes produced for a producer's home or ornamental use, or processed for a vintner's home use if an affidavit approved by the commission is filed by the producer or vintner containing information required by the commission. The commission shall review the affidavit, conduct any additional investigation it deems appropriate, and approve or deny the exemption. If granted, the exemption shall be valid for one marketing season and a new affidavit shall be filed and approved prior to each marketing season in order to retain an exemption from this chapter.

78924. (a) Every producer and vintner shall keep complete and accurate records of winegrapes produced, processed, and marketed, including, but not limited to, the number of tons of winegrapes delivered to or received by vintners, whether within or outside of Mendocino County, the names of the producers from which vintners receive winegrapes, and records related to the sale of winegrapes, wine, or winegrape products. The records shall be in simple form and contain information as the commission shall prescribe. The records shall be preserved by producers and vintners for a period of five years and shall be offered and submitted for inspection at any reasonable time upon demand of the commission or its duly authorized agent.

(b) For purposes of this section and for any other section of this chapter that relates to recordkeeping or the collection and remittance of assessments from producers, including any section dealing with confidentiality of information received from vintners, the term "vintner" shall include persons in this state outside Mendocino County who otherwise meet the definition of vintner in Section 78839. Those persons shall not be required to pay the vintner assessment established by the commission, but shall collect and remit assessments and reports regarding winegrapes received that were produced in Mendocino County.

78925. (a) All proprietary and trade secret information obtained by the commission from producers and vintners shall be confidential and shall not be disclosed except when required by a court order after a hearing in a judicial proceeding involving this chapter. The Legislature finds and declares that this provision is required to ensure that producer and vintner proprietary and trade secret information shall not be disclosed.

(b) In addition, and notwithstanding any other provision of law, all proprietary or trade secret information developed or gathered pursuant to this chapter by the commission, or by the department on behalf of the commission, from any source is confidential, shall not be considered a public record as that term is defined in Section 6252 of the Government Code, and shall not be disclosed by the commission or the secretary

except when required by a court order after a hearing in a judicial proceeding involving this chapter.

(c) Information on volume shipments, crop value, and any other related information that is required for reports to governmental agencies, financial reports to the commission, or aggregate sales and inventory information, and other information that give only totals, but excludes individual information, may be disclosed by the commission.

(d) The commission shall determine whether information is proprietary or trade secret and not subject to disclosure. If the commission denies a request for disclosure of this information, the commission shall provide written justification for its decision to the person requesting the information who may appeal the decision of the commission to the secretary.

78926. (a) Any assessment levied by the commission, pursuant to this chapter, is a personal debt of every person so assessed and is due and payable in the time and manner prescribed by the commission. Failure of a vintner to collect the assessment from a producer shall not exempt the vintner from liability nor relieve the producer of the obligation to pay the assessment.

(b) When the producer or vintner is a corporation, general or limited partnership, or trust, all of the directors and officers of the corporation, all of the members and managers of the limited liability company, all of the general and limited partners in the partnership, and all of the trustees of the trust, in their capacity as individuals shall be included, and any liability for violating this chapter, including, but not limited to, failing to pay assessments or file required reports, shall also include identical liability upon each director and officer of the corporation, each member and manager of the limited liability company, each general and limited partner in the partnership, and each trustee of the trust. Title to the assessments, shall pass immediately to the commission. When collecting and remitting producer assessments, vintners shall hold the assessments in trust for the benefit of the commission until remitted in the time and manner specified by the commission.

78927. Any person who fails to file a return, or remit or pay any assessment within the time required by the commission shall pay to the commission a penalty of 10 percent of the amount of the assessment determined to be due, and in addition, 1.5 percent interest per month on the unpaid balance.

78928. In addition to any other penalty imposed, the commission may require any person who fails to submit records or pay an assessment or related charge pursuant to this article to furnish and maintain a surety bond in a form and amount, and for a period of time, specified by the

commission as assurance that all payments to the commission will be made when due.

Article 7. Violations

78941. It is unlawful for any person to do any of the following:

(a) Willfully render or furnish a false report, statement, or record required by the commission or to in any way to affect the delivery, receipt, processing, or marketing of winegrapes with the intent to avoid payment of assessments.

(b) Fail to render or furnish a report, statement, or record required by the commission.

(c) When engaged in the production, delivery, processing, marketing, or other activities related to winegrapes, wine, or winegrape products, to fail or refuse to furnish the commission, or its duly authorized agents, information concerning the name and address of the persons to whom winegrapes were delivered or from whom winegrapes have been received, and the quantity delivered.

(d) Secrete, destroy, or alter records required to be maintained under this chapter.

78942. The commission shall establish procedures for the purpose of according individuals aggrieved by its action or determinations an informal hearing before the commission, or before a committee of the commission designated for that purpose. Appeals from decisions of the commission may be made to the secretary. The determination of the secretary shall be subject to judicial review upon petition filed with the appropriate superior court.

79843. (a) The commission may commence civil action and use all remedies provided in law or equity for the enforcement of this chapter, including, but not limited to, the collection of assessments, penalties, and interest, and for obtaining injunctive relief or specific performance regarding this chapter and the procedures adopted pursuant to this chapter. A court shall issue to the commission any requested writ of attachment or injunctive relief upon a prima facie showing by verified complaint that a named defendant has violated this chapter or any other procedure of the commission, including, but not limited to, the nonpayment of assessments. No bond shall be required to be posted by the commission as a condition for the issuance of any writ of attachment or injunctive relief.

(b) A writ of attachment shall be issued pursuant to Chapter 4 (commencing with Section 484.010) of Title 6.5 of Part 2 of the Code of Civil Procedure, except that the showing specified in Section 485.010 of the Code of Civil Procedure is not required. Injunctive relief shall be

issued pursuant to Chapter 3 (commencing with Section 525) of Title 7 of Part 2 of the Code of Civil Procedure, except that the showing of irreparable harm or inadequate remedy at law specified in Sections 526 and 527 of the Code of Civil Procedure is not required.

(c) Upon entry of any final judgment on behalf of the commission against any defendant, the court shall enjoin the defendant from conducting any type of business regarding winegrapes, wine, or winegrape products until there is full compliance and satisfaction of the judgment.

(d) Upon a favorable judgment for the commission, it shall be entitled to receive reimbursement for any reasonable attorney's fees and other actual related costs. Venue for these actions may be established at the domicile or place of business of the defendant or in the county of the principal office of the commission. The commission may be sued only in the county of its principal office.

78944. Any action by the commission for any violation of this chapter shall be commenced within three years from the date of discovery of the alleged violation. Any action against the commission by any person shall be commenced within three years from the date of the act of which the person complains.

78945. The termination of this chapter shall not affect or waive any right, duty, obligation, or liability that has arisen or that may thereafter arise in connection with this chapter, release or extinguish any violation of this chapter, or affect or impair any right or remedies of the commission with respect to any violation.

Article 8. Reapproval of Chapter

78961. Every five years, commencing with the 2011-2012 marketing season, the secretary shall hold a hearing to determine whether the operation of this chapter should be continued. If the secretary finds, after the hearing, that a substantial question exists among eligible persons regarding whether the operation of this chapter should be continued, the secretary shall submit the chapter to a reapproval referendum. If a reapproval referendum is required, the operation of this chapter shall continue in effect if the secretary finds that a majority of the eligible producers voting in the referendum voted in favor of continuing this chapter and a majority of the eligible vintners voting in the referendum voted in favor of continuing this chapter. In finding whether the commission is continued pursuant to this article, the vote of any nonprofit agricultural cooperative marketing association that is authorized by its member to so vote, shall be considered to be the approval or rejection by the individual members thereof, or the individual stockholders therein.

No bond or security shall be required for any referendum required by this chapter however, this shall not apply to advance deposit of funds required by the department to cover the actual cost of a referendum.

78962. If the secretary finds, after conducting a hearing pursuant to Section 78961, that no substantial question exists, or that a favorable vote has been given after a referendum, the secretary shall so certify and this chapter shall remain operative. If the secretary finds that a favorable vote has not been given after a referendum vote, he or she shall so certify and declare the operation of this chapter and the commission suspended upon the expiration of the then current marketing season. Thereupon, the operations of the committee shall be wound up and concluded and funds distributed in the manner provided in Section 78964.

78963. (a) Upon a finding by a two-thirds vote of the commission that this chapter has not tended to effectuate its declared purpose, the commission may recommend to the secretary that this chapter be suspended. However, any suspension shall not become effective until the expiration of the then current marketing season.

(b) Alternatively, the secretary may be petitioned to suspend this chapter. The petition must be signed by 2 percent of the producers, by number, who produced not less than 20 percent of the volume of winegrapes in the immediately preceding marketing season and 20 percent of the vintners, by number, who acquired not less than 20 percent of the volume of winegrapes in the immediately preceding marketing season.

(c) The secretary shall, upon receipt of the recommendation to suspend this chapter from the commission, and may, after holding a hearing on the petition to suspend this chapter, hold a referendum among the producers and vintners to determine if the commission shall be suspended. However, the secretary shall not hold a referendum as a result of the petition unless the petitioner shows by a preponderance of the evidence that this chapter has not tended to effectuate its declared purposes.

(d) The secretary shall establish a referendum period that shall not be less than 10 days nor more than 60 days in duration. The secretary may prescribe additional procedures as may be necessary to conduct the referendum. At the close of the referendum period, the secretary shall tabulate the ballots filed during the period. If at least 40 percent of the total number of producers and 40 percent of the total number of vintners from the lists established by the secretary participate in the referendum, the secretary shall suspend this chapter if he or she finds either of the following has occurred:

(1) Sixty-five percent or more of the producers and vintners who voted in the referendum voted in favor of suspension, the producers so

voting marketed the majority of the total quantity of winegrapes marketed in the preceding marketing season by all of the producers who participated in the referendum, and the vintners so voting acquired the majority of the total quantity of winegrapes acquired in the preceding marketing season by all of the vintners who participated in the referendum.

(2) A majority of the producers and vintners who voted in the referendum voted in favor of suspension, the producers so voting marketed 65 percent or more of the total quantity of winegrapes marketed in the preceding marketing season by all of the producers who voted in the referendum, and the vintners so voting acquired 65 percent or more of the total quantity of winegrapes acquired in the preceding marketing season by all of the vintners who voted in the referendum.

78964. After the effective date of suspension of this chapter, the operation of the commission shall be wound up and concluded and all moneys held by the commission not required to defray the expenses of concluding and terminating the operations of the committee shall be returned on a pro rata basis to all persons from whom assessments were collected in the immediately preceding marketing season. However, if the commission finds that the amounts returnable are such that it would be impractical or administratively burdensome to calculate and refund the moneys to the assessment payers, any funds remaining after payment of all expenses of winding up and terminating operations shall be withdrawn from the approved depository and paid to another program conducted or used to fund activities related to the subject matter of this chapter.

78965. Upon suspension of this chapter, the commission shall mail a copy of the notice of suspension to all producers and vintners affected by the suspension whose names and addresses are on file.

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 598

An act to amend Section 65589.4 of the Government Code, relating to housing.

[Approved by Governor October 6, 2005. Filed with
Secretary of State October 6, 2005.]

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

SECTION 1. Section 65589.4 of the Government Code is amended to read:

65589.4. (a) An attached housing development shall be a permitted use not subject to a conditional use permit on any parcel zoned for an attached housing development if local law so provides or if it satisfies the requirements of subdivision (b) and either of the following:

(1) The attached housing development satisfies the criteria of Section 21159.22, 21159.23, or 21159.24 of the Public Resources Code.

(2) The attached housing development meets all of the following criteria:

(A) The attached housing development is subject to a discretionary decision other than a conditional use permit and a negative declaration or mitigated negative declaration has been adopted for the attached housing development under the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code). If no public hearing is held with respect to the discretionary decision, then the negative declaration or mitigated negative declaration for the attached housing development may be adopted only after a public hearing to receive comments on the negative declaration or mitigated negative declaration.

(B) The attached housing development is consistent with both the jurisdiction's zoning ordinance and general plan as it existed on the date the application was deemed complete, except that an attached housing development shall not be deemed to be inconsistent with the zoning designation for the site if that zoning designation is inconsistent with the general plan only because the attached housing development site has not been rezoned to conform with the most recent adopted general plan.

(C) The attached housing development is located in an area that is covered by one of the following documents that has been adopted by the jurisdiction within five years of the date the application for the attached housing development was deemed complete:

(i) A general plan.

(ii) A revision or update to the general plan that includes at least the land use and circulation elements.

(iii) An applicable community plan.

(iv) An applicable specific plan.

(D) The attached housing development consists of not more than 100 residential units with a minimum density of not less than 12 units per

acre or a minimum density of not less than eight units per acre if the attached housing development consists of four or fewer units.

(E) The attached housing development is located in an urbanized area as defined in Section 21071 of the Public Resources Code or within a census-defined place with a population density of at least 5,000 persons per square mile or, if the attached housing development consists of 50 or fewer units, within an incorporated city with a population density of at least 2,500 persons per square mile and a total population of at least 25,000 persons.

(F) The attached housing development is located on an infill site as defined in Section 21061.0.5 of the Public Resources Code.

(b) At least 10 percent of the units of the attached housing development shall be available at affordable housing cost to very low income households, as defined in Section 50105 of the Health and Safety Code, or at least 20 percent of the units of the attached housing development shall be available at affordable housing cost to lower income households, as defined in Section 50079.5 of the Health and Safety Code, or at least 50 percent of the units of the attached housing development available at affordable housing cost to moderate-income households, consistent with Section 50052.5 of the Health and Safety Code. The developer of the attached housing development shall provide sufficient legal commitments to the local agency to ensure the continued availability and use of the housing units for very low, low-, or moderate-income households for a period of at least 30 years.

(c) Nothing in this section shall prohibit a local agency from applying design and site review standards in existence on the date the application was deemed complete.

(d) The provisions of this section are independent of any obligation of a jurisdiction pursuant to subdivision (c) of Section 65583 to identify multifamily sites developable by right.

(e) This section does not apply to the issuance of coastal development permits pursuant to the California Coastal Act (Division 20 (commencing with Section 30000) of the Public Resources Code).

(f) This section does not relieve a public agency from complying with the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code) or relieve an applicant or public agency from complying with the Subdivision Map Act (Division 2 (commencing with Section 66473)).

(g) This section is applicable to all cities and counties, including charter cities, because the Legislature finds that the lack of affordable housing is of vital statewide importance, and thus a matter of statewide concern.

(h) For purposes of this section, “attached housing development” means a newly constructed or substantially rehabilitated structure containing two or more dwelling units and consisting only of residential units, but does not include a second unit, as defined by paragraph (4) of subdivision (h) of Section 65852.2, or the conversion of an existing structure to condominiums.

CHAPTER 599

An act to amend Section 13 of the County Water Authority Act (Chapter 545 of the Statutes of 1943), relating to water.

[Approved by Governor October 6, 2005. Filed with
Secretary of State October 6, 2005.]

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

SECTION 1. Section 13 of the County Water Authority Act (Chapter 545 of the Statutes of 1943) is amended to read:

Sec. 13. (a) All matters and things necessary for the proper administration of the affairs of the authority that are not provided for in this act shall be provided for by the board of directors of the authority by ordinance or resolution. Any action required by this act to be done by resolution may be done, with equal validity, by ordinance.

(b) (1) The board of directors of the authority may adopt regulations regarding its facilities, property, and rights-of-way. The board of directors, by ordinance, may make a violation of any regulation adopted pursuant to this subdivision subject to an administrative fine.

(2) The board of directors shall set forth, by ordinance or resolution, the administrative procedures that govern the imposition, enforcement, collection, and administrative review by the authority of those administrative fines.

(3) The amount of the administrative fine shall not exceed the maximum fine for infractions set forth in subdivision (b) of Section 25132 and subdivision (b) of Section 36900 of the Government Code. For the purpose of carrying out this subdivision, Section 53069.4 of the Government Code applies, except that any action required by that section to be taken by ordinance may be taken by resolution of the board of directors.

(c) The board of directors of the authority, by ordinance, may establish procedures for the abatement of encroachments that violate any regulation adopted pursuant to subdivision (b) and to recover the costs of abatement

by means of a lien with the status and priority of a judgment lien on the property that is subject to the easement or right-of-way from which the encroachment is abated. These procedures shall provide for a reasonable period, specified in the ordinance, during which a person responsible for a continuing violation may abate the encroachment before the commencement of any abatement under this section. For the purposes of carrying out this subdivision, Section 38773.1 of the Government Code applies, except that any action required by that section to be taken by the legislative body shall be taken by the board of directors of the authority. The remedy authorized in this subdivision is cumulative to any other remedy authorized by law.

(d) An encroachment maintained in violation of a regulation adopted pursuant to subdivision (b) is a public nuisance that is subject to abatement by bringing a civil proceeding.

CHAPTER 600

An act to amend Sections 116.240, 116.610, and 116.940 of, and to add Sections 116.221 and 116.222 to, the Code of Civil Procedure, relating to small claims court.

[Approved by Governor October 6, 2005. Filed with
Secretary of State October 6, 2005.]

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

SECTION 1. (a) The Legislature finds and declares that the quality of and access to justice in small claims court in California varies widely from jurisdiction to jurisdiction. The small claims court system should be improved in the following ways:

(1) Commissioners and temporary judges adjudicate many complex issues including, but not limited to, consumer law, rent deposit law, tort law, and contract law. In a report commissioned by the Administrative Office of the Courts, entitled the “California Three Track Civil Litigation Study,” Policy Studies, Incorporated reported that paid court commissioners, “see the full panoply of issues raised in small claims cases, and part of their job is to become knowledgeable in the areas of law likely to arise in small claims court. Further, they have the time and duty to research issues of law likely to arise in small claims court...[and those] that arise with which they are not familiar.” The potential knowledge gap between temporary judges and commissioners should be narrowed through increased use of commissioners and the use of

well-trained, qualified, temporary judges in small claims court in order to ensure an improved ability to deliver justice.

(2) For advisers, improvements need to be made in the availability of in-person assistance, in the knowledge and experience of the advisers, and in the advice being given or supervised by attorneys, so that the assistance can include advice about how to present and defend a claim.

(3) Qualified interpreters are not available in many jurisdictions in California. With the increasing linguistic diversity in California's population in recent decades, the need for interpreter services has grown proportionately.

(b) (1) It is the intent of the Legislature to raise the jurisdictional limit for natural persons only. The jurisdictional increase in this act is limited to natural persons, and is subject to other existing restrictions. It is the intent of the Legislature in limiting the increase to natural persons that other forms of persons, including, but not limited to, corporations, partnerships, unincorporated associations, governmental entities, and any other forms of persons as may now exist or may exist in the future, other than individuals, do not qualify for the jurisdictional increase under this act.

(2) It is the intent of the Legislature that the jurisdictional limit of subdivision (a) of Section 116.231 of the Code of Civil Procedure and subdivision (c) of Section 116.220 of the Code of Civil Procedure shall not be changed by this legislation.

(3) It is the intent of the Legislature that jurisdictional limits shall not be raised again, particularly with respect to individuals as defendants, until services are funded at a level sufficient to provide all of the following:

(A) In-person advice from advisers who are legal professionals.

(B) Staffing levels that are adequate to meet the demand, and also adequate to permit the small claims court advisory service to provide services to both parties in a small claims court case without conflicts of interest.

(C) Professional, well-trained, compensated decisionmakers, in small claims courts in all counties in California, who meet standards established by the Judicial Council.

(4) It is the intent of the Legislature that temporary judges should be well-trained and knowledgeable of state and federal consumer laws, including, but not limited to, rent deposit law, the state and federal Fair Debt Collection Practices Acts, the federal Truth in Lending Act, the federal Fair Credit Billing Act, the federal Electronic Fund Transfer Act, tort law, online purchasing law and other contract law, defenses to contract claims, defenses to debts, and other laws determined by the

Judicial Council and the courts to be important in the adjudication of small claims cases.

SEC. 2. Section 116.221 is added to the Code of Civil Procedure, to read:

116.221. In addition to the jurisdiction conferred by Section 116.220, the small claims court has jurisdiction in an action brought by a natural person, if the amount of the demand does not exceed seven thousand five hundred dollars (\$7,500), except for actions otherwise prohibited by subdivision (c) of Section 116.220 or subdivision (a) of Section 116.231.

SEC. 3. Section 116.222 is added to the Code of Civil Procedure, to read:

116.222. If the action is to enforce the payment of a debt, the statement of calculation of liability shall separately state the original debt, each payment credited to the debt, each fee and charge added to the debt, each payment credited against those fees and charges, all other debits or charges to the account, and an explanation of the nature of those fees, charges, debits, and all other credits to the debt, by source and amount.

SEC. 4. Section 116.240 of the Code of Civil Procedure is amended to read:

116.240. (a) With the consent of the parties who appear at the hearing, the court may order a case to be heard by a temporary judge who is a member of the State Bar, and who has been sworn and empowered to act until final determination of the case.

(b) Prior to serving as a temporary judge in small claims court, on and after July 1, 2006, and at least every three years thereafter, each temporary judge shall take the course of study offered by the courts on ethics and substantive law under rules adopted by the Judicial Council. The course shall include, but not be limited to, state and federal consumer laws, landlord-tenant law along with any applicable county specific rent deposit law, the state and federal Fair Debt Collection Practices Acts, the federal Truth in Lending Act, the federal Fair Credit Billing Act, the federal Electronic Fund Transfer Act, tort law, and contract law, including defenses to contracts and defenses to debts. On substantive law, the courts may receive assistance from the Department of Consumer Affairs to the extent that the department is fiscally able to provide that assistance.

SEC. 5. Section 116.610 of the Code of Civil Procedure is amended to read:

116.610. (a) The small claims court shall give judgment for damages, or equitable relief, or both damages and equitable relief, within the jurisdictional limits stated in Sections 116.220 and 116.231, and may

make any orders as to time of payment or otherwise as the court deems just and equitable for the resolution of the dispute.

(b) The court may, at its discretion or on request of any party, continue the matter to a later date in order to permit and encourage the parties to attempt resolution by informal or alternative means.

(c) The judgment shall include a determination whether the judgment resulted from a motor vehicle accident on a California highway caused by the defendant's operation of a motor vehicle, or by the operation by some other individual, of a motor vehicle registered in the defendant's name.

(d) If the defendant has filed a claim against the plaintiff, or if the judgment is against two or more defendants, the judgment, and the statement of decision if one is rendered, shall specify the basis for and the character and amount of the liability of each of the parties, including, in the case of multiple judgment debtors, whether the liability of each is joint or several.

(e) If specific property is referred to in the judgment, whether it be personal or real, tangible or intangible, the property shall be identified with sufficient detail to permit efficient implementation or enforcement of the judgment.

(f) In an action against several defendants, the court may, in its discretion, render judgment against one or more of them, leaving the action to proceed against the others, whenever a several judgment is proper.

(g) (1) The prevailing party is entitled to the costs of the action, including the costs of serving the order for the appearance of the defendant.

(2) Notwithstanding paragraph (1) and subdivision (b) of Section 1032, the amount of the small claims court filing fee paid by a party pursuant to subdivision (c) of Section 116.230 that exceeds the amount that would have been paid if the party had paid the fee pursuant to subdivision (b) of Section 116.230 shall not be recoverable as costs.

(h) When the court renders judgment, the clerk shall promptly deliver or mail notice of entry of the judgment to the parties, and shall execute a certificate of personal delivery or mailing and place it in the file.

(i) The notice of entry of judgment shall be on a form approved or adopted by the Judicial Council.

SEC. 6. Section 116.940 of the Code of Civil Procedure is amended to read:

116.940. (a) Except as otherwise provided in this section or in rules adopted by the Judicial Council, which are consistent with the requirements of this section, the characteristics of the small claims

advisory service required by Section 116.260 shall be determined by each county in accordance with local needs and conditions.

(b) Each advisory service shall provide the following services:

(1) Individual personal advisory services, in person or by telephone, and by any other means reasonably calculated to provide timely and appropriate assistance. The topics covered by individual personal advisory services shall include, but not be limited to, preparation of small claims court filings, procedures, including procedures related to the conduct of the hearing, and information on the collection of small claims court judgments.

(2) Recorded telephone messages may be used to supplement the individual personal advisory services, but shall not be the sole means of providing advice available in the county.

(3) Adjacent counties may provide advisory services jointly.

(c) In any county in which the number of small claims actions filed annually is 1,000 or less as averaged over the immediately preceding two fiscal years, the county may elect to exempt itself from the requirements set forth in subdivision (b). This exemption shall be formally noticed through the adoption of a resolution by the board of supervisors. If a county so exempts itself, the county shall nevertheless provide the following minimum advisory services in accordance with rules adopted by the Judicial Council:

(1) Recorded telephone messages providing general information relating to small claims actions filed in the county shall be provided during regular business hours.

(2) Small claims information booklets shall be provided in the court clerk's office of each superior court, the county administrator's office, other appropriate county offices, and in any other location that is convenient to prospective small claims litigants in the county.

(d) The advisory service shall operate in conjunction and cooperation with the small claims division, and shall be administered so as to avoid the existence or appearance of a conflict of interest between the individuals providing the advisory services and any party to a particular small claims action or any judicial officer deciding small claims actions.

(e) Advisers may be volunteers, and shall be members of the State Bar, law students, paralegals, or persons experienced in resolving minor disputes, and shall be familiar with small claims court rules and procedures. Advisers may not appear in court as an advocate for any party.

(f) Advisers, including independent contractors, other employees, and volunteers have the immunity conferred by Section 818.9 of the Government Code with respect to advice provided as a public service

on behalf of a court or county to small claims litigants and potential litigants under this chapter.

CHAPTER 601

An act to amend Section 65589.5 of the Government Code, relating to local planning.

[Approved by Governor October 6, 2005. Filed with
Secretary of State October 6, 2005.]

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

SECTION 1. Section 65589.5 of the Government Code is amended to read:

65589.5. (a) The Legislature finds and declares all of the following:

(1) The lack of housing is a critical problem that threatens the economic, environmental, and social quality of life in California.

(2) California housing has become the most expensive in the nation. The excessive cost of the state's housing supply is partially caused by activities and policies of many local governments that limit the approval of housing, increase the cost of land for housing, and require that high fees and exactions be paid by producers of housing.

(3) Among the consequences of those actions are discrimination against low-income and minority households, lack of housing to support employment growth, imbalance in jobs and housing, reduced mobility, urban sprawl, excessive commuting, and air quality deterioration.

(4) Many local governments do not give adequate attention to the economic, environmental, and social costs of decisions that result in disapproval of housing projects, reduction in density of housing projects, and excessive standards for housing projects.

(b) It is the policy of the state that a local government not reject or make infeasible housing developments that contribute to meeting the housing need determined pursuant to this article without a thorough analysis of the economic, social, and environmental effects of the action and without complying with subdivision (d).

(c) The Legislature also recognizes that premature and unnecessary development of agricultural lands for urban uses continues to have adverse effects on the availability of those lands for food and fiber production and on the economy of the state. Furthermore, it is the policy of the state that development should be guided away from prime agricultural lands; therefore, in implementing this section, local

jurisdictions should encourage, to the maximum extent practicable, in filling existing urban areas.

(d) A local agency shall not disapprove a housing development project, including farmworker housing as defined in subdivision (d) of Section 50199.50 of the Health and Safety Code, for very low, low-, or moderate-income households or condition approval, including through the use of design review standards, in a manner that renders the project infeasible for development for the use of very low, low-, or moderate-income households unless it makes written findings, based upon substantial evidence in the record, as to one of the following:

(1) The jurisdiction has adopted a housing element pursuant to this article that has been revised in accordance with Section 65588, is in substantial compliance with this article, and the jurisdiction has met or exceeded its share of the regional housing need allocation pursuant to Section 65584 for the planning period for the income category proposed for the housing development project, provided that any disapproval or conditional approval shall not be based on any of the reasons prohibited by Section 65008. If the housing development project includes a mix of income categories, and the jurisdiction has not met or exceeded its share of the regional housing need for one or more of those categories, then this paragraph shall not be used to disapprove or conditionally approve the project. The share of the regional housing need met by the jurisdiction shall be calculated consistently with the forms and definitions that may be adopted by the Department of Housing and Community Development pursuant to Section 65400. Any disapproval or conditional approval pursuant to this paragraph shall be in accordance with applicable law, rule, or standards.

(2) The development project as proposed would have a specific, adverse impact upon the public health or safety, and there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact without rendering the development unaffordable to low- and moderate-income households. As used in this paragraph, a "specific, adverse impact" means a significant, quantifiable, direct, and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete. Inconsistency with the zoning ordinance or general plan land use designation shall not constitute a specific, adverse impact upon the public health or safety.

(3) The denial of the project or imposition of conditions is required in order to comply with specific state or federal law, and there is no feasible method to comply without rendering the development unaffordable to low- and moderate-income households.

(4) The development project is proposed on land zoned for agriculture or resource preservation that is surrounded on at least two sides by land being used for agricultural or resource preservation purposes, or which does not have adequate water or wastewater facilities to serve the project.

(5) The development project is inconsistent with both the jurisdiction's zoning ordinance and general plan land use designation as specified in any element of the general plan as it existed on the date the application was deemed complete, and the jurisdiction has adopted a revised housing element in accordance with Section 65588 that is in substantial compliance with this article.

(A) This paragraph cannot be utilized to disapprove or conditionally approve a housing development project if the development project is proposed on a site that is identified as suitable or available for very low, low-, or moderate-income households in the jurisdiction's housing element, and consistent with the density specified in the housing element, even though it is inconsistent with both the jurisdiction's zoning ordinance and general plan land use designation.

(B) If the local agency has failed, in accordance with Section 65583.2, to identify in the inventory of land in its housing element sites that can be developed for housing within the planning period and that are sufficient to provide for the jurisdiction's share of the regional housing need for all income levels pursuant to Section 65584, then this paragraph shall not be utilized to disapprove or conditionally approve a housing development project proposed for a site designated in any element of the general plan for residential uses or designated in any element of the general plan for commercial uses if residential uses are permitted or conditionally permitted within commercial designations. In any action in court, the burden of proof shall be on the local agency to show that its housing element does identify adequate sites with appropriate zoning and development standards and with services and facilities to accommodate the local agency's share of the regional housing need for the very low and low-income categories.

(e) Nothing in this section shall be construed to relieve the local agency from complying with the Congestion Management Program required by Chapter 2.6 (commencing with Section 65088) of Division 1 of Title 7 or the California Coastal Act (Division 20 (commencing with Section 30000) of the Public Resources Code). Neither shall anything in this section be construed to relieve the local agency from making one or more of the findings required pursuant to Section 21081 of the Public Resources Code or otherwise complying with the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code).

(f) Nothing in this section shall be construed to prohibit a local agency from requiring the development project to comply with objective, quantifiable, written development standards, conditions, and policies appropriate to, and consistent with, meeting the jurisdiction's share of the regional housing need pursuant to Section 65584. However, the development standards, conditions, and policies shall be applied to facilitate and accommodate development at the density permitted on the site and proposed by the development project. Nothing in this section shall be construed to prohibit a local agency from imposing fees and other exactions otherwise authorized by law that are essential to provide necessary public services and facilities to the development project.

(g) This section shall be applicable to charter cities because the Legislature finds that the lack of housing is a critical statewide problem.

(h) The following definitions apply for the purposes of this section:

(1) "Feasible" means capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social, and technological factors.

(2) "Housing development project" means a use consisting of either of the following:

(A) Residential units only.

(B) Mixed-use developments consisting of residential and nonresidential uses in which nonresidential uses are limited to neighborhood commercial uses and to the first floor of buildings that are two or more stories. As used in this paragraph, "neighborhood commercial" means small-scale general or specialty stores that furnish goods and services primarily to residents of the neighborhood.

(3) "Housing for very low, low-, or moderate-income households" means that either (A) at least 20 percent of the total units shall be sold or rented to lower income households, as defined in Section 50079.5 of the Health and Safety Code, or (B) 100 percent of the units shall be sold or rented to moderate-income households as defined in Section 50093 of the Health and Safety Code, or middle-income households, as defined in Section 65008 of this code. Housing units targeted for lower income households shall be made available at a monthly housing cost that does not exceed 30 percent of 60 percent of area median income with adjustments for household size made in accordance with the adjustment factors on which the lower income eligibility limits are based. Housing units targeted for persons and families of moderate income shall be made available at a monthly housing cost that does not exceed 30 percent of 100 percent of area median income with adjustments for household size made in accordance with the adjustment factors on which the moderate income eligibility limits are based.

(4) "Area median income" means area median income as periodically established by the Department of Housing and Community Development pursuant to Section 50093 of the Health and Safety Code. The developer shall provide sufficient legal commitments to ensure continued availability of units for very low or low-income households in accordance with the provisions of this subdivision for 30 years.

(5) "Neighborhood" means a planning area commonly identified in a community's planning documents, and identified as a neighborhood by the individuals residing and working within the neighborhood. Documentation demonstrating that the area meets the definition of neighborhood may include a map prepared for planning purposes which lists the name and boundaries of the neighborhood.

(6) "Disapprove the development project" includes any instance in which a local agency does either of the following:

(A) Votes on a proposed housing development project application and the application is disapproved.

(B) Fails to comply with the time periods specified in subparagraph (B) of paragraph (1) of subdivision (a) of Section 65950. An extension of time pursuant to Article 5 (commencing with Section 65950) shall be deemed to be an extension of time pursuant to this paragraph.

(i) If any city, county, or city and county denies approval or imposes restrictions, including design changes, a reduction of allowable densities or the percentage of a lot that may be occupied by a building or structure under the applicable planning and zoning in force at the time the application is deemed complete pursuant to Section 65943, that have a substantial adverse effect on the viability or affordability of a housing development for very low, low-, or moderate-income households, and the denial of the development or the imposition of restrictions on the development is the subject of a court action which challenges the denial, then the burden of proof shall be on the local legislative body to show that its decision is consistent with the findings as described in subdivision (d) and that the findings are supported by substantial evidence in the record.

(j) When a proposed housing development project complies with applicable, objective general plan and zoning standards and criteria, including design review standards, in effect at the time that the housing development project's application is determined to be complete, but the local agency proposes to disapprove the project or to approve it upon the condition that the project be developed at a lower density, the local agency shall base its decision regarding the proposed housing development project upon written findings supported by substantial evidence on the record that both of the following conditions exist:

(1) The housing development project would have a specific, adverse impact upon the public health or safety unless the project is disapproved or approved upon the condition that the project be developed at a lower density. As used in this paragraph, a “specific, adverse impact” means a significant, quantifiable, direct, and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete.

(2) There is no feasible method to satisfactorily mitigate or avoid the adverse impact identified pursuant to paragraph (1), other than the disapproval of the housing development project or the approval of the project upon the condition that it be developed at a lower density.

(k) The applicant or any person who would be eligible to apply for residency in the development may bring an action to enforce this section. If in any action brought to enforce the provisions of this section, a court finds that the local agency disapproved a project or conditioned its approval in a manner rendering it infeasible for the development of housing for very low, low-, or moderate-income households, including farmworker housing, without making the findings required by this section or without making sufficient findings supported by substantial evidence, the court shall issue an order or judgment compelling compliance with this section within 60 days, including, but not limited to, an order that the local agency take action on the development project. The court shall retain jurisdiction to ensure that its order or judgment is carried out and shall award reasonable attorney’s fees and costs of suit to the plaintiff or petitioner who proposed the housing development, except under extraordinary circumstances in which the court finds that awarding fees would not further the purposes of this section. If the court determines that its order or judgment has not been carried out within 60 days, the court may issue further orders as provided by law to ensure that the purposes and policies of this section are fulfilled, including, but not limited to, an order to vacate the decision of the local agency, in which case the application for the project, as constituted at the time the local agency took the initial action determined to be in violation of this section, along with any standard conditions determined by the court to be generally imposed by the local agency on similar projects, shall be deemed approved unless the applicant consents to a different decision or action by the local agency.

(l) If the court finds that the local agency (1) acted in bad faith when it disapproved or conditionally approved the housing development in violation of this section and (2) failed to carry out the court’s order or judgment within 60 days as described in paragraph (k), the court in addition to any other remedies provided by this section, may impose

finances upon the local agency that the local agency shall be required to deposit into a housing trust fund. Fines shall not be paid from funds that are already dedicated for affordable housing, including, but not limited to, redevelopment or low- and moderate-income housing funds and federal HOME and CDBG funds. The local agency shall commit the money in the trust fund within five years for the sole purpose of financing newly constructed housing units affordable to extremely low, very low, or low-income households. For purposes of this section, "bad faith" shall mean an action that is frivolous or otherwise entirely without merit.

(m) Any action brought to enforce the provisions of this section shall be brought pursuant to Section 1094.5 of the Code of Civil Procedure, and the local agency shall prepare and certify the record of proceedings in accordance with subdivision (c) of Section 1094.6 of the Code of Civil Procedure no later than 30 days after the petition is served, provided that the cost of preparation of the record shall be borne by the local agency. Upon entry of the trial court's order, a party shall, in order to obtain appellate review of the order, file a petition within 20 days after service upon it of a written notice of the entry of the order, or within such further time not exceeding an additional 20 days as the trial court may for good cause allow. If the local agency appeals the judgment of the trial court, the local agency shall post a bond, in an amount to be determined by the court, to the benefit of the plaintiff if the plaintiff is the project applicant.

(n) In any action, the record of the proceedings before the local agency shall be filed as expeditiously as possible and, notwithstanding Section 1094.6 of the Code of Civil Procedure or subdivision (m) of this section, all or part of the record may be prepared (1) by the petitioner with the petition or petitioner's points and authorities, (2) by the respondent with respondent's points and authorities, (3) after payment of costs by the petitioner, or (4) as otherwise directed by the court. If the expense of preparing the record has been borne by the petitioner and the petitioner is the prevailing party, the expense shall be taxable as costs.

CHAPTER 602

An act to amend Section 97.73 of the Revenue and Taxation Code, relating to local government finance.

[Approved by Governor October 6, 2005. Filed with
Secretary of State October 6, 2005.]

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

SECTION 1. Section 97.73 of the Revenue and Taxation Code is amended to read:

97.73. Notwithstanding any other provision of law, for each of the 2004-05 and 2005-06 fiscal years, all of the following apply:

(a) (1) (A) The total amount of ad valorem property tax revenue, other than those revenues that are pledged to debt service, otherwise allocated for each of those fiscal years to each nonenterprise special district shall be reduced by 10 percent of the amount of ad valorem property tax revenue of the district for the 2001-02 fiscal year, as reported in the 2001-02 edition of the State Controller's Special Districts Annual Report.

(B) (i) Notwithstanding subparagraph (A), for the Laguna Niguel Community Service District in the County of Orange, the reduction described in subparagraph (A) shall be 4 percent rather than 10 percent.

(ii) If the district described in clause (i) is not dissolved before July 1, 2006, for each of the 2006-07 and 2007-08 fiscal years, the auditor shall reduce the total amount of ad valorem property tax revenue, other than those revenues that are pledged to debt service, otherwise allocated to that district for each of those fiscal years by 6 percent of the amount of ad valorem property tax revenue of the district for the 2001-02 fiscal year, as reported in the 2001-02 edition of the State Controller's Special Districts Annual Report.

(C) If a nonenterprise special district is located in more than one county, the auditor of each county in which that nonenterprise special district is located shall implement that portion of the total reduction, required by subparagraph (A) with respect to that district, determined by the ratio of the amount of ad valorem property tax revenue allocated to that district from the county to the total amount of ad valorem property tax revenue allocated to that district from all counties.

(2) The Controller shall determine the amount of the ad valorem property tax revenue reduction required by paragraph (1) for each nonenterprise special district in each county and notify the Director of Finance of these amounts on or before October 25, 2004.

(b) That amount of ad valorem property tax revenue that is not allocated to a nonenterprise special district as a result of subdivision (a) shall instead be deposited in the county Educational Revenue Augmentation Fund and shall be allocated as specified in subdivision (d) of Section 97.3.

(c) For purposes of this section, all of the following apply:

(1) (A) "Nonenterprise special district" means a special district that engages solely, as reported in the 2001-02 edition of the State Controller's

Special Districts Annual Report, in nonenterprise functions, and a qualified special district as defined in Section 97.34.

(B) Notwithstanding any other provision of law, “nonenterprise special district” does not include any of the following:

(i) A fire protection district that was formed under the Shade Tree Law of 1909 set forth in Article 2 (commencing with Section 25620) of Chapter 7 of Division 2 of Title 3 of the Government Code.

(ii) A police protection district formed pursuant to Part 1 (commencing with Section 20000) of Division 14 of the Health and Safety Code.

(iii) A fire protection district formed under the Fire Protection District Law of 1987 (Part 2.7 (commencing with Section 13800) of Division 12 of the Health and Safety Code) or a fire protection district formed under the Fire Protection District Law of 1961, or any of its statutory predecessors, and that existed on January 1, 1988.

(iv) Any library special district, including, but not limited to, the following:

(I) A county free library system established pursuant to Article 1 (commencing with Section 19100) of Chapter 6 of Part 11 of Division 1 of Title 1 of the Education Code.

(II) A unified school district and union school district public library district established pursuant to Chapter 3 (commencing with Section 18300) of Part 11 of Division 1 of Title 1 of the Education Code.

(III) A library district established pursuant to Chapter 8 (commencing with Section 19400) of Part 11 of Division 1 of Title 1 of the Education Code.

(IV) A library district in unincorporated towns and villages established pursuant to Chapter 9 (commencing with Section 19600) of Part 11 of Division 1 of Title 1 of the Education Code.

(v) A memorial district formed pursuant to Article 1 (commencing with Section 1170) of Chapter 1 of Part 2 of Division 6 of the Military and Veterans Code.

(vi) A mosquito abatement district or a vector control district formed pursuant to Chapter 1 (commencing with Section 2000) of Division 3 of the Health and Safety Code, or any predecessor to that law.

(vii) The Glenn County Pest Abatement District and the East Side Mosquito Abatement District formed pursuant to Chapter 8 (commencing with Section 2800) of Division 3 of the Health and Safety Code.

(viii) (I) For the 2005-06 fiscal year, a local health care district as described in Division 23 (commencing with Section 32000) of the Health and Safety Code.

(II) Notwithstanding any other provision of law, in making the determinations required by paragraph (2) of subdivision (a) of Section 97.72, the Controller shall ensure that the operation of this clause does

not result in a net increase in the total amount of the reduction for any special district required by this section or Section 97.72 for the 2005-06 fiscal year from the total amount of the reduction determined under those provisions for that special district for the 2004-05 fiscal year.

(2) With respect to a nonenterprise special district that performs, as reported in the 2001-02 edition of the State Controller's Special Districts Annual Report, nonenterprise functions and police protection services with certified peace officers, as described in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code, or nonenterprise functions and fire protection services, "the amount of ad valorem property tax revenue of the district for the 2001-02 fiscal year" does not include ad valorem property tax revenue of that district for fire protection or police protection nonenterprise functions, as reported in the 2001-02 edition of the State Controller's Special Districts Annual Report.

(3) With respect to a nonenterprise special district formed pursuant to Article 3 (commencing with Section 5500) of Chapter 3 of Division 5 of the Public Resources Code that performs, as reported in the 2001-02 edition of the State Controller's Special Districts Annual Report, nonenterprise functions and police protection services with certified peace officers, as described in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code, or nonenterprise functions and fire protection services, "the amount of ad valorem property tax revenue of the district for the 2001-02 fiscal year" does not include total expenditures net of total revenues by that district for fire protection or police protection nonenterprise functions, as reported in the 2001-02 edition of the State Controller's Special Districts Annual Report.

(4) For purposes of this section, "revenues that are pledged to debt service" includes only those amounts required as the sole source of repayment to pay debt service costs in the 2002-03 fiscal year on debt instruments issued by a nonenterprise special district for the acquisition of fixed assets. For purposes of this paragraph, "fixed assets" means land, buildings, equipment, and improvements, including improvements to buildings.

(d) For the purposes of this section, if a special district's financial transactions do not appear in the 2001-02 edition of the State Controller's Special Districts Annual Report, the Controller shall use the most recent data available for that district.

(e) For the 2005-06 fiscal year and each fiscal year thereafter, the amounts determined under subdivision (a) of Section 96.1, or any successor to that provision, shall not reflect, for a preceding fiscal year, any portion of any allocation required by this section.

CHAPTER 603

An act to add Section 1203.8 to the Penal Code, relating to sentencing.

[Approved by Governor October 6, 2005. Filed with
Secretary of State October 6, 2005.]

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

SECTION 1. (a) The Legislature finds and declares that the successful reintegration of parolees into society depends upon the proper assessment of the offenders' risks and needs prior to entry into the prison system and appropriate direction of offenders into facilities and programs that are available to address risks or needs.

(b) The Legislature recognizes that the transfer of the assessment function from the Department of Corrections and Rehabilitation to the community in which an offender committed his or her crime and to which the offender will likely be paroled may represent an effective and efficient means to perform an assessment.

(c) The Legislature encourages the participation of the Department of Corrections and Rehabilitation and interested counties to develop and implement plans to transfer assessment functions to local probation departments and courts, with the goal of improving public safety in the community and to better enable parolees to become contributing members of society.

SEC. 2. Section 1203.8 is added to the Penal Code, to read:

1203.8. (a) A county may develop a multiagency plan to prepare and enhance nonviolent felony offenders' successful reentry into the community. The plan shall be developed by, and have the concurrence of, the presiding judge, the chief probation officer, the district attorney, the local custodial agency, and the public defender, or their designees, and shall be submitted to the board of supervisors for its approval. The plan shall provide that when a report prepared pursuant to Section 1203.10 recommends a state prison commitment, the report shall also include, but not be limited to, the offender's treatment, literacy, and vocational needs. Any sentence imposed pursuant to this section shall include a recommendation for completion while in state prison, all relevant programs to address those needs identified in the assessment.

(b) The Department of Corrections and Rehabilitation is authorized to enter into an agreement with up to three counties to implement subdivision (a) and to provide funding for the purpose of the probation department carrying out the assessment. The Department of Corrections

and Rehabilitation, to the extent feasible, shall provide to the offender all programs pursuant to the court's recommendation.

CHAPTER 604

An act to amend Section 13997.1 of the Government Code, relating to international trade.

[Approved by Governor October 6, 2005. Filed with
Secretary of State October 6, 2005.]

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

SECTION 1. Section 13997.1 of the Government Code is amended to read:

13997.1. (a) The Governor shall instruct the Secretary of Business, Transportation and Housing to establish, on a contract basis, an international trade and investment office in Yerevan, in the Republic of Armenia, to serve the region of Eastern Europe and Western Asia.

(b) The secretary shall report to the Legislature on the success of the international trade and investment office in Yerevan no later than June 1, 2007. The report shall include, but not be limited to, all of the following:

(1) The level of investment and tourism directed to California as a direct result of the international trade and investment office.

(2) The level of imports sent to California as a direct result of the international trade and investment office.

(3) The level of California exports sent to the region of Eastern Europe and Western Asia as a direct result of the international trade and investment office.

(4) A cost-benefit analysis of the international trade and investment office.

(5) An analysis of the costs and outcomes of the international trade and investment office compared with those of the other international trade and investment offices.

(c) This section shall be implemented only to the extent that funds are available to the Business, Transportation and Housing Agency for this purpose from any source, including, but not limited to, federal funding and private donations authorized pursuant to Section 13997. Private donations made pursuant to Section 13997 and specified for the international trade and investment office in Yerevan shall be deposited

in a separate subaccount within the Economic Development and Trade Promotion Account and may be used only for the operation of this office.

(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.

CHAPTER 605

An act to amend Sections 23 and 24 of, and to add Sections 23.6 and 33 to, the Food and Agricultural Code, and to amend Section 51201 of the Government Code, relating to agricultural lands.

[Approved by Governor October 6, 2005. Filed with
Secretary of State October 6, 2005.]

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

SECTION 1. Section 23 of the Food and Agricultural Code is amended to read:

23. (a) Inasmuch as the planned production of trees, vines, rose bushes, ornamental plants, floricultural crops, and other horticultural crops is distinguishable from the production of other products of the soil only in relation to the time elapsing before maturity, plants and floricultural crops that are being produced by nurseries, whether in open fields or in greenhouses, shall be considered to be “growing agricultural crops” for the purpose of any laws that pertain to the agricultural industry of the state, and those laws shall apply equally to greenhouses and open field nursery operations.

(b) For the reasons stated in subdivision (a), a nursery where the primary activity is the planned production of horticultural crops, is a farm. However, for the purposes of this section and any laws that pertain to farms in this state, a retail nursery is not a farm.

SEC. 2. Section 23.6 is added to the Food and Agricultural Code, to read:

23.6. The Legislature hereby finds and declares that greenhouse production of floricultural, ornamental, or other nursery and agricultural products in the state is a growing industry that provides valuable agricultural products and year-round employment for agricultural workers. The Legislature further declares that greenhouse production is an efficient self-contained production system that offers protections for the environment and allows for the use of conservation-oriented

production technologies, including drip irrigation, water recycling, and hydroponics, and the use of energy conservation systems.

SEC. 3. Section 24 of the Food and Agricultural Code is amended to read:

24. It is hereby declared, as a matter of legislative determination, that the provisions of this section are enacted in the exercise of the power of this state for the purpose of protecting and furthering the public health and welfare. It is further declared that the floriculture and nursery industry of this state is affected with a public interest, in that, among other things:

(a) The production, processing, manufacture, and distribution of floriculture and nursery products constitute a paramount industry of this state which not only provides substantial and required revenues for the state and its political subdivisions by tax revenues and other means, and employment and a means of livelihood for many thousands of its population, but also furnishes substantial employment to related industries that are vital to the public health and welfare.

(b) Basic research and development for floriculture and the nursery industries contribute substantially to food production in this state which is essential to the welfare and health of its citizens.

It is also declared that the elimination of disorderly marketing of California floricultural and nursery products, and the development of new and larger markets through education, promotion and other means for these products, are affected with the public interest.

(c) All production of floriculture and nursery products in greenhouses shall be deemed equivalent to the production of floricultural products in open fields.

SEC. 4. Section 33 is added to the Food and Agricultural Code, to read:

33. "Greenhouse" means a structure covered with transparent or translucent materials for the purpose of admitting natural light and controlling the atmosphere for growing plants, including floricultural, ornamental, or other nursery and agricultural products.

SEC. 5. Section 51201 of the Government Code is amended to read: 51201. As used in this chapter, unless otherwise apparent from the context:

(a) "Agricultural commodity" means any and all plant and animal products produced in this state for commercial purposes.

(b) "Agricultural use" means use of land, including but not limited to greenhouses, for the purpose of producing an agricultural commodity for commercial purposes.

(c) "Prime agricultural land" means any of the following:

(1) All land that qualifies for rating as class I or class II in the Natural Resource Conservation Service land use capability classifications.

(2) Land which qualifies for rating 80 through 100 in the Storie Index Rating.

(3) Land which supports livestock used for the production of food and fiber and which has an annual carrying capacity equivalent to at least one animal unit per acre as defined by the United States Department of Agriculture.

(4) Land planted with fruit- or nut-bearing trees, vines, bushes or crops which have a nonbearing period of less than five years and which will normally return during the commercial bearing period on an annual basis from the production of unprocessed agricultural plant production not less than two hundred dollars (\$200) per acre.

(5) Land which has returned from the production of unprocessed agricultural plant products an annual gross value of not less than two hundred dollars (\$200) per acre for three of the previous five years.

(d) "Agricultural preserve" means an area devoted to either agricultural use, as defined in subdivision (b), recreational use as defined in subdivision (n), or open-space use as defined in subdivision (o), or any combination of those uses and which is established in accordance with the provisions of this chapter.

(e) "Compatible use" is any use determined by the county or city administering the preserve pursuant to Section 51231, 51238, or 51238.1 or by this act to be compatible with the agricultural, recreational, or open-space use of land within the preserve and subject to contract. "Compatible use" includes agricultural use, recreational use or open-space use unless the board or council finds after notice and hearing that the use is not compatible with the agricultural, recreational or open-space use to which the land is restricted by contract pursuant to this chapter.

(f) "Board" means the board of supervisors of a county which establishes or proposes to establish an agricultural preserve or which enters or proposes to enter into a contract on land within an agricultural preserve pursuant to this chapter.

(g) "Council" means the city council of a city which establishes or proposes to establish an agricultural preserve or which enters or proposes to enter into a contract on land within an agricultural preserve pursuant to this chapter.

(h) Except where it is otherwise apparent from the context, "county" or "city" means the county or city having jurisdiction over the land.

(i) A "scenic highway corridor" is an area adjacent to, and within view of, the right-of-way of:

(1) An existing or proposed state scenic highway in the state scenic highway system established by the Legislature pursuant to Article 2.5 (commencing with Section 260) of Chapter 2 of Division 1 of the Streets

and Highways Code and which has been officially designated by the Department of Transportation as an official state scenic highway; or

(2) A county scenic highway established pursuant to Article 2.5 (commencing with Section 260) of Chapter 2 of Division 1 of the Streets and Highways Code, if each of the following conditions have been met:

(A) The scenic highway is included in an adopted general plan of the county or city; and

(B) The scenic highway corridor is included in an adopted specific plan of the county or city; and

(C) Specific proposals for implementing the plan, including regulation of land use, have been approved by the Advisory Committee on a Master Plan for Scenic Highways, and the county or city highway has been officially designated by the Department of Transportation as an official county scenic highway.

(j) A “wildlife habitat area” is a land or water area designated by a board or council, after consulting with and considering the recommendation of the Department of Fish and Game, as an area of great importance for the protection or enhancement of the wildlife resources of the state.

(k) A “saltpond” is an area which, for at least three consecutive years immediately prior to being placed within an agricultural preserve pursuant to this chapter, has been used for the solar evaporation of seawater in the course of salt production for commercial purposes.

(l) A “managed wetland area” is an area, which may be an area diked off from the ocean or any bay, river or stream to which water is occasionally admitted, and which, for at least three consecutive years immediately prior to being placed within an agricultural preserve pursuant to this chapter, was used and maintained as a waterfowl hunting preserve or game refuge or for agricultural purposes.

(m) A “submerged area” is any land determined by the board or council to be submerged or subject to tidal action and found by the board or council to be of great value to the state as open space.

(n) “Recreational use” is the use of land in its agricultural or natural state by the public, with or without charge, for any of the following: walking, hiking, picnicking, camping, swimming, boating, fishing, hunting, or other outdoor games or sports for which facilities are provided for public participation. Any fee charged for the recreational use of land as defined in this subdivision shall be in a reasonable amount and shall not have the effect of unduly limiting its use by the public. Any ancillary structures necessary for a recreational use shall comply with the provisions of Section 51238.1.

(o) “Open-space use” is the use or maintenance of land in a manner that preserves its natural characteristics, beauty, or openness for the

benefit and enjoyment of the public, to provide essential habitat for wildlife, or for the solar evaporation of seawater in the course of salt production for commercial purposes, if the land is within:

- (1) A scenic highway corridor, as defined in subdivision (i).
- (2) A wildlife habitat area, as defined in subdivision (j).
- (3) A saltpond, as defined in subdivision (k).
- (4) A managed wetland area, as defined in subdivision (l).
- (5) A submerged area, as defined in subdivision (m).

CHAPTER 606

An act to amend Section 1771.7 of the Labor Code, relating to labor compliance programs.

[Approved by Governor October 6, 2005. Filed with
Secretary of State October 6, 2005.]

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

SECTION 1. Section 1771.7 of the Labor Code is amended to read:

1771.7. (a) (1) An awarding body that chooses to use funds derived from either the Kindergarten-University Public Education Facilities Bond Act of 2002 or the Kindergarten-University Public Education Facilities Bond Act of 2004 for a public works project, shall initiate and enforce, or contract with a third party to initiate and enforce, a labor compliance program, as described in subdivision (b) of Section 1771.5, with respect to that public works project.

(2) If an awarding body described in paragraph (1) chooses to contract with a third party to initiate and enforce a labor compliance program for a project described in paragraph (1), that third party shall not review the payroll records of its own employees or the employees of its subcontractors, and the awarding body or an independent third party shall review these payroll records for purposes of the labor compliance program.

(b) This section applies to public works that commence on or after April 1, 2003. For purposes of this subdivision, work performed during the design and preconstruction phases of construction, including, but not limited to, inspection and land surveying work, does not constitute the commencement of a public work.

(c) (1) For purposes of this section, if any campus of the California State University chooses to use the funds described in subdivision (a), then the “awarding body” is the Chancellor of the California State

University. For purposes of this subdivision, if the chancellor is required by subdivision (a) to initiate and enforce, or to contract with a third party to initiate and enforce, the labor compliance program described in that subdivision, then in addition to the requirements imposed upon an awarding body by subdivision (b) of Section 1771.5, the Chancellor of the California State University shall review the payroll records described in paragraphs (3) and (4) of subdivision (b) of Section 1771.5 on at least a monthly basis to ensure the awarding body's compliance with the labor compliance program.

(2) For purposes of this subdivision, if an awarding body described in subdivision (a) is the University of California or any campus of that university, and that awarding body is required by subdivision (a) to initiate and enforce, or to contract with a third party to initiate and enforce, the labor compliance program described in that subdivision, then in addition to the requirements imposed upon an awarding body by subdivision (b) of Section 1771.5, the payroll records described in paragraphs (3) and (4) of subdivision (b) of Section 1771.5 shall be reviewed on at least a monthly basis to ensure the awarding body's compliance with the labor compliance program.

(d) (1) An awarding body described in subdivision (a) shall make a written finding that the awarding body has initiated and enforced, or has contracted with a third party to initiate and enforce, the labor compliance program described in subdivision (a).

(2) (A) If an awarding body described in subdivision (a) is a school district, the governing body of that district shall transmit to the State Allocation Board, in the manner determined by that board, a copy of the finding described in paragraph (1).

(B) The State Allocation Board may not release the funds described in subdivision (a) to an awarding body that is a school district until the State Allocation Board has received the written finding described in paragraph (1).

(C) If the State Allocation Board conducts a postaward audit procedure with respect to an award of the funds described in subdivision (a) to an awarding body that is a school district, the State Allocation Board shall verify, in the manner determined by that board, that the school district has complied with the requirements of this subdivision.

(3) If an awarding body described in subdivision (a) is a community college district, the Chancellor of the California State University, or the office of the President of the University of California or any campus of the University of California, that awarding body shall transmit, in the manner determined by the Director of the Department of Industrial Relations, a copy of the finding described in paragraph (1) to the director of that department, or the director of any successor agency that is

responsible for the oversight of employee wage and employee work hours laws.

(e) Notwithstanding Section 17070.63 of the Education Code, for purposes of this act, the State Allocation Board shall increase the grant amounts as described in Chapter 12.5 (commencing with Section 17070.10) of Part 10 of Division 1 of Title 1 of the Education Code to accommodate the state's share of the increased costs of a new construction or modernization project due to the initiation and enforcement of the labor compliance program.

CHAPTER 607

An act to amend Section 1282.4 of the Code of Civil Procedure, relating to arbitration, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 6, 2005. Filed with
Secretary of State October 6, 2005.]

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

SECTION 1. Section 1282.4 of the Code of Civil Procedure, as amended by Section 2 of Chapter 1011 of the Statutes of 2000, is amended to read:

1282.4. (a) A party to the arbitration has the right to be represented by an attorney at any proceeding or hearing in arbitration under this title. A waiver of this right may be revoked; but if a party revokes such waiver, the other party is entitled to a reasonable continuance for the purpose of procuring an attorney.

(b) Notwithstanding any other provision of law, including Section 6125 of the Business and Professions Code, an attorney admitted to the bar of any other state may represent the parties in the course of, or in connection with, an arbitration proceeding in this state, provided that the attorney, if not admitted to the State Bar of California, timely files the certificate described in subdivision (c) and the attorney's appearance is approved by the arbitrator, the arbitrators, or the arbitral forum.

(c) Prior to the first scheduled hearing in an arbitration, the attorney described in subdivision (b) shall serve a certificate on the arbitrator or arbitrators, the State Bar of California, and all other parties and counsel in the arbitration whose addresses are known to the attorney. In the event that the attorney is retained after the first hearing has commenced, then

the certificate shall be served prior to the first hearing at which the attorney appears. The certificate shall state all of the following:

- (1) The attorney's residence and office address.
 - (2) The courts before which the attorney has been admitted to practice and the dates of admission.
 - (3) That the attorney is currently a member in good standing of, and eligible to practice law before, the bar of those courts.
 - (4) That the attorney is not currently on suspension or disbarred from the practice of law before the bar of any court.
 - (5) That the attorney is not a resident of the State of California.
 - (6) That the attorney is not regularly employed in the State of California.
 - (7) That the attorney is not regularly engaged in substantial business, professional, or other activities in the State of California.
 - (8) That the attorney agrees to be subject to the jurisdiction of the courts of this state with respect to the law of this state governing the conduct of attorneys to the same extent as a member of the State Bar of California.
 - (9) The title of the court and the cause in which the attorney has filed an application to appear as counsel pro hac vice in this state or filed a certificate pursuant to this section in the preceding two years, the date of each application, and whether or not it was granted.
 - (10) The name, address, and telephone number of the active member of the State Bar of California who is the attorney of record.
- (d) Failure to timely file the certificate described in subdivision (c) or, absent special circumstances, repeated appearances shall be grounds for disqualification from serving as the attorney of record in the arbitration in which the certificate was filed.
- (e) An attorney who files a certificate containing false information or who otherwise fails to comply with the standards of professional conduct required of members of the State Bar of California shall be subject to the disciplinary jurisdiction of the State Bar with respect to any of his or her acts occurring in the course of the arbitration.
- (f) Notwithstanding any other provision of law, including Section 6125 of the Business and Professions Code, an attorney who is a member in good standing of the bar of any state may represent the parties in connection with rendering legal services in this state in the course of and in connection with an arbitration pending in another state.
- (g) Notwithstanding any other provision of law, including Section 6125 of the Business and Professions Code, any party to an arbitration arising under collective bargaining agreements in industries and provisions subject to either state or federal law may be represented in

the course of, and in connection with, those proceedings by any person, regardless of whether that person is licensed to practice law in this state.

(h) Nothing in this section shall apply to Division 4 (commencing with Section 3201) of the Labor Code.

(i) (1) In enacting the amendments to this section made by Assembly Bill 2086 of the 1997–98 Regular Session, it is the intent of the Legislature to respond to the holding in *Birbrower v. Superior Court* (1998) 17 Cal.4th 117, as modified at 17 Cal.4th 643a (hereafter *Birbrower*), to provide a procedure for nonresident attorneys who are not licensed in this state to appear in California arbitration proceedings.

(2) In enacting subdivision (g), it is the intent of the Legislature to make clear that any party to an arbitration arising under a collective bargaining agreement governed by the laws of this state may be represented in the course of and in connection with those proceedings by any person regardless of whether that person is licensed to practice law in this state.

(3) Except as otherwise specifically provided in this section, in enacting the amendments to this section made by Assembly Bill 2086 of the 1997–98 Regular Session, it is the Legislature’s intent that nothing in this section is intended to expand or restrict the ability of a party prior to the decision in *Birbrower* to elect to be represented by any person in a nonjudicial arbitration proceeding, to the extent those rights or abilities existed prior to that decision. To the extent that *Birbrower* is interpreted to expand or restrict that right or ability pursuant to the laws of this state, it is hereby abrogated except as specifically provided in this section.

(4) In enacting subdivision (h), it is the intent of the Legislature to make clear that nothing in this section shall affect those provisions of law governing the right of injured workers to elect to be represented by any person, regardless of whether that person is licensed to practice law in this state, as set forth in Division 4 (commencing with Section 3200) of the Labor Code.

(j) This section shall be operative until January 1, 2007, and on that date shall be repealed.

SEC. 2. Section 1282.4 of the Code of Civil Procedure, as amended by Section 3 of Chapter 1011 of the Statutes of 2000, is amended to read:

1282.4. (a) A party to the arbitration has the right to be represented by an attorney at any proceeding or hearing in arbitration under this title. A waiver of this right may be revoked; but if a party revokes the waiver, the other party is entitled to a reasonable continuance for the purpose of procuring an attorney.

(b) This section shall become operative on January 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 maintain current arbitration processes, it is necessary for this act to take effect immediately.

CHAPTER 608

An act to amend Sections 3419, 3423, and 6030 of, and to add Sections 3424 and 5007.7 to, the Penal Code, and to amend Sections 222 and 1774 of the Welfare and Institutions Code, relating to inmates.

[Approved by Governor October 6, 2005. Filed with
Secretary of State October 6, 2005.]

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

SECTION 1. Section 3419 of the Penal Code is amended to read:

3419. (a) In the case of any inmate who gives birth after her receipt by the Department of Corrections and Rehabilitation, the department shall, subject to reasonable rules and regulations promulgated pursuant to Section 3414, provide notice of, and a written application for, the program described in this chapter, and upon her request, declare the inmate eligible to participate in a program pursuant to this chapter if all of the requirements of Section 3417 are met.

(b) The notice provided by the department shall contain, but need not be limited to, guidelines for qualification for, and the timeframe for application to, the program and the process for appealing a denial of admittance.

(c) Any community treatment program, in which an inmate who gives birth after her receipt by the Department of Corrections and Rehabilitation participates, shall include, but is not limited to, the following:

- (1) Prenatal care.
- (2) Access to prenatal vitamins.
- (3) Childbirth education.
- (4) Infant care.

SEC. 2. Section 3423 of the Penal Code is amended to read:

3423. Any woman inmate who would give birth to a child during her term of imprisonment may be temporarily taken to a hospital outside the prison for the purposes of childbirth, and the charge for hospital and medical care shall be charged against the funds allocated to the institution. The inmate shall not be shackled by the wrists, ankles, or both during labor, including during transport to a hospital, during delivery, and while

in recovery after giving birth, except as provided in Section 5007.7. The board shall provide for the care of any children so born and shall pay for their care until suitably placed, including, but not limited to, placement in a community treatment program.

SEC. 3. Section 3424 is added to the Penal Code, to read:

3424. A woman who is pregnant during her incarceration and who is not eligible for the program described in this chapter shall have access to complete prenatal health care. The department shall establish minimum standards for pregnant inmates in its custody who are not placed in a community treatment program including all of the following:

- (a) A balanced, nutritious diet approved by a doctor.
- (b) Prenatal and postpartum information and health care, including, but not limited to, access to necessary vitamins as recommended by a doctor.
- (c) Information pertaining to childbirth education and infant care.
- (d) A dental cleaning while in a state facility.

SEC. 4. Section 5007.7 is added to the Penal Code, to read:

5007.7. Pregnant inmates temporarily taken to a hospital outside the prison for the purposes of childbirth shall be transported in the least restrictive way possible, consistent with the legitimate security needs of each inmate. Upon arrival at the hospital, once the inmate has been declared by the attending physician to be in active labor, the inmate shall not be shackled by the wrists, ankles, or both, unless deemed necessary for the safety and security of the inmate, the staff, and the public.

SEC. 5. Section 6030 of the Penal Code is amended to read:

6030. (a) The Corrections Standards Authority shall establish minimum standards for state and local correctional facilities. The standards for state correctional facilities shall be established by January 1, 2007. The authority shall review those standards biennially and make any appropriate revisions.

(b) The standards shall include, but not be limited to, the following: health and sanitary conditions, fire and life safety, security, rehabilitation programs, recreation, treatment of persons confined in state and local correctional facilities, and personnel training.

(c) The standards shall require that at least one person on duty at the facility is knowledgeable in the area of fire and life safety procedures.

(d) The standards shall also include requirements relating to the acquisition, storage, labeling, packaging, and dispensing of drugs.

(e) The standards shall require that inmates who are received by the facility while they are pregnant are provided all of the following:

- (1) A balanced, nutritious diet approved by a doctor.

(2) Prenatal and postpartum information and health care, including, but not limited to, access to necessary vitamins as recommended by a doctor.

(3) Information pertaining to childbirth education and infant care.

(4) A dental cleaning while in a state facility.

(f) The standards shall provide that at no time shall a woman who is in labor be shackled by the wrists, ankles, or both including during transport to a hospital, during delivery, and while in recovery after giving birth, except as provided in Section 5007.7.

(g) In establishing minimum standards, the authority shall seek the advice of the following:

(1) For health and sanitary conditions:

The State Department of Health Services, physicians, psychiatrists, local public health officials, and other interested persons.

(2) For fire and life safety:

The State Fire Marshal, local fire officials, and other interested persons.

(3) For security, rehabilitation programs, recreation, and treatment of persons confined in correctional facilities:

The Department of Corrections and Rehabilitation, state and local juvenile justice commissions, state and local correctional officials, experts in criminology and penology, and other interested persons.

(4) For personnel training:

The Commission on Peace Officer Standards and Training, psychiatrists, experts in criminology and penology, the Department of Corrections and Rehabilitation, state and local correctional officials, and other interested persons.

(5) For female inmates and pregnant inmates in local adult and juvenile facilities:

The California State Sheriffs' Association and Chief Probation Officers' Association of California, and other interested persons.

SEC. 6. Section 222 of the Welfare and Institutions Code is amended to read:

222. (a) Any female in the custody of a local juvenile facility shall have the right to summon and receive the services of any physician and surgeon of her choice in order to determine whether she is pregnant. If she is found to be pregnant, she is entitled to a determination of the extent of the medical services needed by her and to the receipt of those services from the physician and surgeon of her choice. Any expenses occasioned by the services of a physician and surgeon whose services are not provided by the facility shall be borne by the female.

(b) A ward shall not be shackled by the wrists, ankles, or both during labor, including during transport to a hospital, during delivery, and while in recovery after giving birth, subject to the security needs described in

this section. Pregnant wards temporarily taken to a hospital outside the facility for the purposes of childbirth shall be transported in the least restrictive way possible, consistent with the legitimate security needs of each ward. Upon arrival at the hospital, once the ward has been declared by the attending physician to be in active labor, the ward shall not be shackled by the wrists, ankles, or both, unless deemed necessary for the safety and security of the ward, the staff, and the public.

(c) For purposes of this section, "local juvenile facility" means any city, county, or regional facility used for the confinement of juveniles for more than 24 hours.

(d) The rights provided to females by this section shall be posted in at least one conspicuous place to which all female wards have access.

SEC. 7. Section 1774 of the Welfare and Institutions Code is amended to read:

1774. (a) Any female who has been committed to the authority shall have the right to summon and receive the services of any physician and surgeon of her choice in order to determine whether she is pregnant. The director may adopt reasonable rules and regulations with regard to the conduct of examinations to effectuate that determination.

(b) If she is found to be pregnant, she is entitled to a determination of the extent of the medical services needed by her and to the receipt of those services from the physician and surgeon of her choice. Any expenses occasioned by the services of a physician and surgeon whose services are not provided by the facility shall be borne by the female.

(c) A ward who gives birth while under the jurisdiction of the Department of Corrections and Rehabilitation, Division of Juvenile Facilities, or a community treatment program has the right to the following services:

- (1) Prenatal care.
- (2) Access to prenatal vitamins.
- (3) Childbirth education.

(d) A ward shall not be shackled by the wrists, ankles, or both during labor, including during transport to a hospital, during delivery, and while in recovery after giving birth, subject to the security needs described in this section. Pregnant wards temporarily taken to a hospital outside the facility for the purposes of childbirth shall be transported in the least restrictive way possible, consistent with the legitimate security needs of each ward. Upon arrival at the hospital, once the ward has been declared by the attending physician to be in active labor, the ward shall not be shackled by the wrists, ankles, or both, unless deemed necessary for the safety and security of the ward, the staff, and the public.

(e) Any physician providing services pursuant to this section shall possess a current, valid, and unrevoked certificate to engage in the

practice of medicine issued pursuant to Chapter 5 (commencing with Section 2000) of Division 2 of the Business and Professions Code.

(f) The rights provided to females by this section shall be posted in at least one conspicuous place to which all female wards have access.

SEC. 8. 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.

CHAPTER 609

An act to amend Section 481 of the Food and Agricultural Code, relating to contagious diseases.

[Approved by Governor October 6, 2005. Filed with
Secretary of State October 6, 2005.]

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

SECTION 1. The Legislature finds and declares the following:

(a) Outbreaks of highly contagious diseases can have a devastating impact on California's poultry industry.

(b) The 2002-2003 outbreak of Exotic Newcastle Disease in Southern California cost over \$160 million and caused a forced depopulation of over 3 million birds.

(c) Avian influenza represents a significant threat to California's poultry industry and public health. Avian Influenza, or "bird flu," is extremely contagious in birds and rapidly fatal, with mortality rates approaching 100 percent.

(d) Deadly strains of avian influenza can potentially also infect humans and represents a significant public health threat.

(e) In order to prevent the spread of avian influenza, it is vital for California to take appropriate steps to reduce the chances of outbreaks and minimize and protect the public health and the state's commercial poultry industry.

SEC. 2. Section 481 of the Food and Agricultural Code is amended to read:

481. (a) The department may, with the approval of the Governor, cooperate with officials of the United States Department of Agriculture or with officials of other states in the conduct of pest or disease investigations outside of this state in the interest of the protection of the

agricultural industry of this state from any pest or disease which is not generally distributed in this state.

(b) The department may enter into cooperative agreements with the United States Department of Agriculture to carry out a program for the prevention and control of avian influenza. The department shall, in accordance with the Administrative Procedures Act, adopt any regulations necessary to implement program requirements set out in the agreement.

CHAPTER 610

An act to add Section 6060.6 to the Business and Professions Code, and to amend Section 1161.2 of the Code of Civil Procedure, relating to the State Bar of California.

[Approved by Governor October 6, 2005. Filed with
Secretary of State October 6, 2005.]

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

SECTION 1. Section 6060.6 is added to the Business and Professions Code, to read:

6060.6. Notwithstanding Section 30 of this code and Section 17520 of the Family Code, the Committee of Bar Examiners may accept for registration, and the State Bar may process for an original or renewed license to practice law, an application from an individual containing a federal tax identification number, or other appropriate identification number as determined by the State Bar, in lieu of a social security number, if the individual is not eligible for a social security account number at the time of application and is not in noncompliance with a judgment or order for support pursuant to Section 17520 of the Family Code.

SEC. 2. Section 1161.2 of the Code of Civil Procedure, as amended by Chapter 75 of the Statutes of 2005, is amended to read:

1161.2. (a) The clerk may allow access to limited civil case records filed under this chapter, including the court file, index, and register of actions, only as follows:

- (1) To a party to the action, including a party's attorney.
- (2) To any person who provides the clerk with the names of at least one plaintiff and one defendant and the address of the premises, including the apartment or unit number, if any.

(3) To a resident of the premises who provides the clerk with the name of one of the parties or the case number and shows proof of residency.

(4) To any person by order of the court, which may be granted ex parte, on a showing of good cause.

(5) To any other person 60 days after the complaint has been filed, unless a defendant prevails in the action within 60 days of the filing of the complaint, in which case the clerk may not allow access to any court records in the action, except as provided in paragraphs (1) to (4), inclusive.

(b) For purposes of this section, “good cause” includes, but is not limited to, the gathering of newsworthy facts by a person described in Section 1070 of the Evidence Code. It is the intent of the Legislature that a simple procedure be established to request the ex parte order described in subdivision (a).

(c) Upon the filing of any case so restricted, the court clerk shall mail notice to each defendant named in the action. The notice shall be mailed to the address provided in the complaint. The notice shall contain a statement that an unlawful detainer complaint (eviction action) has been filed naming that party as a defendant, and that access to the court file will be delayed for 60 days except to a party, an attorney for one of the parties, or any other person who (1) provides to the clerk the names of at least one plaintiff and one defendant in the action and provides to the clerk the address, including any applicable apartment, unit, or space number, of the subject premises, or (2) provides to the clerk the name of one of the parties in the action or the case number and can establish through proper identification that he or she lives at the subject premises. The notice shall also contain a statement that access to the court index, register of actions, or other records is not permitted until 60 days after the complaint is filed, except pursuant to an order upon a showing of good cause therefor. The notice shall contain on its face the name and telephone number of the county bar association and the name and telephone number of an office or offices funded by the federal Legal Services Corporation or qualified legal services projects that receive funds distributed pursuant to Section 6216 of the Business and Professions Code, that provide legal services to low-income persons in the county in which the action is filed. The notice shall state that these numbers may be called for legal advice regarding the case. The notice shall be issued between 24 and 48 hours of the filing of the complaint, excluding weekends and holidays. One copy of the notice shall be addressed to “all occupants” and mailed separately to the subject premises. The notice shall not constitute service of the summons and complaint.

(d) Notwithstanding any other provision of law, the court shall charge an additional fee of fifteen dollars (\$15) for filing a first appearance by the plaintiff. This fee shall be added to the uniform filing fee for actions filed under this chapter.

(e) This section does not apply to a case that seeks to terminate a mobilehome park tenancy if the statement of the character of the proceeding in the caption of the complaint clearly indicates that the complaint seeks termination of a mobilehome park tenancy.

CHAPTER 611

An act to amend Section 128385 of the Health and Safety Code, relating to nursing education.

[Approved by Governor October 6, 2005. Filed with
Secretary of State October 6, 2005.]

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

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

(1) According to a study by researchers at the University of California, San Francisco (UCSF), and the Public Policy Institute of California completed in December 2003, the state faces a shortage of registered nurses (RNs), and must increase the supply to keep pace with the rapid growth of the state's population.

(2) Based on California's projected population growth, researchers from the UCSF Center for California Health Workforce Studies estimated that an additional 43,000 registered nurses will be needed by 2010, and an additional 74,000 by 2020, to maintain a stable ratio of RNs to population.

(3) There is also a critical shortage of nurse educators holding master's or doctoral degrees, as well as a lack of master's and doctoral degree nursing students. According to the American Association of Colleges of Nursing, the average doctoral faculty member is currently 54 years old. A wave of retirements is expected within the next 10 years. Without nurse educators, nursing programs cannot be expanded to meet current and future needs.

(4) To increase the supply of RNs in California, there must be an expansion of nursing educator opportunities in public colleges and universities that will produce the necessary faculty to teach in nursing programs in the state.

SEC. 2. Section 128385 of the Health and Safety Code is amended to read:

128385. (a) There is hereby created the Registered Nurse Education Program within the Health Professions Education Foundation. Persons participating in this program shall be persons who agree in writing prior to graduation to serve in an eligible county health facility, an eligible state-operated health facility, a health manpower shortage area, or a California nursing school, as designated by the director of the office. Persons agreeing to serve in eligible county health facilities, eligible state-operated health facilities, or health manpower shortage areas, and master's or doctoral students agreeing to serve in a California nursing school may apply for scholarship or loan repayment. The Registered Nurse Education Program shall be administered in accordance with Article 1 (commencing with Section 128330), except that all funds in the Registered Nurse Education Fund shall be used only for the purpose of promoting the education of registered nurses and related administrative costs. The Health Professions Education Foundation shall make recommendations to the director of the office concerning both of the following:

(1) A standard contractual agreement to be signed by the director and any student who has received an award to work in an eligible county health facility, an eligible state-operated health facility, or in a health manpower shortage area that would require a period of obligated professional service in the areas of California designated by the California Healthcare Workforce Policy Commission as deficient in primary care services. The obligated professional service shall be in direct patient care. The agreement shall include a clause entitling the state to recover the funds awarded plus the maximum allowable interest for failure to begin or complete the service obligation.

(2) Maximum allowable amounts for scholarships, educational loans, and loan repayment programs in order to assure the most effective use of these funds.

(b) Applicants may be persons licensed as registered nurses, graduates of associate degree nursing programs prior to entering a program granting a baccalaureate of science degree in nursing, or students entering an entry-level master's degree program in registered nursing or other registered nurse master's or doctoral degree program approved by the Board of Registered Nursing. Priority shall be given to applicants who hold associate degrees in nursing.

(c) Registered nurses and students shall commit to teaching nursing in a California nursing school for five years in order to receive a scholarship or loan repayment for a master's or doctoral degree program.

(d) Not more than 5 percent of the funds available under the Registered Nurse Education Program shall be available for a pilot project designed to test whether it is possible to encourage articulation from associate degree nursing programs to baccalaureate of science degree nursing programs. Persons who otherwise meet the standards of subdivision (a) shall be eligible for educational loans when they are enrolled in associate degree nursing programs. If these persons complete a baccalaureate of science degree nursing program in California within five years of obtaining an associate degree in nursing and meet the standards of this article, these loans shall be completely forgiven.

(e) As used in this section, “eligible county health facility” means a county health facility that has been determined by the office to have a nursing vacancy rate greater than noncounty health facilities located in the same health facility planning area.

(f) As used in this section, “eligible state-operated health facility” means a state-operated health facility that has been determined by the office to have a nursing vacancy rate greater than noncounty health facilities located in the same health facility planning area.

CHAPTER 612

An act to amend Sections 12400, 12401, 12406, and 12811.5 of, to add Sections 12836.5 and 12836.6 to, and to repeal Section 12404 of the Food and Agricultural Code, relating to pesticides.

[Approved by Governor October 6, 2005. Filed with
Secretary of State October 6, 2005.]

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

SECTION 1. It is the intent of the Legislature that the Department of Pesticide Regulation not be responsible for managing and resolving financial obligations among registrants regarding data ownership, but should limit its registration activities to evaluating whether pesticide products should be registered under current department requirements and to endeavoring to accept applications for registration of new pesticide products containing new active ingredients concurrently with the applicant’s submission to the U.S. Environmental Protection Agency. Disputes among applicants and data owners related to data ownership and cost sharing should be resolved by resort to a private proceeding. The Department of Pesticide Regulation shall not be involved in resolving

issues between applicants and data owners over financial obligations arising from data ownership.

SEC. 2. Section 12400 of the Food and Agricultural Code is amended to read:

12400. It is unlawful for any person, other than the registrant or pest control dealer licensed pursuant to Section 12107, to sell, offer to sell, or distribute into this state, or bring into the state for sale, any pesticide products that have been registered by the director unless the person is licensed by the director as a pesticide broker.

SEC. 3. Section 12401 of the Food and Agricultural Code is amended to read:

12401. An application for a pesticide broker license, or renewal of a license, shall be in the form prescribed by the director. Each application for a license, or license renewal, shall state the name and address of the applicant, and any other information specified on the application or required by the director.

SEC. 4. Section 12404 of the Food and Agricultural Code is repealed.

SEC. 5. Section 12406 of the Food and Agricultural Code is amended to read:

12406. (a) Each licensed pesticide broker, or person who is required to be licensed as a pesticide broker pursuant to Section 12400, shall maintain at its principal place of business the records of its purchases subject to mill assessments, sales, and distributions of pesticides into or within this state, including those of its branch locations, for four years. These records shall include copies of invoices showing payment of the mill assessment. The records shall be available for audit by the director.

(b) Each licensed pesticide broker, or person who is required to be licensed as a pesticide broker pursuant to Section 12400, shall report quarterly to the director the total dollars of sales and total pounds or gallons sold into or within this state of each pesticide sold and subject to Sections 12841 and 12841.1. The quarterly report shall be in the form prescribed by the director and shall include information from the broker's licensed branch locations, if any, and any other information specified on the form or required by the director. The report shall include a certification, under penalty of perjury, that the information contained in the report is true and correct. The report shall accompany payment of assessments required by Sections 12841 and 12841.1.

(c) Pesticide retailers shall maintain records that show the names and contact information of their suppliers of pesticide in the current year. These records shall be available for audit by the director.

SEC. 6. Section 12811.5 of the Food and Agricultural Code is amended to read:

12811.5. The director may rely upon any evaluations of previously submitted data to determine whether to accept an application for registration of a new pesticide product, an amendment to a registered pesticide product, or to maintain the registration of a pesticide product regardless of the ownership of the data previously evaluated. However, effective January 1, 2006, applicants will be subject to the following provisions:

(a) If an applicant for registration of a pesticide product, or an amendment of a registered pesticide product, including a registrant that desires to maintain its registration of a pesticide product after the director makes a formal re-evaluation request for additional data, does not submit its own data to fulfill a current data requirement imposed by the director and relies upon data that the applicant does not own or have written permission to rely upon that was submitted to the director by another entity after January 1, 1991, and meets the three criteria set forth in this subdivision, the applicant must either (i) obtain written permission from the data owner to rely on the data, (ii) formulate or obtain its product from a source that has data authorization from the data owner, or a source that complies with subdivision (c), or (iii) if the data meets the criteria set forth in paragraphs (1), (2), and (3), irrevocably offer to pay the data owner a share of the cost of producing the data and comply with the provisions of subdivision (d). The director may rely upon data submitted prior to January 1, 1991, or that does not meet the criteria set forth in paragraphs (1), (2), and (3) to support any application or comply with any formal re-evaluation request for additional data, without permission from the data owner. An offer to pay, and a payment pursuant to that offer, shall only be required as to data not submitted by the applicant that meets the criteria set forth in paragraphs (1), (2), and (3). To be eligible for cost sharing pursuant to this section, the data must meet all of the following requirements:

(1) The data was required by the director in order to obtain, amend, or maintain the data owner's California registration or registrations for uses covered by the application, amendment, or formal re-evaluation request for additional data.

(2) There has been no arbitration award, data compensation, or data cost-sharing agreement pertaining to data supporting the product at the federal level pursuant to Section 3(c)(1) (F)(iii) or 3(c)(2)(B) of the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. Sec. 136a)(FIFRA), or, if an award or agreement exists, the use of data in California was excluded from compensation or cost sharing on its face.

(3) The data that fulfills a current requirement was submitted to the U.S. Environmental Protection Agency or the department no more than 15 years prior to the date of the applicant's California registration,

application, or amendment or the formal re-evaluation request for additional data to which the registrant's reliance responds, provided that as to data submitted to the department as of August 1, 2005, in support of the first registration of a product, the applicable period shall be 17 years from the date of submission to the U.S. Environmental Protection Agency.

(b) If the director previously imposed a specific documented data requirement after January 1, 1991, to obtain, amend, or maintain the California registration of a pesticide product substantially similar to the applicant's product and that data requirement is not currently imposed in California for registration, amendment, or maintenance of the applicant's product, the applicant is further obligated to submit data to meet the requirement, obtain written permission from an owner of the data to rely upon the data, formulate or obtain its product from a source that has authorization from the data owner to rely upon the data or from a source that complies with subdivision (c), or, if the data meets the criteria set forth in paragraphs (1), (2), and (3), irrevocably offer to pay the data owner a share in the cost of producing the data and comply with the provisions of subdivision (c). An offer to pay, and a payment pursuant to that offer, shall only be required as to data not submitted by the applicant that meets the criteria set forth in paragraphs (1), (2), and (3). To be eligible for cost sharing pursuant to this section, the data must meet all of the following requirements:

(1) The data met a specific, documented requirement of the director to obtain, amend, or maintain the California registration of the data owner's pesticide product for a use covered by the applicant's application or amendment.

(2) There has been no arbitration award, data compensation, or data cost-sharing agreement pertaining to data supporting the product at the federal level pursuant to Section 3(c)(1)(F)(iii) or 3(c)(2)(B) of the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. Sec. 136a), or, if an award or agreement exists, the use of the data in California was excluded from compensation or cost sharing on its face.

(3) The data was submitted to the U.S. Environmental Protection Agency or Department of Pesticide Regulation by the data owner after January 1, 1991, and no more than 15 years prior to the date of the applicant's California application for registration or amendment or the response to a formal specific document data requirement to which the registrant's reliance responds, provided that as to data submitted to the department as of August 1, 2005, in support of the first registration of a product, the applicable period shall be 17 years from the date of submission to the U.S. Environmental Protection Agency.

(c) An applicant may formulate its product from a source that does not have data authorization provided that source has submitted data to support the product or makes or has made an irrevocable offer to pay the data owner a share of the cost of producing the data required pursuant to subdivision (a) or (b) for the applicant's product and complies with or has made payment in accordance with the provisions of subdivision (d). In the event that the source has already reached a data compensation or cost-sharing agreement or there has been an arbitration award under FIFRA that excludes the right to rely on the data to satisfy the California requirement on its face, the source must make or have made a new irrevocable offer to pay a share of the cost of producing that data to support the applicant's product in California and comply with the provisions of subdivision (d).

(d) If an applicant is required to offer to pay a share in the cost of producing the data pursuant to subdivision (a) or (b), or if a source of product makes an offer pursuant to subdivision (c), the applicant or source must submit to the data owner upon application to the department an irrevocable offer to pay the data owner a share in the cost of producing the data and to comply with regulations promulgated under this subdivision to determine the amount and terms, if the parties cannot agree. If a data owner for which cost sharing is required under subdivision (a) or (b) cannot be identified from information readily available to the applicant, the applicant's obligation under subdivision (a) or (b) will be absolved if the data owner does not identify himself or herself to the applicant within 12 months after registration of the pesticide product. If within 12 months of registration, the data owner identifies himself or herself to the applicant and the applicant has not already made an irrevocable offer to pay to the data owner, or the applicant's source of product has not made an offer pursuant to subdivision (c), the applicant must do so promptly. In either event, the specific terms and amount of payments to be made shall be fixed by agreement between the applicant and the data owner, but determination of those amounts and terms shall not delay approval of the applicant's application.

If agreement cannot be reached about the terms and amount of payment required by this section at any time more than 90 days after issuance of an irrevocable offer to pay, either the applicant, source or data owner may initiate, or with the consent of all parties, join a proceeding under FIFRA, pursuant to regulations promulgated by the director pursuant to this statute. The purpose of this proceeding shall be to determine the amount due under this section. The director shall promulgate those regulations as emergency regulations within 60 days of the enactment of the bill that enacts this section. The regulations shall provide all of the following:

(1) Allow the proceeding authorized by this subdivision, upon mutual agreement of the parties, to be consolidated with dispute resolution under the federal Insecticide Fungicide and Rodenticide Act (7 U.S.C. Sec. 136, et.seq.).

(2) Require that the decisionmaker consider, among other factors, that the data owner's exclusive right to sell the pesticide resulted in the data owner recovering all or part of the costs of generating the data.

(3) Require that the parties to the proceeding share equally in the payment of the expenses thereof.

(e) If a data owner fails to participate in a procedure for reaching an agreement or in a proceeding as required by subdivision (d), or fails to comply with the terms of an agreement or decision conducted under subdivision (d), then that data owner forfeits his or her right to cost recovery as a result of the use of the data at issue.

(f) If the director finds that an applicant has failed to make an offer to pay as required under subdivision (a) or (b), or if its source of product has failed to make an offer pursuant to subdivision (c), or if an applicant or its source of product has failed to participate in a proceeding for reaching an agreement, or has refused to participate in a proceeding pursuant to subdivision (d), or has failed to comply with an agreement or to comply with an order, or to pay an award resulting from that proceeding, the director shall cancel the registration of the pesticide product in support of which the data was used in accordance with the provisions of subdivision (g), notwithstanding the provisions of Section 12825.

(g) If the applicant subject to subdivision (a) or (b) fails to comply with the provisions of this article, the data owner shall notify the director of the specific provision of noncompliance and provide proof of notification to the applicant of its claim of noncompliance. All parties shall have 30 days from the date of receipt of notification by the director to submit written evidence or arguments to the director regarding the claim and any defenses thereto. The director shall provide a written finding within 60 days of the deadline for submission as to the claim and the resulting consequences.

(h) No hearing or live testimony shall be conducted under subdivision (g) and this proceeding shall not be used as mechanism to prevent or delay the registration or payment for cost sharing as determined by this article. The finding of the director shall be final and conclusive, except that any party aggrieved by such a finding may seek review within 30 days of the finding pursuant to Section 1094.5 of the Code of Civil Procedure.

(i) In lieu of seeking a determination by the director and cancellation of the registration pursuant to subdivision (f), the data owner may bring

an action in any California court of competent jurisdiction against the applicant to enforce the obligations of that party set forth in the provisions of this section.

(j) No cost sharing as provided in subdivisions (a), (b), and (c) shall be required to support an application for annual renewal of a pesticide product registration, provided this provision shall not authorize renewal of a product registered prior to the effective date of this section if that registration is declared to have been unlawfully issued by a court of competent jurisdiction.

(k) The Department of Pesticide Regulation shall make available in the public domain its index of data submitted in support of registration applications, the ownership of that data, and the date it was submitted to California.

SEC. 7. Section 12836.5 is added to the Food and Agricultural Code, to read:

12836.5. The director shall accept applications for registration of pesticide products containing a new active ingredient concurrently with the application to the United States Environmental Protection Agency. The application for registration must include all data and information that meet the requirements of this chapter.

SEC. 8. Section 12836.6 is added to the Food and Agricultural Code, to read:

12836.6. The director shall, with the assistance of the Legislative Analyst, conduct a study to consider more carefully the consequences of data-sharing agreements required under Sections 12011.5 and 12836.5 and the volume of high-hazard pesticides sold in California. The report shall be submitted to the Legislature no later than December 31, 2008.

SEC. 9. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

CHAPTER 613

An act to add Sections 40535 and 56382.8, and Article 3 (commencing with Section 54442) of Chapter 2 of Division 20 to, the Food and Agricultural Code, relating to agriculture omnibus.

[Approved by Governor October 6, 2005. Filed with
Secretary of State October 6, 2005.]

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

SECTION 1. Section 40535 is added to the Food and Agricultural Code, to read:

40535. (a) There is hereby created in the Department of Food and Agriculture Fund, the Analytical Laboratory Account, into which the residual balance of all reimbursements collected by the Secretary of Food and Agriculture for services rendered by the Center for Analytical Chemistry shall be deposited at the end of each fiscal year.

(b) Notwithstanding Section 221, upon appropriation by the Legislature, funds deposited in the Analytical Laboratory Account shall be used to fund services rendered, laboratory equipment repair or replacement, make modifications or upgrades to existing facilities, or for other uses that maintain the laboratory infrastructure.

SEC. 2. Article 3 (commencing with Section 54442) is added to Chapter 2 of Division 20 of the Food and Agricultural Code, to read:

Article 3. Annual Report

54442. (a) To aid in preparation of the report required under this chapter, the secretary shall establish an advisory committee consisting of the following persons:

(1) Six representatives of cooperative bargaining associations from names submitted by cooperative bargaining associations, two of whom shall be appointed by the Governor, two of whom shall be appointed by the Speaker of the Assembly, and two of whom shall be appointed by the Senate Committee on Rules.

(2) Six representatives of processors from names submitted by processors, two of whom shall be appointed by the Governor, two of whom shall be appointed by the Speaker of the Assembly, and two of whom shall be appointed by the Senate Committee on Rules.

(b) The members of the advisory committee shall be reimbursed for travel expenses pursuant to the rules and regulations adopted by the Director of the Department of Personnel Administration pursuant to Section 19820 of the Government Code for attendance at a meeting approved by the Secretary of Food and Agriculture.

54443. The advisory committee shall study and report on all of the following issues:

- (a) Unfair trade practices.
- (b) Licensing.

- (c) Funding.
- (d) Investigation and hearing procedures.
- (e) The need for a mechanism to resolve bargaining disputes.
- (f) Any other issues relating to this chapter.
- (g) Any recommended changes to this chapter.

54444. The advisory committee shall meet not less than once annually.

54445. The advisory committee shall prepare and transmit a report to the secretary at a time fixed by the secretary so as to meet his or her obligation under this article.

54446. (a) The advisory committee shall prepare and submit a report to the secretary who, in turn, shall report to the Legislature on the effectiveness of subdivisions (a) and (e) of Section 54431 in successfully aiding the bargaining process between processors and cooperative bargaining associations. The secretary shall include any recommended changes to subdivisions (a) and (e) of Section 54431 as part of the report.

(b) After receiving the report, the Assembly Committee on Agriculture and the Senate Committee on Agriculture may hold hearings on the report.

(c) The report shall, among other things, focus on any specific abuses of subdivisions (a) and (e) of Section 54431.

(d) Annual progress reports on the report shall be submitted by the advisory committee to the secretary.

54447. This article shall be construed as a continuation of former Article 3 of Chapter 2 of Division 20.

SEC. 3. Section 56382.8 is added to the Food and Agricultural Code, to read:

56382.8. (a) In addition to all other complaint procedures provided for in this chapter, any aggrieved grower or licensee with a complaint that is not subject to the federal Packers and Stockyards Act, 1921 (7 U.S.C. Sec. 181, et seq.) or the federal Perishable Agricultural Commodities Act, 1930 (7 U.S.C. Sec. 499a et seq.) and for which the claim for damages does not exceed thirty thousand dollars (\$30,000), may file a verified complaint with the department, subject to expedited review and settlement. Informal complaints may be made for damages, but not for disciplinary action, although the department may issue a complaint pursuant to Section 56382 as the basis for disciplinary action. Informal complaints must be received by the department within nine months of when the claimant ought to have reasonably known of its existence, as required under Section 56446.

(b) Complaints must be submitted to the department in writing and verified, and may be transmitted via United States mail, overnight

delivery, or by facsimile transmission, setting forth the essential details of the transactions complained of, including the following:

(1) The name and address of each party to the dispute, of the agent representing him or her in the transaction involved, if any, as well as the party's counsel, if any.

(2) The quantity and quality or grade of each kind of produce shipped if a grade or quality is the basis of payment.

(3) The date of shipment.

(4) The carrier identification if a carrier was used.

(5) The shipping and destination points.

(6) If a sale, the date, sale price, and amount actually received.

(7) If a consignment, the date, reported proceeds, gross, and net.

(8) A precise estimate of the amount of damages claimed, if known.

(9) A brief statement of material facts in dispute, including terms of applicable contracts.

(10) The amount of damages being sought.

(c) The complaint shall also, so far as practicable, be accompanied by true copies of all available papers relating to the transaction complained about, including shipping documents, letters, telegrams, invoices, manifests, inspection certificates, accountings, accounts of sale, and any special contracts or agreements.

(d) The informal complaint shall be accompanied by a nonrefundable filing fee of sixty dollars (\$60) as required under Section 56382.5.

(e) Upon confirmation that a complaint has been properly and timely filed, including the securing of a denial letter from the United States Department of Agriculture under the Federal Packers and Stockyards Act, 1921, or the Federal Perishable Agricultural Commodities Act, 1930, the department shall send a copy of the complaint to the respondent by certified mail and advise the respondent that it shall have 30 days from the department's mailing of the complaint in which to answer the complaint. The answer shall contain a brief response to the complaint, including the respondent's position with respect to the claimant's description of matters in dispute, the relevant facts, and the remedy sought, together with a description of any claims it may have against the complainant, in the same manner as claims are to be set out in the complaint. The respondent shall also include any pertinent documentation relevant to its defense with its answer.

(f) After receipt of the answer from the respondent, the department shall informally consult with the parties to clarify the nature of the dispute and to facilitate the exchange of information between the parties in order to assist the parties in reaching an expedited informal resolution of the dispute. The informal consultation process will last no longer than 60

days. The parties shall cooperate fully with the department and shall participate in the informal consultation process.

(g) If the informal consultation process provided for in this section does not result in resolution of the dispute, the complainant may then pursue arbitration against the licensee and the complaint and any counterclaim will be fully and finally adjudicated and resolved by a decision of an arbitrator under expedited arbitration procedures as follows:

(1) The complainant shall pay a fee of six hundred dollars (\$600) to the department for the arbitration and the counterclaimant shall pay a fee of six hundred dollars (\$600) for any counterclaim that is filed.

(2) An arbitrator from a panel of arbitrators registered with the department shall be selected by the department and confirmed by both the complainant and the respondent or counterclaimant after the prospective arbitrator has certified that he or she has no known conflict of interest in the dispute and after each party has had an opportunity to lodge an objection for cause to the appointment of the named arbitrator within five days of its receipt of the notice of appointment of the arbitrator. The notice of appointment shall be in writing and may be transmitted via overnight delivery or by facsimile transmission.

(3) Upon confirmation of the appointment of the arbitrator the department will transmit to the arbitrator the verified complaint, the statement of defense, and the statement of counterclaim, if one is filed.

(4) The complainant shall have 30 days after receipt of the notice of appointment of the arbitrator to submit to the department in writing sworn declarations by witnesses and any other documentary evidence not previously submitted, as well as legal authorities and arguments.

(5) Within five days of the department's receipt of the complainant's written submission the department shall transmit a copy of the complainant's written submission to the respondent. The respondent shall have 30 days from the receipt of the complainant's written submission to submit to the department in writing responsive declarations by witnesses or other documentary evidence not previously submitted, as well as any legal authorities and arguments. The respondent's written submission in support of its counterclaim, if any, must be sent to the department at the same time as the responsive submission.

(6) If there is a counterclaim filed, within five days of the department's receipt of the counterclaimant's written submission the department shall transmit a copy of the counterclaimant's written submission to the complainant. The complainant shall have 10 days from the receipt of the counterclaimant's written submission to submit any witness statements, evidence or legal authorities and arguments in reply.

(7) The arbitrator may, in the interest of justice, briefly extend the time periods for written submissions by either party.

(8) Once all periods for submission of evidence and arguments have expired and the department has transmitted all written submissions to the arbitrator, the case and all evidence to be considered by the arbitrator shall be deemed to be submitted.

(9) The arbitrator shall issue his or her arbitration decision and award in writing within 30 days after the case has been submitted for a decision. This time period may be extended by the arbitrator if, in his or her judgment, clarification of the evidence submitted is required from either the complainant, the respondent or counterclaimant, or both.

(10) No hearings or live testimony shall be conducted under the expedited arbitration procedures.

(11) The arbitrator shall award interest at the legal rate to be paid in addition to any damages that are awarded and the arbitrator may award the recovery of costs to one party to the arbitration or apportion costs between the parties as he or she deems appropriate. Costs may include filing fees, mediation fees and expenses, fees or expenses incurred by the department, fees paid to expert witnesses, auditors or inspectors, but not attorneys' fees, unless there has been an agreement by the parties that the prevailing party in any dispute shall be entitled to recover reasonable attorneys' fees as part of any award for damages, and in that case, the arbitrator may award reasonable attorneys' fees to the prevailing party.

(h) Either party to an expedited arbitration proceeding conducted pursuant to this section may bring an action in any California court of competent jurisdiction to enforce any awards for damages made pursuant to this section. If an enforcement action is necessary to secure payment of awards for damages, the party initiating the enforcement proceeding shall be entitled to recover all additional expenses, costs and attorneys' fees incurred in connection with that proceeding.

(i) The department shall retain jurisdiction, as provided for under Section 56445, over any matter in which a licensee refuses to pay or otherwise comply with an arbitrator's decision conducted pursuant to the expedited arbitration procedures as set forth herein, and may immediately commence an action to revoke the license of the licensee.

(j) A complainant may enforce his or her rights through the verified complaint and expedited arbitration process as provided herein, or by a civil action brought in any court of competent jurisdiction. This section shall in no way abridge, preclude, or alter other remedies available to

the parties now existing under common law or by statute, and the provisions set forth herein are in addition to those other remedies.

CHAPTER 614

An act to amend Section 65583 of, and to add Section 65584.09 to, the Government Code, relating to local planning.

[Approved by Governor October 6, 2005. Filed with
Secretary of State October 6, 2005.]

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

SECTION 1. Section 65583 of the Government Code is amended to read:

65583. The housing element shall consist of an identification and analysis of existing and projected housing needs and a statement of goals, policies, quantified objectives, financial resources, and scheduled programs for the preservation, improvement, and development of housing. The housing element shall identify adequate sites for housing, including rental housing, factory-built housing, and mobilehomes, and shall make adequate provision for the existing and projected needs of all economic segments of the community. The element shall contain all of the following:

(a) An assessment of housing needs and an inventory of resources and constraints relevant to the meeting of these needs. The assessment and inventory shall include all of the following:

(1) An analysis of population and employment trends and documentation of projections and a quantification of the locality's existing and projected housing needs for all income levels. These existing and projected needs shall include the locality's share of the regional housing need in accordance with Section 65584.

(2) An analysis and documentation of household characteristics, including level of payment compared to ability to pay, housing characteristics, including overcrowding, and housing stock condition.

(3) An inventory of land suitable for residential development, including vacant sites and sites having potential for redevelopment, and an analysis of the relationship of zoning and public facilities and services to these sites.

(4) An analysis of potential and actual governmental constraints upon the maintenance, improvement, or development of housing for all income levels and for persons with disabilities as identified in the analysis

pursuant to paragraph (6), including land use controls, building codes and their enforcement, site improvements, fees and other exactions required of developers, and local processing and permit procedures. The analysis shall also demonstrate local efforts to remove governmental constraints that hinder the locality from meeting its share of the regional housing need in accordance with Section 65584 and from meeting the need for housing for persons with disabilities identified pursuant to paragraph (6).

(5) An analysis of potential and actual nongovernmental constraints upon the maintenance, improvement, or development of housing for all income levels, including the availability of financing, the price of land, and the cost of construction.

(6) An analysis of any special housing needs, such as those of the elderly, persons with disabilities, large families, farmworkers, families with female heads of households, and families and persons in need of emergency shelter.

(7) An analysis of opportunities for energy conservation with respect to residential development.

(8) An analysis of existing assisted housing developments that are eligible to change from low-income housing uses during the next 10 years due to termination of subsidy contracts, mortgage prepayment, or expiration of restrictions on use. "Assisted housing developments," for the purpose of this section, shall mean multifamily rental housing that receives governmental assistance under federal programs listed in subdivision (a) of Section 65863.10, state and local multifamily revenue bond programs, local redevelopment programs, the federal Community Development Block Grant Program, or local in-lieu fees. "Assisted housing developments" shall also include multifamily rental units that were developed pursuant to a local inclusionary housing program or used to qualify for a density bonus pursuant to Section 65916.

(A) The analysis shall include a listing of each development by project name and address, the type of governmental assistance received, the earliest possible date of change from low-income use and the total number of elderly and nonelderly units that could be lost from the locality's low-income housing stock in each year during the 10-year period. For purposes of state and federally funded projects, the analysis required by this subparagraph need only contain information available on a statewide basis.

(B) The analysis shall estimate the total cost of producing new rental housing that is comparable in size and rent levels, to replace the units that could change from low-income use, and an estimated cost of preserving the assisted housing developments. This cost analysis for

replacement housing may be done aggregately for each five-year period and does not have to contain a project-by-project cost estimate.

(C) The analysis shall identify public and private nonprofit corporations known to the local government which have legal and managerial capacity to acquire and manage these housing developments.

(D) The analysis shall identify and consider the use of all federal, state, and local financing and subsidy programs which can be used to preserve, for lower income households, the assisted housing developments, identified in this paragraph, including, but not limited to, federal Community Development Block Grant Program funds, tax increment funds received by a redevelopment agency of the community, and administrative fees received by a housing authority operating within the community. In considering the use of these financing and subsidy programs, the analysis shall identify the amounts of funds under each available program which have not been legally obligated for other purposes and which could be available for use in preserving assisted housing developments.

(b) (1) A statement of the community's goals, quantified objectives, and policies relative to the maintenance, preservation, improvement, and development of housing.

(2) It is recognized that the total housing needs identified pursuant to subdivision (a) may exceed available resources and the community's ability to satisfy this need within the content of the general plan requirements outlined in Article 5 (commencing with Section 65300). Under these circumstances, the quantified objectives need not be identical to the total housing needs. The quantified objectives shall establish the maximum number of housing units by income category that can be constructed, rehabilitated, and conserved over a five-year time period.

(c) A program which sets forth a five-year schedule of actions the local government is undertaking or intends to undertake to implement the policies and achieve the goals and objectives of the housing element through the administration of land use and development controls, provision of regulatory concessions and incentives, and the utilization of appropriate federal and state financing and subsidy programs when available and the utilization of moneys in a low- and moderate-income housing fund of an agency if the locality has established a redevelopment project area pursuant to the Community Redevelopment Law (Division 24 (commencing with Section 33000) of the Health and Safety Code). In order to make adequate provision for the housing needs of all economic segments of the community, the program shall do all of the following:

(1) Identify actions that will be taken to make sites available during the planning period of the general plan with appropriate zoning and development standards and with services and facilities to accommodate

that portion of the city's or county's share of the regional housing need for each income level that could not be accommodated on sites identified in the inventory completed pursuant to paragraph (3) of subdivision (a) without rezoning, and to comply with the requirements of Section 65584.09. Sites shall be identified as needed to facilitate and encourage the development of a variety of types of housing for all income levels, including multifamily rental housing, factory-built housing, mobilehomes, housing for agricultural employees, emergency shelters, and transitional housing.

(A) Where the inventory of sites, pursuant to paragraph (3) of subdivision (a), does not identify adequate sites to accommodate the need for groups of all household income levels pursuant to Section 65584, the program shall identify sites that can be developed for housing within the planning period pursuant to subdivision (h) of Section 65583.2.

(B) Where the inventory of sites pursuant to paragraph (3) of subdivision (a) does not identify adequate sites to accommodate the need for farmworker housing, the program shall provide for sufficient sites to meet the need with zoning that permits farmworker housing use by right, including density and development standards that could accommodate and facilitate the feasibility of the development of farmworker housing for low- and very low income households.

(2) Assist in the development of adequate housing to meet the needs of low- and moderate-income households.

(3) Address and, where appropriate and legally possible, remove governmental constraints to the maintenance, improvement, and development of housing, including housing for all income levels and housing for persons with disabilities. The program shall remove constraints to, or provide reasonable accommodations for housing designed for, intended for occupancy by, or with supportive services for, persons with disabilities.

(4) Conserve and improve the condition of the existing affordable housing stock, which may include addressing ways to mitigate the loss of dwelling units demolished by public or private action.

(5) Promote housing opportunities for all persons regardless of race, religion, sex, marital status, ancestry, national origin, color, familial status, or disability.

(6) (A) Preserve for lower income households the assisted housing developments identified pursuant to paragraph (8) of subdivision (a). The program for preservation of the assisted housing developments shall utilize, to the extent necessary, all available federal, state, and local financing and subsidy programs identified in paragraph (8) of subdivision (a), except where a community has other urgent needs for which

alternative funding sources are not available. The program may include strategies that involve local regulation and technical assistance.

(B) The program shall include an identification of the agencies and officials responsible for the implementation of the various actions and the means by which consistency will be achieved with other general plan elements and community goals. The local government shall make a diligent effort to achieve public participation of all economic segments of the community in the development of the housing element, and the program shall describe this effort.

(d) The analysis and program for preserving assisted housing developments required by the amendments to this section enacted by the Statutes of 1989 shall be adopted as an amendment to the housing element by July 1, 1992.

(e) Failure of the department to review and report its findings pursuant to Section 65585 to the local government between July 1, 1992, and the next periodic review and revision required by Section 65588, concerning the housing element amendment required by the amendments to this section by the Statutes of 1989, shall not be used as a basis for allocation or denial of any housing assistance administered pursuant to Part 2 (commencing with Section 50400) of Division 31 of the Health and Safety Code.

SEC. 2. Section 65584.09 is added to the Government Code, to read:

65584.09. (a) For housing elements due pursuant to Section 65588 on or after January 1, 2006, if a city or county in the prior planning period failed to identify or make available adequate sites to accommodate that portion of the regional housing need allocated pursuant to Section 65584, then the city or county shall, within the first year of the planning period of the new housing element, zone or rezone adequate sites to accommodate the unaccommodated portion of the regional housing need allocation from the prior planning period.

(b) The requirements under subdivision (a) shall be in addition to any zoning or rezoning required to accommodate the jurisdiction's share of the regional housing need pursuant to Section 65584 for the new planning period.

(c) Nothing in this section shall be construed to diminish the requirement of a city or county to accommodate its share of the regional housing need for each income level during the planning period set forth in Section 65588, including the obligations to (1) implement programs included pursuant to Section 65583 to achieve the goals and objectives, including programs to zone or rezone land, and (2) timely adopt a housing element with an inventory described in paragraph (3) of subdivision (a) of Section 65583 and a program to make sites available pursuant to

paragraph (1) of subdivision (c) of Section 65583, which can accommodate the jurisdiction's share of the regional housing need.

CHAPTER 615

An act to amend Section 1337.6 of the Health and Safety Code, relating to health facilities.

[Approved by Governor October 6, 2005. Filed with
Secretary of State October 6, 2005.]

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

SECTION 1. Section 1337.6 of the Health and Safety Code is amended to read:

1337.6. (a) Certificates issued under this article shall be renewed every two years and renewal shall be conditional upon the occurrence of all of the following:

(1) The certificate holder submitting documentation of completion of 48 hours of in-service training every two years obtained through an approved training program or taught by a director of staff development for a licensed skilled nursing or intermediate care facility that has been approved by the state department, or by individuals or programs approved by the state department. At least 12 of the 48 hours of in-service training shall be completed in each of the two years. Twenty-four of the 48 hours of in-service training may be obtained through an online computer training program approved by the Licensing and Certification Division of the state department.

(2) (A) A vendor of online programs for continuing education shall ensure that each online course contains all of the following:

(i) An interactive portion where the participants receive feedback, through online communication, based on input from the participant.

(ii) Required use of a personal identification number or personal identification information to confirm the identity of the participant.

(iii) A final screen displaying a printable statement, to be signed by the participant, certifying that the identified participant completed the course. The vendor shall obtain a copy of the final screen statement with the original signature of the participant prior to the issuance of a certificate of completion. The signed statement of completion shall be maintained by the vendor for a period of three years and shall be made available to the department upon demand.

(B) The department may approve online programs for continuing education that do not meet the requirements of subparagraph (A) if the vendor demonstrates to the department's satisfaction that, through advanced technology, the course and the course delivery meet the other requirements of this section.

(3) The certificate holder obtaining a criminal record clearance.

(b) Certificates issued under this article shall expire on the certificate holder's birthday. If the certificate is renewed more than 30 days after its expiration, the certificate holder, as a condition precedent to renewal, shall also pay the delinquency fee prescribed by this article.

(c) To renew an unexpired certificate, the certificate holder shall, on or before the certificate expiration date, apply for renewal on a form provided by the state department, pay the renewal fee prescribed by this article, and submit documentation of the required in-service training.

(d) The state department shall give written notice to a certificate holder 90 days in advance of the renewal date and, 90 days in advance of the expiration of the fourth year that a renewal fee has not been paid, and shall give written notice informing the certificate holder, in general terms, of the provisions of this article. Nonreceipt of the renewal notice does not relieve the certificate holder of the obligation to make a timely renewal. Failure to make a timely renewal shall result in expiration of the certificate.

(e) Except as otherwise provided in this article, an expired certificate may be renewed at any time within two years after its expiration on the filing of an application for renewal on a form prescribed by the state department, and payment of the renewal fee in effect on the date the application is filed, and documentation of the required in-service education.

Renewal under this article shall be effective on the date on which the application is filed, on the date when the renewal fee is paid, or on the date on which the delinquency fee is paid, whichever occurs last. If so renewed, the certificate shall continue in effect until the date provided for in this article, when it shall expire if it is not again renewed.

(f) If a certified nurse assistant applies for renewal more than two years after the expiration, the certified nurse assistant shall complete an approved 75-hour competency evaluation training program and competency evaluation program. If the certified nurse assistant demonstrates in writing to the state department's satisfaction why the certified nurse assistant cannot pay the delinquency fee, then the state department on a case-by-case basis shall consider waiving the delinquency fee. A suspended certificate is subject to expiration and shall be renewed as provided in this article, but this renewal does not entitle the certificate holder, while the certificate remains suspended,

and, until it is reinstated, to engage in the certified activity, or in any other activity or conduct in violation of the order or judgment by which the certificate was suspended.

(g) A revoked certificate is subject to expiration as provided in this article, but it cannot be renewed. If reinstatement of the certificate is approved by the state department, the certificate holder, as a condition precedent to reinstatement, shall pay a reinstatement fee in an amount equal to the renewal fee in effect on the date the application for reinstatement is filed, plus the delinquency fee, if any, accrued at the time of its revocation.

(h) Except as provided in subdivision (i), a certificate that is not renewed within four years after its expiration cannot be renewed, restored, reissued, or reinstated except upon completion of a certification program unless deemed otherwise by the state department if all of the following conditions are met:

(1) No fact, circumstance, or condition exists that, if the certificate was issued, would justify its revocation or suspension.

(2) The person pays the application fee provided for by this article.

(3) The person takes and passes any examination that may be required of an applicant for a new certificate at that time, that shall be given by an approved provider of a certification training program.

(i) A certified nurse assistant whose certificate has expired after two years may have his or her certificate renewed if he or she pays a training application fee, completes 75 hours in an approved competency evaluation training program, passes a competency test, and obtains a criminal background clearance prior to the renewal. The department shall develop a training program for these previously certified individuals.

(j) Certificate holders shall notify the department within 60 days of any change of address. Any notice sent by the department shall be effective if mailed to the current address filed with the department.

(k) Certificate holders that have been certified as both nurse assistants pursuant to this article and home health aides pursuant to Chapter 8 (commencing with Section 1725) of Division 2 shall renew their certificates at the same time on one application.

CHAPTER 616

An act to amend Section 11839.20 of, and to add Sections 11758.421 and 11758.425 to, the Health and Safety Code, relating to narcotic treatment programs, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 6, 2005. Filed with
Secretary of State October 6, 2005.]

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

SECTION 1. Section 11758.421 is added to the Health and Safety Code, to read:

11758.421. (a) (1) The Legislature finds and declares all of the following:

(A) Medical treatment for indigent patients who are not eligible for Medi-Cal is essential to protecting the public health.

(B) The Legislature supports the adoption of standardized and simplified forms and procedures in order to promote the drug treatment of indigent patients who are not eligible for Medi-Cal.

(C) Providers should not be required by the state to subsidize the medical treatment provided to indigent patients who are not eligible for Medi-Cal.

(D) The Legislature supports the therapeutic value of indigent patients who are not eligible for Medi-Cal contributing some level of fees for drug treatment services in order to support the goals of those drug treatment services.

(2) It is the intent of the Legislature in enacting this section to encourage narcotic treatment program providers to serve indigent patients who are not eligible for Medi-Cal. It is also the intent of the Legislature that the State Department of Alcohol and Drug Programs allow narcotic treatment program providers to charge therapeutic fees for providing drug treatment to indigent patients who are not eligible for Medi-Cal if the providers establish a fee scale that complies with the documentation requirements established pursuant to this section and federal law.

(b) (1) The Legislature recognizes that narcotic treatment program providers are reimbursed for controlled substances provided under the Medi-Cal Drug Treatment Program, also known as Drug Medi-Cal (Chapter 3.4 (commencing with Section 11758.40)), and pursuant to federal law at a rate that is the lower of the per capita uniform statewide monthly reimbursement or Drug Medi-Cal rate, or the provider's usual and customary charge to the general public for the same or similar services.

(2) It furthers the intent of the Legislature to ensure that narcotic treatment programs in the state are able to serve indigent clients and that there is an exception to the reimbursement requirements described in paragraph (1), as the federal law has been interpreted by representatives with the Centers for Medicare and Medicaid Services. Pursuant to this exception, if a narcotic treatment program provider who is serving

low-income non-Drug Medi-Cal clients complies with a federal requirement for the application of a sliding indigency scale, the reduced charges under the sliding indigency scale shall not lower the provider's usual and customary charge determination for purposes of Medi-Cal reimbursement.

(c) A licensed narcotic treatment program provider that serves low-income non-Drug Medi-Cal clients shall be deemed in compliance with federal and state law, for purposes of the application of the exception described in paragraph (2) of subdivision (b), and avoid audit disallowances, if the provider implements a sliding indigency scale that meets all of the following requirements:

(1) The maximum fee contained in the scale shall be the provider's full nondiscounted, published charge and shall be at least the rate that Drug Medi-Cal would pay for the same or similar services provided to Drug Medi-Cal clients.

(2) The sliding indigency scale shall provide for an array of different charges, based upon a client's ability to pay, as measured by identifiable variables. These variables may include, but need not be limited to, financial information and the number of dependents of the client.

(3) Income ranges shall be in increments that result in a reasonable distribution of clients paying differing amounts for services based on differing abilities to pay.

(4) A provider shall obtain written documentation that supports an indigency allowance under the sliding indigency scale established pursuant to this section, including a financial determination. In cases where this written documentation cannot be obtained, the provider shall document at least three attempts to obtain this written documentation from a client.

(5) The provider shall maintain all written documentation that supports an indigency allowance under this section, including, if used, the financial evaluation form set forth in Section 11758.425.

(6) Written policies shall be established and maintained that set forth the basis for determining whether an indigency allowance may be granted under this section and establish what documentation shall be requested from a client.

(d) In developing the sliding indigency scale, a narcotic treatment program provider shall consider, but need not include, any or all of the following components:

(1) Vertically, the rows would reflect increments of family or household income. There would be a sufficient number of increments to allow for differing charges, such as a six hundred dollar (\$600) increase per interval.

(2) Horizontally, the columns would provide for some other variable, such as family size, in which case, the columns would reflect the number of people dependent on the income, including the client.

(3) Each row, except the first and last rows, would contain at least two different fee amounts and each of the columns, four or more in number, would contain at least six different fee amounts.

(4) The cells would contain an array of fees so that no fee would be represented in more than 25 percent of the cells.

(e) A narcotic treatment program provider that uses the financial evaluation form instructions and financial form set forth in Section 11758.425 in obtaining written documentation that supports an indigency allowance as required under paragraph (4) of subdivision (c) shall be deemed in compliance with that paragraph.

SEC. 2. Section 11758.425 is added to the Health and Safety Code, to read:

11758.425. A narcotic treatment program provider may use the following instructions and financial evaluation form to comply with the requirements of paragraph (4) of subdivision (c) of Section 11758.421:

FINANCIAL EVALUATION FORM INSTRUCTIONS

MONTHLY INCOME DATA—This data should specify the source and the amount and be supported by sufficient documentation. Income data may include, but are not limited to, income received as a paid employee, unemployment benefits, disability benefits, pension payments, family income, savings income, or other sources.

MONTHLY EXPENSES DATA—This data is not required unless there is no evidence or documentation of income data. Expense data may include, but are not limited to, any known expenses related to the following:

- (1) Court-ordered payments, such as child support, fines, debts, restitution, or other payments.
- (2) Housing-related expenses, such as rent, mortgage, insurance, utilities, or other obligations.
- (3) Transportation costs, such as any related expenses, including automobile payments or automobile insurance payments.
- (4) Insurance coverage should also be noted if it produces either an expense or benefit to the client.

CLIENT MONTHLY TREATMENT FEE—The following applies to this data:

- (1) The amount box indicates the client's fee according to his or her location on the sliding scale.

(2) The adjusted client monthly fee box is to be filled only if the fee to be charged differs from the fee indicated by the client's location on the sliding scale.

(3) If the fee is adjusted from what the sliding scale would indicate, a reason for the adjustment must be provided. (Valid reasons might include extraordinary medical expenses for a client suffering from HIV/AIDS, etc.)

PLEASE NOTE—The documentation for this form requires that the provider make at least three documented attempts to collect documentation from a client. Any questions on this form may be directed to the department at (____).

SEC. 3. Section 11839.20 of the Health and Safety Code is amended to read:

11839.20. (a) It is the intent of the Legislature in licensing narcotic treatment programs to provide a means whereby the patient may be rehabilitated and will no longer need to support a dependency on opiates.

(b) It is the intent of the Legislature that each narcotic treatment program shall have a strong rehabilitative element, including, but not limited to, individual and group therapy, counseling, vocational guidance, and job and education counseling.

(c) The Legislature declares the ultimate goal of all narcotic treatment programs shall be to aid the patient in altering his or her lifestyle and eventually to eliminate the improper use of legal drugs and the use of illicit drugs.

(d) The department shall adopt any regulations necessary to ensure that every program is making a sustained effort to end the drug dependency of the patients.

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 all Californians as soon as possible by ensuring that drug treatment services remain available to indigent patients, it is necessary that this act take effect immediately.

CHAPTER 617

An act to amend Sections 25503.6 and 25503.8 of the Business and Professions Code, relating to alcoholic beverages.

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

SECTION 1. Section 25503.6 of the Business and Professions Code is amended to read:

25503.6. (a) Notwithstanding any other provision of this chapter, a beer manufacturer, the holder of a winegrower's license, a distilled spirits rectifier, a distilled spirits manufacturer, or distilled spirits manufacturer's agent may purchase advertising space and time from, or on behalf of, an on-sale retail licensee subject to all of the following conditions:

(1) The on-sale licensee is the owner, manager, agent of the owner, assignee of the owner's advertising rights, or the major tenant of the owner of any of the following:

(A) An outdoor stadium or a fully enclosed arena with a fixed seating capacity in excess of 10,000 seats located in Sacramento County or Alameda County.

(B) A fully enclosed arena with a fixed seating capacity in excess of 18,000 seats located in Orange County or Los Angeles County.

(C) An outdoor stadium or fully enclosed arena with a fixed seating capacity in excess of 8,500 seats located in Kern County.

(D) An exposition park of not less than 50 acres that includes an outdoor stadium with a fixed seating capacity in excess of 8,000 seats and a fully enclosed arena with an attendance capacity in excess of 4,500 people, located in San Bernardino County.

(E) An outdoor stadium with a fixed seating capacity in excess of 10,000 seats located in Yolo County.

(F) An outdoor stadium and a fully enclosed arena with fixed seating capacities in excess of 10,000 seats located in Fresno County.

(G) An athletic and entertainment complex of not less than 50 acres that includes within its boundaries an outdoor stadium with a fixed seating capacity of at least 8,000 seats and a second outdoor stadium with a fixed seating capacity of at least 3,500 seats located within Riverside County.

(H) An outdoor stadium with a fixed seating capacity in excess of 1,500 seats located in Tulare County.

(I) A motorsports entertainment complex of not less than 50 acres that includes within its boundaries an outdoor speedway with a fixed seating capacity of at least 50,000 seats, located within San Bernardino County.

(J) An exposition park, owned or operated by a bona fide nonprofit organization, of not less than 400 acres with facilities including a grandstand with a seating capacity of at least 8,000 people, at least one exhibition hall greater than 100,000 square feet, and at least four

exhibition halls, each greater than 30,000 square feet, located in the City of Pomona or the City of La Verne in Los Angeles County.

(K) An outdoor soccer stadium with a fixed seating capacity of at least 25,000 seats, an outdoor tennis stadium with a fixed capacity of at least 7,000 seats, an outdoor track and field facility with a fixed seating capacity of at least 7,000 seats, and an indoor velodrome with a fixed seating capacity of at least 2,000 seats, all located within a sports and athletic complex built before January 1, 2005, within the City of Carson in Los Angeles County.

(2) The outdoor stadium or fully enclosed arena described in paragraph (1) is not owned by a community college district.

(3) The advertising space or time is purchased only in connection with the events to be held on the premises of the exposition park, stadium, or arena owned by the on-sale licensee. With respect to an exposition park as described in subparagraph (J) of paragraph (1) that includes at least one hotel, the advertising space or time shall not be displayed on or in any hotel located in the exposition park, or purchased in connection with the operation of any hotel located in the exposition park.

(4) The on-sale licensee serves other brands of beer distributed by a competing beer wholesaler in addition to the brand manufactured or marketed by the beer manufacturer, other brands of wine distributed by a competing wine wholesaler in addition to the brand produced by the winegrower, and other brands of distilled spirits distributed by a competing distilled spirits wholesaler in addition to the brand manufactured or marketed by the distilled spirits rectifier, the distilled spirits manufacturer or the distilled spirits manufacturer's agent that purchased the advertising space or time.

(b) Any purchase of advertising space or time pursuant to subdivision (a) shall be conducted pursuant to a written contract entered into by the beer manufacturer, the holder of the winegrower's license, the distilled spirits rectifier, the distilled spirits manufacturer, or the distilled spirits manufacturer's agent and the on-sale licensee.

(c) Any beer manufacturer or holder of a winegrower's license, any distilled spirits rectifier, any distilled spirits manufacturer, or any distilled spirits manufacturer's agent who, through coercion or other illegal means, induces, directly or indirectly, a holder of a wholesaler's license to fulfill all or part of those contractual obligations entered into pursuant to subdivision (a) or (b) shall be guilty of a misdemeanor and shall be punished by imprisonment in the county jail not exceeding six months, or by a fine in an amount equal to the entire value of the advertising space, time, or costs involved in the contract, whichever is greater, plus ten thousand dollars (\$10,000), or by both imprisonment and fine. The

person shall also be subject to license revocation pursuant to Section 24200.

(d) Any on-sale retail licensee, as described in subdivision (a), who, directly or indirectly, solicits or coerces a holder of a wholesaler's license to solicit a beer manufacturer, a holder of a winegrower's license, a distilled spirits rectifier, a distilled spirits manufacturer, or a distilled spirits manufacturer's agent to purchase advertising space or time pursuant to subdivision (a) or (b) shall be guilty of a misdemeanor and shall be punished by imprisonment in the county jail not exceeding six months, or by a fine in an amount equal to the entire value of the advertising space or time involved in the contract, whichever is greater, plus ten thousand dollars (\$10,000), or by both imprisonment and fine. The person shall also be subject to license revocation pursuant to Section 24200.

(e) For the purposes of this section, "beer manufacturer" includes any holder of a beer manufacturer's license, any holder of an out-of-state beer manufacturer's certificate, or any holder of a beer and wine importer's general license.

SEC. 2. Section 25503.8 of the Business and Professions Code is amended to read:

25503.8. (a) Notwithstanding any other provision of this chapter, a beer manufacturer, the holder of a winegrower's license, a California winegrower's agent, a distilled spirits rectifier, a distilled spirits manufacturer, or a distilled spirits manufacturer's agent may purchase advertising space and time from, or on behalf of, an on-sale retail licensee if all of the following conditions are met:

(1) The on-sale licensee is the owner of any of the following:

(A) A fully enclosed auditorium or theater with a fixed seating capacity in excess of 6,000 seats, at least 60 percent of the use of which is for plays or musical concerts, not including sporting events.

(B) A motion picture studio facility at which public tours are conducted for at least four million people per year.

(C) A retail, entertainment development adjacent to, and under common ownership with, a theme park, amphitheater, and motion picture production studio.

(D) A theme or amusement park and the adjacent retail, dining, and entertainment area located in the City of Los Angeles, Los Angeles County, or Orange County.

(E) A fully enclosed theater, with box office sales and attendance by the public on a ticketed basis only, with a fixed seating capacity in excess of 6,000 seats, located in Los Angeles County within the area subject to the Los Angeles Sports and Entertainment District Specific Plan adopted

by the City of Los Angeles pursuant to ordinance number 174225, as approved on September 6, 2001.

(2) The advertising space or time is purchased only in connection with one of the following:

(A) In the case of a fully enclosed auditorium or theater, in connection with sponsorship of plays or musical concerts to be held on the premises of the auditorium or theater owned by the on-sale licensee.

(B) In the case of a motion picture studio facility, in connection with sponsorship of the public tours or special events conducted at the studio facility.

(C) In the case of a retail, entertainment development, in connection with sponsorship of public tours or special events conducted at the development.

(D) In the case of a theme or amusement park and the adjacent retail, dining, and entertainment area, located in the City of Los Angeles, Los Angeles County, or Orange County, in connection with daily activities and events at the theme or amusement park and the adjacent retail, dining, and entertainment area.

(E) In the case of the fully enclosed theater described in subparagraph (E) of paragraph (1) of subdivision (a), in connection with events conducted at the theater.

(3) The on-sale licensee serves other brands of beer distributed by a competing beer wholesaler in addition to the brand manufactured or marketed by the beer manufacturer, other brands of wine distributed by a competing wine wholesaler in addition to the brand produced or marketed by the winegrower or California winegrower's agent, and other brands of distilled spirits distributed by a competing distilled spirits wholesaler in addition to the brand manufactured or marketed by the distilled spirits manufacturer or distilled spirits manufacturer's agent purchasing the advertising space or time.

(b) Any purchase of advertising space or time conducted pursuant to subdivision (a) shall be conducted pursuant to a written contract entered into by the beer manufacturer, the holder of the winegrower's license, the California winegrower's agent, the distilled spirits manufacturer, or the distilled spirits manufacturer's agent, and the on-sale licensee, which contract shall not in any way involve the holder of a wholesaler's license.

(c) Any beer manufacturer, distilled spirits manufacturer, distilled spirits manufacturer's agent, holder of a winegrower's license, or California winegrower's agent, who, through coercion or other illegal means, induces, directly or indirectly, a holder of a wholesaler's license to fulfill those contractual obligations entered into pursuant to subdivision (a) or (b) shall be guilty of a misdemeanor and shall be punished by imprisonment in the county jail not exceeding six months, or by a fine

in an amount equal to the entire value of the advertising space or time involved in the contract, whichever is greater, plus ten thousand dollars (\$10,000), or by both imprisonment and fine. The person shall also be subject to license revocation pursuant to Section 24200.

(d) Any on-sale retail licensee, as described in subdivision (a), who solicits or coerces, directly or indirectly, a holder of a wholesaler's license to solicit a beer manufacturer, distilled spirits manufacturer, or distilled spirits manufacturer's agent, holder of a winegrower's license, or California winegrower's agent to purchase advertising space or time pursuant to subdivision (a) or (b) shall be guilty of a misdemeanor and shall be punished by imprisonment in the county jail not exceeding six months, or by a fine in an amount equal to the entire value of the advertising space or time involved in the contract, whichever is greater, plus ten thousand dollars (\$10,000), or by both imprisonment and fine. The person shall also be subject to license revocation pursuant to Section 24200.

(e) For the purposes of this section, "beer manufacturer" includes any holder of a beer manufacturer's license, any holder of an out-of-state beer manufacturer's certificate, or any holder of a beer and wine importer's general license.

SEC. 3. The Legislature hereby finds and declares, with respect to Sections 1 and 2 of this act, that a special statute is necessary and that a statute of general applicability cannot be enacted within the meaning of Section 16 of Article IV of the California Constitution, because of unique circumstances and concerns applicable to certain facilities in Los Angeles County.

CHAPTER 618

An act to amend Sections 116.240, 116.610, and 116.940 of, and to add Sections 116.221 and 116.222 to, the Code of Civil Procedure, relating to small claims court.

[Approved by Governor October 6, 2005. Filed with
Secretary of State October 6, 2005.]

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

SECTION 1. (a) The Legislature finds and declares that the quality of and access to justice in small claims court in California varies widely from jurisdiction to jurisdiction. The small claims court system should be improved in the following ways:

(1) Commissioners and temporary judges adjudicate many complex issues including, but not limited to, consumer law, rent deposit law, tort law, and contract law. In a report commissioned by the Administrative Office of the Courts, entitled the “California Three Track Civil Litigation Study,” Policy Studies, Incorporated reported that paid court commissioners, “see the full panoply of issues raised in small claims cases, and part of their job is to become knowledgeable in the areas of law likely to arise in small claims court. Further, they have the time and duty to research issues of law likely to arise in small claims court...[and those] that arise with which they are not familiar.” The potential knowledge gap between temporary judges and commissioners should be narrowed through increased use of commissioners and the use of well-trained, qualified temporary judges in small claims court in order to ensure an improved ability to deliver justice.

(2) For advisers, improvements need to be made in the availability of in-person assistance, in the knowledge and experience of the advisers, and in the advice being given or supervised by attorneys, so that the assistance can include advice about how to present and defend a claim.

(3) Qualified interpreters are not available in many jurisdictions in California. With the increasing linguistic diversity in California’s population in recent decades, the need for interpreter services has grown proportionately.

(b) (1) It is the intent of the Legislature to raise the jurisdictional limit for natural persons only. The jurisdictional increase in this act is limited to natural persons, and is subject to other existing restrictions. It is the intent of the Legislature in limiting the increase to natural persons that other forms of persons, including, but not limited to, corporations, partnerships, unincorporated associations, governmental entities, and any other forms of persons as may now exist or may exist in the future, other than individuals, do not qualify for the jurisdictional increase under this act.

(2) It is the intent of the Legislature that the jurisdictional limit of subdivision (a) of Section 116.231 of the Code of Civil Procedure and subdivision (c) of Section 116.220 of the Code of Civil Procedure shall not be changed by this legislation.

(3) It is the intent of the Legislature that jurisdictional limits shall not be raised again, particularly with respect to individuals as defendants, until services are funded at a level sufficient to provide all of the following:

(A) In-person advice from advisers who are legal professionals.

(B) Staffing levels that are adequate to meet the demand, and also adequate to permit the small claims court advisory service to provide

services to both parties in a small claims court case without conflicts of interest.

(C) Professional, well-trained, compensated decisionmakers, in small claims court in all counties in California, who meet standards established by the Judicial Council.

(4) It is the intent of the Legislature that temporary judges should be well-trained and knowledgeable of state and federal consumer laws, including, but not limited to, rent deposit law, the state and federal Fair Debt Collection Practices Acts, the federal Truth in Lending Act, the federal Fair Credit Billing Act, the federal Electronic Fund Transfer Act, tort law, online purchasing law and other contract law, defenses to contract claims, defenses to debts, and other laws determined by the Judicial Council and the courts to be important in the adjudication of small claims cases.

SEC. 2. Section 116.221 is added to the Code of Civil Procedure, to read:

116.221. In addition to the jurisdiction conferred by Section 116.220, the small claims court has jurisdiction in an action brought by a natural person, if the amount of the demand does not exceed seven thousand five hundred dollars (\$7,500), except for actions otherwise prohibited by subdivision (c) of Section 116.220 or subdivision (a) of Section 116.231.

SEC. 3. Section 116.222 is added to the Code of Civil Procedure, to read:

116.222. If the action is to enforce the payment of a debt, the statement of calculation of liability shall separately state the original debt, each payment credited to the debt, each fee and charge added to the debt, each payment credited against those fees and charges, all other debits or charges to the account, and an explanation of the nature of those fees, charges, debits, and all other credits to the debt, by source and amount.

SEC. 4. Section 116.240 of the Code of Civil Procedure is amended to read:

116.240. (a) With the consent of the parties who appear at the hearing, the court may order a case to be heard by a temporary judge who is a member of the State Bar, and who has been sworn and empowered to act until final determination of the case.

(b) Prior to serving as a temporary judge in small claims court, on and after July 1, 2006, and at least every three years thereafter, each temporary judge shall take the course of study offered by the courts on ethics and substantive law under rules adopted by the Judicial Council. The course shall include, but not be limited to, state and federal consumer laws, landlord-tenant law along with any applicable county specific rent

deposit law, the state and federal Fair Debt Collection Practices Acts, the federal Truth in Lending Act, the federal Fair Credit Billing Act, the federal Electronic Fund Transfer Act, tort law, and contract law, including defenses to contracts and defenses to debts. On substantive law, the courts may receive assistance from the Department of Consumer Affairs, to the extent that the department is fiscally able to provide that assistance.

SEC. 5. Section 116.610 of the Code of Civil Procedure is amended to read:

116.610. (a) The small claims court shall give judgment for damages, or equitable relief, or both damages and equitable relief, within the jurisdictional limits stated in Sections 116.220 and 116.231, and may make any orders as to time of payment or otherwise as the court deems just and equitable for the resolution of the dispute.

(b) The court may, at its discretion or on request of any party, continue the matter to a later date in order to permit and encourage the parties to attempt resolution by informal or alternative means.

(c) The judgment shall include a determination whether the judgment resulted from a motor vehicle accident on a California highway caused by the defendant's operation of a motor vehicle, or by the operation by some other individual, of a motor vehicle registered in the defendant's name.

(d) If the defendant has filed a claim against the plaintiff, or if the judgment is against two or more defendants, the judgment, and the statement of decision if one is rendered, shall specify the basis for and the character and amount of the liability of each of the parties, including, in the case of multiple judgment debtors, whether the liability of each is joint or several.

(e) If specific property is referred to in the judgment, whether it be personal or real, tangible or intangible, the property shall be identified with sufficient detail to permit efficient implementation or enforcement of the judgment.

(f) In an action against several defendants, the court may, in its discretion, render judgment against one or more of them, leaving the action to proceed against the others, whenever a several judgment is proper.

(g) (1) The prevailing party is entitled to the costs of the action, including the costs of serving the order for the appearance of the defendant.

(2) Notwithstanding paragraph (1) of this subdivision and subdivision (b) of Section 1032, the amount of the small claims court fee paid by a party pursuant to subdivision (c) of Section 116.230 that exceeds the amount that would have been paid if the party had paid the fee pursuant to subdivision (b) of Section 116.230 shall not be recoverable as costs.

(h) When the court renders judgment, the clerk shall promptly deliver or mail notice of entry of the judgment to the parties, and shall execute a certificate of personal delivery or mailing and place it in the file.

(i) The notice of entry of judgment shall be on a form approved or adopted by the Judicial Council.

SEC. 6. Section 116.940 of the Code of Civil Procedure is amended to read:

116.940. (a) Except as otherwise provided in this section or in rules adopted by the Judicial Council, which are consistent with the requirements of this section, the characteristics of the small claims advisory service required by Section 116.260 shall be determined by each county in accordance with local needs and conditions.

(b) Each advisory service shall provide the following services:

(1) Individual personal advisory services, in person or by telephone, and by any other means reasonably calculated to provide timely and appropriate assistance. The topics covered by individual personal advisory services shall include, but not be limited to, preparation of small claims court filings, procedures, including procedures related to the conduct of the hearing, and information on the collection of small claims court judgments.

(2) Recorded telephone messages may be used to supplement the individual personal advisory services, but shall not be the sole means of providing advice available in the county.

(3) Adjacent counties may provide advisory services jointly.

(c) In any county in which the number of small claims actions filed annually is 1,000 or less as averaged over the immediately preceding two fiscal years, the county may elect to exempt itself from the requirements set forth in subdivision (b). This exemption shall be formally noticed through the adoption of a resolution by the board of supervisors. If a county so exempts itself, the county shall nevertheless provide the following minimum advisory services in accordance with rules adopted by the Judicial Council:

(1) Recorded telephone messages providing general information relating to small claims actions filed in the county shall be provided during regular business hours.

(2) Small claims information booklets shall be provided in the court clerk's office of each superior court, the county administrator's office, other appropriate county offices, and in any other location that is convenient to prospective small claims litigants in the county.

(d) The advisory service shall operate in conjunction and cooperation with the small claims division, and shall be administered so as to avoid the existence or appearance of a conflict of interest between the

individuals providing the advisory services and any party to a particular small claims action or any judicial officer deciding small claims actions.

(e) Advisers may be volunteers, and shall be members of the State Bar, law students, paralegals, or persons experienced in resolving minor disputes, and shall be familiar with small claims court rules and procedures. Advisers may not appear in court as an advocate for any party.

(f) Advisers, including independent contractors, other employees, and volunteers have the immunity conferred by Section 818.9 of the Government Code with respect to advice provided as a public service on behalf of a court or county to small claims litigants and potential litigants under this chapter.

CHAPTER 619

An act to amend Section 14528.5 of the Government Code, relating to transportation.

[Approved by Governor October 6, 2005. Filed with
Secretary of State October 6, 2005.]

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

SECTION 1. Section 14528.5 of the Government Code is amended to read:

14528.5. (a) To resolve local transportation problems resulting from the infeasibility of planned state transportation facilities on State Highway Route 238 and State Highway Route 84 between existing State Highway Routes 238 and 880, the city or county in which either of the planned facilities were to be located, acting jointly with the transportation planning agency having jurisdiction over the city or county, may develop and file with the commission a local alternative transportation improvement program that addresses transportation problems and opportunities in the county which were to be served by the planned facilities. Priorities for funding in the local alternative program shall go to projects in the local voter-approved transportation sales tax measure.

(b) The commission shall have the final authority regarding the content and approval of the local alternative transportation improvement program. The commission shall not approve any local alternative transportation improvement program submitted under this section after July 1, 2010.

(c) All proceeds from the sale of the excess properties, less any reimbursements due to the federal government and all costs incurred in

the sale of those excess properties, shall be allocated by the commission to fund the approved local alternative transportation improvement program and shall not be subject to Sections 188 and 188.8 of the Streets and Highways Code. The proceeds shall be used only for state highway purposes.

(d) This section does not apply to those highways that are in the National System of Interstate and Defense Highways.

(e) This section applies only to State Highway Routes 238 and 84.

CHAPTER 620

An act to amend Section 36801 of the Government Code, relating to city government.

[Approved by Governor October 6, 2005. Filed with
Secretary of State October 6, 2005.]

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

SECTION 1. Section 36801 of the Government Code is amended to read:

36801. The city council shall meet at the meeting at which the declaration of the election results for a general municipal election is made pursuant to Sections 10262 and 10263 of the Elections Code and, following the declaration of the election results and the installation of elected officials, choose one of its number as mayor, and one of its number as mayor pro tempore.

CHAPTER 621

An act to amend Sections 1725, 1741, 1750, 1750.1, 1750.2, 1750.3, 1751, 1752, 1752.5, 1753, 1753.1, 1753.5, 1754, 1756, 1757, 1770, 2053.5, 2053.6, 2064, 2230, 2234.1, 2466, 2472, 2474, 2475, 2492, 2493, 2498, 2499.8, 2741, 3735, 3739, 4005, 4038, 4053, 4104, 4106, 4114, 4115, 4115.5, 4127.5, 4161, 4202, 4205, 4231, 4232, 4315, 4360, 4364, 4365, 4366, 4369, 4371, 4372, 4373, 4400, and 4850 of, to amend and renumber Section 1753 of, to add Sections 1751.1, 1752.2, 1752.6, 3779, and 4023.5 to, to repeal Sections 1752, 2570.8, 3735.3, 3736, 3775.2, 3775.3, 4206, 4363, 4367, 4368, and 4370 of, and to repeal and add Sections 4361 and 4362 of, the Business and Professions Code,

relating to professions and vocations, and making an appropriation therefor.

[Approved by Governor October 6, 2005. Filed with
Secretary of State October 6, 2005.]

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

SECTION 1. Section 1725 of the Business and Professions Code is amended to read:

1725. The amount of the fees prescribed by this chapter that relate to the licensing of dental auxiliaries shall be established by board resolution and subject to the following limitations:

(a) The application fee for an original license shall not exceed twenty dollars (\$20).

(b) The fee for examination for licensure as a registered dental assistant shall not exceed fifty dollars (\$50) for the written examination and shall not exceed sixty dollars (\$60) for the practical examination. On and after January 1, 2008, the application fee and the fee for issuance of a license as a registered orthodontic assistant, registered surgery assistant, registered restorative assistant, or registered dental assistant shall not exceed fifty dollars (\$50).

(c) The fee for examination for licensure as a registered dental assistant in extended functions or a registered restorative assistant in extended functions shall not exceed two hundred fifty dollars (\$250).

(d) The fee for examination for licensure as a registered dental hygienist shall not exceed two hundred twenty dollars (\$220).

(e) For third- and fourth-year dental students, the fee for examination for licensure as a registered dental hygienist shall not exceed the actual cost of the examination.

(f) The fee for examination for licensure as a registered dental hygienist in extended functions shall not exceed two hundred fifty dollars (\$250).

(g) The board shall establish the fee at an amount not to exceed the actual cost for licensure as a registered dental hygienist in alternative practice.

(h) The biennial renewal fee for a dental auxiliary whose license expires on or after January 1, 1991, shall not exceed sixty dollars (\$60). On or after January 1, 1992, the board may set the renewal fee in an amount not to exceed eighty dollars (\$80).

(i) The delinquency fee shall not exceed twenty-five dollars (\$25) or one-half of the renewal fee, whichever is greater. Any delinquent license

may be restored only upon payment of all fees, including the delinquency fee.

(j) The fee for issuance of a duplicate registration, license, or certificate to replace one that is lost or destroyed, or in the event of a name change, shall not exceed twenty-five dollars (\$25).

(k) The fee for each curriculum review and site evaluation for educational programs for registered dental assistants which are not accredited by a board-approved agency, the Council for Private Postsecondary and Vocational Education, or the Chancellor's office of the California Community Colleges shall not exceed one thousand four hundred dollars (\$1,400).

(l) The fee for each review of radiation safety courses or specialty registration courses that are not accredited by a board-approved agency, the Council for Private Postsecondary and Vocational Education, or the Chancellor's office of the California Community Colleges shall not exceed three hundred dollars (\$300).

(m) No fees or charges other than those listed in subdivisions (a) through (k) above shall be levied by the board in connection with the licensure of dental auxiliaries, registered dental assistants educational program site evaluations and radiation safety course evaluations pursuant to this chapter.

(n) Fees fixed by the board pursuant to this section shall not be subject to the approval of the Office of Administrative Law.

(o) Fees collected pursuant to this section shall be deposited in the State Dental Auxiliary Fund.

SEC. 2. Section 1741 of the Business and Professions Code is amended to read:

1741. As used in this article:

(a) "Board" means the Dental Board of California.

(b) "Committee" means the Committee on Dental Auxiliaries.

(c) "Direct supervision" means supervision of dental procedures based on instructions given by a licensed dentist, who must be physically present in the treatment facility during the performance of those procedures.

(d) "General supervision" means supervision of dental procedures based on instructions given by a licensed dentist but not requiring the physical presence of the supervising dentist during the performance of those procedures.

(e) "Dental auxiliary" means a person who may perform dental assisting or dental hygiene procedures authorized by this article.

SEC. 3. Section 1750 of the Business and Professions Code, as amended by Section 5 of Chapter 667 of the Statutes of 2004, is amended to read:

1750. (a) A dental assistant is a person who may perform basic supportive dental procedures as authorized by this article under the supervision of a licensed dentist and who may perform basic supportive procedures as authorized pursuant to subdivision (b) of Section 1751 under the supervision of a registered dental hygienist in alternative practice.

(b) This section shall become inoperative on December 31, 2007, and, as of January 1, 2008, is repealed, unless a later enacted statute, that is enacted before January 1, 2008, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 4. Section 1750 of the Business and Professions Code, as added by Section 6 of Chapter 667 of the Statutes of 2004, is amended to read:

1750. (a) A dental assistant is an individual who, without a license, may perform basic supportive dental procedures, as authorized by this article and by regulations adopted by the board, under the supervision of a licensed dentist. "Basic supportive dental procedures" are those procedures that have technically elementary characteristics, are completely reversible, and are unlikely to precipitate potentially hazardous conditions for the patient being treated. These basic supportive dental procedures may be performed under general supervision. These basic supportive dental procedures do not include those procedures authorized in Section 1750.3 or Section 1753.1, or by the board pursuant to Section 1751 for registered assistants.

(b) The supervising licensed dentist shall be responsible for determining the competency of the dental assistant to perform the basic supportive dental procedures authorized pursuant to subdivision (a).

(c) The supervising licensed dentist shall be responsible for assuring that each dental assistant, registered orthodontic assistant, registered surgery assistant, registered restorative assistant, registered restorative assistant in extended functions, registered dental assistant, and registered dental assistant in extended functions, who is in his or her continuous employ for 120 days or more, has completed both of the following within a year of the date of employment:

- (1) Board-approved courses in infection control and California law.
- (2) A course in basic life support offered by the American Red Cross, the American Heart Association, or any other course approved by the board as equivalent.

(d) Prior to operating radiographic equipment or applying for licensure as a registered dental assistant under Section 1752.5, an auxiliary described in subdivision (c) shall successfully complete a radiation safety course approved by the board.

(e) This section shall become operative on January 1, 2008.

SEC. 5. Section 1750.1 of the Business and Professions Code is amended to read:

1750.1. (a) The practice of dental assisting does not include any of the following procedures:

- (1) Diagnosis and comprehensive treatment planning.
- (2) Placing, finishing, or removing permanent restorations, except as provided in Section 1753.1.
- (3) Surgery or cutting on hard and soft tissue including, but not limited to, the removal of teeth and the cutting and suturing of soft tissue.
- (4) Prescribing medication.
- (5) Starting or adjusting local or general anesthesia or oral or parenteral conscious sedation, except for the administration of nitrous oxide and oxygen, whether administered alone or in combination with each other and except as otherwise provided in this article.

(b) This section shall become operative on January 1, 2008.

SEC. 6. Section 1750.2 of the Business and Professions Code is amended to read:

1750.2. (a) On and after January 1, 2008, the board shall license as a “registered orthodontic assistant,” “registered surgery assistant,” or “registered restorative assistant” any person who submits written evidence of satisfactory completion of a course or courses approved by the board pursuant to subdivision (b) that qualifies him or her in one of these specialty areas of practice.

(b) The board shall adopt regulations for the approval of postsecondary specialty registration courses in the specialty areas specified in this section. The board shall also adopt regulations for the approval and recognition of required prerequisite courses and core courses that teach basic dental science, when these courses are taught at secondary institutions, regional occupational centers, or through regional occupational programs.

The regulations shall define the minimum education and training requirements necessary to achieve proficiency in the procedures authorized for each specialty registration, taking into account the combinations of classroom and practical instruction, clinical training, and supervised work experience that are most likely to provide the greatest number of opportunities for improving dental assisting skills efficiently.

(c) The board may approve specialty registration courses referred to in this section prior to January 1, 2008, and the board shall recognize the completion of these approved courses prior to January 1, 2008, but no specialty registrations shall be issued prior to January 1, 2008.

(d) The board may approve a course for the specialty registration listed in subdivision (b) that does not include instruction in coronal polishing.

(e) The board may approve a course that only includes instruction in coronal polishing as specified in paragraph (8) of subdivision (b) of Section 1750.3.

(f) A person who holds a specialty registration pursuant to this section shall be subject to the continuing education requirements established by the board pursuant to Section 1645 and the renewal requirements of Article 6 (commencing with Section 1715).

SEC. 7. Section 1750.3 of the Business and Professions Code is amended to read:

1750.3. (a) A registered orthodontic assistant may perform all of the following dental procedures, as well as those authorized by board regulations adopted pursuant to Section 1751:

- (1) Any duties that a dental assistant may perform.
- (2) Mouth-mirror inspections of the oral cavity, to include charting of obvious lesions, existing restorations, and missing teeth.
- (3) Placing metal orthodontic separators.
- (4) Placing ligatures and arch wires.
- (5) Taking orthodontic impressions.
- (6) Sizing, fitting, cementing, and removal of orthodontic bands.
- (7) Selecting, prepositioning, curing in a position approved by the supervising dentist, and removal of orthodontic brackets.
- (8) Coronal polishing.
- (9) Preparing teeth for bonding.
- (10) Applying bleaching agents and activating bleaching agents with nonlaser, light-curing devices.
- (11) Removal of excess cement from coronal surfaces of teeth under orthodontic treatment by means of a hand instrument or an ultrasonic scaler.
- (12) Taking facebow transfers and bite registrations for diagnostic models for case study only.

(b) A registered surgery assistant may perform the following dental procedures, as well as those authorized by board regulations adopted pursuant to Section 1751:

- (1) Any duties that a dental assistant may perform.
- (2) Mouth-mirror inspections of the oral cavity, to include charting of obvious lesions, existing restorations, and missing teeth.
- (3) Monitoring of patients during the preoperative, intraoperative, and postoperative phases.

(A) For purposes of this paragraph, patient monitoring includes the following:

(i) Selection and validation of monitoring sensors, selecting menus and default settings and analysis for electrocardiogram, pulse oximeter and capnograph, continuous blood pressure, pulse, and respiration rates.

(ii) Interpretation of data from noninvasive patient monitors including readings from continuous blood pressure and information from the monitor display for electrocardiogram waveform, carbon dioxide and end tidal carbon dioxide concentration, respiratory cycle data, continuous noninvasive blood pressure data, and pulse arterial oxygen saturation measurements, for the purpose of evaluating the condition of the patient during preoperative, intraoperative, and postoperative treatment.

(B) For purposes of this paragraph, patient monitoring does not include the following:

(i) Reading and transmitting information from the monitor display during the intraoperative phase of surgery for electrocardiogram waveform, carbon dioxide and end tidal carbon dioxide concentrations, respiratory cycle data, continuous noninvasive blood pressure data, or pulse arterial oxygen saturation measurements, for the purpose of interpretation and evaluation by a licensed dentist who shall be at chairside during this procedure.

(ii) Placing of sensors.

(4) Taking impressions for surgical splints and occlusal guards.

(5) Placement of surgical dressings .

(6) Adding drugs, medications, and fluids to intravenous lines using a syringe, provided that a licensed dentist is present at the patient's chairside.

(7) Removal of intravenous lines.

(8) Coronal polishing, provided that evidence of satisfactory completion of a board-approved course in this function has been submitted to the board prior to the performance thereof.

(c) A registered restorative assistant may perform all of the following dental procedures, as well as those authorized by board regulations adopted pursuant to Section 1751:

(1) Any duties that a dental assistant may perform.

(2) Mouth-mirror inspections of the oral cavity, to include charting of obvious lesions, existing restorations, and missing teeth.

(3) Sizing, fitting, adjusting, intraorally fabricating, temporarily cementing, and removing temporary crowns and other temporary restorations.

(4) Placing bases and liners on sound dentin.

(5) Removing excess cement from supragingival surfaces of teeth with a hand instrument or an ultrasonic scaler.

(6) Taking facebow transfers and bite registrations for diagnostic models for case study only.

(7) Taking impressions for space-maintaining appliances and occlusal guards.

(8) Coronal polishing.

(9) Applying pit and fissure sealants.

(10) Applying bleaching agents and activating bleaching agents with nonlaser, light-curing devices.

(11) Placement of surgical dressings.

(d) The supervising dentist shall be responsible for determining the level of supervision required for assistants registered pursuant to this section.

(e) This section shall become operative on January 1, 2008.

SEC. 7.1. Section 1751 of the Business and Professions Code, as amended by Section 10 of Chapter 667 of the Statutes of 2004, is amended to read:

1751. (a) By September 15, 1993, the board, upon recommendation of the committee, consistent with this article, standards of good dental practice, and the health and welfare of patients, shall adopt regulations relating to the functions that may be performed by dental assistants under direct or general supervision, and the settings within which dental assistants may work. At least once every seven years thereafter, the board shall review the list of functions performable by dental assistants, the supervision level, and settings under which they may be performed, and shall update the regulations as needed to keep them current with the state of the practice.

(b) Under the supervision of a registered dental hygienist in alternative practice, a dental assistant may perform intraoral retraction and suctioning.

(c) This section shall become inoperative on December 31, 2007, and, as of January 1, 2008, is repealed, unless a later enacted statute, that is enacted before January 1, 2008, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 8. Section 1751 of the Business and Professions Code, as added by Section 11 of Chapter 667 of the Statutes of 2004, is amended to read:

1751. (a) The board, upon recommendation of the committee, shall adopt regulations governing the procedures that dental assistants, registered orthodontic assistants, registered surgery assistants, registered restorative assistants, registered dental assistants, registered restorative assistants in extended functions, and registered dental assistants in extended functions are authorized to perform consistent with and necessary to implement the provisions of this article, and the settings within which each may practice.

(b) The board shall conduct an initial review of the procedures, supervision level, settings under which they may be performed, and

utilization of extended functions dental auxiliaries by January 1, 2012. The board shall submit the results of its review to the Joint Committee on Boards, Commissions, and Consumer Protection. After the initial review, a review shall be conducted at least once every five to seven years thereafter and the board shall update regulations as necessary to keep them current with the state of dental practice.

(c) This section shall become operative on January 1, 2008.

SEC. 9. Section 1751.1 is added to the Business and Professions Code, to read:

1751.1. Notwithstanding any other provision of law, in order to expedite the implementation of the provisions in Chapter 667 of the Statutes of 2004 and Senate Bill 1111 of the 2005-06 Regular Session relating to educational programs and courses for registered orthodontic assistants, registered surgery assistants, registered restorative assistants, registered dental assistants, registered restorative assistants in extended functions, and registered dental assistants in extended functions and to ensure consistency between these provisions, in initially adopting regulations pursuant to Sections 1750.2, 1752.2, 1752.5, 1752.6, 1753 and 1757, the board shall publish a notice of proposed regulatory action for each of the above regulations on the same date in the same year.

SEC. 10. Section 1752 of the Business and Professions Code, as amended by Section 12 of Chapter 667 of the Statutes of 2004, is amended to read:

1752. (a) The supervising licensed dentist shall be responsible for determining the competency of the dental assistant to perform allowable functions.

(b) This section shall become inoperative on December 31, 2007, and, as of January 1, 2008, is repealed, unless a later enacted statute, that is enacted before January 1, 2008, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 10.1. Section 1752 of the Business and Professions Code, as added by Section 13 of Chapter 667 of the Statutes of 2004, is amended to read:

1752. (a) A “registered dental assistant in extended functions” is an individual licensed pursuant to this article who may perform basic restorative services and direct patient care, as authorized by Sections 1750, 1750.3, and 1753.1, and by the board regulations adopted pursuant to Section 1751 under the supervision of a licensed dentist.

(b) A “registered restorative assistant in extended functions” is an individual licensed pursuant to this article who may perform basic restorative services and direct patient care, as authorized by Section 1750, subdivision (c) of Section 1750.3, and Section 1753.1, and by

board regulations adopted pursuant to Section 1751 under the supervision of a licensed dentist.

(c) This section shall become operative on January 1, 2008.

SEC. 11. Section 1752.2 is added to the Business and Professions Code, to read:

1752.2. (a) A board-approved educational program in registered dental assisting, as provided in subdivisions (a) and (b) of Section 1752.5, is a program that has met the requirements for approval pursuant to board regulations.

(b) An educational program in registered dental assisting that has been approved by the board prior to January 1, 2008, to teach the duties that a registered dental assistant was allowed to perform pursuant to board regulations prior to January 1, 2008, shall continue to be so approved on and after January 1, 2008, if it has certified no later than November 30, 2007, on a form specified by the board, that it shall provide instruction in all duties that registered dental assistants shall be allowed to perform on and after January 1, 2008, with the exception of adding drugs, medications, and fluids to intravenous lines using a syringe.

(c) The board may at any time conduct a thorough evaluation of an approved educational program's curriculum and facilities to determine whether the program meets the requirements for approval as specified in board regulations.

SEC. 12. Section 1752 of the Business and Professions Code, as added by Section 13 of Chapter 667 of the Statutes of 2004, is repealed.

SEC. 13. Section 1752.5 of the Business and Professions Code is amended to read:

1752.5. On and after September 1, 2007, a person may apply for and be issued a license as a registered dental assistant upon providing evidence to the board of one of the following:

(a) Successful completion of an educational program in registered dental assisting approved by the board on or after January 1, 2006, to teach all of the functions specified in Section 1750.3.

(b) Successful completion of:

(1) An educational program in registered dental assisting approved by the board to teach the duties that registered dental assistants were allowed to perform pursuant to board regulations prior to January 1, 2008.

(2) A board-approved course or courses in the following duties:

(A) Selecting, prepositioning, curing in a position approved by the supervising dentist, and removal of orthodontic brackets.

(B) Monitoring of patients during the preoperative, intraoperative, and postoperative phases.

(i) For purposes of this subparagraph, patient monitoring includes the following:

(I) Selection and validation of monitoring sensors, selecting menus and default settings and analysis for electrocardiogram, pulse oximeter and capnograph, continuous blood pressure, pulse, and respiration rates.

(II) Interpretation of data from noninvasive patient monitors including readings from continuous blood pressure and information from the monitor display for electrocardiogram waveform, carbon dioxide and end tidal carbon dioxide concentration, respiratory cycle data, continuous noninvasive blood pressure data, and pulse arterial oxygen saturation measurements, for the purpose of evaluating the condition of the patient during preoperative, intraoperative, and postoperative treatment.

(ii) For purposes of this subparagraph, patient monitoring does not include the following:

(I) Reading and transmitting information from the monitor display during the intraoperative phase of surgery for electrocardiogram waveform, carbon dioxide and end tidal carbon dioxide concentrations, respiratory cycle data, continuous noninvasive blood pressure data, or pulse arterial oxygen saturation measurements, for the purpose of interpretation and evaluation by a licensed dentist who shall be at chairside during this procedure.

(II) Placing of sensors.

(C) Adding drugs, medications, and fluids to intravenous lines using a syringe.

(D) Applying pit and fissure sealants.

(c) Successful completion of:

(1) Twelve months of satisfactory work experience as a dental assistant in California or another state. The board shall give credit toward the 12 months of work experience to persons who have graduated from a dental assisting program in a postsecondary institution, secondary institution, regional occupational center, or regional occupation program that are not approved by the board. The credit shall equal the total weeks spent in classroom training and internship on a week-for-week basis not to exceed 16 weeks.

(2) The three board-approved specialty registration courses, as defined in Section 1750.2, for registration as a registered orthodontic assistant, registered surgery assistant, and registered restorative assistant.

(3) A board-approved radiation safety program.

SEC. 14. Section 1752.6 is added to the Business and Professions Code, to read:

1752.6. A registered dental assistant may perform all duties and procedures that a dental assistant, registered orthodontic assistant, registered surgery assistant, and a registered restorative assistant are

allowed to perform, as well as those procedures authorized by regulations adopted pursuant to Section 1751, except for the following:

(a) A registered dental assistant who qualifies for licensure under subdivision (a) of Section 1752.5 may only perform the registered surgery assistant duty of adding drugs, medications, and fluids to intravenous lines after providing evidence of completion of a board-approved course in this duty.

(b) A registered dental assistant licensed on or before July 1, 2008, who qualified for licensure prior to September 1, 2007, may only perform the following duties after the completion of a board-approved course or courses in the following duties:

(1) Selecting, prepositioning, curing in a position approved by the supervising dentist, and removal of orthodontic brackets.

(2) Monitoring of patients during the preoperative, intraoperative, and postoperative phases, using noninvasive instrumentation such as pulse oximeters, electrocardiograms, and capnography.

(3) Adding drugs, medications, and fluids to intravenous lines.

(4) Applying pit and fissure sealants.

(c) The supervising dentist shall be responsible for determining the level of supervision required for authorized procedures performed by registered dental assistants.

(d) This section shall become operative on January 1, 2008.

SEC. 15. Section 1753 of the Business and Professions Code, as amended by Section 15 of Chapter 667 of the Statutes of 2004, is amended and renumbered to read:

1752.1. (a) The board shall license as a registered dental assistant a person who files an application prior to September 1, 2007, and submits written evidence, satisfactory to the board, of either one of the following requirements:

(1) Graduation from an educational program in dental assisting approved by the board, and satisfactory performance on written and practical examinations required by the board.

(2) Satisfactory work experience of more than 12 months as a dental assistant in California or another state and satisfactory performance on a written and practical examination required by the board. The board shall give credit toward the 12 months work experience referred to in this subdivision to persons who have graduated from a dental assisting program in a postsecondary institution approved by the Department of Education or in a secondary institution, regional occupational center, or regional occupational program, that are not, however, approved by the board pursuant to subdivision (a). The credit shall equal the total weeks spent in classroom training and internship on a week-for-week basis not to exceed 16 weeks. The board, in cooperation with the Superintendent

of Public Instruction, shall establish the minimum criteria for the curriculum of nonboard-approved programs. Additionally, the board shall notify those programs only if the program's curriculum does not meet established minimum criteria, as established for board-approved registered dental assistant programs, except any requirement that the program be given in a postsecondary institution. Graduates of programs not meeting established minimum criteria shall not qualify for satisfactory work experience as defined by this section.

(b) In addition to the requirements specified in subdivision (a), each applicant for registered dental assistant licensure on or after July 1, 2002, shall provide evidence of having successfully completed board-approved courses in radiation safety and coronal polishing as a condition of licensure. The length and content of the courses shall be governed by applicable board regulations.

(c) An applicant who fails to pass the written and practical examinations required by this section on or before June 30, 2008, shall not be eligible for further reexamination and must apply for and meet the requirements for registered dental assistant licensure specified in Section 1752.5. Between September 1, 2007, and June 30, 2008, an applicant shall only be allowed to apply to take the written examination two times, and shall only be allowed to apply to take the practical examination two times.

(d) This section shall become inoperative on December 31, 2008, and, as of January 1, 2009, is repealed, unless a later enacted statute, that is enacted before January 1, 2009, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 16. Section 1753 of the Business and Professions Code, as added by Section 16 of Chapter 667 of the Statutes of 2004, is amended to read:

1753. (a) On and after January 1, 2008, the board shall license as a registered dental assistant in extended functions a person who submits written evidence, satisfactory to the board, of all of the following:

(1) Current licensure as a registered dental assistant, or completion of the requirements for licensure as a registered dental assistant, as provided in Section 1752.5.

(2) Successful completion of either of the following:

(A) An extended functions postsecondary program approved by the board in all of the procedures specified in Section 1753.1.

(B) An extended functions postsecondary program approved by the board on or before to teach the duties that registered dental assistants in extended functions were allowed to perform pursuant to board regulations prior to January 1, 2008, and a course approved by the board in the

procedures specified in paragraphs (8) through (13) of subdivision (b) of Section 1753.1.

(3) Successful completion of board-approved courses in radiation safety and, within the last two years, courses in infection control, California dental law, and basic life support.

(4) Satisfactory performance on a written examination and a clinical or practical examination specified by the board. The board shall designate whether the written examination shall be administered by the committee or by the board-approved extended functions program.

(b) On and after January 1, 2008, the board shall license as a registered restorative assistant in extended functions a person who submits written evidence, satisfactory to the board, of all of the following:

(1) Completion of 12 months of satisfactory work experience as a dental assistant in California or another state. The board shall give credit toward the 12 months of work experience to persons who have graduated from a dental assisting program in a postsecondary institution, secondary institution, regional occupational center, or regional occupation program that are not approved by the board. The credit shall equal the total weeks spent in classroom training and internship on a week-for-week basis, not to exceed 16 weeks.

(2) Successful completion of a board-approved course in radiation safety, and, within the last two years, courses in infection control, California dental law, and basic life support.

(3) Successful completion of a postsecondary program approved by the board for restorative dental assisting specialty registration specified in subdivision (c) of Section 1750.3.

(4) Successful completion of an extended functions postsecondary program approved by the board in all of the procedures specified in Section 1753.1.

(5) Satisfactory performance on a written examination and a clinical or practical examination specified by the board. The board shall designate whether the written examination shall be administered by the committee or by the board-approved extended functions program.

(c) In approving extended functions postsecondary programs required to be completed for licensure pursuant to this section, the board shall require that the programs be taught by persons having prior experience teaching the applicable procedures specified in Section 1753.1, or procedures otherwise authorized by the board pursuant to Section 1751, in a dental school approved either by the Commission on Dental Accreditation or a comparable organization approved by the board. Approved programs shall include didactic, laboratory, and clinical modalities.

(d) The board may approve extended functions postsecondary programs referred to in this section prior to January 1, 2008, and the board shall recognize the completion of these approved programs prior to January 1, 2008.

SEC. 17. Section 1753.1 of the Business and Professions Code is amended to read:

1753.1. (a) A registered dental assistant in extended functions licensed on or after January 1, 2008, is authorized to perform all duties and procedures that a registered dental assistant is authorized to perform, and those duties that the board may prescribe by regulation pursuant to Section 1751.

(b) A registered dental assistant in extended functions licensed on or after January 1, 2008, is authorized to perform the following additional procedures under direct supervision and pursuant to the order, control, and full professional responsibility of a licensed dentist:

- (1) Cord retraction of gingivae for impression procedures.
- (2) Taking impressions for cast restorations.
- (3) Formulating indirect patterns for endodontic post and core castings.
- (4) Fitting trial endodontic filling points.
- (5) Drying canals previously opened by the supervising dentist, with absorbent points.
- (6) Testing pulp vitality.
- (7) Removing excess cement from subgingival tooth surfaces with a hand instrument.
- (8) Fitting and cementing stainless steel crowns.
- (9) Placing, condensing, and carving amalgam restorations.
- (10) Placing class I, III, and V nonmetallic restorations.
- (11) Taking facebow transfers and bite registrations for fixed prostheses.
- (12) Taking final impressions for tooth-borne, removable prostheses.
- (13) Placing and adjusting permanent crowns for cementation by the dentist.
- (14) Applying etchants for bonding restorative materials.
- (15) Other procedures authorized by regulations adopted by the board pursuant to Section 1751.

(c) A registered restorative assistant in extended functions licensed on or after January 1, 2008, is authorized to perform all duties and procedures that a registered restorative assistant is authorized to perform, those duties that the board may prescribe by regulation pursuant to Section 1751, and the duties specified in subdivision (b) of this section.

(d) All procedures required to be performed under direct supervision shall be checked and approved by the supervising dentist prior to the patient's dismissal from the office.

SEC. 18. Section 1753.5 of the Business and Professions Code is amended to read:

1753.5. A registered dental assistant may apply pit and fissure sealants under the general supervision of a licensed dentist, after providing evidence to the board of having completed a board-approved course in that procedure.

SEC. 19. Section 1754 of the Business and Professions Code is amended to read:

1754. (a) By September 15, 1993, the board, upon recommendation of the committee and consistent with this article, standards of good dental practice, and the health and welfare of patients, shall adopt regulations relating to the functions which may be performed by registered dental assistants under direct or general supervision, and the settings within which registered dental assistants may work. At least once every seven years thereafter, the board shall review the list of functions performable by registered dental assistants, the supervision level, and settings under which they may be performed, and shall update the regulations as needed to keep them current with the state of the practice.

(b) This section shall become inoperative on December 31, 2007, and, as of January 1, 2008, is repealed, unless a later enacted statute, that is enacted before January 1, 2008, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 20. Section 1756 of the Business and Professions Code is amended to read:

1756. (a) The board shall license as a registered dental assistant in extended functions a person who satisfies all of the following requirements:

- (1) Status as a registered dental assistant.
- (2) Completion of clinical training approved by the board in a facility affiliated with a dental school under the direct supervision of the dental school faculty.
- (3) Satisfactory performance on an examination required by the board.

(b) This section shall become inoperative on December 31, 2007, and, as of January 1, 2008, is repealed, unless a later enacted statute, that is enacted before January 1, 2008, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 21. Section 1757 of the Business and Professions Code is amended to read:

1757. (a) Each person who holds a license as a registered dental assistant in extended functions on the effective date of this section may only perform those procedures that a registered dental assistant is allowed to perform as specified in and limited by subdivision (b) of Section 1752.6, and the procedures listed in paragraphs (1), (2), (3), (4), (5), (6),

(7), and (14) of subdivision (b) of Section 1753.1, until he or she provides evidence of having completed a board-approved course or courses in the additional procedures specified in paragraphs (8) to (13) of subdivision (b) of Section 1753.1, and an examination in those additional procedures as specified by the board.

(b) This section shall become operative on January 1, 2008.

SEC. 22. Section 1770 of the Business and Professions Code, as amended by Section 23 of Chapter 667 of the Statutes of 2004, is amended to read:

1770. (a) A licensed dentist may simultaneously utilize in his or her practice no more than two dental auxiliaries in extended functions licensed pursuant to Sections 1756 and 1768.

(b) This section shall become inoperative on December 31, 2007, and, as of January 1, 2008, is repealed, unless a later enacted statute, that is enacted before January 1, 2008, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 23. Section 1770 of the Business and Professions Code, as added by Section 24 of Chapter 667 of the Statutes of 2004, is amended to read:

1770. (a) A licensed dentist may simultaneously utilize in his or her practice no more than three dental auxiliaries in extended functions licensed pursuant to Sections 1753 and 1768.

(b) This section shall become operative on January 1, 2008.

SEC. 24. Section 2053.5 of the Business and Professions Code is amended to read:

2053.5. (a) Notwithstanding any other provision of law, a person who complies with the requirements of Section 2053.6 shall not be in violation of Section 2051 or 2052 unless that person does any of the following:

(1) Conducts surgery or any other procedure on another person that punctures the skin or harmfully invades the body.

(2) Administers or prescribes X-ray radiation to another person.

(3) Prescribes or administers legend drugs or controlled substances to another person.

(4) Recommends the discontinuance of legend drugs or controlled substances prescribed by an appropriately licensed practitioner.

(5) Willfully diagnoses and treats a physical or mental condition of any person under circumstances or conditions that cause or create a risk of great bodily harm, serious physical or mental illness, or death.

(6) Sets fractures.

(7) Treats lacerations or abrasions through electrotherapy.

(8) Holds out, states, indicates, advertises, or implies to a client or prospective client that he or she is a physician, a surgeon, or a physician and surgeon.

(b) A person who advertises any services that are not unlawful under Section 2051 or 2052 pursuant to subdivision (a) shall disclose in the advertisement that he or she is not licensed by the state as a healing arts practitioner.

SEC. 25. Section 2053.6 of the Business and Professions Code is amended to read:

2053.6. (a) A person who provides services pursuant to Section 2053.5 that are not unlawful under Section 2051 or 2052 shall, prior to providing those services, do the following:

(1) Disclose to the client in a written statement using plain language the following information:

(A) That he or she is not a licensed physician.

(B) That the treatment is alternative or complementary to healing arts services licensed by the state.

(C) That the services to be provided are not licensed by the state.

(D) The nature of the services to be provided.

(E) The theory of treatment upon which the services are based.

(F) His or her educational, training, experience, and other qualifications regarding the services to be provided.

(2) Obtain a written acknowledgment from the client stating that he or she has been provided with the information described in paragraph (1). The client shall be provided with a copy of the written acknowledgement, which shall be maintained by the person providing the service for three years.

(b) The information required by subdivision (a) shall be provided in a language that the client understands.

(c) Nothing in this section or in Section 2053.5 shall be construed to do the following:

(1) Affect the scope of practice of licensed physicians and surgeons.

(2) Limit the right of any person to seek relief for negligence or any other civil remedy against a person providing services subject to the requirements of this section.

SEC. 26. Section 2064 of the Business and Professions Code is amended to read:

2064. Nothing in this chapter shall be construed to prevent a regularly matriculated student undertaking a course of professional instruction in an approved medical school, or to prevent a foreign medical student who is enrolled in an approved medical school and clinical training program in this state, or to prevent students enrolled in a program of supervised clinical training under the direction of an approved medical school

pursuant to Section 2104, from engaging in the practice of medicine whenever and wherever prescribed as a part of his or her course of study.

SEC. 27. Section 2230 of the Business and Professions Code is amended to read:

2230. (a) All proceedings against a licensee for unprofessional conduct, or against an applicant for licensure for unprofessional conduct or cause, shall be conducted in accordance with the Administrative Procedure Act (Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code) except as provided in this chapter, and shall be prosecuted by the Senior Assistant Attorney General of the Health Quality Enforcement Section.

(b) For the purpose of exercising its disciplinary authority against a physician and surgeon pursuant to this chapter and the Administrative Procedure Act, the Division of Medical Quality shall organize itself as two panels of seven members. Two members of each panel shall be public members. For purposes of this article, "agency itself," as used in the Administrative Procedure Act, means a panel of the division as described in this subdivision. The decision or order of a panel imposing any disciplinary action pursuant to this chapter and the Administrative Procedure Act shall be final.

SEC. 28. Section 2234.1 of the Business and Professions Code is amended to read:

2234.1. (a) A physician and surgeon shall not be subject to discipline pursuant to subdivision (b), (c), or (d) of Section 2234 solely on the basis that the treatment or advice he or she rendered to a patient is alternative or complementary medicine if that treatment or advice meets all of the following requirements:

(1) It is provided after informed consent and a good faith prior examination of the patient, and medical indication exists for the treatment or advice, or it is provided for health or well-being.

(2) It is provided after the physician and surgeon has given the patient information concerning conventional treatment and describing the education, experience, and credentials of the physician and surgeon related to the alternative or complementary medicine he or she practices.

(3) It does not cause a delay in or discourage traditional diagnosis of a condition of the patient.

(4) It does not cause death or serious bodily injury to the patient.

(b) For purposes of this section, "alternative or complementary medicine" means those health care methods of diagnosis, treatment, or healing that are not generally used but that provide a reasonable potential for therapeutic gain in a patient's medical condition that is not outweighed by the risk of the health care method.

SEC. 28.5. Section 2234.1 of the Business and Professions Code is amended to read:

2234.1. (a) A physician and surgeon shall not be subject to discipline pursuant to subdivision (b), (c), or (d) of Section 2234 solely on the basis that the treatment or advice he or she rendered to a patient is alternative or complementary medicine, including the treatment of persistent Lyme Disease, if that treatment or advice meets all of the following requirements:

(1) It is provided after informed consent and a good-faith prior examination of the patient, and medical indication exists for the treatment or advice, or it is provided for health or well-being.

(2) It is provided after the physician and surgeon has given the patient information concerning conventional treatment and describing the education, experience, and credentials of the physician and surgeon related to the alternative or complementary medicine that he or she practices.

(3) In the case of alternative or complementary medicine, it does not cause a delay in, or discourage traditional diagnosis of, a condition of the patient.

(4) It does not cause death or serious bodily injury to the patient.

(b) For purposes of this section, "alternative or complementary medicine," means those health care methods of diagnosis, treatment, or healing that are not generally used but that provide a reasonable potential for therapeutic gain in a patient's medical condition that is not outweighed by the risk of the health care method.

(c) Since the National Institute of Medicine has reported that it can take up to 17 years for a new best practice to reach the average physician and surgeon, it is prudent to give attention to new developments not only in general medical care but in the actual treatment of specific diseases, particularly those that are not yet broadly recognized in California.

SEC. 29. Section 2466 of the Business and Professions Code is amended to read:

2466. All members of the board shall be appointed for terms of four years. Vacancies shall immediately be filled by the appointing power for the unexpired portion of the terms in which they occur. No person shall serve as a member of the board for more than two consecutive terms.

SEC. 30. 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 licensed health care practitioner 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 paragraph (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 paragraph (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) A doctor of podiatric medicine 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. 31. Section 2474 of the Business and Professions Code is amended to read:

2474. Any person who uses in any sign or in any advertisement or otherwise, the word or words “doctor of podiatric medicine,” “doctor of podiatry,” “podiatric doctor,” “D.P.M.,” “podiatrist,” “foot specialist,” or any other term or terms or any letters indicating or implying that he or she is a doctor of podiatric medicine, or that he or she practices podiatric medicine, or holds himself out as practicing podiatric medicine or foot correction as defined in Section 2472, without having at the time of so doing a valid, unrevoked, and unsuspended certificate as provided for in this chapter, is guilty of a misdemeanor.

SEC. 32. Section 2475 of the Business and Professions Code is amended to read:

2475. Unless otherwise provided by law, no postgraduate trainee, intern, resident postdoctoral fellow, or instructor may engage in the practice of podiatric medicine, or receive compensation therefor, or offer to engage in the practice of podiatric medicine unless he or she holds a valid, unrevoked, and unsuspended certificate to practice podiatric medicine issued by the division. However, a graduate of an approved college or school of podiatric medicine upon whom the degree doctor of podiatric medicine has been conferred, who is issued a resident’s license, which may be renewed annually for up to four years for this purpose by the division upon recommendation of the board, and who is enrolled in a postgraduate training program approved by the board, may engage in the practice of podiatric medicine whenever and wherever required as a part of that program and may receive compensation for that practice under the following conditions:

(a) A graduate with a resident’s license in an approved internship, residency, or fellowship program may participate in training rotations outside the scope of podiatric medicine, under the supervision of a physician and surgeon who holds a medical doctor or doctor of

osteopathy degree wherever and whenever required as a part of the training program, and may receive compensation for that practice. If the graduate fails to receive a license to practice podiatric medicine under this chapter within three years from the commencement of the postgraduate training, all privileges and exemptions under this section shall automatically cease.

(b) Hospitals functioning as a part of the teaching program of an approved college or school of podiatric medicine in this state may exchange instructors or resident or assistant resident doctors of podiatric medicine with another approved college or school of podiatric medicine not located in this state, or those hospitals may appoint a graduate of an approved school as such a resident for purposes of postgraduate training. Those instructors and residents may practice and be compensated as provided in this section, but that practice and compensation shall be for a period not to exceed two years.

SEC. 33. Section 2492 of the Business and Professions Code is amended to read:

2492. (a) The board shall examine every applicant for a certificate to practice podiatric medicine to ensure a minimum of entry-level competence at the time and place designated by the board in its discretion, but at least twice a year.

(b) Unless the applicant meets the requirements of Section 2486, applicants shall be required to have taken and passed the examination administered by the National Board of Podiatric Medical Examiners.

(c) The board may appoint qualified persons to give the whole or any portion of any examination as provided in this article, who shall be designated as examination commissioners. The board may fix the compensation of those persons subject to the provisions of applicable state laws and regulations.

(d) The provisions of Article 9 (commencing with Section 2170) shall apply to examinations administered by the board except where those provisions are in conflict with or inconsistent with the provisions of this article. In respect to applicants under this article any references to the "Division of Licensing" or "division" shall be deemed to apply to the board.

SEC. 34. Section 2493 of the Business and Professions Code is amended to read:

2493. (a) An applicant for a certificate to practice podiatric medicine shall pass an examination in the subjects required by Section 2483 in order to ensure a minimum of entry-level competence.

(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.

SEC. 35. Section 2498 of the Business and Professions Code is amended to read:

2498. (a) The board shall have the responsibility for reviewing the quality of podiatric medical practice carried out by persons licensed to practice podiatric medicine.

(b) Each member of the board, or any licensed doctor of podiatric medicine appointed by the board, shall additionally have the authority to inspect, or require reports from, a general or specialized hospital and the podiatric medical staff thereof, with respect to the podiatric medical care, services, or facilities provided therein, and may inspect podiatric medical patient records with respect to the care, services, or facilities. The authority to make inspections and to require reports as provided by this section shall not be delegated by a member of the board to any person other than a doctor of podiatric medicine and shall be subject to the restrictions against disclosure described in Section 2263.

SEC. 36. Section 2499.8 of the Business and Professions Code is amended to read:

2499.8. Any licensee who demonstrates to the satisfaction of the board that he or she is unable to practice podiatric medicine due to a disability may request a waiver of the license renewal fee. The granting of a waiver shall be at the discretion of the board and may be terminated at any time. Waivers shall be based on the inability of a licensee to practice podiatric medicine. A licensee whose renewal fee has been waived pursuant to this section shall not engage in the practice of podiatric medicine unless and until the licensee pays the current renewal fee and does either of the following:

(a) Establishes to the satisfaction of the board, on a form prescribed by the board and signed under penalty of perjury, that the licensee's disability either no longer exists or does not affect his or her ability to practice podiatric medicine safely.

(b) Signs an agreement on a form prescribed by the board, signed under penalty of perjury, in which the licensee agrees to limit his or her practice in the manner prescribed by the reviewing physician.

SEC. 37. Section 2570.8 of the Business and Professions Code is repealed.

SEC. 38. Section 2741 of the Business and Professions Code is amended to read:

2741. An application for reexamination shall be accompanied by the fees prescribed by this chapter.

SEC. 39. Section 3735 of the Business and Professions Code is amended to read:

3735. Except as otherwise provided in this chapter, no applicant shall receive a license under this chapter without first successfully passing the national respiratory therapist examination conducted by those persons, and in the manner and under the rules and regulations, as the board may prescribe.

SEC. 40. Section 3735.3 of the Business and Professions Code is repealed.

SEC. 41. Section 3736 of the Business and Professions Code is repealed.

SEC. 42. Section 3739 of the Business and Professions Code is amended to read:

3739. (a) (1) Except as otherwise provided in this section, every person who has filed an application for licensure with the board may, between the dates specified by the board, perform as a respiratory care practitioner applicant under the direct supervision of a respiratory care practitioner licensed in this state provided he or she has met education requirements for licensure as may be certified by his or her respiratory care program, and if ever attempted, has passed the national respiratory therapist examination.

(2) During this period the applicant shall identify himself or herself only as a "respiratory care practitioner applicant."

(3) If for any reason the license is not issued, all privileges under this subdivision shall automatically cease on the date specified by the board.

(b) If an applicant fails the national respiratory therapist examination, all privileges under this section shall automatically cease on the date specified by the board.

(c) No applicant for a respiratory care practitioner license shall be authorized to perform as a respiratory care practitioner applicant if cause exists to deny the license.

(d) "Under the direct supervision" means assigned to a respiratory care practitioner who is on duty and immediately available in the assigned patient care area.

SEC. 43. Section 3775.2 of the Business and Professions Code is repealed.

SEC. 44. Section 3775.3 of the Business and Professions Code is repealed.

SEC. 45. Section 3779 is added to the Business and Professions Code, to read:

3779. For purposes of license verification, a person may rely upon the licensing information as it is displayed on the board's Internet Web site that includes the issuance and expiration dates of any license issued by the board.

SEC. 46. Section 4005 of the Business and Professions Code is amended to read:

4005. (a) The board may adopt rules and regulations, not inconsistent with the laws of this state, as may be necessary for the protection of the public. Included therein shall be the right to adopt rules and regulations as follows: for the proper and more effective enforcement and administration of this chapter; pertaining to the practice of pharmacy; relating to the sanitation of persons and establishments licensed under this chapter; pertaining to establishments wherein any drug or device is compounded, prepared, furnished, or dispensed; providing for standards of minimum equipment for establishments licensed under this chapter; pertaining to the sale of drugs by or through any mechanical device; and relating to pharmacy practice experience necessary for licensure as a pharmacist.

(b) Notwithstanding any provision of this chapter to the contrary, the board may adopt regulations permitting the dispensing of drugs or devices in emergency situations, and permitting dispensing of drugs or devices pursuant to a prescription of a person licensed to prescribe in a state other than California where the person, if licensed in California in the same licensure classification would, under California law, be permitted to prescribe drugs or devices and where the pharmacist has first interviewed the patient to determine the authenticity of the prescription.

(c) The adoption, amendment, or repeal by the board of these or any other board rules or regulations shall be in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

SEC. 47. Section 4023.5 is added to the Business and Professions Code, to read:

4023.5. For the purposes of this chapter, "direct supervision and control" means that a pharmacist is on the premises at all times and is fully aware of all activities performed by either a pharmacy technician or intern pharmacist.

SEC. 48. Section 4038 of the Business and Professions Code is amended to read:

4038. (a) "Pharmacy technician" means an individual who assists a pharmacist in a pharmacy in the performance of his or her pharmacy related duties, as specified in Section 4115.

(b) A "pharmacy technician trainee" is a person who is enrolled in a pharmacy technician training program operated by a California public postsecondary education institution or by a private postsecondary vocational institution approved by the Bureau for Private Postsecondary and Vocational Education.

SEC. 49. Section 4053 of the Business and Professions Code, as added by Section 7 of Chapter 857 of the Statutes of 2004, is amended to read:

4053. (a) Notwithstanding Section 4051, the board may issue a license as a designated representative to provide sufficient and qualified supervision in a wholesaler or veterinary food-animal drug retailer. The designated representative shall protect the public health and safety in the handling, storage, and shipment of dangerous drugs and dangerous devices in the wholesaler or veterinary food-animal drug retailer.

(b) An individual may apply for a designated representative license. In order to obtain and maintain that license, the individual shall meet all of the following requirements:

(1) He or she shall be a high school graduate or possess a general education development equivalent.

(2) He or she shall have a minimum of one year of paid work experience, in the past three years, related to the distribution or dispensing of dangerous drugs or dangerous devices or meet all of the prerequisites to take the examination required for licensure as a pharmacist by the board.

(3) He or she shall complete a training program approved by the board that, at a minimum, addresses each of the following subjects:

(A) Knowledge and understanding of California law and federal law relating to the distribution of dangerous drugs and dangerous devices.

(B) Knowledge and understanding of California law and federal law relating to the distribution of controlled substances.

(C) Knowledge and understanding of quality control systems.

(D) Knowledge and understanding of the United States Pharmacopoeia standards relating to the safe storage and handling of drugs.

(E) Knowledge and understanding of prescription terminology, abbreviations, dosages and format.

(4) The board may, by regulation, require training programs to include additional material.

(5) The board may not issue a license as a designated representative until the applicant provides proof of completion of the required training to the board.

(c) The veterinary food-animal drug retailer or wholesaler shall not operate without a pharmacist or a designated representative on its premises.

(d) Only a pharmacist or a designated representative shall prepare and affix the label to veterinary food-animal drugs.

(e) Section 4051 shall not apply to any laboratory licensed under Section 351 of Title III of the Public Health Service Act (Public Law 78-410).

SEC. 50. Section 4104 of the Business and Professions Code is amended to read:

4104. (a) Every pharmacy shall have in place procedures for taking action to protect the public when a licensed individual employed by or with the pharmacy is discovered or known to be chemically, mentally, or physically impaired to the extent it affects his or her ability to practice the profession or occupation authorized by his or her license, or is discovered or known to have engaged in the theft, diversion, or self-use of dangerous drugs.

(b) Every pharmacy shall have written policies and procedures for detecting chemical, mental, or physical impairment, as well as theft, diversion, or self-use of dangerous drugs, among licensed individuals employed by or with the pharmacy.

(c) Every pharmacy shall report to the board, within 30 days of the receipt or development of the following information with regard to any licensed individual employed by or with the pharmacy:

(1) Any admission by a licensed individual of chemical, mental, or physical impairment affecting his or her ability to practice.

(2) Any admission by a licensed individual of theft, diversion, or self-use of dangerous drugs.

(3) Any video or documentary evidence demonstrating chemical, mental, or physical impairment of a licensed individual to the extent it affects his or her ability to practice.

(4) Any video or documentary evidence demonstrating theft, diversion, or self-use of dangerous drugs by a licensed individual.

(5) Any termination based on chemical, mental, or physical impairment of a licensed individual to the extent it affects his or her ability to practice.

(6) Any termination of a licensed individual based on theft, diversion, or self-use of dangerous drugs.

(d) Anyone participating in good faith in the making of a report authorized or required by this section shall have immunity from any liability, civil or criminal, that might otherwise arise from the making of the report. Any participant shall have the same immunity with respect

to participation in any administrative or judicial proceeding resulting from the report.

SEC. 51. Section 4106 of the Business and Professions Code is amended to read:

4106. For purposes of license verification, a person may rely upon the licensing information as it is displayed on the board's Internet Web site that includes the issuance and expiration dates of any license issued by the board.

SEC. 52. Section 4114 of the Business and Professions Code is amended to read:

4114. (a) An intern pharmacist may perform all functions of a pharmacist at the discretion of and under the direct supervision and control of a pharmacist whose license is in good standing with the board.

(b) A pharmacist may not supervise more than two intern pharmacists at any one time.

SEC. 53. Section 4115 of the Business and Professions Code is amended to read:

4115. (a) A pharmacy technician may perform packaging, manipulative, repetitive, or other nondiscretionary tasks, only while assisting, and while under the direct supervision and control of a pharmacist.

(b) This section does not authorize the performance of any tasks specified in subdivision (a) by a pharmacy technician without a pharmacist on duty.

(c) This section does not authorize a pharmacy technician to perform any act requiring the exercise of professional judgment by a pharmacist.

(d) The board shall adopt regulations to specify tasks pursuant to subdivision (a) that a pharmacy technician may perform under the supervision of a pharmacist. Any pharmacy that employs a pharmacy technician shall do so in conformity with the regulations adopted by the board.

(e) No person shall act as a pharmacy technician without first being licensed by the board as a pharmacy technician.

(f) (1) A pharmacy with only one pharmacist shall have no more than one pharmacy technician performing the tasks specified in subdivision (a). The ratio of pharmacy technicians performing the tasks specified in subdivision (a) to any additional pharmacist shall not exceed 2:1, except that this ratio shall not apply to personnel performing clerical functions pursuant to Section 4116 or 4117. This ratio is applicable to all practice settings, except for an inpatient of a licensed health facility, a patient of a licensed home health agency, as specified in paragraph (2), an inmate of a correctional facility of the Department of the Youth Authority or the Department of Corrections, and for a person receiving treatment in

a facility operated by the State Department of Mental Health, the State Department of Developmental Services, or the Department of Veterans Affairs.

(2) The board may adopt regulations establishing the ratio of pharmacy technicians performing the tasks specified in subdivision (a) to pharmacists applicable to the filling of prescriptions of an inpatient of a licensed health facility and for a patient of a licensed home health agency. Any ratio established by the board pursuant to this subdivision shall allow, at a minimum, at least one pharmacy technician for a single pharmacist in a pharmacy and two pharmacy technicians for each additional pharmacist, except that this ratio shall not apply to personnel performing clerical functions pursuant to Section 4116 or 4117.

(3) A pharmacist scheduled to supervise a second pharmacy technician may refuse to supervise a second pharmacy technician if the pharmacist determines, in the exercise of his or her professional judgment, that permitting the second pharmacy technician to be on duty would interfere with the effective performance of the pharmacist's responsibilities under this chapter. A pharmacist assigned to supervise a second pharmacy technician shall notify the pharmacist in charge in writing of his or her determination, specifying the circumstances of concern with respect to the pharmacy or the pharmacy technician that have led to the determination, within a reasonable period, but not to exceed 24 hours, after the posting of the relevant schedule. No entity employing a pharmacist may discharge, discipline, or otherwise discriminate against any pharmacist in the terms and conditions of employment for exercising or attempting to exercise in good faith the right established pursuant to this paragraph.

(g) Notwithstanding subdivisions (a) and (b), the board shall by regulation establish conditions to permit the temporary absence of a pharmacist for breaks and lunch periods pursuant to Section 512 of the Labor Code and the orders of the Industrial Welfare Commission without closing the pharmacy. During these temporary absences, a pharmacy technician may, at the discretion of the pharmacist, remain in the pharmacy but may only perform nondiscretionary tasks. The pharmacist shall be responsible for a pharmacy technician and shall review any task performed by a pharmacy technician during the pharmacist's temporary absence. Nothing in this subdivision shall be construed to authorize a pharmacist to supervise pharmacy technicians in greater ratios than those described in subdivision (f).

(h) The pharmacist on duty shall be directly responsible for the conduct of a pharmacy technician supervised by that pharmacist.

SEC. 54. Section 4115.5 of the Business and Professions Code is amended to read:

4115.5. (a) Notwithstanding any other provision of law, a pharmacy technician trainee may be placed in a pharmacy to complete an externship for the purpose of obtaining practical training required to become licensed as a pharmacy technician.

(b) (1) A pharmacy technician trainee participating in an externship as described in subdivision (a) may perform the duties described in subdivision (a) of Section 4115 only under the direct supervision and control of a pharmacist.

(2) A pharmacist supervising a pharmacy technician trainee participating in an externship as described in subdivision (a) shall be directly responsible for the conduct of the trainee.

(3) A pharmacist supervising a pharmacy technician trainee participating in an externship as described in subdivision (a) shall verify any prescription prepared by the trainee under supervision of the pharmacist by initialing the prescription label before the medication is disbursed to a patient or by engaging in other verification procedures that are specifically approved by board regulations.

(4) A pharmacist may only supervise one pharmacy technician trainee at any given time.

(5) A pharmacist supervising a pharmacy technician trainee participating in an externship as described in subdivision (a) shall certify attendance for the pharmacy technician trainee and certify that the pharmacy technician trainee has met the educational objectives established by a California public postsecondary education institution or the private postsecondary vocational institution in which the trainee is enrolled, as established by the institution.

(c) (1) Except as described in paragraph (2), an externship in which a pharmacy technician trainee is participating as described in subdivision (a) shall be for a period of no more than 120 hours.

(2) When an externship in which a pharmacy technician trainee is participating as described in subdivision (a) involves rotation between a community and hospital pharmacy for the purpose of training the student in distinct practice settings, the externship may be for a period of up to 320 hours. No more than 120 of the 320 hours may be completed in a community pharmacy setting or in a single department in a hospital pharmacy.

(d) An externship in which a pharmacy technician trainee may participate as described in subdivision (a) shall be for a period of no more than six consecutive months in a community pharmacy and for a total of no more than 12 months if the externship involves rotation between a community and hospital pharmacy. The externship shall be completed while the trainee is enrolled in a course of instruction at the institution.

(e) A pharmacy technician trainee participating in an externship as described in subdivision (a) shall wear identification that indicates his or her trainee status.

SEC. 55. Section 4127.5 of the Business and Professions Code is amended to read:

4127.5. The fee for the issuance of a nongovernmental license, or renewal of a license, to compound sterile drug products shall be five hundred dollars (\$500) and may be increased to six hundred dollars (\$600).

SEC. 56. Section 4161 of the Business and Professions Code, as added by Section 4.5 of Chapter 887 of the Statutes of 2004, is amended to read:

4161. (a) A person located outside this state that ships, mails, or delivers dangerous drugs or dangerous devices into this state shall be considered a nonresident wholesaler.

(b) A nonresident wholesaler shall be licensed by the board prior to shipping, mailing, or delivering dangerous drugs or dangerous devices to a site located in this state.

(c) A separate license shall be required for each place of business owned or operated by a nonresident wholesaler from or through which dangerous drugs or dangerous devices are shipped, mailed, or delivered to a site located in this state. A license shall be renewed annually and shall not be transferable.

(d) The following information shall be reported, in writing, to the board at the time of initial application for licensure by a nonresident wholesaler, on renewal of a nonresident wholesaler license, or within 30 days of a change in that information:

- (1) Its agent for service of process in this state.
- (2) Its principal corporate officers, as specified by the board, if any.
- (3) Its general partners, as specified by the board, if any.
- (4) Its owners if the applicant is not a corporation or partnership.

(e) A report containing the information in subdivision (d) shall be made within 30 days of any change of ownership, office, corporate officer, or partner.

(f) A nonresident wholesaler shall comply with all directions and requests for information from the regulatory or licensing agency of the state in which it is licensed, as well as with all requests for information made by the board.

(g) A nonresident wholesaler shall maintain records of dangerous drugs and dangerous devices sold, traded, or transferred to persons in this state, so that the records are in a readily retrievable form.

(h) A nonresident wholesaler shall at all times maintain a valid, unexpired license, permit, or registration to conduct the business of the

wholesaler in compliance with the laws of the state in which it is a resident. An application for a nonresident wholesaler license in this state shall include a license verification from the licensing authority in the applicant's state of residence.

(i) The board may not issue or renew a nonresident wholesaler license until the nonresident wholesaler identifies a designated representative-in-charge and notifies the board in writing of the identity and license number of the designated representative-in-charge.

(j) The designated representative-in-charge shall be responsible for the nonresident wholesaler's compliance with state and federal laws governing wholesalers. A nonresident wholesaler shall identify and notify the board of a new designated representative-in-charge within 30 days of the date that the prior designated representative-in-charge ceases to be the designated representative-in-charge.

(k) The board may issue a temporary license, upon conditions and for periods of time as the board determines to be in the public interest. A temporary license fee shall be fixed by the board at an amount not to exceed the annual fee for renewal of a license to conduct business as a nonresident wholesaler.

(l) The registration fee shall be the fee specified in subdivision (f) of Section 4400.

SEC. 57. Section 4202 of the Business and Professions Code is amended to read:

4202. (a) The board may issue a pharmacy technician license to an individual if he or she is a high school graduate or possesses a general educational development certificate equivalent, and meets any one of the following requirements:

- (1) Has obtained an associate's degree in pharmacy technology.
- (2) Has completed a course of training specified by the board.
- (3) Has graduated from a school of pharmacy recognized by the board.
- (4) Is certified by the Pharmacy Technician Certification Board.

(b) The board shall adopt regulations pursuant to this section for the licensure of pharmacy technicians and for the specification of training courses as set out in paragraph (2) of subdivision (a). Proof of the qualifications of any applicant for licensure as a pharmacy technician shall be made to the satisfaction of the board and shall be substantiated by any evidence required by the board.

(c) The board shall conduct a criminal background check of the applicant to determine if an applicant has committed acts that would constitute grounds for denial of licensure, pursuant to this chapter or Chapter 2 (commencing with Section 480) of Division 1.5.

(d) The board may suspend or revoke a license issued pursuant to this section on any ground specified in Section 4301.

(e) Once licensed as a pharmacist, the pharmacy technician registration is no longer valid and the pharmacy technician license shall be returned to the board within 15 days.

SEC. 58. Section 4205 of the Business and Professions Code is amended to read:

4205. (a) A license issued pursuant to Section 4110, 4120, 4160, or 4161 shall be considered a license within the meaning of Section 4141.

(b) The board may, in its discretion, issue a license to any person authorizing the sale and dispensing of hypodermic syringes and needles for animal use.

(c) The application for a license shall be made in writing on a form to be furnished by the board. The board may require any information as the board deems reasonably necessary to carry out the purposes of Article 9 (commencing with Section 4140) of this chapter.

(d) A separate license shall be required for each of the premises of any person who sells or dispenses hypodermic syringes or needles at more than one location.

(e) A license shall be renewed annually and shall not be transferable.

(f) The board may deny, revoke, or suspend any license issued pursuant to this article for any violation of this chapter.

SEC. 59. Section 4206 of the Business and Professions Code is repealed.

SEC. 60. Section 4231 of the Business and Professions Code is amended to read:

4231. (a) The board shall not renew a pharmacist license unless the applicant submits proof satisfactory to the board that he or she has successfully completed 30 hours of approved courses of continuing pharmacy education during the two years preceding the application for renewal.

(b) Notwithstanding subdivision (a), the board shall not require completion of continuing education for the first renewal of a pharmacist license.

(c) If an applicant for renewal of a pharmacist license submits the renewal application and payment of the renewal fee but does not submit proof satisfactory to the board that the licensee has completed 30 hours of continuing pharmacy education, the board shall not renew the license and shall issue the applicant an inactive pharmacist license. A licensee with an inactive pharmacist license issued pursuant to this section may obtain an active pharmacist license by paying the renewal fees due and submitting satisfactory proof to the board that the licensee has completed 30 hours of continuing pharmacy education.

SEC. 61. Section 4232 of the Business and Professions Code is amended to read:

4232. (a) The courses shall be in the form of postgraduate studies, institutes, seminars, lectures, conferences, workshops, extension studies, correspondence courses, and other similar methods of conveying continuing professional pharmacy education.

(b) The subject matter shall be pertinent to the socioeconomic and legal aspects of health care, the properties and actions of drugs and dosage forms and the etiology, and characteristics and therapeutics of the disease state.

(c) The subject matter of the courses may include, but shall not be limited to, the following: pharmacology, biochemistry, physiology, pharmaceutical chemistry, pharmacy administration, pharmacy jurisprudence, public health and communicable diseases, professional practice management, anatomy, histology, and any other subject matter as represented in curricula of accredited colleges of pharmacy.

SEC. 62. Section 4315 of the Business and Professions Code is amended to read:

4315. (a) The executive officer, or his or her designee, may issue a letter of admonishment to a licensee for failure to comply with this chapter or regulations adopted pursuant to this chapter, directing the licensee to come into compliance.

(b) The letter of admonishment shall be in writing and shall describe in detail the nature and facts of the violation, including a reference to the statutes or regulations violated.

(c) The letter of admonishment shall inform the licensee that within 30 days of service of the order of admonishment the licensee may do either of the following:

(1) Submit a written request for an office conference to the executive officer of the board to contest the letter of admonishment.

(A) Upon a timely request, the executive officer, or his or her designee, shall hold an office conference with the licensee or the licensee's legal counsel or authorized representative. Unless so authorized by the executive officer, or his or her designee, no individual other than the legal counsel or authorized representative of the licensee may accompany the licensee to the office conference.

(B) Prior to or at the office conference the licensee may submit to the executive officer declarations and documents pertinent to the subject matter of the letter of admonishment.

(C) The office conference is intended to be an informal proceeding and shall not be subject to 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).

(D) The executive officer, or his or her designee, may affirm, modify, or withdraw the letter of admonishment. Within 14 calendar days from the date of the office conference, the executive officer, or his or her designee, shall personally serve or send by certified mail to the licensee's address of record with the board a written decision. This decision shall be deemed the final administrative decision concerning the letter of admonishment.

(E) Judicial review of the decision may be had by filing a petition for a writ of mandate in accordance with the provisions of Section 1094.5 of the Code of Civil Procedure within 30 days of the date the decision was personally served or sent by certified mail. The judicial review shall extend to the question of whether or not there was a prejudicial abuse of discretion in the issuance of the letter of admonishment.

(2) Comply with the letter of admonishment and submit a written corrective action plan to the executive officer documenting compliance. If an office conference is not requested pursuant to this section, compliance with the letter of admonishment shall not constitute an admission of the violation noted in the letter of admonishment.

(d) The letter of admonishment shall be served upon the licensee personally or by certified mail at the licensee's address of record with the board. If the licensee is served by certified mail, service shall be effective upon deposit in the United States mail.

(e) The licensee shall maintain and have readily available a copy of the letter of admonishment and corrective action plan, if any, for at least three years from the date of issuance of the letter of admonishment.

(f) Nothing in this section shall in any way limit the board's authority or ability to do either of the following:

(1) Issue a citation pursuant to Section 125.9, 148, or 4067 or pursuant to Section 1775, 1775.15, 1777, or 1778 of Title 16 of the California Code of Regulations.

(2) Institute disciplinary proceedings pursuant to Article 19 (commencing with Section 4300).

SEC. 62.5. Section 4315 of the Business and Professions Code is amended to read:

4315. (a) The executive officer, or his or her designee, may issue a letter of admonishment to a licensee for failure to comply with Section 733 or for failure to comply with this chapter or regulations adopted pursuant to this chapter, directing the licensee to come into compliance.

(b) The letter of admonishment shall be in writing and shall describe in detail the nature and facts of the violation, including a reference to the statutes or regulations violated.

(c) The letter of admonishment shall inform the licensee that within 30 days of service of the order of admonishment the licensee may do either of the following:

(1) Submit a written request for an office conference to the executive officer of the board to contest the letter of admonishment.

(A) Upon a timely request, the executive officer, or his or her designee, shall hold an office conference with the licensee or the licensee's legal counsel or authorized representative. Unless so authorized by the executive officer, or his or her designee, no individual other than the legal counsel or authorized representative of the licensee may accompany the licensee to the office conference.

(B) Prior to or at the office conference, the licensee may submit to the executive officer declarations and documents pertinent to the subject matter of the letter of admonishment.

(C) The office conference is intended to be an informal proceeding and shall not be subject to 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).

(D) The executive officer, or his or her designee, may affirm, modify, or withdraw the letter of admonishment. Within 14 calendar days from the date of the office conference, the executive officer, or his or her designee, shall personally serve or send by certified mail to the licensee's address of record with the board a written decision. This decision shall be deemed the final administrative decision concerning the letter of admonishment.

(E) Judicial review of the decision may be had by filing a petition for a writ of mandate in accordance with the provisions of Section 1094.5 of the Code of Civil Procedure within 30 days of the date the decision was personally served or sent by certified mail. The judicial review shall extend to the question of whether or not there was a prejudicial abuse of discretion in the issuance of the letter of admonishment.

(2) Comply with the letter of admonishment and submit a written corrective action plan to the executive officer documenting compliance. If an office conference is not requested pursuant to this section, compliance with the letter of admonishment shall not constitute an admission of the violation noted in the letter of admonishment.

(d) The letter of admonishment shall be served upon the licensee personally or by certified mail at the licensee's address of record with the board. If the licensee is served by certified mail, service shall be effective upon deposit in the United States mail.

(e) The licensee shall maintain and have readily available a copy of the letter of admonishment and corrective action plan, if any, for at least three years from the date of issuance of the letter of admonishment.

(f) Nothing in this section shall in any way limit the board's authority or ability to do either of the following:

(1) Issue a citation pursuant to Section 125.9, 148, or 4067 or pursuant to Section 1775 of Title 16 of the California Code of Regulations.

(2) Institute disciplinary proceedings pursuant to Article 19 (commencing with Section 4300).

SEC. 63. Section 4360 of the Business and Professions Code is amended to read:

4360. The board shall operate a pharmacists recovery program to rehabilitate pharmacists and intern pharmacists whose competency may be impaired due to abuse of alcohol, drug use, or mental illness. The intent of the pharmacists recovery program is to return these pharmacists and intern pharmacists to the practice of pharmacy in a manner that will not endanger the public health and safety.

SEC. 64. Section 4361 of the Business and Professions Code is repealed.

SEC. 65. Section 4361 is added to the Business and Professions Code, to read:

4361. (a) "Participant" means a pharmacist or intern pharmacist who has entered the pharmacists recovery program.

(b) "Pharmacists recovery program" means the rehabilitation program created by this article for pharmacists and intern pharmacists.

SEC. 66. Section 4362 of the Business and Professions Code is repealed.

SEC. 67. Section 4362 is added to the Business and Professions Code, to read:

4362. (a) A pharmacist or intern pharmacist may enter the pharmacists recovery program if:

(1) The pharmacist or intern pharmacist is referred by the board instead of, or in addition to, other means of disciplinary action.

(2) The pharmacist or intern pharmacist voluntarily elects to enter the pharmacists recovery program.

(b) A pharmacist or intern pharmacist who enters the pharmacists recovery program pursuant to paragraph (2) of subdivision (a) shall not be subject to discipline or other enforcement action by the board solely on his or her entry into the pharmacists recovery program or on information obtained from the pharmacist or intern pharmacist while participating in the program unless the pharmacist or intern pharmacist would pose a threat to the health and safety of the public. However, if the board receives information regarding the conduct of the pharmacist

or intern pharmacist, that information may serve as a basis for discipline or other enforcement by the board.

SEC. 68. Section 4363 of the Business and Professions Code is repealed.

SEC. 69. Section 4364 of the Business and Professions Code is amended to read:

4364. (a) The board shall establish criteria for the participation of pharmacists and intern pharmacists in the pharmacists recovery program.

(b) The board may deny a pharmacist or intern pharmacist who fails to meet the criteria for participation entry into the pharmacists recovery program.

(c) The establishment of criteria for participation in the pharmacists recovery program shall not be subject to the requirements of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

SEC. 70. Section 4365 of the Business and Professions Code is amended to read:

4365. The board shall contract with one or more qualified contractors to administer the pharmacists recovery program.

SEC. 71. Section 4366 of the Business and Professions Code is amended to read:

4366. The functions of the contractor administering the pharmacists recovery program shall include, but not be limited to, the following:

(a) To evaluate those pharmacists and intern pharmacists who request participation in the program.

(b) To develop a treatment contract with each participant in the pharmacists recovery program.

(c) To monitor the compliance of each participant with their treatment contract.

(d) To prepare reports as required by the board.

(e) To inform each participant of the procedures followed in the program.

(f) To inform each participant of their rights and responsibilities in the program.

(g) To inform each participant of the possible consequences of noncompliance with the program.

SEC. 72. Section 4367 of the Business and Professions Code is repealed.

SEC. 73. Section 4368 of the Business and Professions Code is repealed.

SEC. 74. Section 4369 of the Business and Professions Code is amended to read:

4369. (a) Any failure to comply with the treatment contract, determination that the participant is failing to derive benefit from the program, or other requirements of the pharmacists recovery program may result in the termination of the pharmacist's or intern pharmacist's participation in the pharmacists recovery program. The name and license number of a pharmacist or intern pharmacist who is terminated from the pharmacists recovery program and the basis for the termination shall be reported to the board.

(b) Participation in the pharmacists recovery program shall not be a defense to any disciplinary action that may be taken by the board.

(c) No provision of this article shall preclude the board from commencing disciplinary action against a licensee who is terminated from the pharmacists recovery program.

SEC. 75. Section 4370 of the Business and Professions Code is repealed.

SEC. 76. Section 4371 of the Business and Professions Code is amended to read:

4371. The board shall review the pharmacists recovery program on a quarterly basis. As part of this evaluation, the board shall review files of all participants in the pharmacists recovery program.

SEC. 77. Section 4372 of the Business and Professions Code is amended to read:

4372. All board records and records of the pharmacists recovery program pertaining to the treatment of a pharmacist or intern pharmacist in the program shall be kept confidential and are not subject to discovery, subpoena, or disclosure pursuant to Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code. However, board records and records of the pharmacists recovery program may be disclosed and testimony provided in connection with participation in the pharmacists recovery program, but only to the extent those records or testimony are relevant to the conduct for which the pharmacist or intern pharmacist was terminated from the pharmacists recovery program.

SEC. 78. Section 4373 of the Business and Professions Code is amended to read:

4373. No member of the board shall be liable for any civil damages because of acts or omissions that may occur while acting in good faith pursuant to this article.

SEC. 79. Section 4400 of the Business and Professions Code, as added by Section 50 of Chapter 857 of the Statutes of 2004, is amended to read:

4400. The amount of fees and penalties prescribed by this chapter, except as otherwise provided is that fixed by the board according to the following schedule:

(a) The fee for a nongovernmental pharmacy license shall be three hundred forty dollars (\$340) and may be increased to four hundred dollars (\$400).

(b) The fee for a nongovernmental pharmacy annual renewal shall be one hundred seventy-five dollars (\$175) and may be increased to two hundred fifty dollars (\$250).

(c) The fee for the pharmacist application and examination shall be one hundred fifty-five dollars (\$155) and may be increased to one hundred eighty-five dollars (\$185).

(d) The fee for regrading an examination shall be seventy-five dollars (\$75) and may be increased to eighty-five dollars (\$85). If an error in grading is found and the applicant passes the examination, the regrading fee shall be refunded.

(e) The fee for a pharmacist license and biennial renewal shall be one hundred fifteen dollars (\$115) and may be increased to one hundred fifty dollars (\$150).

(f) The fee for a nongovernmental wholesaler license and annual renewal shall be five hundred fifty dollars (\$550) and may be increased to six hundred dollars (\$600).

(g) The fee for a hypodermic license and renewal shall be ninety dollars (\$90) and may be increased to one hundred twenty-five dollars (\$125).

(h) (1) The fee for application, investigation, and issuance of a license as a designated representative pursuant to Section 4053 shall be one hundred eighty-five dollars (\$185) and may be increased to two hundred fifty dollars (\$250). If the applicant is not issued a license as a designated representative, the board shall refund one hundred ten dollars (\$110) of the fee.

(2) The fee for the annual renewal of a license as a designated representative shall be one hundred ten dollars (\$110) and may be increased to one hundred fifty dollars (\$150).

(i) (1) The fee for the application, investigation, and issuance of a license as a designated representative for a veterinary food-animal drug retailer pursuant to Section 4053 shall be two hundred fifty dollars (\$250). If the applicant is not issued a license as a designated representative, the board shall refund one hundred fifty dollars (\$150) of the fee.

(2) The fee for the annual renewal of a license as a designated representative for a veterinary food-animal drug retailer shall be one hundred ten dollars (\$110).

(j) The fee for a nonresident wholesaler's license and annual renewal issued pursuant to Section 4120 shall be five hundred fifty dollars (\$550) and may be increased to six hundred dollars (\$600).

(k) The fee for evaluation of continuing education courses for accreditation shall be set by the board at an amount not to exceed forty dollars (\$40) per course hour.

(l) The fee for an intern pharmacist license shall be sixty-five dollars (\$65) and may be increased to seventy-five dollars (\$75). The fee for transfer of intern hours or verification of licensure to another state shall be fixed by the board not to exceed twenty dollars (\$20).

(m) The board may waive or refund the additional fee for the issuance of a certificate where the certificate is issued less than 45 days before the next regular renewal date.

(n) The fee for the reissuance of any license, or renewal thereof, that has been lost or destroyed or reissued due to a name change is thirty dollars (\$30).

(o) The fee for the reissuance of any license, or renewal thereof, that must be reissued because of a change in the information, is sixty dollars (\$60) and may be increased to one hundred dollars (\$100).

(p) It is the intent of the Legislature that, in setting fees pursuant to this section, the board shall seek to maintain a reserve in the Pharmacy Board Contingent Fund equal to approximately one year's operating expenditures.

(q) The fee for any applicant for a nongovernmental clinic permit is three hundred forty dollars (\$340) and may be increased to four hundred dollars (\$400) for each permit. The annual fee for renewal of the permit is one hundred seventy-five dollars (\$175) and may be increased to two hundred fifty dollars (\$250) for each permit.

(r) The board shall charge a fee for the processing and issuance of a license to a pharmacy technician and a separate fee for the biennial renewal of the license. The license fee shall be twenty-five dollars (\$25) and may be increased to fifty dollars (\$50). The biennial renewal fee shall be twenty-five dollars (\$25) and may be increased to fifty dollars (\$50).

(s) The fee for a veterinary food-animal drug retailer license shall be four hundred dollars (\$400). The annual renewal fee for a veterinary food-animal drug retailer shall be two hundred fifty dollars (\$250).

(t) The fee for issuance of a retired license pursuant to Section 4200.5 shall be thirty dollars (\$30).

SEC. 79.5. Section 4400 of the Business and Professions Code, as added by Section 50 of Chapter 857 of the Statutes of 2004, is amended to read:

4400. The amount of fees and penalties prescribed by this chapter, except as otherwise provided is that fixed by the board according to the following schedule:

(a) The fee for a nongovernmental pharmacy license shall be three hundred forty dollars (\$340) and may be increased to four hundred dollars (\$400).

(b) The fee for a nongovernmental pharmacy annual renewal shall be one hundred seventy-five dollars (\$175) and may be increased to two hundred fifty dollars (\$250).

(c) The fee for the pharmacist application and examination shall be one hundred fifty-five dollars (\$155) and may be increased to one hundred eighty-five dollars (\$185).

(d) The fee for regrading an examination shall be seventy-five dollars (\$75) and may be increased to eighty-five dollars (\$85). If an error in grading is found and the applicant passes the examination, the regrading fee shall be refunded.

(e) The fee for a pharmacist license and biennial renewal shall be one hundred fifteen dollars (\$115) and may be increased to one hundred fifty dollars (\$150).

(f) The fee for a nongovernmental wholesaler license and annual renewal shall be five hundred fifty dollars (\$550) and may be increased to six hundred dollars (\$600), except as provided in subdivision (j).

(g) The fee for a hypodermic license and renewal shall be ninety dollars (\$90) and may be increased to one hundred twenty-five dollars (\$125).

(h) (1) The fee for application, investigation, and issuance of license as a designated representative pursuant to Section 4053 shall be one hundred eighty-five dollars (\$185) and may be increased to two hundred fifty dollars (\$250). If the applicant is not issued a license as a designated representative, the board shall refund one hundred ten dollars (\$110) of the fee.

(2) The fee for the annual renewal of a license as a designated representative shall be one hundred ten dollars (\$110) and may be increased to one hundred fifty dollars (\$150).

(i) (1) The fee for the application, investigation, and issuance of a license as a designated representative for a veterinary food-animal drug retailer pursuant to Section 4053 shall be two hundred fifty dollars (\$250). If the applicant is not issued a license as a designated representative, the board shall refund one hundred fifty dollars (\$150) of the fee.

(2) The fee for the annual renewal of a license as a designated representative for a veterinary food-animal drug retailer shall be one hundred ten dollars (\$110).

(j) (1) The application fee for a nonresident wholesaler's license issued pursuant to Section 4161 shall be five hundred fifty dollars (\$550) and may be increased to six hundred dollars (\$600).

(2) For nonresident wholesalers who have 21 or more wholesaler facilities operating nationwide the application fees for the first 20 locations shall be five hundred fifty dollars (\$550) and may be increased to six hundred dollars (\$600). The application fee for any additional location after licensure of the first 20 locations shall be two hundred twenty-five dollars (\$225) and may be increased to three hundred dollars (\$300).

(3) The annual renewal fee for a nonresident wholesaler's license issued pursuant to Section 4161 shall be five hundred fifty dollars (\$550) and may be increased to six hundred dollars (\$600).

(k) The fee for evaluation of continuing education courses for accreditation shall be set by the board at an amount not to exceed forty dollars (\$40) per course hour.

(l) The fee for an intern pharmacist license shall be sixty-five dollars (\$65) and may be increased to seventy-five dollars (\$75). The fee for transfer of intern hours or verification of licensure to another state shall be fixed by the board not to exceed twenty dollars (\$20).

(m) The board may waive or refund the additional fee for the issuance of a certificate where the certificate is issued less than 45 days before the next regular renewal date.

(n) The fee for the reissuance of any license, or renewal thereof, that has been lost or destroyed or reissued due to a name change is thirty dollars (\$30).

(o) The fee for the reissuance of any license, or renewal thereof, that must be reissued because of a change in the information, is sixty dollars (\$60) and may be increased to one hundred dollars (\$100).

(p) It is the intent of the Legislature that, in setting fees pursuant to this section, the board shall seek to maintain a reserve in the Pharmacy Board Contingent Fund equal to approximately one year's operating expenditures.

(q) The fee for any applicant for a nongovernmental clinic permit is three hundred forty dollars (\$340) and may be increased to four hundred dollars (\$400) for each permit. The annual fee for renewal of the permit is one hundred seventy-five dollars (\$175) and may be increased to two hundred fifty dollars (\$250) for each permit.

(r) The board shall charge a fee for the processing and issuance of a license to a pharmacy technician and a separate fee for the biennial renewal of the license. The license fee shall be twenty-five dollars (\$25) and may be increased to fifty dollars (\$50). The biennial renewal fee shall be twenty-five dollars (\$25) and may be increased to fifty dollars (\$50).

(s) The fee for a veterinary food-animal drug retailer license shall be four hundred dollars (\$400). The annual renewal fee for a veterinary food-animal drug retailer shall be two hundred fifty dollars (\$250).

(t) The fee for issuance of a retired license pursuant to Section 4200.5 shall be thirty dollars (\$30).

SEC. 80. Section 4850 of the Business and Professions Code is amended to read:

4850. Every person holding a license under this chapter shall conspicuously display the license in his or her principal place of business.

SEC. 81. Section 28.5 of this bill incorporates amendments to Section 2234.1 of the Business and Professions Code proposed by both this bill and Assembly Bill 592. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2006, (2) each bill amends Section 2234.1 of the Business and Professions Code, and (3) this bill is enacted after Assembly Bill 592, in which case Section 28 of this bill shall not become operative.

SEC. 82. Section 62.5 of this bill incorporates amendments to Section 4315 of the Business and Professions Code proposed by both this bill and Senate Bill 644. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2006, (2) each bill amends Section 4315 of the Business and Professions Code, and (3) this bill is enacted after SB 644, in which case Section 62 of this bill shall not become operative.

SEC. 83. Section 79.5 of this bill incorporates amendments to Section 4400 of the Business and Professions Code proposed by both this bill and Assembly Bill 497. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2006, (2) each bill amends Section 4400 of the Business and Professions Code, and (3) this bill is enacted after AB 497, in which case Section 79 of this bill shall not become operative.

SEC. 84. 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 622

An act to amend Section 8686 of the Government Code, and to amend Sections 218, 17207, and 24347.5 of, and to add Sections 195.98, 195.99, and 195.100 to, the Revenue and Taxation Code, relating to taxation, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 6, 2005. Filed with
Secretary of State October 6, 2005.]

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

SECTION 1. Section 8686 of the Government Code is amended to read:

8686. (a) For any eligible project, the state share shall amount to no more than 75 percent of total state eligible costs.

(b) Notwithstanding subdivision (a), the state share shall be up to 100 percent of total state eligible costs connected with the following events:

- (1) The October 17, 1989, Loma Prieta earthquake.
- (2) The October 20, 1991, East Bay fire.
- (3) The fires that occurred in southern California from October 1, 1993, to November 30, 1993, inclusive.
- (4) The January 17, 1994, Northridge earthquake.
- (5) Storms that occurred in California during the periods commencing January 3, 1995, and February 13, 1995, as specified in agreements between this state and the United States for federal financial assistance.
- (6) The storms that occurred in California in December of 1996 and early January of 1997, as specified in agreements between this state and the United States for federal financial assistance.
- (7) The winter storms and flooding that occurred from February 1, 1998, to April 30, 1998, inclusive, as specified in agreements between this state and the United States for federal financial assistance.
- (8) The wildfires that occurred in southern California commencing October 21, 2003, as specified in agreements between this state and the United States for federal financial assistance.
- (9) The December 22, 2003, San Simeon earthquake, as specified in agreements between this state and the United States for federal financial assistance.
- (10) The severe storms, flooding, debris flows, and mudslides that occurred from December 27, 2004, to January 11, 2005, inclusive, in southern California, as specified in agreements between California and the United States for federal financial assistance.

(11) The severe storms, flooding, landslides, and mud and debris flows that occurred from February 16, 2005, to February 23, 2005, inclusive, in southern California, as specified in agreements between California and the United States for federal financial assistance.

(c) For any federally declared disaster subsequent to January 1, 1995, that the Legislature has designated in subdivision (b), the state shall assume the increased share specified in subdivision (b) in those cases where the Federal Emergency Management Agency or another applicable federal agency has approved the federal share of costs.

(d) The state shall make no allocation for any project application resulting in a state share of less than two thousand five hundred dollars (\$2,500) under this section.

SEC. 2. Section 195.98 is added to the Revenue and Taxation Code, to read:

195.98. (a) By September 30, 2005, the auditors of the Counties of Orange, Riverside, San Bernardino, and San Diego, which counties were the subject of the Governor's proclamations of a state of emergency for the severe rainstorms that occurred in December 2004, January 2005, February 2005, or March 2005, that caused flash floods, mudslides, the accumulation of debris, and that washed out and damaged roads in those counties, shall certify to the Director of Finance an estimate of the total amount of the reduction in property tax revenues on both the regular secured roll and the supplemental roll for the 2004-05 fiscal year resulting from the reassessment by the county assessor pursuant to paragraph (1) of subdivision (a) of Section 170 of those properties that are eligible properties as a result of that disaster, except that the amount certified shall not include any estimated property tax revenue reductions to school districts, other than basic state aid school districts, and county offices of education.

(b) For purposes of this section, "basic state aid school district" means any school district that does not receive a state apportionment pursuant to subdivision (h) of Section 42238 of the Education Code, but receives from the state only a basic apportionment pursuant to Section 6 of Article IX of the California Constitution.

SEC. 3. Section 195.99 is added to the Revenue and Taxation Code, to read:

195.99. After the county auditor of an eligible county, as described in Section 195.98, has made the applicable certification to the Director of Finance pursuant to that section, the director shall, within 30 days after verification of the county auditor's estimate, certify this amount to the Controller for allocation to the county. Upon receipt of certification from the Director of Finance, the Controller shall make the appropriate allocation to the county within 10 working days.

SEC. 4. Section 195.100 is added to the Revenue and Taxation Code, to read:

195.100. (a) On or before June 30, 2006, each eligible county, as described in Section 195.98, shall compute and remit to the Controller for deposit in the General Fund an amount equal to the amount allocated to it by the Controller pursuant to Section 195.99, less the actual amount of its property tax revenue lost on the regular secured and supplemental rolls with respect to those eligible properties described in Section 195.98 as a result of the reassessment of those properties pursuant to paragraph (1) of subdivision (a) of Section 170, excluding any property tax revenue lost by school districts, other than basic state aid school districts, and county offices of education. If the actual amount of property tax revenue lost by an eligible county in the immediately preceding fiscal year, as described and limited in the preceding sentence, exceeds the amount allocated by the Controller to that county pursuant to Section 195.99, the Controller shall allocate the amount of that excess to that eligible county.

(b) For purposes of this section, "basic state aid school district" means any school district that does not receive a state apportionment pursuant to subdivision (h) of Section 42238 of the Education Code, but receives from the state only a basic apportionment pursuant to Section 6 of Article IX of the California Constitution.

SEC. 5. Section 218 of the Revenue and Taxation Code is amended to read:

218. (a) The homeowners' property tax exemption is in the amount of the assessed value of the dwelling specified in this section, as authorized by subdivision (k) of Section 3 of Article XIII of the California Constitution. That exemption shall be in the amount of seven thousand dollars (\$7,000) of the full value of the dwelling.

(b) The exemption does not extend to property that is rented, vacant, under construction on the lien date, or that is a vacation or secondary home of the owner or owners, nor does it apply to property on which an owner receives the veteran's exemption.

(c) For purposes of this section, all of the following apply:

(1) "Owner" includes a person purchasing the dwelling under a contract of sale or who holds shares or membership in a cooperative housing corporation, which holding is a requisite to the exclusive right of occupancy of a dwelling.

(2) (A) "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. A two-dwelling unit shall be considered as two separate single-family dwellings.

(B) "Dwelling" includes the following:

(i) A single-family dwelling occupied by an owner thereof as his or her principal place of residence on the lien date.

(ii) A multiple-dwelling unit occupied by an owner thereof on the lien date as his or her principal place of residence.

(iii) A condominium occupied by an owner thereof as his or her principal place of residence on the lien date.

(iv) Premises occupied by the owner of shares or a membership interest in a cooperative housing corporation, as defined in subdivision (i) of Section 61, as his or her principal place of residence on the lien date. Each exemption allowed pursuant to this subdivision shall be deducted from the total assessed valuation of the cooperative housing corporation. The exemption shall be taken into account in apportioning property taxes among owners of share or membership interests in the cooperative housing corporations so as to benefit those owners who qualify for the exemption.

(d) Any dwelling that qualified for an exemption under this section prior to October 20, 1991, that was damaged or destroyed by fire in a disaster, as declared by the Governor, occurring on or after October 20, 1991, and before November 1, 1991, and that has not changed ownership since October 20, 1991, shall not be disqualified as a “dwelling” or be denied an exemption under this section solely on the basis that the dwelling was temporarily damaged or destroyed or was being reconstructed by the owner.

(e) Any dwelling that qualified for an exemption under this section prior to October 15, 2003, that was damaged or destroyed by fire or earthquake in a disaster, as declared by the Governor, during October, November, or December 2003, and that has not changed ownership since October 15, 2003, shall not be disqualified as a “dwelling” or be denied an exemption under this section solely on the basis that the dwelling was temporarily damaged or destroyed or was being reconstructed by the owner.

(f) Any dwelling that qualified for an exemption under this section prior to June 3, 2004, that was damaged or destroyed by flood in a disaster, as declared by the Governor, during June 2004, and that has not changed ownership since June 3, 2004, shall not be disqualified as a “dwelling” or be denied an exemption under this section solely on the basis that the dwelling was temporarily damaged or destroyed or was being reconstructed by the owner.

(g) Any dwelling that qualified for an exemption under this section prior to December 28, 2004, that was damaged or destroyed by severe rainstorms, floods, mudslides, or the accumulation of debris in a disaster, as declared by the Governor, during December 2004, January 2005, February 2005, March 2005, or June 2005, and that has not changed

ownership since December 28, 2004, shall not be disqualified as a “dwelling” or be denied an exemption under this section solely on the basis that the dwelling was temporarily damaged or destroyed or was being reconstructed by the owner, or was temporarily uninhabited as a result of restricted access to the property due to floods, mudslides, the accumulation of debris, or washed-out or damaged roads.

(h) The exemption provided for in subdivision (k) of Section 3 of Article XIII of the California Constitution shall first be applied to the building, structure, or other shelter and the excess, if any, shall be applied to any land on which it may be located.

SEC. 5.5. Section 218 of the Revenue and Taxation Code is amended to read:

218. (a) The homeowners’ property tax exemption is in the amount of the assessed value of the dwelling specified in this section, as authorized by subdivision (k) of Section 3 of Article XIII of the California Constitution. That exemption shall be in the amount of seven thousand dollars (\$7,000) of the full value of the dwelling.

(b) The exemption does not extend to property that is rented, vacant, under construction on the lien date, or that is a vacation or secondary home of the owner or owners, nor does it apply to property on which an owner receives the veteran’s exemption.

(c) For purposes of this section, all of the following apply:

(1) “Owner” includes a person purchasing the dwelling under a contract of sale or who holds shares or membership in a cooperative housing corporation, which holding is a requisite to the exclusive right of occupancy of a dwelling.

(2) (A) “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. A two-dwelling unit shall be considered as two separate single-family dwellings.

(B) “Dwelling” includes the following:

(i) A single-family dwelling occupied by an owner thereof as his or her principal place of residence on the lien date.

(ii) A multiple-dwelling unit occupied by an owner thereof on the lien date as his or her principal place of residence.

(iii) A condominium occupied by an owner thereof as his or her principal place of residence on the lien date.

(iv) Premises occupied by the owner of shares or a membership interest in a cooperative housing corporation, as defined in subdivision (i) of Section 61, as his or her principal place of residence on the lien date. Each exemption allowed pursuant to this subdivision shall be deducted from the total assessed valuation of the cooperative housing corporation. The exemption shall be taken into account in apportioning

property taxes among owners of share or membership interests in the cooperative housing corporations so as to benefit those owners who qualify for the exemption.

(d) Any dwelling that qualified for an exemption under this section prior to October 20, 1991, that was damaged or destroyed by fire in a disaster, as declared by the Governor, occurring on or after October 20, 1991, and before November 1, 1991, and that has not changed ownership since October 20, 1991, shall not be disqualified as a “dwelling” or be denied an exemption under this section solely on the basis that the dwelling was temporarily damaged or destroyed or was being reconstructed by the owner.

(e) Any dwelling that qualified for an exemption under this section prior to October 15, 2003, that was damaged or destroyed by fire or earthquake in a disaster, as declared by the Governor, during October, November, or December 2003, and that has not changed ownership since October 15, 2003, shall not be disqualified as a “dwelling” or be denied an exemption under this section solely on the basis that the dwelling was temporarily damaged or destroyed or was being reconstructed by the owner.

(f) Any dwelling that qualified for an exemption under this section prior to June 3, 2004, that was damaged or destroyed by flood in a disaster, as declared by the Governor, during June 2004, and that has not changed ownership since June 3, 2004, shall not be disqualified as a “dwelling” or be denied an exemption under this section solely on the basis that the dwelling was temporarily damaged or destroyed or was being reconstructed by the owner.

(g) Any dwelling that qualified for an exemption under this section prior to August 11, 2004, that was damaged or destroyed by the wildfires and any other related casualty that occurred in Shasta County in a disaster, as declared by the Governor, during August 2004, and that has not changed ownership since August 11, 2004, shall not be disqualified as a “dwelling” or be denied an exemption under this section solely on the basis that the dwelling was temporarily damaged or destroyed or was being reconstructed by the owner.

(h) Any dwelling that qualified for an exemption under this section prior to December 28, 2004, that was damaged or destroyed by severe rainstorms, floods, mudslides, or the accumulation of debris in a disaster, as declared by the Governor, during December 2004, January 2005, February 2005, March 2005, or June 2005, and that has not changed ownership since December 28, 2004, shall not be disqualified as a “dwelling” or be denied an exemption under this section solely on the basis that the dwelling was temporarily damaged or destroyed or was being reconstructed by the owner, or was temporarily uninhabited as a

result of restricted access to the property due to floods, mudslides, the accumulation of debris, or washed-out or damaged roads.

(i) The exemption provided for in subdivision (k) of Section 3 of Article XIII of the California Constitution shall first be applied to the building, structure, or other shelter and the excess, if any, shall be applied to any land on which it may be located.

SEC. 6. Section 17207 of the Revenue and Taxation Code is amended to read:

17207. (a) An excess disaster loss, as defined in subdivision (c), shall be carried to other taxable years as provided in subdivision (b), with respect to losses resulting from any of the following disasters:

(1) Forest fire or any other related casualty occurring in 1985 in California.

(2) Storm, flooding, or any other related casualty occurring in 1986 in California.

(3) Any loss sustained during 1987 as a result of a forest fire or any other related casualty.

(4) Earthquake, aftershock, or any other related casualty occurring in 1987 in California.

(5) Earthquake, aftershock, or any other related casualty occurring in 1989 in California.

(6) Any loss sustained during 1990 as a result of fire or any other related casualty in California.

(7) Any loss sustained as a result of the Oakland/Berkeley fire of 1991, or any other related casualty.

(8) Any loss sustained as a result of storm, flooding, or any other related casualty occurring in February 1992 in California.

(9) Earthquake, aftershock, or any other related casualty occurring in April 1992 in the County of Humboldt.

(10) Riots, arson, or any other related casualty occurring in April or May 1992 in California.

(11) Any loss sustained as a result of the earthquakes that occurred in the County of San Bernardino in June and July of 1992, or any other related casualty.

(12) Any loss sustained as a result of the Fountain Fire that occurred in the County of Shasta, or as a result of either of the fires in the Counties of Calaveras and Trinity that occurred in August 1992, or any other related casualty.

(13) Any loss sustained as a result of storm, flooding, or any other related casualty that occurred in the Counties of Alpine, Contra Costa, Fresno, Humboldt, Imperial, Lassen, Los Angeles, Madera, Mendocino, Modoc, Monterey, Napa, Orange, Plumas, Riverside, San Bernardino,

San Diego, Santa Barbara, Sierra, Siskiyou, Sonoma, Tehama, Trinity, and Tulare, and the City of Fillmore in January 1993.

(14) Any loss sustained as a result of a fire that occurred in the Counties of Los Angeles, Orange, Riverside, San Bernardino, San Diego, and Ventura, during October or November of 1993, or any other related casualty.

(15) Any loss sustained as a result of the earthquake, aftershocks, or any other related casualty that occurred in the Counties of Los Angeles, Orange, and Ventura on or after January 17, 1994.

(16) Any loss sustained as a result of a fire that occurred in the County of San Luis Obispo during August of 1994, or any other related casualty.

(17) Any loss sustained as a result of the storms or flooding occurring in 1995, or any other related casualty, sustained in any county of this state subject to a disaster declaration with respect to the storms and flooding.

(18) Any loss sustained as a result of the storms or flooding occurring in December 1996 or January 1997, or any related casualty, sustained in any county of this state subject to a disaster declaration with respect to the storms or flooding.

(19) Any loss sustained as a result of the storms or flooding occurring in February 1998, or any related casualty, sustained in any county of this state subject to a disaster declaration with respect to the storms or flooding.

(20) Any loss sustained as a result of a freeze occurring in the winter of 1998-99, or any related casualty, sustained in any county of this state subject to a disaster declaration with respect to the freeze.

(21) Any loss sustained as a result of an earthquake occurring in September 2000, that was included in the Governor's proclamation of a state of emergency for the County of Napa.

(22) Any loss sustained as a result of the Middle River levee break in San Joaquin County occurring in June 2004.

(23) Any losses sustained as a result of the fires that occurred in the Counties of Los Angeles, Riverside, San Bernardino, San Diego, and Ventura in October and November 2003, or as a result of floods, mudflows, and debris flows, directly related to fires.

(24) Any losses sustained in the Counties of Santa Barbara and San Luis Obispo as a result of the San Simeon earthquake, aftershocks, and any other related casualties.

(25) Any loss sustained in the Counties of Orange, Riverside, San Bernardino, and San Diego as a result of the severe rainstorms, and related flooding, slides, and other events, that occurred in December 2004, January 2005, February 2005, March 2005, or June 2005.

(b) (1) In the case of any loss allowed under Section 165(c) of the Internal Revenue Code, relating to limitation of losses of individuals, any excess disaster loss shall be carried forward to each of the five taxable years following the taxable year for which the loss is claimed. However, if there is any excess disaster loss remaining after the five-year period, then the applicable percentage, as set forth in paragraph (1) of subdivision (b) of Section 17276, of that excess disaster loss shall be carried forward to each of the next 10 taxable years.

(2) The entire amount of any excess disaster loss as defined in subdivision (c) shall be carried to the earliest of the taxable years to which, by reason of subdivision (b), the loss may be carried. The portion of the loss which shall be carried to each of the other taxable years shall be the excess, if any, of the amount of excess disaster loss over the sum of the adjusted taxable income for each of the prior taxable years to which that excess disaster loss is carried.

(c) "Excess disaster loss" means a disaster loss computed pursuant to Section 165 of the Internal Revenue Code which exceeds the adjusted taxable income of the year of loss or, if the election under Section 165(i) of the Internal Revenue Code is made, the adjusted taxable income of the year preceding the loss.

(d) The provisions of this section and Section 165(i) of the Internal Revenue Code shall be applicable to any of the losses listed in subdivision (a) sustained in any county or city in this state which was proclaimed by the Governor to be in a state of disaster.

(e) Losses allowable under this section may not be taken into account in computing a net operating loss deduction under Section 172 of the Internal Revenue Code.

(f) For purposes of this section, "adjusted taxable income" shall be defined by Section 1212(b)(2)(B) of the Internal Revenue Code.

(g) For losses described in paragraphs (15) to (25), inclusive, of subdivision (a), the election under Section 165(i) of the Internal Revenue Code may be made on a return or amended return filed on or before the due date of the return (determined with regard to extension) for the taxable year in which the disaster occurred.

SEC. 6.5. Section 17207 of the Revenue and Taxation Code is amended to read:

17207. (a) An excess disaster loss, as defined in subdivision (c), shall be carried to other taxable years as provided in subdivision (b), with respect to losses resulting from any of the following disasters:

(1) Forest fire or any other related casualty occurring in 1985 in California.

(2) Storm, flooding, or any other related casualty occurring in 1986 in California.

(3) Any loss sustained during 1987 as a result of a forest fire or any other related casualty.

(4) Earthquake, aftershock, or any other related casualty occurring in 1987 in California.

(5) Earthquake, aftershock, or any other related casualty occurring in 1989 in California.

(6) Any loss sustained during 1990 as a result of fire or any other related casualty in California.

(7) Any loss sustained as a result of the Oakland/Berkeley Fire of 1991, or any other related casualty.

(8) Any loss sustained as a result of storm, flooding, or any other related casualty occurring in February 1992 in California.

(9) Earthquake, aftershock, or any other related casualty occurring in April 1992 in the County of Humboldt.

(10) Riots, arson, or any other related casualty occurring in April or May 1992 in California.

(11) Any loss sustained as a result of the earthquakes that occurred in the County of San Bernardino in June and July of 1992, or any other related casualty.

(12) Any loss sustained as a result of the Fountain Fire that occurred in the County of Shasta, or as a result of either of the fires in the Counties of Calaveras and Trinity that occurred in August 1992, or any other related casualty.

(13) Any loss sustained as a result of storm, flooding, or any other related casualty that occurred in the Counties of Alpine, Contra Costa, Fresno, Humboldt, Imperial, Lassen, Los Angeles, Madera, Mendocino, Modoc, Monterey, Napa, Orange, Plumas, Riverside, San Bernardino, San Diego, Santa Barbara, Sierra, Siskiyou, Sonoma, Tehama, Trinity, and Tulare, and the City of Fillmore in January 1993.

(14) Any loss sustained as a result of a fire that occurred in the Counties of Los Angeles, Orange, Riverside, San Bernardino, San Diego, and Ventura, during October or November of 1993, or any other related casualty.

(15) Any loss sustained as a result of the earthquake, aftershocks, or any other related casualty that occurred in the Counties of Los Angeles, Orange, and Ventura on or after January 17, 1994.

(16) Any loss sustained as a result of a fire that occurred in the County of San Luis Obispo during August of 1994, or any other related casualty.

(17) Any loss sustained as a result of the storms or flooding occurring in 1995, or any other related casualty, sustained in any county of this state subject to a disaster declaration with respect to the storms and flooding.

(18) Any loss sustained as a result of the storms or flooding occurring in December 1996 or January 1997, or any related casualty, sustained in any county of this state subject to a disaster declaration with respect to the storms or flooding.

(19) Any loss sustained as a result of the storms or flooding occurring in February 1998, or any related casualty, sustained in any county of this state subject to a disaster declaration with respect to the storms or flooding.

(20) Any loss sustained as a result of a freeze occurring in the winter of 1998-99, or any related casualty, sustained in any county of this state subject to a disaster declaration with respect to the freeze.

(21) Any loss sustained as a result of an earthquake occurring in September 2000, that was included in the Governor's proclamation of a state of emergency for the County of Napa.

(22) Any loss sustained as a result of the Middle River levee break in San Joaquin County occurring in June 2004.

(23) Any losses sustained as a result of the fires that occurred in the Counties of Los Angeles, Riverside, San Bernardino, San Diego, and Ventura in October and November 2003, or as a result of floods, mudflows, and debris flows, directly related to fires.

(24) Any losses sustained in the Counties of Santa Barbara and San Luis Obispo as a result of the San Simeon earthquake, aftershocks, and any other related casualties.

(25) Any losses sustained as a result of the wildfires that occurred in Shasta County, commencing August 11, 2004, and any other related casualty.

(26) Any loss sustained in the Counties of Kern, Los Angeles, Santa Barbara, and Ventura as a result of the severe rainstorms, related flooding and slides, and any other related casualties, that occurred in December 2004, January 2005, February 2005, or March 2005.

(27) Any loss sustained in the Counties of Orange, Riverside, San Bernardino, and San Diego as a result of the severe rainstorms, and related flooding, slides, and other events, that occurred in December 2004, January 2005, February 2005, March 2005, or June 2005.

(b) (1) In the case of any loss allowed under Section 165(c) of the Internal Revenue Code, relating to limitation of losses of individuals, any excess disaster loss shall be carried forward to each of the five taxable years following the taxable year for which the loss is claimed. However, if there is any excess disaster loss remaining after the five-year period, then the applicable percentage, as set forth in paragraph (1) of subdivision (b) of Section 17276, of that excess disaster loss shall be carried forward to each of the next 10 taxable years.

(2) The entire amount of any excess disaster loss as defined in subdivision (c) shall be carried to the earliest of the taxable years to which, by reason of subdivision (b), the loss may be carried. The portion of the loss which shall be carried to each of the other taxable years shall be the excess, if any, of the amount of excess disaster loss over the sum of the adjusted taxable income for each of the prior taxable years to which that excess disaster loss is carried.

(c) "Excess disaster loss" means a disaster loss computed pursuant to Section 165 of the Internal Revenue Code which exceeds the adjusted taxable income of the year of loss or, if the election under Section 165(i) of the Internal Revenue Code is made, the adjusted taxable income of the year preceding the loss.

(d) The provisions of this section and Section 165(i) of the Internal Revenue Code shall be applicable to any of the losses listed in subdivision (a) sustained in any county or city in this state which was proclaimed by the Governor to be in a state of disaster.

(e) Losses allowable under this section may not be taken into account in computing a net operating loss deduction under Section 172 of the Internal Revenue Code.

(f) For purposes of this section, "adjusted taxable income" shall be defined by Section 1212(b)(2)(B) of the Internal Revenue Code.

(g) For losses described in paragraphs (15) to (26), inclusive, of subdivision (a), the election under Section 165(i) of the Internal Revenue Code may be made on a return or amended return filed on or before the due date of the return (determined with regard to extension) for the taxable year in which the disaster occurred.

SEC. 7. Section 24347.5 of the Revenue and Taxation Code is amended to read:

24347.5. (a) An excess disaster loss, as defined in subdivision (c), shall be carried to other taxable years as provided in subdivision (b), with respect to losses resulting from any of the following disasters:

(1) Forest fire or any other related casualty occurring in 1985 in California.

(2) Storm, flooding, or any other related casualty occurring in 1986 in California.

(3) Any loss sustained during 1987 as a result of a forest fire or any other related casualty.

(4) Earthquake, aftershock, or any other related casualty occurring in October 1987 in California.

(5) Earthquake, aftershock, or any other related casualty occurring in October 1989 in California.

(6) Any loss sustained during 1990 as a result of fire or any other related casualty in California.

(7) Any loss sustained as a result of the Oakland/Berkeley fire of 1991, or any other related casualty.

(8) Any loss sustained as a result of storm, flooding, or any other related casualty occurring in February 1992 in California.

(9) Earthquake, aftershock, or any other related casualty occurring in April 1992 in the County of Humboldt.

(10) Riots, arson, or any other related casualty occurring in April or May 1992 in California.

(11) Any loss sustained as a result of the earthquakes or any other related casualty that occurred in the County of San Bernardino in June and July of 1992.

(12) Any loss sustained as a result of the Fountain Fire that occurred in the County of Shasta, or as a result of either of the fires in the Counties of Calaveras and Trinity that occurred in August 1992, or any other related casualty.

(13) Any loss sustained as a result of storm, flooding, or any other related casualty that occurred in the Counties of Alpine, Contra Costa, Fresno, Humboldt, Imperial, Lassen, Los Angeles, Madera, Mendocino, Modoc, Monterey, Napa, Orange, Plumas, Riverside, San Bernardino, San Diego, Santa Barbara, Sierra, Siskiyou, Sonoma, Tehama, Trinity, and Tulare, and the City of Fillmore in January 1993.

(14) Any loss sustained as a result of a fire that occurred in the Counties of Los Angeles, Orange, Riverside, San Bernardino, San Diego, and Ventura, during October or November of 1993, or any other related casualty.

(15) Any loss sustained as a result of the earthquake, aftershocks, or any other related casualty that occurred in the Counties of Los Angeles, Orange, and Ventura on or after January 17, 1994.

(16) Any loss sustained as a result of a fire that occurred in the County of San Luis Obispo during August of 1994, or any other related casualty.

(17) Any loss sustained as a result of the storms or flooding occurring in 1995, or any other related casualty, sustained in any county of this state subject to a disaster declaration with respect to the storms and flooding.

(18) Any loss sustained as a result of the storms or flooding occurring in December 1996 or January 1997, or any related casualty, sustained in any county of this state subject to a disaster declaration with respect to the storms or flooding.

(19) Any loss sustained as a result of the storms or flooding occurring in February 1998, or any related casualty, sustained in any county of this state subject to a disaster declaration with respect to the storms or flooding.

(20) Any loss sustained as a result of a freeze occurring in the winter of 1998-99, or any related casualty, sustained in any county of this state subject to a disaster declaration with respect to the freeze.

(21) Any loss sustained as a result of an earthquake occurring in September 2000, that was included in the Governor's proclamation of a state of emergency for the County of Napa.

(22) Any loss sustained as a result of the Middle River levee break in San Joaquin County occurring in June 2004.

(23) Any losses sustained as a result of the fires that occurred in the Counties of Los Angeles, San Bernardino, Riverside, San Diego, and Ventura in October and November 2003, or as a result of floods, mudflows, and debris flows, directly related to fires.

(24) Any losses sustained in the Counties of Santa Barbara and San Luis Obispo as a result of the San Simeon earthquake, aftershocks, and any other related casualties.

(25) Any loss sustained in the Counties of Orange, Riverside, San Bernardino, and San Diego as a result of the severe rainstorms, and related flooding, slides, and other events, that occurred in December 2004, January 2005, February 2005, March 2005, or June 2005.

(b) (1) In the case of any loss allowed under Section 165 of the Internal Revenue Code, relating to losses, any excess disaster loss shall be carried forward to each of the five taxable years following the taxable year for which the loss is claimed. However, if there is any excess disaster loss remaining after the five-year period, then the applicable percentage, as set forth in paragraph (1) of subdivision (b) of Section 24416, of that excess disaster loss shall be carried forward to each of the next 10 taxable years.

(2) The entire amount of any excess disaster loss as defined in subdivision (c) shall be carried to the earliest of the taxable years to which, by reason of subdivision (b), the loss may be carried. The portion of the loss which shall be carried to each of the other taxable years shall be the excess, if any, of the amount of excess disaster loss over the sum of the net income for each of the prior taxable years to which that excess disaster loss is carried.

(c) "Excess disaster loss" means a disaster loss computed pursuant to Section 165 of the Internal Revenue Code, which exceeds the net income of the year of loss or, if the election under Section 165(i) of the Internal Revenue Code is made, the net income of the year preceding the loss.

(d) The provisions of this section and Section 165(i) of the Internal Revenue Code shall be applicable to any of the losses listed in subdivision (a) sustained in any county or city in this state which was proclaimed by the Governor to be in a state of disaster.

(e) Any corporation subject to the provisions of Section 25101 or 25101.15 that has disaster losses pursuant to this section, shall determine the excess disaster loss to be carried to other taxable years under the principles specified in Section 25108 relating to net operating losses.

(f) Losses allowable under this section may not be taken into account in computing a net operating loss deduction under Section 172 of the Internal Revenue Code.

(g) For losses described in paragraphs (15) to (25), inclusive, of subdivision (a), the election under Section 165(i) of the Internal Revenue Code may be made on a return or amended return filed on or before the due date of the return (determined with regard to extension) for the taxable year in which the disaster occurred.

SEC. 7.5. Section 24347.5 of the Revenue and Taxation Code is amended to read:

24347.5. (a) An excess disaster loss, as defined in subdivision (c), shall be carried to other taxable years as provided in subdivision (b), with respect to losses resulting from any of the following disasters:

(1) Forest fire or any other related casualty occurring in 1985 in California.

(2) Storm, flooding, or any other related casualty occurring in 1986 in California.

(3) Any loss sustained during 1987 as a result of a forest fire or any other related casualty.

(4) Earthquake, aftershock, or any other related casualty occurring in October 1987 in California.

(5) Earthquake, aftershock, or any other related casualty occurring in October 1989 in California.

(6) Any loss sustained during 1990 as a result of fire or any other related casualty in California.

(7) Any loss sustained as a result of the Oakland/Berkeley Fire of 1991, or any other related casualty.

(8) Any loss sustained as a result of storm, flooding, or any other related casualty occurring in February 1992 in California.

(9) Earthquake, aftershock, or any other related casualty occurring in April 1992 in the County of Humboldt.

(10) Riots, arson, or any other related casualty occurring in April or May 1992 in California.

(11) Any loss sustained as a result of the earthquakes or any other related casualty that occurred in the County of San Bernardino in June and July of 1992.

(12) Any loss sustained as a result of the Fountain Fire that occurred in the County of Shasta, or as a result of either of the fires in the Counties

of Calaveras and Trinity that occurred in August 1992, or any other related casualty.

(13) Any loss sustained as a result of storm, flooding, or any other related casualty that occurred in the Counties of Alpine, Contra Costa, Fresno, Humboldt, Imperial, Lassen, Los Angeles, Madera, Mendocino, Modoc, Monterey, Napa, Orange, Plumas, Riverside, San Bernardino, San Diego, Santa Barbara, Sierra, Siskiyou, Sonoma, Tehama, Trinity, and Tulare, and the City of Fillmore in January 1993.

(14) Any loss sustained as a result of a fire that occurred in the Counties of Los Angeles, Orange, Riverside, San Bernardino, San Diego, and Ventura, during October or November of 1993, or any other related casualty.

(15) Any loss sustained as a result of the earthquake, aftershocks, or any other related casualty that occurred in the Counties of Los Angeles, Orange, and Ventura on or after January 17, 1994.

(16) Any loss sustained as a result of a fire that occurred in the County of San Luis Obispo during August of 1994, or any other related casualty.

(17) Any loss sustained as a result of the storms or flooding occurring in 1995, or any other related casualty, sustained in any county of this state subject to a disaster declaration with respect to the storms and flooding.

(18) Any loss sustained as a result of the storms or flooding occurring in December 1996 or January 1997, or any related casualty, sustained in any county of this state subject to a disaster declaration with respect to the storms or flooding.

(19) Any loss sustained as a result of the storms or flooding occurring in February 1998, or any related casualty, sustained in any county of this state subject to a disaster declaration with respect to the storms or flooding.

(20) Any loss sustained as a result of a freeze occurring in the winter of 1998-99, or any related casualty, sustained in any county of this state subject to a disaster declaration with respect to the freeze.

(21) Any loss sustained as a result of an earthquake occurring in September 2000, that was included in the Governor's proclamation of a state of emergency for the County of Napa.

(22) Any loss sustained as a result of the Middle River levee break in San Joaquin County occurring in June 2004.

(23) Any losses sustained as a result of the fires that occurred in the Counties of Los Angeles, San Bernardino, Riverside, San Diego, and Ventura in October and November 2003, or as a result of floods, mudflows, and debris flows, directly related to fires.

(24) Any losses sustained in the Counties of Santa Barbara and San Luis Obispo as a result of the San Simeon earthquake, aftershocks, and any other related casualties.

(25) Any losses sustained as a result of the wildfires that occurred in Shasta County, commencing August 11, 2004, and any other related casualty.

(26) Any loss sustained in the Counties of Kern, Los Angeles, Santa Barbara, and Ventura as a result of the severe rainstorms, related flooding and slides, and any other related casualties, that occurred in December 2004, January 2005, February 2005, or March 2005.

(27) Any loss sustained in the Counties of Orange, Riverside, San Bernardino, and San Diego as a result of the severe rainstorms, and related flooding, slides, and other events, that occurred in December 2004, January 2005, February 2005, March 2005, or June 2005.

(b) (1) In the case of any loss allowed under Section 165 of the Internal Revenue Code, relating to losses, any excess disaster loss shall be carried forward to each of the five taxable years following the taxable year for which the loss is claimed. However, if there is any excess disaster loss remaining after the five-year period, then the applicable percentage, as set forth in paragraph (1) of subdivision (b) of Section 24416, of that excess disaster loss shall be carried forward to each of the next 10 taxable years.

(2) The entire amount of any excess disaster loss as defined in subdivision (c) shall be carried to the earliest of the taxable years to which, by reason of subdivision (b), the loss may be carried. The portion of the loss which shall be carried to each of the other taxable years shall be the excess, if any, of the amount of excess disaster loss over the sum of the net income for each of the prior taxable years to which that excess disaster loss is carried.

(c) "Excess disaster loss" means a disaster loss computed pursuant to Section 165 of the Internal Revenue Code, which exceeds the net income of the year of loss or, if the election under Section 165(i) of the Internal Revenue Code is made, the net income of the year preceding the loss.

(d) The provisions of this section and Section 165(i) of the Internal Revenue Code shall be applicable to any of the losses listed in subdivision (a) sustained in any county or city in this state which was proclaimed by the Governor to be in a state of disaster.

(e) Any corporation subject to the provisions of Section 25101 or 25101.15 that has disaster losses pursuant to this section, shall determine the excess disaster loss to be carried to other taxable years under the principles specified in Section 25108 relating to net operating losses.

(f) Losses allowable under this section may not be taken into account in computing a net operating loss deduction under Section 172 of the Internal Revenue Code.

(g) For losses described in paragraphs (15) to (26), inclusive, of subdivision (a), the election under Section 165(i) of the Internal Revenue Code may be made on a return or amended return filed on or before the due date of the return (determined with regard to extension) for the taxable year in which the disaster occurred.

SEC. 8. The Legislature finds and declares that this act fulfills a statewide public purpose because of both of the following:

(a) The Governor of California has officially proclaimed a state of emergency declaring that the severe rainstorms, flash floods, mudslides, accumulation of debris, and washed-out and damaged roads that occurred within the Counties of Orange, Riverside, San Bernardino, and San Diego during December 2004 and January 2005, were natural disasters, thus qualifying affected persons for various forms of governmental assistance and relief.

(b) The Governor of California has officially proclaimed a state of emergency declaring that the continuing severe rainstorms, flash floods, mudslides, sinkholes, accumulation of debris, and washed-out and damaged roads that occurred within the Counties of Orange, Riverside, San Bernardino, and San Diego were natural disasters, thus qualifying affected persons for various forms of governmental assistance and relief.

(c) This act is consistent with, and supplements, the proclaimed disaster assistance and relief by providing necessary fiscal assistance and tax relief to affected jurisdictions and persons to allow them to maintain essential basic services and repair damage to, and restore, their homes and businesses.

SEC. 9. It is the intent of the Legislature to provide in the annual Budget Act those additional reimbursements to local governments that, as a result of Section 5 of this act, are required by Section 25 of Article XIII of the California Constitution.

SEC. 10. 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.

SEC. 11. (a) Section 5.5 of this bill incorporates amendments to Section 218 of the Revenue and Taxation Code proposed by this bill, Assembly Bill 18, and Assembly Bill 164. It shall only become operative if (1) all three bills are enacted and become effective on or before January 1, 2006, (2) all three bills amend Section 218 of the Revenue and Taxation Code, and (3) this bill is enacted after Assembly Bill 18 or

Assembly Bill 164, in which case Section 218 of the Revenue and Taxation Code, as amended by Assembly Bill 18 or Assembly Bill 164, shall remain operative only until the operative date of this bill, at which time Section 5.5 of this bill shall become operative, and Section 5 of this bill shall not become operative.

(b) Section 6.5 of this bill incorporates amendments to Section 17207 of the Revenue and Taxation Code proposed by this bill, Assembly Bill 18, and Assembly Bill 164. It shall only become operative if (1) all three bills are enacted and become effective on or before January 1, 2006, (2) all three bills amend Section 17207 of the Revenue and Taxation Code, and (3) this bill is enacted after Assembly Bill 18 or Assembly Bill 164, in which case Section 17207 of the Revenue and Taxation Code, as amended by Assembly Bill 18 or Assembly Bill 164, shall remain operative only until the operative date of this bill, at which time Section 6.5 of this bill shall become operative, and Section 6 of this bill shall not become operative.

(c) Section 7.5 of this bill incorporates amendments to Section 24347.5 of the Revenue and Taxation Code proposed by this bill, Assembly Bill 18, and Assembly Bill 164. It shall only become operative if (1) all three bills are enacted and become effective on or before January 1, 2006, (2) all three bills amend Section 24347.5 of the Revenue and Taxation Code, and (3) this bill is enacted after Assembly Bill 18 or Assembly Bill 164, in which case Section 24347.5 of the Revenue and Taxation Code, as amended by Assembly Bill 18 or Assembly Bill 164, shall remain operative only until the operative date of this bill, at which time Section 7.5 of this bill shall become operative, and Section 7 of this bill shall not become operative.

SEC. 12. This bill shall not become operative unless both this bill and Assembly Bill 164 are chaptered and become effective on or before January 1, 2006. If Assembly Bill 164 is not chaptered and does not become effective on or before January 1, 2006, this bill shall not become operative.

SEC. 13. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to timely provide essential relief to those persons and jurisdictions who have suffered damage or loss as a result of the series of severe rainstorms that occurred in California during December 2004 and January 2005, and that continued through February of 2005 and March of 2005, it is necessary that this act take effect immediately.

CHAPTER 623

An act to amend Section 8686 of the Government Code, and to amend Sections 218, 17207, and 24347.5 of, and to add Sections 195.92, 195.93, and 195.94 to, the Revenue and Taxation Code, relating to disaster relief, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 6, 2005. Filed with
Secretary of State October 6, 2005.]

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

SECTION 1. Section 8686 of the Government Code is amended to read:

8686. (a) For any eligible project, the state share shall amount to no more than 75 percent of total state eligible costs.

(b) Notwithstanding subdivision (a), the state share shall be up to 100 percent of total state eligible costs connected with the following events:

- (1) The October 17, 1989, Loma Prieta earthquake.
- (2) The October 20, 1991, East Bay fire.
- (3) The fires that occurred in southern California from October 1, 1993, to November 30, 1993, inclusive.
- (4) The January 17, 1994, Northridge earthquake.
- (5) Storms that occurred in California during the periods commencing January 3, 1995, and February 13, 1995, as specified in agreements between this state and the United States for federal financial assistance.
- (6) The storms that occurred in California in December of 1996 and early January of 1997, as specified in agreements between this state and the United States for federal financial assistance.
- (7) The winter storms and flooding that occurred from February 1, 1998, to April 30, 1998, inclusive, as specified in agreements between this state and the United States for federal financial assistance.
- (8) The wildfires that occurred in southern California commencing October 21, 2003, as specified in agreements between this state and the United States for federal financial assistance.
- (9) The December 22, 2003, San Simeon earthquake, as specified in agreements between this state and the United States for federal financial assistance.
- (10) The severe storms, flooding, debris flows, and mudslides that occurred during December 27, 2004, to January 11, 2005, inclusive, in southern California, as specified in agreements between this state and the United States for federal financial assistance.

(11) The severe storms, flooding, landslides, and mud and debris flows that occurred in southern California during the period from February 16 to February 23, 2005, inclusive, as specified in agreements between this state and the United States for federal financial assistance.

(c) For any federally declared disaster subsequent to January 1, 1995, that the Legislature has designated in subdivision (b), the state shall assume the increased share specified in subdivision (b) in those cases where the Federal Emergency Management Agency or another applicable federal agency has approved the federal share of costs.

(d) The state shall make no allocation for any project application resulting in a state share of less than two thousand five hundred dollars (\$2,500) under this section.

SEC. 2. Section 195.92 is added to the Revenue and Taxation Code, to read:

195.92. (a) By September 30, 2005, the auditors of the Counties of Kern, Los Angeles, Santa Barbara, and Ventura, which were the subject of the Governor's proclamations of a state of emergency for the severe rainstorms that occurred in December 2004, January 2005, February 2005, or March 2005, that caused flash floods, mudslides, the accumulation of debris, and that washed out and damaged roads in those counties, shall certify to the Director of Finance an estimate of the total amount of the reduction in property tax revenues on both the regular secured roll and the supplemental roll for the 2004–05 fiscal year resulting from the reassessment by the county assessor pursuant to paragraph (1) of subdivision (a) of Section 170 of those properties that are eligible properties as a result of that disaster, except that the amount certified shall not include any estimated property tax revenue reductions to school districts, other than basic state aid school districts, and county offices of education.

(b) For purposes of this section, "basic state aid school district" means any school district that does not receive a state apportionment pursuant to subdivision (h) of Section 42238 of the Education Code, but receives from the state only a basic apportionment pursuant to Section 6 of Article IX of the California Constitution.

SEC. 3. Section 195.93 is added to the Revenue and Taxation Code, to read:

195.93. After the county auditor of an eligible county, as described in Section 195.92, has made the applicable certification to the Director of Finance pursuant to that section, the director shall, within 30 days after verification of the county auditor's estimate, certify this amount to the Controller for allocation to the county. Upon receipt of certification from the Director of Finance, the Controller shall make the appropriate allocation to the county within 10 working days.

SEC. 4. Section 195.94 is added to the Revenue and Taxation Code, to read:

195.94. (a) On or before June 30, 2006, each eligible county, as described in Section 195.92, shall compute and remit to the Controller for deposit in the General Fund an amount equal to the amount allocated to it by the Controller pursuant to Section 195.93, less the actual amount of its property tax revenue lost on the regular secured and supplemental rolls with respect to those eligible properties described in Section 195.92 as a result of the reassessment of those properties pursuant to paragraph (1) of subdivision (a) of Section 170, excluding any property tax revenue lost by school districts, other than basic state aid school districts, and county offices of education. If the actual amount of property tax revenue lost by an eligible county in the immediately preceding fiscal year, as described and limited in the preceding sentence, exceeds the amount allocated by the Controller to that county pursuant to Section 195.93, the Controller shall allocate the amount of that excess to that eligible county.

(b) For purposes of this section, "basic state aid school district" means any school district that does not receive a state apportionment pursuant to subdivision (h) of Section 42238 of the Education Code, but receives from the state only a basic apportionment pursuant to Section 6 of Article IX of the California Constitution.

SEC. 5. Section 218 of the Revenue and Taxation Code is amended to read:

218. (a) The homeowners' property tax exemption is in the amount of the assessed value of the dwelling specified in this section, as authorized by subdivision (k) of Section 3 of Article XIII of the Constitution. That exemption shall be in the amount of seven thousand dollars (\$7,000) of the full value of the dwelling.

(b) The exemption does not extend to property that is rented, vacant, under construction on the lien date, or that is a vacation or secondary home of the owner or owners, nor does it apply to property on which an owner receives the veteran's exemption.

(c) For purposes of this section, all of the following apply:

(1) "Owner" includes a person purchasing the dwelling under a contract of sale or who holds shares or membership in a cooperative housing corporation, which holding is a requisite to the exclusive right of occupancy of a dwelling.

(2) (A) "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. A two-dwelling unit shall be considered as two separate single-family dwellings.

(B) "Dwelling" includes the following:

(i) A single-family dwelling occupied by an owner thereof as his or her principal place of residence on the lien date.

(ii) A multiple-dwelling unit occupied by an owner thereof on the lien date as his or her principal place of residence.

(iii) A condominium occupied by an owner thereof as his or her principal place of residence on the lien date.

(iv) Premises occupied by the owner of shares or a membership interest in a cooperative housing corporation, as defined in subdivision (i) of Section 61, as his or her principal place of residence on the lien date. Each exemption allowed pursuant to this subdivision shall be deducted from the total assessed valuation of the cooperative housing corporation. The exemption shall be taken into account in apportioning property taxes among owners of share or membership interests in the cooperative housing corporations so as to benefit those owners who qualify for the exemption.

(d) Any dwelling that qualified for an exemption under this section prior to October 20, 1991, that was damaged or destroyed by fire in a disaster, as declared by the Governor, occurring on or after October 20, 1991, and before November 1, 1991, and that has not changed ownership since October 20, 1991, shall not be disqualified as a “dwelling” or be denied an exemption under this section solely on the basis that the dwelling was temporarily damaged or destroyed or was being reconstructed by the owner.

(e) Any dwelling that qualified for an exemption under this section prior to October 15, 2003, that was damaged or destroyed by fire or earthquake in a disaster, as declared by the Governor, during October, November, or December 2003, and that has not changed ownership since October 15, 2003, shall not be disqualified as a “dwelling” or be denied an exemption under this section solely on the basis that the dwelling was temporarily damaged or destroyed or was being reconstructed by the owner.

(f) Any dwelling that qualified for an exemption under this section prior to June 3, 2004, that was damaged or destroyed by flood in a disaster, as declared by the Governor, during June 2004, and that has not changed ownership since June 3, 2004, shall not be disqualified as a “dwelling” or be denied an exemption under this section solely on the basis that the dwelling was temporarily damaged or destroyed or was being reconstructed by the owner.

(g) Any dwelling that qualified for an exemption under this section prior to December 28, 2004, that was damaged or destroyed by severe rainstorms, floods, mudslides, or the accumulation of debris in a disaster, as declared by the Governor, during December 2004, January 2005, February 2005, March 2005, or June 2005, and that has not changed

ownership since December 28, 2004, shall not be disqualified as a “dwelling” or be denied an exemption under this section solely on the basis that the dwelling was temporarily damaged or destroyed or was being reconstructed by the owner, or was temporarily uninhabited as a result of restricted access to the property due to floods, mudslides, the accumulation of debris, or washed-out and damaged roads.

(h) The exemption provided for in subdivision (k) of Section 3 of Article XIII of the Constitution shall first be applied to the building, structure, or other shelter and the excess, if any, shall be applied to any land on which it may be located.

SEC. 5.5. Section 218 of the Revenue and Taxation Code is amended to read:

218. (a) The homeowners’ property tax exemption is in the amount of the assessed value of the dwelling specified in this section, as authorized by subdivision (k) of Section 3 of Article XIII of the Constitution. That exemption shall be in the amount of seven thousand dollars (\$7,000) of the full value of the dwelling.

(b) The exemption does not extend to property that is rented, vacant, under construction on the lien date, or that is a vacation or secondary home of the owner or owners, nor does it apply to property on which an owner receives the veteran’s exemption.

(c) For purposes of this section, all of the following apply:

(1) “Owner” includes a person purchasing the dwelling under a contract of sale or who holds shares or membership in a cooperative housing corporation, which holding is a requisite to the exclusive right of occupancy of a dwelling.

(2) (A) “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. A two-dwelling unit shall be considered as two separate single-family dwellings.

(B) “Dwelling” includes the following:

(i) A single-family dwelling occupied by an owner thereof as his or her principal place of residence on the lien date.

(ii) A multiple-dwelling unit occupied by an owner thereof on the lien date as his or her principal place of residence.

(iii) A condominium occupied by an owner thereof as his or her principal place of residence on the lien date.

(iv) Premises occupied by the owner of shares or a membership interest in a cooperative housing corporation, as defined in subdivision (i) of Section 61, as his or her principal place of residence on the lien date. Each exemption allowed pursuant to this subdivision shall be deducted from the total assessed valuation of the cooperative housing corporation. The exemption shall be taken into account in apportioning

property taxes among owners of share or membership interests in the cooperative housing corporations so as to benefit those owners who qualify for the exemption.

(d) Any dwelling that qualified for an exemption under this section prior to October 20, 1991, that was damaged or destroyed by fire in a disaster, as declared by the Governor, occurring on or after October 20, 1991, and before November 1, 1991, and that has not changed ownership since October 20, 1991, shall not be disqualified as a “dwelling” or be denied an exemption under this section solely on the basis that the dwelling was temporarily damaged or destroyed or was being reconstructed by the owner.

(e) Any dwelling that qualified for an exemption under this section prior to October 15, 2003, that was damaged or destroyed by fire or earthquake in a disaster, as declared by the Governor, during October, November, or December 2003, and that has not changed ownership since October 15, 2003, shall not be disqualified as a “dwelling” or be denied an exemption under this section solely on the basis that the dwelling was temporarily damaged or destroyed or was being reconstructed by the owner.

(f) Any dwelling that qualified for an exemption under this section prior to June 3, 2004, that was damaged or destroyed by flood in a disaster, as declared by the Governor, during June 2004, and that has not changed ownership since June 3, 2004, shall not be disqualified as a “dwelling” or be denied an exemption under this section solely on the basis that the dwelling was temporarily damaged or destroyed or was being reconstructed by the owner.

(g) Any dwelling that qualified for an exemption under this section prior to August 11, 2004, that was damaged or destroyed by the wildfires and any other related casualty that occurred in Shasta County in a disaster, as declared by the Governor, during August 2004, and that has not changed ownership since August 11, 2004, shall not be disqualified as a “dwelling” or be denied an exemption under this section solely on the basis that the dwelling was temporarily damaged or destroyed or was being reconstructed by the owner.

(h) Any dwelling that qualified for an exemption under this section prior to December 28, 2004, that was damaged or destroyed by severe rainstorms, floods, mudslides, or the accumulation of debris in a disaster, as declared by the Governor, during December 2004, January 2005, February 2005, March 2005, or June 2005, and that has not changed ownership since December 28, 2004, shall not be disqualified as a “dwelling” or be denied an exemption under this section solely on the basis that the dwelling was temporarily damaged or destroyed or was being reconstructed by the owner, or was temporarily uninhabited as a

result of restricted access to the property due to floods, mudslides, the accumulation of debris, or washed-out or damaged roads.

(i) The exemption provided for in subdivision (k) of Section 3 of Article XIII of the Constitution shall first be applied to the building, structure, or other shelter and the excess, if any, shall be applied to any land on which it may be located.

SEC. 6. Section 17207 of the Revenue and Taxation Code is amended to read:

17207. (a) An excess disaster loss, as defined in subdivision (c), shall be carried to other taxable years as provided in subdivision (b), with respect to losses resulting from any of the following disasters:

(1) Forest fire or any other related casualty occurring in 1985 in California.

(2) Storm, flooding, or any other related casualty occurring in 1986 in California.

(3) Any loss sustained during 1987 as a result of a forest fire or any other related casualty.

(4) Earthquake, aftershock, or any other related casualty occurring in 1987 in California.

(5) Earthquake, aftershock, or any other related casualty occurring in 1989 in California.

(6) Any loss sustained during 1990 as a result of fire or any other related casualty in California.

(7) Any loss sustained as a result of the Oakland/Berkeley Fire of 1991, or any other related casualty.

(8) Any loss sustained as a result of storm, flooding, or any other related casualty occurring in February 1992 in California.

(9) Earthquake, aftershock, or any other related casualty occurring in April 1992 in the County of Humboldt.

(10) Riots, arson, or any other related casualty occurring in April or May 1992 in California.

(11) Any loss sustained as a result of the earthquakes that occurred in the County of San Bernardino in June and July of 1992, or any other related casualty.

(12) Any loss sustained as a result of the Fountain Fire that occurred in the County of Shasta, or as a result of either of the fires in the Counties of Calaveras and Trinity that occurred in August 1992, or any other related casualty.

(13) Any loss sustained as a result of storm, flooding, or any other related casualty that occurred in the Counties of Alpine, Contra Costa, Fresno, Humboldt, Imperial, Lassen, Los Angeles, Madera, Mendocino, Modoc, Monterey, Napa, Orange, Plumas, Riverside, San Bernardino,

San Diego, Santa Barbara, Sierra, Siskiyou, Sonoma, Tehama, Trinity, and Tulare, and the City of Fillmore in January 1993.

(14) Any loss sustained as a result of a fire that occurred in the Counties of Los Angeles, Orange, Riverside, San Bernardino, San Diego, and Ventura, during October or November of 1993, or any other related casualty.

(15) Any loss sustained as a result of the earthquake, aftershocks, or any other related casualty that occurred in the Counties of Los Angeles, Orange, and Ventura on or after January 17, 1994.

(16) Any loss sustained as a result of a fire that occurred in the County of San Luis Obispo during August of 1994, or any other related casualty.

(17) Any loss sustained as a result of the storms or flooding occurring in 1995, or any other related casualty, sustained in any county of this state subject to a disaster declaration with respect to the storms and flooding.

(18) Any loss sustained as a result of the storms or flooding occurring in December 1996 or January 1997, or any related casualty, sustained in any county of this state subject to a disaster declaration with respect to the storms or flooding.

(19) Any loss sustained as a result of the storms or flooding occurring in February 1998, or any related casualty, sustained in any county of this state subject to a disaster declaration with respect to the storms or flooding.

(20) Any loss sustained as a result of a freeze occurring in the winter of 1998–99, or any related casualty, sustained in any county of this state subject to a disaster declaration with respect to the freeze.

(21) Any loss sustained as a result of an earthquake occurring in September 2000, that was included in the Governor's proclamation of a state of emergency for the County of Napa.

(22) Any loss sustained as a result of the Middle River levee break in San Joaquin County occurring in June 2004.

(23) Any losses sustained as a result of the fires that occurred in the Counties of Los Angeles, San Bernardino, Riverside, San Diego, and Ventura in October and November 2003, or as a result of floods, mudflows, and debris flows, directly related to fires.

(24) Any losses sustained in the Counties of Santa Barbara and San Luis Obispo as a result of the San Simeon earthquake, aftershocks, and any other related casualties.

(25) Any loss sustained in the Counties of Kern, Los Angeles, Santa Barbara, and Ventura as a result of the severe rainstorms, related flooding and slides, and any other related casualties, that occurred in December 2004, January 2005, February 2005, or March 2005.

(b) (1) In the case of any loss allowed under Section 165(c) of the Internal Revenue Code, relating to limitation of losses of individuals, any excess disaster loss shall be carried forward to each of the five taxable years following the taxable year for which the loss is claimed. However, if there is any excess disaster loss remaining after the five-year period, then the applicable percentage, as set forth in paragraph (1) of subdivision (b) of Section 17276, of that excess disaster loss shall be carried forward to each of the next 10 taxable years.

(2) The entire amount of any excess disaster loss as defined in subdivision (c) shall be carried to the earliest of the taxable years to which, by reason of subdivision (b), the loss may be carried. The portion of the loss which shall be carried to each of the other taxable years shall be the excess, if any, of the amount of excess disaster loss over the sum of the adjusted taxable income for each of the prior taxable years to which that excess disaster loss is carried.

(c) "Excess disaster loss" means a disaster loss computed pursuant to Section 165 of the Internal Revenue Code which exceeds the adjusted taxable income of the year of loss or, if the election under Section 165(i) of the Internal Revenue Code is made, the adjusted taxable income of the year preceding the loss.

(d) The provisions of this section and Section 165(i) of the Internal Revenue Code shall be applicable to any of the losses listed in subdivision (a) sustained in any county or city in this state which was proclaimed by the Governor to be in a state of disaster.

(e) Losses allowable under this section may not be taken into account in computing a net operating loss deduction under Section 172 of the Internal Revenue Code.

(f) For purposes of this section, "adjusted taxable income" shall be defined by Section 1212(b)(2)(B) of the Internal Revenue Code.

(g) For losses described in paragraphs (15) to (25), inclusive, of subdivision (a), the election under Section 165(i) of the Internal Revenue Code may be made on a return or amended return filed on or before the due date of the return (determined with regard to extension) for the taxable year in which the disaster occurred.

SEC. 6.5. Section 17207 of the Revenue and Taxation Code is amended to read:

17207. (a) An excess disaster loss, as defined in subdivision (c), shall be carried to other taxable years as provided in subdivision (b), with respect to losses resulting from any of the following disasters:

(1) Forest fire or any other related casualty occurring in 1985 in California.

(2) Storm, flooding, or any other related casualty occurring in 1986 in California.

(3) Any loss sustained during 1987 as a result of a forest fire or any other related casualty.

(4) Earthquake, aftershock, or any other related casualty occurring in 1987 in California.

(5) Earthquake, aftershock, or any other related casualty occurring in 1989 in California.

(6) Any loss sustained during 1990 as a result of fire or any other related casualty in California.

(7) Any loss sustained as a result of the Oakland/Berkeley Fire of 1991, or any other related casualty.

(8) Any loss sustained as a result of storm, flooding, or any other related casualty occurring in February 1992 in California.

(9) Earthquake, aftershock, or any other related casualty occurring in April 1992 in the County of Humboldt.

(10) Riots, arson, or any other related casualty occurring in April or May 1992 in California.

(11) Any loss sustained as a result of the earthquakes that occurred in the County of San Bernardino in June and July of 1992, or any other related casualty.

(12) Any loss sustained as a result of the Fountain Fire that occurred in the County of Shasta, or as a result of either of the fires in the Counties of Calaveras and Trinity that occurred in August 1992, or any other related casualty.

(13) Any loss sustained as a result of storm, flooding, or any other related casualty that occurred in the Counties of Alpine, Contra Costa, Fresno, Humboldt, Imperial, Lassen, Los Angeles, Madera, Mendocino, Modoc, Monterey, Napa, Orange, Plumas, Riverside, San Bernardino, San Diego, Santa Barbara, Sierra, Siskiyou, Sonoma, Tehama, Trinity, and Tulare, and the City of Fillmore in January 1993.

(14) Any loss sustained as a result of a fire that occurred in the Counties of Los Angeles, Orange, Riverside, San Bernardino, San Diego, and Ventura, during October or November of 1993, or any other related casualty.

(15) Any loss sustained as a result of the earthquake, aftershocks, or any other related casualty that occurred in the Counties of Los Angeles, Orange, and Ventura on or after January 17, 1994.

(16) Any loss sustained as a result of a fire that occurred in the County of San Luis Obispo during August of 1994, or any other related casualty.

(17) Any loss sustained as a result of the storms or flooding occurring in 1995, or any other related casualty, sustained in any county of this state subject to a disaster declaration with respect to the storms and flooding.

(18) Any loss sustained as a result of the storms or flooding occurring in December 1996 or January 1997, or any related casualty, sustained in any county of this state subject to a disaster declaration with respect to the storms or flooding.

(19) Any loss sustained as a result of the storms or flooding occurring in February 1998, or any related casualty, sustained in any county of this state subject to a disaster declaration with respect to the storms or flooding.

(20) Any loss sustained as a result of a freeze occurring in the winter of 1998–99, or any related casualty, sustained in any county of this state subject to a disaster declaration with respect to the freeze.

(21) Any loss sustained as a result of an earthquake occurring in September 2000, that was included in the Governor's proclamation of a state of emergency for the County of Napa.

(22) Any loss sustained as a result of the Middle River levee break in San Joaquin County occurring in June 2004.

(23) Any losses sustained as a result of the fires that occurred in the Counties of Los Angeles, Riverside, San Bernardino, San Diego, and Ventura in October and November 2003, or as a result of floods, mudflows, and debris flows, directly related to fires.

(24) Any losses sustained in the Counties of Santa Barbara and San Luis Obispo as a result of the San Simeon earthquake, aftershocks, and any other related casualties.

(25) Any losses sustained as a result of the wildfires that occurred in Shasta County, commencing August 11, 2004, and any other related casualty.

(26) Any loss sustained in the Counties of Kern, Los Angeles, Santa Barbara, and Ventura as a result of the severe rainstorms, related flooding and slides, and any other related casualties, that occurred in December 2004, January 2005, February 2005, or March 2005.

(27) Any loss sustained in the Counties of Orange, Riverside, San Bernardino, and San Diego as a result of the severe rainstorms, and related flooding, slides, and other events, that occurred in December 2004, January 2005, February 2005, March 2005, or June 2005.

(b) (1) In the case of any loss allowed under Section 165(c) of the Internal Revenue Code, relating to limitation of losses of individuals, any excess disaster loss shall be carried forward to each of the five taxable years following the taxable year for which the loss is claimed. However, if there is any excess disaster loss remaining after the five-year period, then the applicable percentage, as set forth in paragraph (1) of subdivision (b) of Section 17276, of that excess disaster loss shall be carried forward to each of the next 10 taxable years.

(2) The entire amount of any excess disaster loss as defined in subdivision (c) shall be carried to the earliest of the taxable years to which, by reason of subdivision (b), the loss may be carried. The portion of the loss which shall be carried to each of the other taxable years shall be the excess, if any, of the amount of excess disaster loss over the sum of the adjusted taxable income for each of the prior taxable years to which that excess disaster loss is carried.

(c) "Excess disaster loss" means a disaster loss computed pursuant to Section 165 of the Internal Revenue Code which exceeds the adjusted taxable income of the year of loss or, if the election under Section 165(i) of the Internal Revenue Code is made, the adjusted taxable income of the year preceding the loss.

(d) The provisions of this section and Section 165(i) of the Internal Revenue Code shall be applicable to any of the losses listed in subdivision (a) sustained in any county or city in this state which was proclaimed by the Governor to be in a state of disaster.

(e) Losses allowable under this section may not be taken into account in computing a net operating loss deduction under Section 172 of the Internal Revenue Code.

(f) For purposes of this section, "adjusted taxable income" shall be defined by Section 1212(b)(2)(B) of the Internal Revenue Code.

(g) For losses described in paragraphs (15) to (26), inclusive, of subdivision (a), the election under Section 165(i) of the Internal Revenue Code may be made on a return or amended return filed on or before the due date of the return (determined with regard to extension) for the taxable year in which the disaster occurred.

SEC. 7. Section 24347.5 of the Revenue and Taxation Code is amended to read:

24347.5. (a) An excess disaster loss, as defined in subdivision (c), shall be carried to other taxable years as provided in subdivision (b), with respect to losses resulting from any of the following disasters:

(1) Forest fire or any other related casualty occurring in 1985 in California.

(2) Storm, flooding, or any other related casualty occurring in 1986 in California.

(3) Any loss sustained during 1987 as a result of a forest fire or any other related casualty.

(4) Earthquake, aftershock, or any other related casualty occurring in October 1987 in California.

(5) Earthquake, aftershock, or any other related casualty occurring in October 1989 in California.

(6) Any loss sustained during 1990 as a result of fire or any other related casualty in California.

(7) Any loss sustained as a result of the Oakland/Berkeley Fire of 1991, or any other related casualty.

(8) Any loss sustained as a result of storm, flooding, or any other related casualty occurring in February 1992 in California.

(9) Earthquake, aftershock, or any other related casualty occurring in April 1992 in the County of Humboldt.

(10) Riots, arson, or any other related casualty occurring in April or May 1992 in California.

(11) Any loss sustained as a result of the earthquakes or any other related casualty that occurred in the County of San Bernardino in June and July of 1992.

(12) Any loss sustained as a result of the Fountain Fire that occurred in the County of Shasta, or as a result of either of the fires in the Counties of Calaveras and Trinity that occurred in August 1992, or any other related casualty.

(13) Any loss sustained as a result of storm, flooding, or any other related casualty that occurred in the Counties of Alpine, Contra Costa, Fresno, Humboldt, Imperial, Lassen, Los Angeles, Madera, Mendocino, Modoc, Monterey, Napa, Orange, Plumas, Riverside, San Bernardino, San Diego, Santa Barbara, Sierra, Siskiyou, Sonoma, Tehama, Trinity, and Tulare, and the City of Fillmore in January 1993.

(14) Any loss sustained as a result of a fire that occurred in the Counties of Los Angeles, Orange, Riverside, San Bernardino, San Diego, and Ventura, during October or November of 1993, or any other related casualty.

(15) Any loss sustained as a result of the earthquake, aftershocks, or any other related casualty that occurred in the Counties of Los Angeles, Orange, and Ventura on or after January 17, 1994.

(16) Any loss sustained as a result of a fire that occurred in the County of San Luis Obispo during August of 1994, or any other related casualty.

(17) Any loss sustained as a result of the storms or flooding occurring in 1995, or any other related casualty, sustained in any county of this state subject to a disaster declaration with respect to the storms and flooding.

(18) Any loss sustained as a result of the storms or flooding occurring in December 1996 or January 1997, or any related casualty, sustained in any county of this state subject to a disaster declaration with respect to the storms or flooding.

(19) Any loss sustained as a result of the storms or flooding occurring in February 1998, or any related casualty, sustained in any county of this state subject to a disaster declaration with respect to the storms or flooding.

(20) Any loss sustained as a result of a freeze occurring in the winter of 1998–99, or any related casualty, sustained in any county of this state subject to a disaster declaration with respect to the freeze.

(21) Any loss sustained as a result of an earthquake occurring in September 2000, that was included in the Governor’s proclamation of a state of emergency for the County of Napa.

(22) Any loss sustained as a result of the Middle River levee break in San Joaquin County occurring in June 2004.

(23) Any losses sustained as a result of the fires that occurred in the Counties of Los Angeles, Riverside, San Bernardino, San Diego, and Ventura in October and November 2003, or as a result of floods, mudflows, and debris flows, directly related to fires.

(24) Any losses sustained in the Counties of Santa Barbara and San Luis Obispo as a result of the San Simeon earthquake, aftershocks, and any other related casualties.

(25) Any loss sustained in the Counties of Kern, Los Angeles, Santa Barbara, and Ventura as a result of the severe rainstorms, related flooding and slides, and any other related casualties, that occurred in December 2004, January 2005, February 2005, or March 2005.

(b) (1) In the case of any loss allowed under Section 165 of the Internal Revenue Code, relating to losses, any excess disaster loss shall be carried forward to each of the five taxable years following the taxable year for which the loss is claimed. However, if there is any excess disaster loss remaining after the five-year period, then the applicable percentage, as set forth in paragraph (1) of subdivision (b) of Section 24416, of that excess disaster loss shall be carried forward to each of the next 10 taxable years.

(2) The entire amount of any excess disaster loss as defined in subdivision (c) shall be carried to the earliest of the taxable years to which, by reason of subdivision (b), the loss may be carried. The portion of the loss which shall be carried to each of the other taxable years shall be the excess, if any, of the amount of excess disaster loss over the sum of the net income for each of the prior taxable years to which that excess disaster loss is carried.

(c) “Excess disaster loss” means a disaster loss computed pursuant to Section 165 of the Internal Revenue Code, which exceeds the net income of the year of loss or, if the election under Section 165(i) of the Internal Revenue Code is made, the net income of the year preceding the loss.

(d) The provisions of this section and Section 165(i) of the Internal Revenue Code shall be applicable to any of the losses listed in subdivision (a) sustained in any county or city in this state which was proclaimed by the Governor to be in a state of disaster.

(e) Any corporation subject to the provisions of Section 25101 or 25101.15 that has disaster losses pursuant to this section, shall determine the excess disaster loss to be carried to other taxable years under the principles specified in Section 25108 relating to net operating losses.

(f) Losses allowable under this section may not be taken into account in computing a net operating loss deduction under Section 172 of the Internal Revenue Code.

(g) For losses described in paragraphs (15) to (25), inclusive, of subdivision (a), the election under Section 165(i) of the Internal Revenue Code may be made on a return or amended return filed on or before the due date of the return (determined with regard to extension) for the taxable year in which the disaster occurred.

SEC. 7.5. Section 24347.5 of the Revenue and Taxation Code is amended to read:

24347.5. (a) An excess disaster loss, as defined in subdivision (c), shall be carried to other taxable years as provided in subdivision (b), with respect to losses resulting from any of the following disasters:

(1) Forest fire or any other related casualty occurring in 1985 in California.

(2) Storm, flooding, or any other related casualty occurring in 1986 in California.

(3) Any loss sustained during 1987 as a result of a forest fire or any other related casualty.

(4) Earthquake, aftershock, or any other related casualty occurring in October 1987 in California.

(5) Earthquake, aftershock, or any other related casualty occurring in October 1989 in California.

(6) Any loss sustained during 1990 as a result of fire or any other related casualty in California.

(7) Any loss sustained as a result of the Oakland/Berkeley Fire of 1991, or any other related casualty.

(8) Any loss sustained as a result of storm, flooding, or any other related casualty occurring in February 1992 in California.

(9) Earthquake, aftershock, or any other related casualty occurring in April 1992 in the County of Humboldt.

(10) Riots, arson, or any other related casualty occurring in April or May 1992 in California.

(11) Any loss sustained as a result of the earthquakes or any other related casualty that occurred in the County of San Bernardino in June and July of 1992.

(12) Any loss sustained as a result of the Fountain Fire that occurred in the County of Shasta, or as a result of either of the fires in the Counties

of Calaveras and Trinity that occurred in August 1992, or any other related casualty.

(13) Any loss sustained as a result of storm, flooding, or any other related casualty that occurred in the Counties of Alpine, Contra Costa, Fresno, Humboldt, Imperial, Lassen, Los Angeles, Madera, Mendocino, Modoc, Monterey, Napa, Orange, Plumas, Riverside, San Bernardino, San Diego, Santa Barbara, Sierra, Siskiyou, Sonoma, Tehama, Trinity, and Tulare, and the City of Fillmore in January 1993.

(14) Any loss sustained as a result of a fire that occurred in the Counties of Los Angeles, Orange, Riverside, San Bernardino, San Diego, and Ventura, during October or November of 1993, or any other related casualty.

(15) Any loss sustained as a result of the earthquake, aftershocks, or any other related casualty that occurred in the Counties of Los Angeles, Orange, and Ventura on or after January 17, 1994.

(16) Any loss sustained as a result of a fire that occurred in the County of San Luis Obispo during August of 1994, or any other related casualty.

(17) Any loss sustained as a result of the storms or flooding occurring in 1995, or any other related casualty, sustained in any county of this state subject to a disaster declaration with respect to the storms and flooding.

(18) Any loss sustained as a result of the storms or flooding occurring in December 1996 or January 1997, or any related casualty, sustained in any county of this state subject to a disaster declaration with respect to the storms or flooding.

(19) Any loss sustained as a result of the storms or flooding occurring in February 1998, or any related casualty, sustained in any county of this state subject to a disaster declaration with respect to the storms or flooding.

(20) Any loss sustained as a result of a freeze occurring in the winter of 1998–99, or any related casualty, sustained in any county of this state subject to a disaster declaration with respect to the freeze.

(21) Any loss sustained as a result of an earthquake occurring in September 2000, that was included in the Governor's proclamation of a state of emergency for the County of Napa.

(22) Any loss sustained as a result of the Middle River levee break in San Joaquin County occurring in June 2004.

(23) Any losses sustained as a result of the fires that occurred in the Counties of Los Angeles, Riverside, San Bernardino, San Diego, and Ventura in October and November 2003, or as a result of floods, mudflows, and debris flows, directly related to fires.

(24) Any losses sustained in the Counties of Santa Barbara and San Luis Obispo as a result of the San Simeon earthquake, aftershocks, and any other related casualties.

(25) Any losses sustained as a result of the wildfires that occurred in Shasta County, commencing August 11, 2004, and any other related casualty.

(26) Any loss sustained in the Counties of Kern, Los Angeles, Santa Barbara, and Ventura as a result of the severe rainstorms, related flooding and slides, and any other related casualties, that occurred in December 2004, January 2005, February 2005, or March 2005.

(27) Any loss sustained in the Counties of Orange, Riverside, San Bernardino, and San Diego as a result of the severe rainstorms, and related flooding, slides, and other events, that occurred in December 2004, January 2005, February 2005, March 2005, or June 2005.

(b) (1) In the case of any loss allowed under Section 165 of the Internal Revenue Code, relating to losses, any excess disaster loss shall be carried forward to each of the five taxable years following the taxable year for which the loss is claimed. However, if there is any excess disaster loss remaining after the five-year period, then the applicable percentage, as set forth in paragraph (1) of subdivision (b) of Section 24416, of that excess disaster loss shall be carried forward to each of the next 10 taxable years.

(2) The entire amount of any excess disaster loss as defined in subdivision (c) shall be carried to the earliest of the taxable years to which, by reason of subdivision (b), the loss may be carried. The portion of the loss which shall be carried to each of the other taxable years shall be the excess, if any, of the amount of excess disaster loss over the sum of the net income for each of the prior taxable years to which that excess disaster loss is carried.

(c) "Excess disaster loss" means a disaster loss computed pursuant to Section 165 of the Internal Revenue Code, which exceeds the net income of the year of loss or, if the election under Section 165(i) of the Internal Revenue Code is made, the net income of the year preceding the loss.

(d) The provisions of this section and Section 165(i) of the Internal Revenue Code shall be applicable to any of the losses listed in subdivision (a) sustained in any county or city in this state which was proclaimed by the Governor to be in a state of disaster.

(e) Any corporation subject to the provisions of Section 25101 or 25101.15 that has disaster losses pursuant to this section, shall determine the excess disaster loss to be carried to other taxable years under the principles specified in Section 25108 relating to net operating losses.

(f) Losses allowable under this section may not be taken into account in computing a net operating loss deduction under Section 172 of the Internal Revenue Code.

(g) For losses described in paragraphs (15) to (26), inclusive, of subdivision (a), the election under Section 165(i) of the Internal Revenue Code may be made on a return or amended return filed on or before the due date of the return (determined with regard to extension) for the taxable year in which the disaster occurred.

SEC. 8. The Legislature finds and declares that this act fulfills a statewide public purpose because of all of the following:

(a) The Governor of California has officially proclaimed a state of emergency declaring that the severe rainstorms, flash floods, mudslides, the accumulation of debris, and washed-out and damaged roads, that occurred within the Counties of Kern, Los Angeles, Santa Barbara, and Ventura during December 2004 and January 2005, were natural disasters, thus qualifying affected persons for various forms of governmental assistance and relief.

(b) The Governor of California has officially proclaimed a state of emergency declaring that the continuing severe rainstorms, flash floods, mudslides, sinkholes, the accumulation of debris, and washed-out and damaged roads that occurred within the Counties of Kern, Los Angeles, Santa Barbara, and Ventura, were natural disasters, thus qualifying affected persons for various forms of governmental assistance and relief.

(c) This act is consistent with, and supplements, the proclaimed disaster assistance and relief by providing necessary fiscal assistance and tax relief to affected jurisdictions and persons to allow them to maintain essential basic services and repair damage to, and restore, their homes and businesses.

SEC. 9. The requirements under Sections 99268.3, 99268.4, and 99268.9 of the Public Utilities Code may be reduced, by up to 30 days, by the Ventura County Transportation Commission with respect to an eligible operator under this article where the Governor has declared a State of Emergency as a result of a series of severe rainstorms that occurred during December 2004 through March 2005 in Ventura County disrupting Compressed Natural Gas service provided by Southern California Gas Company.

SEC. 10. It is the intent of the Legislature to provide in the annual Budget Act those additional reimbursements to local governments that, as a result of Section 4 of this act, are required by Section 25 of Article XIII of the California Constitution.

SEC. 11. 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.

SEC. 12. (a) Section 5.5 of this bill incorporates amendments to Section 218 of the Revenue and Taxation Code proposed by this bill, AB 18, and SB 457. It shall only become operative if (1) all three bills are enacted and become effective on or before January 1, 2006, (2) all three bills amend Section 218 of the Revenue and Taxation Code, and (3) this bill is enacted after AB 18 or SB 457, in which case Section 218 of the Revenue and Taxation Code, as amended by AB 18 or SB 457, shall remain operative only until the operative date of this bill, at which time Section 5.5 of this bill shall become operative, and Section 5 of this bill shall not become operative.

(b) Section 6.5 of this bill incorporates amendments to Section 17207 of the Revenue and Taxation Code proposed by this bill, AB 18, and SB 457. It shall only become operative if (1) all three bills are enacted and become effective on or before January 1, 2006, (2) all three bills amend Section 17207 of the Revenue and Taxation Code, and (3) this bill is enacted after AB 18 or SB 457, in which case Section 17207 of the Revenue and Taxation Code, as amended by AB 18 or SB 457, shall remain operative only until the operative date of this bill, at which time Section 6.5 of this bill shall become operative, and Section 6 of this bill shall not become operative.

(c) Section 7.5 of this bill incorporates amendments to Section 24347.5 of the Revenue and Taxation Code proposed by this bill, AB 18, and SB 457. It shall only become operative if (1) all three bills are enacted and become effective on or before January 1, 2006, (2) all three bills amend Section 24347.5 of the Revenue and Taxation Code, and (3) this bill is enacted after AB 18 or SB 457, in which case Section 24347.5 of the Revenue and Taxation Code, as amended by AB 18 or SB 457, shall remain operative only until the operative date of this bill, at which time Section 7.5 of this bill shall become operative, and Section 7 of this bill shall not become operative.

SEC. 13. This bill shall not become operative unless both this bill and Senate Bill 457 are chaptered and become effective on or before January 1, 2006. If Senate Bill 457 is not chaptered and does not become effective on or before January 1, 2006, this bill shall not become operative.

SEC. 14. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to timely provide essential relief to those persons and jurisdictions who have suffered damage or loss as a result of the series

of severe rainstorms that occurred in California during December 2004 and January of 2005, and that continued through February of 2005 and March of 2005, it is necessary that this act take effect immediately.

CHAPTER 624

An act to amend Sections 218, 17207, and 24347.5 of, and to add Sections 195.95, 195.96, and 195.97 to, the Revenue and Taxation Code, relating to disaster relief, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 6, 2005. Filed with
Secretary of State October 6, 2005.]

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

SECTION 1. Section 195.95 is added to the Revenue and Taxation Code, to read:

195.95. (a) By September 30, 2005, the Auditor of Shasta County, which was the subject of the Governor's Proclamation of a state of emergency for the wildfires that occurred in Shasta County during August 2004, shall certify to the Director of Finance an estimate of the total amount of the reduction in property tax revenues on both the regular secured roll and the supplemental roll for the 2004–05 fiscal year resulting from the reassessment by the county assessor pursuant to paragraph (1) of subdivision (a) of Section 170 of those properties that are eligible properties as a result of that disaster, except that the amount certified shall not include any estimated property tax revenue reductions to school districts, other than basic state aid school districts, and county offices of education.

(b) For purposes of this section, "basic state aid school district" means any school district that does not receive a state apportionment pursuant to subdivision (h) of Section 42238 of the Education Code, but receives from the state only a basic apportionment pursuant to Section 6 of Article IX of the California Constitution.

SEC. 2. Section 195.96 is added to the Revenue and Taxation Code, to read:

195.96. After the Auditor of Shasta County has made the applicable certification to the Director of Finance pursuant to Section 195.95, the director shall, within 30 days after verification of the county auditor's estimate, certify this amount to the Controller for allocation to the county. Upon receipt of certification from the Director of Finance, the Controller

shall make the appropriate allocation to the county within 10 working days.

SEC. 3. Section 195.97 is added to the Revenue and Taxation Code, to read:

195.97. (a) On or before June 30, 2006, Shasta County shall compute and remit to the Controller for deposit in the General Fund an amount equal to the amount allocated to it by the Controller pursuant to Section 195.96, less the actual amount of its property tax revenue lost on the regular secured and supplemental rolls with respect to those eligible properties described in Section 195.95 as a result of the reassessment of those properties pursuant to paragraph (1) of subdivision (a) of Section 170, excluding any property tax revenue lost by school districts, other than basic state aid school districts, and county offices of education. If the actual amount of property tax revenue lost by Shasta County in the immediately preceding fiscal year, as described and limited in the preceding sentence, exceeds the amount allocated by the Controller to that county pursuant to Section 195.96, the Controller shall allocate the amount of that excess to that county.

(b) For purposes of this section, "basic state aid school district" means any school district that does not receive a state apportionment pursuant to subdivision (h) of Section 42238 of the Education Code, but receives from the state only a basic apportionment pursuant to Section 6 of Article IX of the California Constitution.

SEC. 4. Section 218 of the Revenue and Taxation Code is amended to read:

218. (a) The homeowners' property tax exemption is in the amount of the assessed value of the dwelling specified in this section, as authorized by subdivision (k) of Section 3 of Article XIII of the Constitution. That exemption shall be in the amount of seven thousand dollars (\$7,000) of the full value of the dwelling.

(b) The exemption does not extend to property that is rented, vacant, under construction on the lien date, or that is a vacation or secondary home of the owner or owners, nor does it apply to property on which an owner receives the veteran's exemption.

(c) For purposes of this section, all of the following apply:

(1) "Owner" includes a person purchasing the dwelling under a contract of sale or who holds shares or membership in a cooperative housing corporation, which holding is a requisite to the exclusive right of occupancy of a dwelling.

(2) (A) "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. A two-dwelling unit shall be considered as two separate single-family dwellings.

(B) "Dwelling" includes the following:

(i) A single-family dwelling occupied by an owner thereof as his or her principal place of residence on the lien date.

(ii) A multiple-dwelling unit occupied by an owner thereof on the lien date as his or her principal place of residence.

(iii) A condominium occupied by an owner thereof as his or her principal place of residence on the lien date.

(iv) Premises occupied by the owner of shares or a membership interest in a cooperative housing corporation, as defined in subdivision (i) of Section 61, as his or her principal place of residence on the lien date. Each exemption allowed pursuant to this subdivision shall be deducted from the total assessed valuation of the cooperative housing corporation. The exemption shall be taken into account in apportioning property taxes among owners of share or membership interests in the cooperative housing corporations so as to benefit those owners who qualify for the exemption.

(d) Any dwelling that qualified for an exemption under this section prior to October 20, 1991, that was damaged or destroyed by fire in a disaster, as declared by the Governor, occurring on or after October 20, 1991, and before November 1, 1991, and that has not changed ownership since October 20, 1991, shall not be disqualified as a "dwelling" or be denied an exemption under this section solely on the basis that the dwelling was temporarily damaged or destroyed or was being reconstructed by the owner.

(e) Any dwelling that qualified for an exemption under this section prior to October 15, 2003, that was damaged or destroyed by fire or earthquake in a disaster, as declared by the Governor, during October, November, or December 2003, and that has not changed ownership since October 15, 2003, shall not be disqualified as a "dwelling" or be denied an exemption under this section solely on the basis that the dwelling was temporarily damaged or destroyed or was being reconstructed by the owner.

(f) Any dwelling that qualified for an exemption under this section prior to June 3, 2004, that was damaged or destroyed by flood in a disaster, as declared by the Governor, during June 2004, and that has not changed ownership since June 3, 2004, shall not be disqualified as a "dwelling" or be denied an exemption under this section solely on the basis that the dwelling was temporarily damaged or destroyed or was being reconstructed by the owner.

(g) Any dwelling that qualified for an exemption under this section prior to August 11, 2004, that was damaged or destroyed by the wildfires and any other related casualty that occurred in Shasta County in a disaster, as declared by the Governor during August 2004, and that has

not changed ownership since August 11, 2004, shall not be disqualified as a “dwelling” or be denied an exemption under this section solely on the basis that the dwelling was temporarily damaged or destroyed or was being reconstructed by the owner.

(h) The exemption provided for in subdivision (k) of Section 3 of Article XIII of the Constitution shall first be applied to the building, structure, or other shelter and the excess, if any, shall be applied to any land on which it may be located.

SEC. 4.5. Section 218 of the Revenue and Taxation Code is amended to read:

218. (a) The homeowners’ property tax exemption is in the amount of the assessed value of the dwelling specified in this section, as authorized by subdivision (k) of Section 3 of Article XIII of the Constitution. That exemption shall be in the amount of seven thousand dollars (\$7,000) of the full value of the dwelling.

(b) The exemption does not extend to property that is rented, vacant, under construction on the lien date, or that is a vacation or secondary home of the owner or owners, nor does it apply to property on which an owner receives the veteran’s exemption.

(c) For purposes of this section, all of the following apply:

(1) “Owner” includes a person purchasing the dwelling under a contract of sale or who holds shares or membership in a cooperative housing corporation, which holding is a requisite to the exclusive right of occupancy of a dwelling.

(2) (A) “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. A two-dwelling unit shall be considered as two separate single-family dwellings.

(B) “Dwelling” includes the following:

(i) A single-family dwelling occupied by an owner thereof as his or her principal place of residence on the lien date.

(ii) A multiple-dwelling unit occupied by an owner thereof on the lien date as his or her principal place of residence.

(iii) A condominium occupied by an owner thereof as his or her principal place of residence on the lien date.

(iv) Premises occupied by the owner of shares or a membership interest in a cooperative housing corporation, as defined in subdivision (i) of Section 61, as his or her principal place of residence on the lien date. Each exemption allowed pursuant to this subdivision shall be deducted from the total assessed valuation of the cooperative housing corporation. The exemption shall be taken into account in apportioning property taxes among owners of share or membership interests in the

cooperative housing corporations so as to benefit those owners who qualify for the exemption.

(d) Any dwelling that qualified for an exemption under this section prior to October 20, 1991, that was damaged or destroyed by fire in a disaster, as declared by the Governor, occurring on or after October 20, 1991, and before November 1, 1991, and that has not changed ownership since October 20, 1991, shall not be disqualified as a “dwelling” or be denied an exemption under this section solely on the basis that the dwelling was temporarily damaged or destroyed or was being reconstructed by the owner.

(e) Any dwelling that qualified for an exemption under this section prior to October 15, 2003, that was damaged or destroyed by fire or earthquake in a disaster, as declared by the Governor, during October, November, or December 2003, and that has not changed ownership since October 15, 2003, shall not be disqualified as a “dwelling” or be denied an exemption under this section solely on the basis that the dwelling was temporarily damaged or destroyed or was being reconstructed by the owner.

(f) Any dwelling that qualified for an exemption under this section prior to June 3, 2004, that was damaged or destroyed by flood in a disaster, as declared by the Governor, during June 2004, and that has not changed ownership since June 3, 2004, shall not be disqualified as a “dwelling” or be denied an exemption under this section solely on the basis that the dwelling was temporarily damaged or destroyed or was being reconstructed by the owner.

(g) Any dwelling that qualified for an exemption under this section prior to August 11, 2004, that was damaged or destroyed by the wildfires and any other related casualty that occurred in Shasta County in a disaster, as declared by the Governor, during August 2004, and that has not changed ownership since August 11, 2004, shall not be disqualified as a “dwelling” or be denied an exemption under this section solely on the basis that the dwelling was temporarily damaged or destroyed or was being reconstructed by the owner.

(h) Any dwelling that qualified for an exemption under this section prior to December 28, 2004, that was damaged or destroyed by severe rainstorms, floods, mudslides, or the accumulation of debris in a disaster, as declared by the Governor, during December 2004, January 2005, February 2005, March 2005, or June 2005, and that has not changed ownership since December 28, 2004, shall not be disqualified as a “dwelling” or be denied an exemption under this section solely on the basis that the dwelling was temporarily damaged or destroyed or was being reconstructed by the owner, or was temporarily uninhabited as a

result of restricted access to the property due to floods, mudslides, the accumulation of debris, or washed out or damaged roads.

(i) The exemption provided for in subdivision (k) of Section 3 of Article XIII of the Constitution shall first be applied to the building, structure, or other shelter and the excess, if any, shall be applied to any land on which it may be located.

SEC. 5. Section 17207 of the Revenue and Taxation Code is amended to read:

17207. (a) An excess disaster loss, as defined in subdivision (c), shall be carried to other taxable years as provided in subdivision (b), with respect to losses resulting from any of the following disasters:

(1) Forest fire or any other related casualty occurring in 1985 in California.

(2) Storm, flooding, or any other related casualty occurring in 1986 in California.

(3) Any loss sustained during 1987 as a result of a forest fire or any other related casualty.

(4) Earthquake, aftershock, or any other related casualty occurring in 1987 in California.

(5) Earthquake, aftershock, or any other related casualty occurring in 1989 in California.

(6) Any loss sustained during 1990 as a result of fire or any other related casualty in California.

(7) Any loss sustained as a result of the Oakland/Berkeley Fire of 1991, or any other related casualty.

(8) Any loss sustained as a result of storm, flooding, or any other related casualty occurring in February 1992 in California.

(9) Earthquake, aftershock, or any other related casualty occurring in April 1992 in the County of Humboldt.

(10) Riots, arson, or any other related casualty occurring in April or May 1992 in California.

(11) Any loss sustained as a result of the earthquakes that occurred in the County of San Bernardino in June and July of 1992, or any other related casualty.

(12) Any loss sustained as a result of the Fountain Fire that occurred in the County of Shasta, or as a result of either of the fires in the Counties of Calaveras and Trinity that occurred in August 1992, or any other related casualty.

(13) Any loss sustained as a result of storm, flooding, or any other related casualty that occurred in the Counties of Alpine, Contra Costa, Fresno, Humboldt, Imperial, Lassen, Los Angeles, Madera, Mendocino, Modoc, Monterey, Napa, Orange, Plumas, Riverside, San Bernardino,

San Diego, Santa Barbara, Sierra, Siskiyou, Sonoma, Tehama, Trinity, and Tulare, and the City of Fillmore in January 1993.

(14) Any loss sustained as a result of a fire that occurred in the Counties of Los Angeles, Orange, Riverside, San Bernardino, San Diego, and Ventura, during October or November of 1993, or any other related casualty.

(15) Any loss sustained as a result of the earthquake, aftershocks, or any other related casualty that occurred in the Counties of Los Angeles, Orange, and Ventura on or after January 17, 1994.

(16) Any loss sustained as a result of a fire that occurred in the County of San Luis Obispo during August of 1994, or any other related casualty.

(17) Any loss sustained as a result of the storms or flooding occurring in 1995, or any other related casualty, sustained in any county of this state subject to a disaster declaration with respect to the storms and flooding.

(18) Any loss sustained as a result of the storms or flooding occurring in December 1996 or January 1997, or any related casualty, sustained in any county of this state subject to a disaster declaration with respect to the storms or flooding.

(19) Any loss sustained as a result of the storms or flooding occurring in February 1998, or any related casualty, sustained in any county of this state subject to a disaster declaration with respect to the storms or flooding.

(20) Any loss sustained as a result of a freeze occurring in the winter of 1998–99, or any related casualty, sustained in any county of this state subject to a disaster declaration with respect to the freeze.

(21) Any loss sustained as a result of an earthquake occurring in September 2000, that was included in the Governor's proclamation of a state of emergency for the County of Napa.

(22) Any loss sustained as a result of the Middle River levee break in San Joaquin County occurring in June 2004.

(23) Any losses sustained as a result of the fires that occurred in the Counties of Los Angeles, San Bernardino, Riverside, San Diego, and Ventura in October and November 2003, or as a result of floods, mudflows, and debris flows, directly related to fires.

(24) Any losses sustained in the Counties of Santa Barbara and San Luis Obispo as a result of the San Simeon earthquake, aftershocks, and any other related casualties.

(25) Any losses sustained as a result of the wildfires that occurred in Shasta County, commencing August 11, 2004, and any other related casualty.

(b) (1) In the case of any loss allowed under Section 165(c) of the Internal Revenue Code, relating to limitation of losses of individuals,

any excess disaster loss shall be carried forward to each of the five taxable years following the taxable year for which the loss is claimed. However, if there is any excess disaster loss remaining after the five-year period, then the applicable percentage, as set forth in paragraph (1) of subdivision (b) of Section 17276, of that excess disaster loss shall be carried forward to each of the next 10 taxable years.

(2) The entire amount of any excess disaster loss as defined in subdivision (c) shall be carried to the earliest of the taxable years to which, by reason of subdivision (b), the loss may be carried. The portion of the loss which shall be carried to each of the other taxable years shall be the excess, if any, of the amount of excess disaster loss over the sum of the adjusted taxable income for each of the prior taxable years to which that excess disaster loss is carried.

(c) "Excess disaster loss" means a disaster loss computed pursuant to Section 165 of the Internal Revenue Code which exceeds the adjusted taxable income of the year of loss or, if the election under Section 165(i) of the Internal Revenue Code is made, the adjusted taxable income of the year preceding the loss.

(d) The provisions of this section and Section 165(i) of the Internal Revenue Code shall be applicable to any of the losses listed in subdivision (a) sustained in any county or city in this state which was proclaimed by the Governor to be in a state of disaster.

(e) Losses allowable under this section may not be taken into account in computing a net operating loss deduction under Section 172 of the Internal Revenue Code.

(f) For purposes of this section, "adjusted taxable income" shall be defined by Section 1212(b)(2)(B) of the Internal Revenue Code.

(g) For losses described in paragraphs (15) to (25), inclusive, of subdivision (a), the election under Section 165(i) of the Internal Revenue Code may be made on a return or amended return filed on or before the due date of the return (determined with regard to extension) for the taxable year in which the disaster occurred.

SEC. 5.5. Section 17207 of the Revenue and Taxation Code is amended to read:

17207. (a) An excess disaster loss, as defined in subdivision (c), shall be carried to other taxable years as provided in subdivision (b), with respect to losses resulting from any of the following disasters:

(1) Forest fire or any other related casualty occurring in 1985 in California.

(2) Storm, flooding, or any other related casualty occurring in 1986 in California.

(3) Any loss sustained during 1987 as a result of a forest fire or any other related casualty.

(4) Earthquake, aftershock, or any other related casualty occurring in 1987 in California.

(5) Earthquake, aftershock, or any other related casualty occurring in 1989 in California.

(6) Any loss sustained during 1990 as a result of fire or any other related casualty in California.

(7) Any loss sustained as a result of the Oakland/Berkeley Fire of 1991, or any other related casualty.

(8) Any loss sustained as a result of storm, flooding, or any other related casualty occurring in February 1992 in California.

(9) Earthquake, aftershock, or any other related casualty occurring in April 1992 in the County of Humboldt.

(10) Riots, arson, or any other related casualty occurring in April or May 1992 in California.

(11) Any loss sustained as a result of the earthquakes that occurred in the County of San Bernardino in June and July of 1992, or any other related casualty.

(12) Any loss sustained as a result of the Fountain Fire that occurred in the County of Shasta, or as a result of either of the fires in the Counties of Calaveras and Trinity that occurred in August 1992, or any other related casualty.

(13) Any loss sustained as a result of storm, flooding, or any other related casualty that occurred in the Counties of Alpine, Contra Costa, Fresno, Humboldt, Imperial, Lassen, Los Angeles, Madera, Mendocino, Modoc, Monterey, Napa, Orange, Plumas, Riverside, San Bernardino, San Diego, Santa Barbara, Sierra, Siskiyou, Sonoma, Tehama, Trinity, and Tulare, and the City of Fillmore in January 1993.

(14) Any loss sustained as a result of a fire that occurred in the Counties of Los Angeles, Orange, Riverside, San Bernardino, San Diego, and Ventura, during October or November of 1993, or any other related casualty.

(15) Any loss sustained as a result of the earthquake, aftershocks, or any other related casualty that occurred in the Counties of Los Angeles, Orange, and Ventura on or after January 17, 1994.

(16) Any loss sustained as a result of a fire that occurred in the County of San Luis Obispo during August of 1994, or any other related casualty.

(17) Any loss sustained as a result of the storms or flooding occurring in 1995, or any other related casualty, sustained in any county of this state subject to a disaster declaration with respect to the storms and flooding.

(18) Any loss sustained as a result of the storms or flooding occurring in December 1996 or January 1997, or any related casualty, sustained

in any county of this state subject to a disaster declaration with respect to the storms or flooding.

(19) Any loss sustained as a result of the storms or flooding occurring in February 1998, or any related casualty, sustained in any county of this state subject to a disaster declaration with respect to the storms or flooding.

(20) Any loss sustained as a result of a freeze occurring in the winter of 1998–99, or any related casualty, sustained in any county of this state subject to a disaster declaration with respect to the freeze.

(21) Any loss sustained as a result of an earthquake occurring in September 2000, that was included in the Governor's proclamation of a state of emergency for the County of Napa.

(22) Any loss sustained as a result of the Middle River levee break in San Joaquin County occurring in June 2004.

(23) Any losses sustained as a result of the fires that occurred in the Counties of Los Angeles, San Bernardino, Riverside, San Diego, and Ventura in October and November 2003, or as a result of floods, mudflows, and debris flows, directly related to fires.

(24) Any losses sustained in the Counties of Santa Barbara and San Luis Obispo as a result of the San Simeon earthquake, aftershocks, and any other related casualties.

(25) Any losses sustained as a result of the wildfires that occurred in Shasta County, commencing August 11, 2004, and any other related casualty.

(26) Any loss sustained in the Counties of Kern, Los Angeles, Orange, Riverside, San Bernardino, San Diego, Santa Barbara, and Ventura as a result of the severe rainstorms, related flooding and slides, and any other related casualties, that occurred in December 2004, January 2005, February 2005, March 2005, or June 2005.

(b) (1) In the case of any loss allowed under Section 165(c) of the Internal Revenue Code, relating to limitation of losses of individuals, any excess disaster loss shall be carried forward to each of the five taxable years following the taxable year for which the loss is claimed. However, if there is any excess disaster loss remaining after the five-year period, then the applicable percentage, as set forth in paragraph (1) of subdivision (b) of Section 17276, of that excess disaster loss shall be carried forward to each of the next 10 taxable years.

(2) The entire amount of any excess disaster loss as defined in subdivision (c) shall be carried to the earliest of the taxable years to which, by reason of subdivision (b), the loss may be carried. The portion of the loss which shall be carried to each of the other taxable years shall be the excess, if any, of the amount of excess disaster loss over the sum

of the adjusted taxable income for each of the prior taxable years to which that excess disaster loss is carried.

(c) "Excess disaster loss" means a disaster loss computed pursuant to Section 165 of the Internal Revenue Code which exceeds the adjusted taxable income of the year of loss or, if the election under Section 165(i) of the Internal Revenue Code is made, the adjusted taxable income of the year preceding the loss.

(d) The provisions of this section and Section 165(i) of the Internal Revenue Code shall be applicable to any of the losses listed in subdivision (a) sustained in any county or city in this state which was proclaimed by the Governor to be in a state of disaster.

(e) Losses allowable under this section may not be taken into account in computing a net operating loss deduction under Section 172 of the Internal Revenue Code.

(f) For purposes of this section, "adjusted taxable income" shall be defined by Section 1212(b)(2)(B) of the Internal Revenue Code.

(g) For losses described in paragraphs (15) to (26), inclusive, of subdivision (a), the election under Section 165(i) of the Internal Revenue Code may be made on a return or amended return filed on or before the due date of the return (determined with regard to extension) for the taxable year in which the disaster occurred.

SEC. 6. Section 24347.5 of the Revenue and Taxation Code is amended to read:

24347.5. (a) An excess disaster loss, as defined in subdivision (c), shall be carried to other taxable years as provided in subdivision (b), with respect to losses resulting from any of the following disasters:

(1) Forest fire or any other related casualty occurring in 1985 in California.

(2) Storm, flooding, or any other related casualty occurring in 1986 in California.

(3) Any loss sustained during 1987 as a result of a forest fire or any other related casualty.

(4) Earthquake, aftershock, or any other related casualty occurring in October 1987 in California.

(5) Earthquake, aftershock, or any other related casualty occurring in October 1989 in California.

(6) Any loss sustained during 1990 as a result of fire or any other related casualty in California.

(7) Any loss sustained as a result of the Oakland/Berkeley Fire of 1991, or any other related casualty.

(8) Any loss sustained as a result of storm, flooding, or any other related casualty occurring in February 1992 in California.

(9) Earthquake, aftershock, or any other related casualty occurring in April 1992 in the County of Humboldt.

(10) Riots, arson, or any other related casualty occurring in April or May 1992 in California.

(11) Any loss sustained as a result of the earthquakes or any other related casualty that occurred in the County of San Bernardino in June and July of 1992.

(12) Any loss sustained as a result of the Fountain Fire that occurred in the County of Shasta, or as a result of either of the fires in the Counties of Calaveras and Trinity that occurred in August 1992, or any other related casualty.

(13) Any loss sustained as a result of storm, flooding, or any other related casualty that occurred in the Counties of Alpine, Contra Costa, Fresno, Humboldt, Imperial, Lassen, Los Angeles, Madera, Mendocino, Modoc, Monterey, Napa, Orange, Plumas, Riverside, San Bernardino, San Diego, Santa Barbara, Sierra, Siskiyou, Sonoma, Tehama, Trinity, and Tulare, and the City of Fillmore in January 1993.

(14) Any loss sustained as a result of a fire that occurred in the Counties of Los Angeles, Orange, Riverside, San Bernardino, San Diego, and Ventura, during October or November of 1993, or any other related casualty.

(15) Any loss sustained as a result of the earthquake, aftershocks, or any other related casualty that occurred in the Counties of Los Angeles, Orange, and Ventura on or after January 17, 1994.

(16) Any loss sustained as a result of a fire that occurred in the County of San Luis Obispo during August of 1994, or any other related casualty.

(17) Any loss sustained as a result of the storms or flooding occurring in 1995, or any other related casualty, sustained in any county of this state subject to a disaster declaration with respect to the storms and flooding.

(18) Any loss sustained as a result of the storms or flooding occurring in December 1996 or January 1997, or any related casualty, sustained in any county of this state subject to a disaster declaration with respect to the storms or flooding.

(19) Any loss sustained as a result of the storms or flooding occurring in February 1998, or any related casualty, sustained in any county of this state subject to a disaster declaration with respect to the storms or flooding.

(20) Any loss sustained as a result of a freeze occurring in the winter of 1998–99, or any related casualty, sustained in any county of this state subject to a disaster declaration with respect to the freeze.

(21) Any loss sustained as a result of an earthquake occurring in September 2000, that was included in the Governor's proclamation of a state of emergency for the County of Napa.

(22) Any loss sustained as a result of the Middle River levee break in San Joaquin County occurring in June 2004.

(23) Any losses sustained as a result of the fires that occurred in the Counties of Los Angeles, San Bernardino, Riverside, San Diego, and Ventura in October and November 2003, or as a result of floods, mudflows, and debris flows, directly related to fires.

(24) Any losses sustained in the Counties of Santa Barbara and San Luis Obispo as a result of the San Simeon earthquake, aftershocks, and any other related casualties.

(25) Any losses sustained as a result of the wildfires that occurred in Shasta County, commencing August 11, 2004, and any other related casualty.

(b) (1) In the case of any loss allowed under Section 165 of the Internal Revenue Code, relating to losses, any excess disaster loss shall be carried forward to each of the five taxable years following the taxable year for which the loss is claimed. However, if there is any excess disaster loss remaining after the five-year period, then the applicable percentage, as set forth in paragraph (1) of subdivision (b) of Section 24416, of that excess disaster loss shall be carried forward to each of the next 10 taxable years.

(2) The entire amount of any excess disaster loss as defined in subdivision (c) shall be carried to the earliest of the taxable years to which, by reason of subdivision (b), the loss may be carried. The portion of the loss which shall be carried to each of the other taxable years shall be the excess, if any, of the amount of excess disaster loss over the sum of the net income for each of the prior taxable years to which that excess disaster loss is carried.

(c) "Excess disaster loss" means a disaster loss computed pursuant to Section 165 of the Internal Revenue Code, which exceeds the net income of the year of loss or, if the election under Section 165(i) of the Internal Revenue Code is made, the net income of the year preceding the loss.

(d) The provisions of this section and Section 165(i) of the Internal Revenue Code shall be applicable to any of the losses listed in subdivision (a) sustained in any county or city in this state which was proclaimed by the Governor to be in a state of disaster.

(e) Any corporation subject to the provisions of Section 25101 or 25101.15 that has disaster losses pursuant to this section, shall determine the excess disaster loss to be carried to other taxable years under the principles specified in Section 25108 relating to net operating losses.

(f) Losses allowable under this section may not be taken into account in computing a net operating loss deduction under Section 172 of the Internal Revenue Code.

(g) For losses described in paragraphs (15) to (25), inclusive, of subdivision (a), the election under Section 165(i) of the Internal Revenue Code may be made on a return or amended return filed on or before the due date of the return (determined with regard to extension) for the taxable year in which the disaster occurred.

SEC. 6.5. Section 24347.5 of the Revenue and Taxation Code is amended to read:

24347.5. (a) An excess disaster loss, as defined in subdivision (c), shall be carried to other taxable years as provided in subdivision (b), with respect to losses resulting from any of the following disasters:

(1) Forest fire or any other related casualty occurring in 1985 in California.

(2) Storm, flooding, or any other related casualty occurring in 1986 in California.

(3) Any loss sustained during 1987 as a result of a forest fire or any other related casualty.

(4) Earthquake, aftershock, or any other related casualty occurring in October 1987 in California.

(5) Earthquake, aftershock, or any other related casualty occurring in October 1989 in California.

(6) Any loss sustained during 1990 as a result of fire or any other related casualty in California.

(7) Any loss sustained as a result of the Oakland/Berkeley Fire of 1991, or any other related casualty.

(8) Any loss sustained as a result of storm, flooding, or any other related casualty occurring in February 1992 in California.

(9) Earthquake, aftershock, or any other related casualty occurring in April 1992 in the County of Humboldt.

(10) Riots, arson, or any other related casualty occurring in April or May 1992 in California.

(11) Any loss sustained as a result of the earthquakes or any other related casualty that occurred in the County of San Bernardino in June and July of 1992.

(12) Any loss sustained as a result of the Fountain Fire that occurred in the County of Shasta, or as a result of either of the fires in the Counties of Calaveras and Trinity that occurred in August 1992, or any other related casualty.

(13) Any loss sustained as a result of storm, flooding, or any other related casualty that occurred in the Counties of Alpine, Contra Costa, Fresno, Humboldt, Imperial, Lassen, Los Angeles, Madera, Mendocino,

Modoc, Monterey, Napa, Orange, Plumas, Riverside, San Bernardino, San Diego, Santa Barbara, Sierra, Siskiyou, Sonoma, Tehama, Trinity, and Tulare, and the City of Fillmore in January 1993.

(14) Any loss sustained as a result of a fire that occurred in the Counties of Los Angeles, Orange, Riverside, San Bernardino, San Diego, and Ventura, during October or November of 1993, or any other related casualty.

(15) Any loss sustained as a result of the earthquake, aftershocks, or any other related casualty that occurred in the Counties of Los Angeles, Orange, and Ventura on or after January 17, 1994.

(16) Any loss sustained as a result of a fire that occurred in the County of San Luis Obispo during August of 1994, or any other related casualty.

(17) Any loss sustained as a result of the storms or flooding occurring in 1995, or any other related casualty, sustained in any county of this state subject to a disaster declaration with respect to the storms and flooding.

(18) Any loss sustained as a result of the storms or flooding occurring in December 1996 or January 1997, or any related casualty, sustained in any county of this state subject to a disaster declaration with respect to the storms or flooding.

(19) Any loss sustained as a result of the storms or flooding occurring in February 1998, or any related casualty, sustained in any county of this state subject to a disaster declaration with respect to the storms or flooding.

(20) Any loss sustained as a result of a freeze occurring in the winter of 1998–99, or any related casualty, sustained in any county of this state subject to a disaster declaration with respect to the freeze.

(21) Any loss sustained as a result of an earthquake occurring in September 2000, that was included in the Governor's proclamation of a state of emergency for the County of Napa.

(22) Any loss sustained as a result of the Middle River levee break in San Joaquin County occurring in June 2004.

(23) Any losses sustained as a result of the fires that occurred in the Counties of Los Angeles, San Bernardino, Riverside, San Diego, and Ventura in October and November 2003, or as a result of floods, mudflows, and debris flows, directly related to fires.

(24) Any losses sustained in the Counties of Santa Barbara and San Luis Obispo as a result of the San Simeon earthquake, aftershocks, and any other related casualties.

(25) Any losses sustained as a result of the wildfires that occurred in Shasta County, commencing August 11, 2004, and any other related casualty.

(26) Any loss sustained in the Counties of Kern, Los Angeles, Orange, Riverside, San Bernardino, San Diego, Santa Barbara, and Ventura as a result of the severe rainstorms, related flooding and slides, and any other related casualties, that occurred in December 2004, January 2005, February 2005, March 2005, or June 2005.

(b) (1) In the case of any loss allowed under Section 165 of the Internal Revenue Code, relating to losses, any excess disaster loss shall be carried forward to each of the five taxable years following the taxable year for which the loss is claimed. However, if there is any excess disaster loss remaining after the five-year period, then the applicable percentage, as set forth in paragraph (1) of subdivision (b) of Section 24416, of that excess disaster loss shall be carried forward to each of the next 10 taxable years.

(2) The entire amount of any excess disaster loss as defined in subdivision (c) shall be carried to the earliest of the taxable years to which, by reason of subdivision (b), the loss may be carried. The portion of the loss which shall be carried to each of the other taxable years shall be the excess, if any, of the amount of excess disaster loss over the sum of the net income for each of the prior taxable years to which that excess disaster loss is carried.

(c) "Excess disaster loss" means a disaster loss computed pursuant to Section 165 of the Internal Revenue Code, which exceeds the net income of the year of loss or, if the election under Section 165(i) of the Internal Revenue Code is made, the net income of the year preceding the loss.

(d) The provisions of this section and Section 165(i) of the Internal Revenue Code shall be applicable to any of the losses listed in subdivision (a) sustained in any county or city in this state which was proclaimed by the Governor to be in a state of disaster.

(e) Any corporation subject to the provisions of Section 25101 or 25101.15 that has disaster losses pursuant to this section, shall determine the excess disaster loss to be carried to other taxable years under the principles specified in Section 25108 relating to net operating losses.

(f) Losses allowable under this section may not be taken into account in computing a net operating loss deduction under Section 172 of the Internal Revenue Code.

(g) For losses described in paragraphs (15) to (26), inclusive, of subdivision (a), the election under Section 165(i) of the Internal Revenue Code may be made on a return or amended return filed on or before the due date of the return (determined with regard to extension) for the taxable year in which the disaster occurred.

SEC. 7. The Legislature finds and declares that this act fulfills a statewide public purpose because of both of the following:

(a) The Governor of California has officially proclaimed a state of emergency that declared that the wildfires that occurred within Shasta County during August 2004, were natural disasters, thus qualifying affected persons for various forms of governmental assistance and relief.

(b) This act is consistent with, and supplements, the proclaimed disaster assistance and relief by providing necessary fiscal assistance and tax relief to affected jurisdictions and persons to allow them to maintain essential basic services and repair damage to, and restore, their homes and businesses.

SEC. 8. It is the intent of the Legislature to provide in the annual Budget Act those additional reimbursements to local governments that, as a result of Section 4 of this act, are required by Section 25 of Article XIII of the California Constitution.

SEC. 9. 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.

SEC. 10. (a) Section 4.5 of this bill incorporates amendments to Section 218 of the Revenue and Taxation Code proposed by this bill, AB 164, and SB 457. It shall only become operative if (1) all three bills are enacted and become effective on or before January 1, 2006, (2) all three bills amend Section 218 of the Revenue and Taxation Code, and (3) this bill is enacted after AB 164 or SB 457, in which case Section 218 of the Revenue and Taxation Code, as amended by AB 164 or SB 457, shall remain operative only until the operative date of this bill, at which time Section 4.5 of this bill shall become operative, and Section 4 of this bill shall not become operative.

(b) Section 5.5 of this bill incorporates amendments to Section 17207 of the Revenue and Taxation Code proposed by this bill, AB 164, and SB 457. It shall only become operative if (1) all three bills are enacted and become effective on or before January 1, 2006, (2) all three bills amend Section 17207 of the Revenue and Taxation Code, and (3) this bill is enacted after AB 164 or SB 457, in which case Section 17207 of the Revenue and Taxation Code, as amended by AB 164 or SB 457, shall remain operative only until the operative date of this bill, at which time Section 5.5 of this bill shall become operative, and Section 5 of this bill shall not become operative.

(c) Section 6.5 of this bill incorporates amendments to Section 24347.5 of the Revenue and Taxation Code proposed by this bill, AB 164, and SB 457. It shall only become operative if (1) all three bills are enacted and become effective on or before January 1, 2006, (2) all three bills amend Section 24347.5 of the Revenue and Taxation Code, and (3) this

bill is enacted after AB 164 or SB 457, in which case Section 24347.5 of the Revenue and Taxation Code, as amended by AB 164 or SB 457, shall remain operative only until the operative date of this bill, at which time Section 6.5 of this bill shall become operative, and Section 6 of this bill shall not become operative.

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 timely provide essential relief to those persons and jurisdictions who have suffered damage or loss as a result of the wildfires that occurred in Shasta County during August 2004, it is necessary that this act take effect immediately.

CHAPTER 625

An act to amend Section 1255.7 of the Health and Safety Code, to amend Section 271.5 of the Penal Code, and to amend Section 14005.24 of, and to amend and repeal Sections 300 and 361.5 of, the Welfare and Institutions Code, relating to abandonment of newborns.

[Approved by Governor October 7, 2005. Filed with
Secretary of State October 7, 2005.]

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, “parent” means a birth parent of a minor child who is 72 hours old or younger.

(3) 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.

(4) 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 surrender 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 Title 1 of Part 4 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.

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 (j) 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.

SEC. 3. Section 300 of the Welfare and Institutions Code, as amended by Section 3 of Chapter 824 of the Statutes of 2000, is amended to read:

300. Any child who comes within any of the following descriptions is within the jurisdiction of the juvenile court which may adjudge that person to be a dependent child of the court:

(a) The child has suffered, or there is a substantial risk that the child will suffer, serious physical harm inflicted nonaccidentally upon the

child by the child's parent or guardian. For the purposes of this subdivision, a court may find there is a substantial risk of serious future injury based on the manner in which a less serious injury was inflicted, a history of repeated inflictions of injuries on the child or the child's siblings, or a combination of these and other actions by the parent or guardian which indicate the child is at risk of serious physical harm. For purposes of this subdivision, "serious physical harm" does not include reasonable and age-appropriate spanking to the buttocks where there is no evidence of serious physical injury.

(b) The child has suffered, or there is a substantial risk that the child will suffer, serious physical harm or illness, as a result of the failure or inability of his or her parent or guardian to adequately supervise or protect the child, or the willful or negligent failure of the child's parent or guardian to adequately supervise or protect the child from the conduct of the custodian with whom the child has been left, or by the willful or negligent failure of the parent or guardian to provide the child with adequate food, clothing, shelter, or medical treatment, or by the inability of the parent or guardian to provide regular care for the child due to the parent's or guardian's mental illness, developmental disability, or substance abuse. No child shall be found to be a person described by this subdivision solely due to the lack of an emergency shelter for the family. Whenever it is alleged that a child comes within the jurisdiction of the court on the basis of the parent's or guardian's willful failure to provide adequate medical treatment or specific decision to provide spiritual treatment through prayer, the court shall give deference to the parent's or guardian's medical treatment, nontreatment, or spiritual treatment through prayer alone in accordance with the tenets and practices of a recognized church or religious denomination, by an accredited practitioner thereof, and shall not assume jurisdiction unless necessary to protect the child from suffering serious physical harm or illness. In making its determination, the court shall consider (1) the nature of the treatment proposed by the parent or guardian, (2) the risks to the child posed by the course of treatment or nontreatment proposed by the parent or guardian, (3) the risk, if any, of the course of treatment being proposed by the petitioning agency, and (4) the likely success of the courses of treatment or nontreatment proposed by the parent or guardian and agency. The child shall continue to be a dependent child pursuant to this subdivision only so long as is necessary to protect the child from risk of suffering serious physical harm or illness.

(c) The child is suffering serious emotional damage, or is at substantial risk of suffering serious emotional damage, evidenced by severe anxiety, depression, withdrawal, or untoward aggressive behavior toward self or others, as a result of the conduct of the parent or guardian or who has

no parent or guardian capable of providing appropriate care. No child shall be found to be a person described by this subdivision if the willful failure of the parent or guardian to provide adequate mental health treatment is based on a sincerely held religious belief and if a less intrusive judicial intervention is available.

(d) The child has been sexually abused, or there is a substantial risk that the child will be sexually abused, as defined in Section 11165.1 of the Penal Code, by his or her parent or guardian or a member of his or her household, or the parent or guardian has failed to adequately protect the child from sexual abuse when the parent or guardian knew or reasonably should have known that the child was in danger of sexual abuse.

(e) The child is under the age of five years and has suffered severe physical abuse by a parent, or by any person known by the parent, if the parent knew or reasonably should have known that the person was physically abusing the child. For the purposes of this subdivision, "severe physical abuse" means any of the following: any single act of abuse which causes physical trauma of sufficient severity that, if left untreated, would cause permanent physical disfigurement, permanent physical disability, or death; any single act of sexual abuse which causes significant bleeding, deep bruising, or significant external or internal swelling; or more than one act of physical abuse, each of which causes bleeding, deep bruising, significant external or internal swelling, bone fracture, or unconsciousness; or the willful, prolonged failure to provide adequate food. A child may not be removed from the physical custody of his or her parent or guardian on the basis of a finding of severe physical abuse unless the social worker has made an allegation of severe physical abuse pursuant to Section 332.

(f) The child's parent or guardian caused the death of another child through abuse or neglect.

(g) The child has been left without any provision for support; physical custody of the child has been voluntarily surrendered pursuant to Section 1255.7 of the Health and Safety Code and the child has not been reclaimed within the 14-day period specified in subdivision (e) of that section; the child's parent has been incarcerated or institutionalized and cannot arrange for the care of the child; or a relative or other adult custodian with whom the child resides or has been left is unwilling or unable to provide care or support for the child, the whereabouts of the parent are unknown, and reasonable efforts to locate the parent have been unsuccessful.

(h) The child has been freed for adoption by one or both parents for 12 months by either relinquishment or termination of parental rights or an adoption petition has not been granted.

(i) The child has been subjected to an act or acts of cruelty by the parent or guardian or a member of his or her household, or the parent or guardian has failed to adequately protect the child from an act or acts of cruelty when the parent or guardian knew or reasonably should have known that the child was in danger of being subjected to an act or acts of cruelty.

(j) The child's sibling has been abused or neglected, as defined in subdivision (a), (b), (d), (e), or (i), and there is a substantial risk that the child will be abused or neglected, as defined in those subdivisions. The court shall consider the circumstances surrounding the abuse or neglect of the sibling, the age and gender of each child, the nature of the abuse or neglect of the sibling, the mental condition of the parent or guardian, and any other factors the court considers probative in determining whether there is a substantial risk to the child.

It is the intent of the Legislature that nothing in this section disrupt the family unnecessarily or intrude inappropriately into family life, prohibit the use of reasonable methods of parental discipline, or prescribe a particular method of parenting. Further, nothing in this section is intended to limit the offering of voluntary services to those families in need of assistance but who do not come within the descriptions of this section. To the extent that savings accrue to the state from child welfare services funding obtained as a result of the enactment of the act that enacted this section, those savings shall be used to promote services which support family maintenance and family reunification plans, such as client transportation, out-of-home respite care, parenting training, and the provision of temporary or emergency in-home caretakers and persons teaching and demonstrating homemaking skills. The Legislature further declares that a physical disability, such as blindness or deafness, is no bar to the raising of happy and well-adjusted children and that a court's determination pursuant to this section shall center upon whether a parent's disability prevents him or her from exercising care and control.

As used in this section, "guardian" means the legal guardian of the child.

SEC. 4. Section 300 of the Welfare and Institutions Code, as added by Section 3.5 of Chapter 824 of the Statutes of 2000, is repealed.

SEC. 5. Section 361.5 of the Welfare and Institutions Code, as amended by Section 7 of Chapter 918 of the Statutes of 2002, is amended to read:

361.5. (a) Except as provided in subdivision (b), or when the parent has voluntarily relinquished the child and the relinquishment has been filed with the State Department of Social Services, or upon the establishment of an order of guardianship pursuant to Section 360, whenever a child is removed from a parent's or guardian's custody, the

juvenile court shall order the social worker to provide child welfare services to the child and the child's mother and statutorily presumed father or guardians. Upon a finding and declaration of paternity by the juvenile court or proof of a prior declaration of paternity by any court of competent jurisdiction, the juvenile court may order services for the child and the biological father, if the court determines that the services will benefit the child. Child welfare services, when provided, shall be provided as follows:

(1) For a child who, on the date of initial removal from the physical custody of his or her parent or guardian, was three years of age or older, court-ordered services shall not exceed a period of 12 months from the date the child entered foster care, except as otherwise provided in paragraph (3).

(2) For a child who, on the date of initial removal from the physical custody of his or her parent or guardian, was under the age of three years, court-ordered services shall not exceed a period of six months from the date the child entered foster care.

(3) For the purpose of placing and maintaining a sibling group together in a permanent home should reunification efforts fail, for a child in a sibling group whose members were removed from parental custody at the same time, and in which one member of the sibling group was under the age of three years on the date of initial removal from the physical custody of his or her parent or guardian, court-ordered services to some or all of the sibling group may be limited to a period of six months from the date the child entered foster care. For the purposes of this paragraph, "a sibling group" shall mean two or more children who are related to each other as full or half-siblings.

Regardless of the age of the child, a child shall be deemed to have entered foster care on the earlier of the date of the jurisdictional hearing held pursuant to Section 356 or the date that is 60 days after the date on which the child was initially removed from the physical custody of his or her parent or guardian.

Notwithstanding paragraphs (1), (2), and (3), court-ordered services may be extended up to a maximum time period not to exceed 18 months after the date the child was originally removed from physical custody of his or her parent or guardian if it can be shown, at the hearing held pursuant to subdivision (f) of Section 366.21, that the permanent plan for the child is that he or she will be returned and safely maintained in the home within the extended time period. The court shall extend the time period only if it finds that there is a substantial probability that the child will be returned to the physical custody of his or her parent or guardian within the extended time period or that reasonable services have not been provided to the parent or guardian. If the court extends

the time period, the court shall specify the factual basis for its conclusion that there is a substantial probability that the child will be returned to the physical custody of his or her parent or guardian within the extended time period. The court also shall make findings pursuant to subdivision (a) of Section 366 and subdivision (e) of Section 358.1.

When counseling or other treatment services are ordered, the parent or guardian shall be ordered to participate in those services, unless the parent's or guardian's participation is deemed by the court to be inappropriate or potentially detrimental to the child. Physical custody of the child by the parents or guardians during the applicable time period under paragraph (1), (2), or (3) shall not serve to interrupt the running of the period. If at the end of the applicable time period, a child cannot be safely returned to the care and custody of a parent or guardian without court supervision, but the child clearly desires contact with the parent or guardian, the court shall take the child's desire into account in devising a permanency plan.

In cases where the child was under the age of three years on the date of the initial removal from the physical custody of his or her parent or guardian or is a member of a sibling group as described in paragraph (3), the court shall inform the parent or guardian that the failure of the parent or guardian to participate regularly in any court-ordered treatment programs or to cooperate or avail himself or herself of services provided as part of the child welfare services case plan may result in a termination of efforts to reunify the family after six months. The court shall inform the parent or guardian of the factors used in subdivision (e) of Section 366.21 to determine whether to limit services to six months for some or all members of a sibling group as described in paragraph (3).

Except in cases where, pursuant to subdivision (b), the court does not order reunification services, the court shall inform the parent or parents of Section 366.26 and shall specify that the parent's or parents' parental rights may be terminated.

(b) Reunification services need not be provided to a parent or guardian described in this subdivision when the court finds, by clear and convincing evidence, any of the following:

(1) That the whereabouts of the parent or guardian is unknown. A finding pursuant to this paragraph shall be supported by an affidavit or by proof that a reasonably diligent search has failed to locate the parent or guardian. The posting or publication of notices is not required in that search.

(2) That the parent or guardian is suffering from a mental disability that is described in Chapter 2 (commencing with Section 7820) of Part 4 of Division 12 of the Family Code and that renders him or her incapable of utilizing those services.

(3) That the child or a sibling of the child has been previously adjudicated a dependent pursuant to any subdivision of Section 300 as a result of physical or sexual abuse, that following that adjudication the child had been removed from the custody of his or her parent or guardian pursuant to Section 361, that the child has been returned to the custody of the parent or guardian from whom the child had been taken originally, and that the child is being removed pursuant to Section 361, due to additional physical or sexual abuse.

(4) That the parent or guardian of the child has caused the death of another child through abuse or neglect.

(5) That the child was brought within the jurisdiction of the court under subdivision (e) of Section 300 because of the conduct of that parent or guardian.

(6) That the child has been adjudicated a dependent pursuant to any subdivision of Section 300 as a result of severe sexual abuse or the infliction of severe physical harm to the child, a sibling, or a half-sibling by a parent or guardian, as defined in this subdivision, and the court makes a factual finding that it would not benefit the child to pursue reunification services with the offending parent or guardian.

A finding of severe sexual abuse, for the purposes of this subdivision, may be based on, but is not limited to, sexual intercourse, or stimulation involving genital-genital, oral-genital, anal-genital, or oral-anal contact, whether between the parent or guardian and the child or a sibling or half-sibling of the child, or between the child or a sibling or half-sibling of the child and another person or animal with the actual or implied consent of the parent or guardian; or the penetration or manipulation of the child's, sibling's, or half-sibling's genital organs or rectum by any animate or inanimate object for the sexual gratification of the parent or guardian, or for the sexual gratification of another person with the actual or implied consent of the parent or guardian.

A finding of the infliction of severe physical harm, for the purposes of this subdivision, may be based on, but is not limited to, deliberate and serious injury inflicted to or on a child's body or the body of a sibling or half-sibling of the child by an act or omission of the parent or guardian, or of another individual or animal with the consent of the parent or guardian; deliberate and torturous confinement of the child, sibling, or half-sibling in a closed space; or any other torturous act or omission that would be reasonably understood to cause serious emotional damage.

(7) That the parent is not receiving reunification services for a sibling or a half-sibling of the child pursuant to paragraph (3), (5), or (6).

(8) That the child was conceived by means of the commission of an offense listed in Section 288 or 288.5 of the Penal Code, or by an act committed outside of this state that, if committed in this state, would

constitute one of those offenses. This paragraph only applies to the parent who committed the offense or act.

(9) That the child has been found to be a child described in subdivision (g) of Section 300, that the parent or guardian of the child willfully abandoned the child, and the court finds that the abandonment itself constituted a serious danger to the child; or that the parent or other person having custody of the child voluntarily surrendered physical custody of the child pursuant to Section 1255.7 of the Health and Safety Code. For the purposes of this paragraph, “serious danger” means that without the intervention of another person or agency, the child would have sustained severe or permanent disability, injury, illness, or death. For purposes of this paragraph, “willful abandonment” shall not be construed as actions taken in good faith by the parent without the intent of placing the child in serious danger.

(10) That the court ordered termination of reunification services for any siblings or half-siblings of the child because the parent or guardian failed to reunify with the sibling or half-sibling after the sibling or half-sibling had been removed from that parent or guardian pursuant to Section 361 and that parent or guardian is the same parent or guardian described in subdivision (a) and that, according to the findings of the court, this parent or guardian has not subsequently made a reasonable effort to treat the problems that led to removal of the sibling or half-sibling of that child from that parent or guardian.

(11) That the parental rights of a parent over any sibling or half-sibling of the child had been permanently severed, and this parent is the same parent described in subdivision (a), and that, according to the findings of the court, this parent has not subsequently made a reasonable effort to treat the problems that led to removal of the sibling or half-sibling of that child from the parent.

(12) That the parent or guardian of the child has been convicted of a violent felony, as defined in subdivision (c) of Section 667.5 of the Penal Code.

(13) That the parent or guardian of the child has a history of extensive, abusive, and chronic use of drugs or alcohol and has resisted prior court-ordered treatment for this problem during a three-year period immediately prior to the filing of the petition that brought that child to the court’s attention, or has failed or refused to comply with a program of drug or alcohol treatment described in the case plan required by Section 358.1 on at least two prior occasions, even though the programs identified were available and accessible.

(14) That the parent or guardian of the child has advised the court that he or she is not interested in receiving family maintenance or family reunification services or having the child returned to or placed in his or

her custody and does not wish to receive family maintenance or reunification services.

The parent or guardian shall be represented by counsel and shall execute a waiver of services form to be adopted by the Judicial Council. The court shall advise the parent or guardian of any right to services and of the possible consequences of a waiver of services, including the termination of parental rights and placement of the child for adoption. The court shall not accept the waiver of services unless it states on the record its finding that the parent or guardian has knowingly and intelligently waived the right to services.

(15) That the parent or guardian has on one or more occasions willfully abducted the child or child's sibling or half-sibling from his or her placement and refused to disclose the child's or child's sibling's or half-sibling's whereabouts, refused to return physical custody of the child or child's sibling or half-sibling to his or her placement, or refused to return physical custody of the child or child's sibling or half-sibling to the social worker.

(c) In deciding whether to order reunification in any case in which this section applies, the court shall hold a dispositional hearing. The social worker shall prepare a report that discusses whether reunification services shall be provided. When it is alleged, pursuant to paragraph (2) of subdivision (b), that the parent is incapable of utilizing services due to mental disability, the court shall order reunification services unless competent evidence from mental health professionals establishes that, even with the provision of services, the parent is unlikely to be capable of adequately caring for the child within the time limits specified in subdivision (a).

The court shall not order reunification for a parent or guardian described in paragraph (3), (4), (6), (7), (8), (9), (10), (11), (12), (13), (14), or (15) of subdivision (b) unless the court finds, by clear and convincing evidence, that reunification is in the best interest of the child.

In addition, the court shall not order reunification in any situation described in paragraph (5) of subdivision (b) unless it finds that, based on competent testimony, those services are likely to prevent reabuse or continued neglect of the child or that failure to try reunification will be detrimental to the child because the child is closely and positively attached to that parent. The social worker shall investigate the circumstances leading to the removal of the child and advise the court whether there are circumstances that indicate that reunification is likely to be successful or unsuccessful and whether failure to order reunification is likely to be detrimental to the child.

The failure of the parent to respond to previous services, the fact that the child was abused while the parent was under the influence of drugs

or alcohol, a past history of violent behavior, or testimony by a competent professional that the parent's behavior is unlikely to be changed by services are among the factors indicating that reunification services are unlikely to be successful. The fact that a parent or guardian is no longer living with an individual who severely abused the child may be considered in deciding that reunification services are likely to be successful, provided that the court shall consider any pattern of behavior on the part of the parent that has exposed the child to repeated abuse.

(d) If reunification services are not ordered pursuant to paragraph (1) of subdivision (b) and the whereabouts of a parent become known within six months of the out-of-home placement of the child, the court shall order the social worker to provide family reunification services in accordance with this subdivision.

(e) (1) If the parent or guardian is incarcerated or institutionalized, the court shall order reasonable services unless the court determines, by clear and convincing evidence, those services would be detrimental to the child. In determining detriment, the court shall consider the age of the child, the degree of parent-child bonding, the length of the sentence, the nature of the treatment, the nature of the crime or illness, the degree of detriment to the child if services are not offered and, for children 10 years of age or older, the child's attitude toward the implementation of family reunification services, and any other appropriate factors. Reunification services are subject to the applicable time limitations imposed in subdivision (a). Services may include, but shall not be limited to, all of the following:

(A) Maintaining contact between the parent and child through collect telephone calls.

(B) Transportation services, where appropriate.

(C) Visitation services, where appropriate.

(D) Reasonable services to extended family members or foster parents providing care for the child if the services are not detrimental to the child.

An incarcerated parent may be required to attend counseling, parenting classes, or vocational training programs as part of the service plan if these programs are available.

(2) The presiding judge of the juvenile court of each county may convene representatives of the county welfare department, the sheriff's department, and other appropriate entities for the purpose of developing and entering into protocols for ensuring the notification, transportation, and presence of an incarcerated or institutionalized parent at all court hearings involving proceedings affecting the child pursuant to Section 2625 of the Penal Code.

(3) Notwithstanding any other provision of law, if the incarcerated parent is a woman seeking to participate in the community treatment program operated by the Department of Corrections pursuant to Chapter 4.8 (commencing with Section 1174) of Title 7 of Part 2 of, Chapter 4 (commencing with Section 3410) of Title 2 of Part 3 of, the Penal Code, the court shall determine whether the parent's participation in a program is in the child's best interest and whether it is suitable to meet the needs of the parent and child.

(f) If the court, pursuant to paragraph (2), (3), (4), (5), (6), (7), (8), (9), (10), (11), (12), (13), (14), or (15) of subdivision (b) or paragraph (1) of subdivision (e), does not order reunification services, it shall, at the dispositional hearing, that shall include a permanency hearing, determine if a hearing under Section 366.26 shall be set in order to determine whether adoption, guardianship, or long-term foster care is the most appropriate plan for the child. If the court so determines, it shall conduct the hearing pursuant to Section 366.26 within 120 days after the dispositional hearing. However, the court shall not schedule a hearing so long as the other parent is being provided reunification services pursuant to subdivision (a). The court may continue to permit the parent to visit the child unless it finds that visitation would be detrimental to the child.

(g) Whenever a court orders that a hearing shall be held pursuant to Section 366.26, it shall direct the agency supervising the child and the licensed county adoption agency, or the State Department of Social Services when it is acting as an adoption agency in counties that are not served by a county adoption agency, to prepare an assessment that shall include:

- (1) Current search efforts for an absent parent or parents.
- (2) A review of the amount of and nature of any contact between the child and his or her parents and other members of his or her extended family since the time of placement. Although the extended family of each child shall be reviewed on a case-by-case basis, "extended family" for the purpose of this paragraph shall include, but not be limited to, the child's siblings, grandparents, aunts, and uncles.
- (3) An evaluation of the child's medical, developmental, scholastic, mental, and emotional status.
- (4) A preliminary assessment of the eligibility and commitment of any identified prospective adoptive parent or guardian, particularly the caretaker, to include a social history including screening for criminal records and prior referrals for child abuse or neglect, the capability to meet the child's needs, and the understanding of the legal and financial rights and responsibilities of adoption and guardianship. If a proposed guardian is a relative of the minor, and the relative was assessed for

foster care placement of the minor prior to January 1, 1998, the assessment shall also consider, but need not be limited to, all of the factors specified in subdivision (a) of Section 361.3. As used in this paragraph, "relative" means an adult who is related to the minor by blood, adoption, or affinity within the fifth degree of kinship, including stepparents, stepsiblings, and all relatives whose status is preceded by the words "great," "great-great," or "grand," or the spouse of any of those persons even if the marriage was terminated by death or dissolution.

(5) The relationship of the child to any identified prospective adoptive parent or guardian, the duration and character of the relationship, the motivation for seeking adoption or guardianship, and a statement from the child concerning placement and the adoption or guardianship, unless the child's age or physical, emotional, or other condition precludes his or her meaningful response, and if so, a description of the condition.

(6) An analysis of the likelihood that the child will be adopted if parental rights are terminated.

(h) In determining whether reunification services will benefit the child pursuant to paragraph (6) or (7) of subdivision (b), the court shall consider any information it deems relevant, including the following factors:

(1) The specific act or omission comprising the severe sexual abuse or the severe physical harm inflicted on the child or the child's sibling or half-sibling.

(2) The circumstances under which the abuse or harm was inflicted on the child or the child's sibling or half-sibling.

(3) The severity of the emotional trauma suffered by the child or the child's sibling or half-sibling.

(4) Any history of abuse of other children by the offending parent or guardian.

(5) The likelihood that the child may be safely returned to the care of the offending parent or guardian within 12 months with no continuing supervision.

(6) Whether or not the child desires to be reunified with the offending parent or guardian.

(i) The court shall read into the record the basis for a finding of severe sexual abuse or the infliction of severe physical harm under paragraph (6) of subdivision (b), and shall also specify the factual findings used to determine that the provision of reunification services to the offending parent or guardian would not benefit the child.

SEC. 6. Section 361.5 of the Welfare and Institutions Code, as amended by Section 8 of Chapter 918 of the Statutes of 2002, is repealed.

SEC. 7. Section 14005.24 of the Welfare and Institutions Code is amended to read:

14005.24. The department shall instruct counties, by means of an all county letter or similar instruction, as to the process that is to be used to ensure that each child, physical custody of whom has been voluntarily surrendered pursuant to Section 1255.7 of the Health and Safety Code, shall be determined eligible for benefits under this chapter for, at a minimum, a period of time commencing on the date physical custody is surrendered and ending on the earliest of the following dates:

(a) The last day of the month following the month in which the child was voluntarily surrendered under Section 1255.7 of the Health and Safety Code.

(b) The date the child is reclaimed under Section 1255.7 of the Health and Safety Code.

(c) The date the child ceases to reside in California.

SEC. 8. 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.

CHAPTER 626

An act to amend Section 366.26 of the Welfare and Institutions Code, relating to termination of parental rights.

[Approved by Governor October 7, 2005. Filed with
Secretary of State October 7, 2005.]

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

SECTION 1. Section 366.26 of the Welfare and Institutions Code is amended to read:

366.26. (a) This section applies to children who are adjudged dependent children of the juvenile court pursuant to subdivision (c) of Section 360. The procedures specified herein are the exclusive procedures for conducting these hearings; Part 2 (commencing with Section 3020) of Division 8 of the Family Code is not applicable to these proceedings. Section 8714.7 of the Family Code is applicable and available to all dependent children meeting the requirements of that section, if the postadoption contact agreement has been entered into voluntarily. For children who are adjudged dependent children of the juvenile court pursuant to subdivision (c) of Section 360, this section and Sections 8604, 8605, 8606, and 8700 of the Family Code and Chapter 5

(commencing with Section 7660) of Part 3 of Division 12 of the Family Code specify the exclusive procedures for permanently terminating parental rights with regard to, or establishing legal guardianship of, the child while the child is a dependent child of the juvenile court.

(b) At the hearing, that shall be held in juvenile court for all children who are dependents of the juvenile court, the court, in order to provide stable, permanent homes for these children, shall review the report as specified in Section 361.5, 366.21, or 366.22, shall indicate that the court has read and considered it, shall receive other evidence that the parties may present, and then shall make findings and orders in the following order of preference:

(1) Terminate the rights of the parent or parents and order that the child be placed for adoption and, upon the filing of a petition for adoption in the juvenile court, order that a hearing be set. The court shall proceed with the adoption after the appellate rights of the natural parents have been exhausted.

(2) On making a finding under paragraph (3) of subdivision (c), identify adoption as the permanent placement goal and order that efforts be made to locate an appropriate adoptive family for the child within a period not to exceed 180 days.

(3) Appoint a legal guardian for the child and order that letters of guardianship issue.

(4) Order that the child be placed in long-term foster care, subject to the periodic review of the juvenile court under Section 366.3.

In choosing among the above alternatives the court shall proceed pursuant to subdivision (c).

(c) (1) If the court determines, based on the assessment provided as ordered under subdivision (i) of Section 366.21 or subdivision (b) of Section 366.22, and any other relevant evidence, by a clear and convincing standard, that it is likely the child will be adopted, the court shall terminate parental rights and order the child placed for adoption. The fact that the child is not yet placed in a preadoptive home nor with a relative or foster family who is prepared to adopt the child, shall not constitute a basis for the court to conclude that it is not likely the child will be adopted. A finding under subdivision (b) or paragraph (1) of subdivision (e) of Section 361.5 that reunification services shall not be offered, under subdivision (e) of Section 366.21 that the whereabouts of a parent have been unknown for six months or that the parent has failed to visit or contact the child for six months or that the parent has been convicted of a felony indicating parental unfitness, or, under Section 366.21 or 366.22, that the court has continued to remove the child from the custody of the parent or guardian and has terminated reunification services, shall constitute a sufficient basis for termination of parental

rights unless the court finds a compelling reason for determining that termination would be detrimental to the child due to one or more of the following circumstances:

(A) The parents or guardians have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship.

(B) A child 12 years of age or older objects to termination of parental rights.

(C) The child is placed in a residential treatment facility, adoption is unlikely or undesirable, and continuation of parental rights will not prevent finding the child a permanent family placement if the parents cannot resume custody when residential care is no longer needed.

(D) The child is living with a relative or foster parent who is unable or unwilling to adopt the child because of exceptional circumstances, that do not include an unwillingness to accept legal or financial responsibility for the child, but who is willing and capable of providing the child with a stable and permanent environment and the removal of the child from the physical custody of his or her relative or foster parent would be detrimental to the emotional well-being of the child. This subparagraph does not apply to any child who is living with a nonrelative and who is either (i) under six years of age or (ii) a member of a sibling group where at least one child is under six years of age and the siblings are, or should be, permanently placed together.

(E) There would be substantial interference with a child's sibling relationship, taking into consideration the nature and extent of the relationship, including, but not limited to, whether the child was raised with a sibling in the same home, whether the child shared significant common experiences or has existing close and strong bonds with a sibling, and whether ongoing contact is in the child's best interest, including the child's long-term emotional interest, as compared to the benefit of legal permanence through adoption.

If the court finds that termination of parental rights would be detrimental to the child pursuant to subparagraph (A), (B), (C), (D), or (E), it shall state its reasons in writing or on the record.

(2) The court shall not terminate parental rights if at each and every hearing at which the court was required to consider reasonable efforts or services, the court has found that reasonable efforts were not made or that reasonable services were not offered or provided.

(3) If the court finds that termination of parental rights would not be detrimental to the child pursuant to paragraph (1) and that the child has a probability for adoption but is difficult to place for adoption and there is no identified or available prospective adoptive parent, the court may identify adoption as the permanent placement goal and without

terminating parental rights, order that efforts be made to locate an appropriate adoptive family for the child within a period not to exceed 180 days. During this 180-day period, the public agency responsible for seeking adoptive parents for each child shall, to the extent possible, ask each child who is 10 years of age or older who is placed in a group home for six months or longer from the date the child entered foster care, to identify any individuals, other than the child's siblings, who are important to the child, in order to identify potential adoptive parents. The public agency may ask any other child to provide that information, as appropriate. During the 180-day period, the public agency shall, to the extent possible, contact other private and public adoption agencies regarding the availability of the child for adoption. During the 180-day period, the public agency shall conduct the search for adoptive parents in the same manner as prescribed for children in Sections 8708 and 8709 of the Family Code. At the expiration of this period, another hearing shall be held and the court shall proceed pursuant to paragraph (1) or (3) of subdivision (b). For purposes of this section, a child may only be found to be difficult to place for adoption if there is no identified or available prospective adoptive parent for the child because of the child's membership in a sibling group, or the presence of a diagnosed medical, physical, or mental handicap, or the child is the age of seven years or more.

(4) (A) If the court finds that adoption of the child or termination of parental rights is not in the best interest of the child, because one of the conditions in subparagraph (A), (B), (C), (D), or (E) of paragraph (1) or in paragraph (2) applies, the court shall either order that the present caretakers or other appropriate persons shall become legal guardians of the child or order that the child remain in long-term foster care. Legal guardianship shall be considered before long-term foster care, if it is in the best interests of the child and if a suitable guardian can be found. A child who is 10 years of age or older who is placed in a group home for six months or longer from the date the child entered foster care, shall be asked to identify any individuals, other than the child's siblings, who are important to the child, in order to identify potential guardians. The agency may ask any other child to provide that information, as appropriate.

(B) If the child is living with a relative or a foster parent who is willing and capable of providing a stable and permanent environment, but not willing to become a legal guardian, the child shall not be removed from the home if the court finds the removal would be seriously detrimental to the emotional well-being of the child because the child has substantial psychological ties to the relative caretaker or foster parents.

(C) The court shall also make an order for visitation with the parents or guardians unless the court finds by a preponderance of the evidence that the visitation would be detrimental to the physical or emotional well-being of the child.

(5) If the court finds that the child should not be placed for adoption, that legal guardianship shall not be established, and that there are no suitable foster parents except exclusive-use homes available to provide the child with a stable and permanent environment, the court may order the care, custody, and control of the child transferred from the county welfare department to a licensed foster family agency. The court shall consider the written recommendation of the county welfare director regarding the suitability of the transfer. The transfer shall be subject to further court orders.

The licensed foster family agency shall place the child in a suitable licensed or exclusive-use home that has been certified by the agency as meeting licensing standards. The licensed foster family agency shall be responsible for supporting the child and providing appropriate services to the child, including those services ordered by the court. Responsibility for the support of the child shall not, in and of itself, create liability on the part of the foster family agency to third persons injured by the child. Those children whose care, custody, and control are transferred to a foster family agency shall not be eligible for foster care maintenance payments or child welfare services, except for emergency response services pursuant to Section 16504.

(d) The proceeding for the appointment of a guardian for a child who is a dependent of the juvenile court shall be in the juvenile court. If the court finds pursuant to this section that legal guardianship is the appropriate permanent plan, it shall appoint the legal guardian and issue letters of guardianship. The assessment prepared pursuant to subdivision (g) of Section 361.5, subdivision (i) of Section 366.21, and subdivision (b) of Section 366.22 shall be read and considered by the court prior to the appointment, and this shall be reflected in the minutes of the court. The person preparing the assessment may be called and examined by any party to the proceeding.

(e) The proceeding for the adoption of a child who is a dependent of the juvenile court shall be in the juvenile court if the court finds pursuant to this section that adoption is the appropriate permanent plan and the petition for adoption is filed in the juvenile court. Upon the filing of a petition for adoption, the juvenile court shall order that an adoption hearing be set. The court shall proceed with the adoption after the appellate rights of the natural parents have been exhausted. The full report required by Section 8715 of the Family Code shall be read and considered by the court prior to the adoption and this shall be reflected

in the minutes of the court. The person preparing the report may be called and examined by any party to the proceeding. It is the intent of the Legislature, pursuant to this subdivision, to give potential adoptive parents the option of filing in the juvenile court the petition for the adoption of a child who is a dependent of the juvenile court. Nothing in this section is intended to prevent the filing of a petition for adoption in any other court as permitted by law, instead of in the juvenile court.

(f) At the beginning of any proceeding pursuant to this section, if the child or the parents are not being represented by previously retained or appointed counsel, the court shall proceed as follows:

(1) In accordance with subdivision (c) of Section 317, if a child before the court is without counsel, the court shall appoint counsel unless the court finds that the child would not benefit from the appointment of counsel. The court shall state on the record its reasons for that finding.

(2) If a parent appears without counsel and is unable to afford counsel, the court shall appoint counsel for the parent, unless this representation is knowingly and intelligently waived. The same counsel shall not be appointed to represent both the child and his or her parent. The public defender or private counsel may be appointed as counsel for the parent.

(3) Private counsel appointed under this section shall receive a reasonable sum for compensation and expenses, the amount of which shall be determined by the court. The amount shall be paid by the real parties in interest, other than the child, in any proportions the court deems just. However, if the court finds that any of the real parties in interest are unable to afford counsel, the amount shall be paid out of the general fund of the county.

(g) The court may continue the proceeding for not to exceed 30 days as necessary to appoint counsel, and to enable counsel to become acquainted with the case.

(h) (1) At all proceedings under this section, the court shall consider the wishes of the child and shall act in the best interests of the child.

(2) In accordance with Section 349, the child shall be present in court if the child or the child's counsel so requests or the court so orders. If the child is 10 years of age or older and is not present at a hearing held pursuant to this section, the court shall determine whether the minor was properly notified of his or her right to attend the hearing and inquire as to the reason why the child is not present.

(3) (A) The testimony of the child may be taken in chambers and outside the presence of the child's parent or parents, if the child's parent or parents are represented by counsel, the counsel is present, and any of the following circumstances exist:

(i) The court determines that testimony in chambers is necessary to ensure truthful testimony.

(ii) The child is likely to be intimidated by a formal courtroom setting.

(iii) The child is afraid to testify in front of his or her parent or parents.

(B) After testimony in chambers, the parent or parents of the child may elect to have the court reporter read back the testimony or have the testimony summarized by counsel for the parent or parents.

(C) The testimony of a child also may be taken in chambers and outside the presence of the guardian or guardians of a child under the circumstances specified in this subdivision.

(i) Any order of the court permanently terminating parental rights under this section shall be conclusive and binding upon the child, upon the parent or parents and upon all other persons who have been served with citation by publication or otherwise as provided in this chapter. After making the order, the court shall have no power to set aside, change, or modify it, but nothing in this section shall be construed to limit the right to appeal the order.

(j) If the court, by order or judgment, declares the child free from the custody and control of both parents, or one parent if the other does not have custody and control, the court shall at the same time order the child referred to the State Department of Social Services or a licensed adoption agency for adoptive placement by the agency. However, a petition for adoption may not be granted until the appellate rights of the natural parents have been exhausted. The State Department of Social Services or licensed adoption agency shall be responsible for the custody and supervision of the child and shall be entitled to the exclusive care and control of the child at all times until a petition for adoption is granted, except as specified in subdivision (n). With the consent of the agency, the court may appoint a guardian of the child, who shall serve until the child is adopted.

(k) Notwithstanding any other provision of law, the application of any person who, as a relative caretaker or foster parent, has cared for a dependent child for whom the court has approved a permanent plan for adoption, or who has been freed for adoption, shall be given preference with respect to that child over all other applications for adoptive placement if the agency making the placement determines that the child has substantial emotional ties to the relative caretaker or foster parent and removal from the relative caretaker or foster parent would be seriously detrimental to the child's emotional well-being.

As used in this subdivision, "preference" means that the application shall be processed and, if satisfactory, the family study shall be completed before the processing of the application of any other person for the adoptive placement of the child.

(l) (1) An order by the court that a hearing pursuant to this section be held is not appealable at any time unless all of the following applies:

(A) A petition for extraordinary writ review was filed in a timely manner.

(B) The petition substantively addressed the specific issues to be challenged and supported that challenge by an adequate record.

(C) The petition for extraordinary writ review was summarily denied or otherwise not decided on the merits.

(2) Failure to file a petition for extraordinary writ review within the period specified by rule, to substantively address the specific issues challenged, or to support that challenge by an adequate record shall preclude subsequent review by appeal of the findings and orders made pursuant to this section.

(3) The Judicial Council shall adopt rules of court, effective January 1, 1995, to ensure all of the following:

(A) A trial court, after issuance of an order directing a hearing pursuant to this section be held, shall advise all parties of the requirement of filing a petition for extraordinary writ review as set forth in this subdivision in order to preserve any right to appeal in these issues. This notice shall be made orally to a party if the party is present at the time of the making of the order or by first-class mail by the clerk of the court to the last known address of a party not present at the time of the making of the order.

(B) The prompt transmittal of the records from the trial court to the appellate court.

(C) That adequate time requirements for counsel and court personnel exist to implement the objective of this subdivision.

(D) That the parent or guardian, or their trial counsel or other counsel, is charged with the responsibility of filing a petition for extraordinary writ relief pursuant to this subdivision.

(4) The intent of this subdivision is to do both of the following:

(A) Make every reasonable attempt to achieve a substantive and meritorious review by the appellate court within the time specified in Sections 366.21 and 366.22 for holding a hearing pursuant to this section.

(B) Encourage the appellate court to determine all writ petitions filed pursuant to this subdivision on their merits.

(5) This subdivision shall only apply to cases in which an order to set a hearing pursuant to this section is issued on or after January 1, 1995.

(m) Except for subdivision (j), this section shall also apply to minors adjudged wards pursuant to Section 727.31.

(n) (1) Notwithstanding Section 8704 of the Family Code or any other provision of law, the court, at a hearing held pursuant to this section or anytime thereafter, may designate a current caretaker as a prospective adoptive parent if the child has lived with the caretaker for at least six months, the caretaker currently expresses a commitment to adopt the

child, and the caretaker has taken at least one step to facilitate the adoption process. In determining whether to make that designation, the court may take into consideration whether the caretaker is listed in the preliminary assessment prepared by the county department in accordance with subdivision (i) of Section 366.21 as an appropriate person to be considered as an adoptive parent for the child and the recommendation of the State Department of Social Services or licensed adoption agency.

(2) For purposes of this subdivision, steps to facilitate the adoption process include, but are not limited to, the following:

- (A) Applying for an adoption homestudy.
- (B) Cooperating with an adoption homestudy.
- (C) Being designated by the court or the licensed adoption agency as the adoptive family.
- (D) Requesting de facto parent status.
- (E) Signing an adoptive placement agreement.
- (F) Engaging in discussions regarding a postadoption contact agreement.
- (G) Working to overcome any impediments that have been identified by the State Department of Social Services and the licensed adoption agency.

(H) Attending classes required of prospective adoptive parents.

(3) Prior to a change in placement and as soon as possible after a decision is made to remove a child from the home of a designated prospective adoptive parent, the agency shall notify the court, the designated prospective adoptive parent or the current caretaker, if that caretaker would have met the threshold criteria to be designated as a prospective adoptive parent pursuant to paragraph (1) on the date of service of this notice, the child's attorney, and the child, if the child is 10 years of age or older, of the proposal in the manner described in Section 16010.6.

(A) Within five court days or seven calendar days, whichever is longer, of the date of notification, the child, the child's attorney, or the designated prospective adoptive parent may file a petition with the court objecting to the proposal to remove the child, or the court, upon its own motion, may set a hearing regarding the proposal. The court may, for good cause, extend the filing period. A caretaker who would have met the threshold criteria to be designated as a prospective adoptive parent pursuant to paragraph (1) on the date of service of the notice of proposed removal of the child may file, together with the petition under this subparagraph, a petition for an order designating the caretaker as a prospective adoptive parent for purposes of this subdivision.

(B) A hearing ordered pursuant to this paragraph shall be held as soon as possible and not later than five court days after the petition is filed

with the court or the court sets a hearing upon its own motion, unless the court for good cause is unable to set the matter for hearing five court days after the petition is filed, in which case the court shall set the matter for hearing as soon as possible. At the hearing, the court shall determine whether the caretaker has met the threshold criteria to be designated as a prospective adoptive parent pursuant to paragraph (1), and whether the proposed removal of the child from the home of the designated prospective adoptive parent is in the child's best interest, and the child may not be removed from the home of the designated prospective adoptive parent unless the court finds that removal is in the child's best interest. If the court determines that the caretaker did not meet the threshold criteria to be designated as a prospective adoptive parent on the date of service of the notice of proposed removal of the child, the petition objecting to the proposed removal filed by the caretaker shall be dismissed. If the caretaker was designated as a prospective adoptive parent prior to this hearing, the court shall inquire into any progress made by the caretaker towards the adoption of the child since the caretaker was designated as a prospective adoptive parent.

(C) A determination by the court that the caretaker is a designated prospective adoptive parent pursuant to paragraph (1) or subparagraph (B) does not make the caretaker a party to the dependency proceeding nor does it confer on the caretaker any standing to object to any other action of the department or licensed adoption agency, unless the caretaker has been declared a de facto parent by the court prior to the notice of removal served pursuant to paragraph (3).

(D) If a petition objecting to the proposal to remove the child is not filed, and the court, upon its own motion, does not set a hearing, the child may be removed from the home of the designated prospective adoptive parent without a hearing.

(4) Notwithstanding paragraph (3), if the State Department of Social Services or a licensed adoption agency determines that the child must be removed from the home of the caretaker who is or may be a designated prospective adoptive parent immediately, due to a risk of physical or emotional harm, the agency may remove the child from that home and is not required to provide notice prior to the removal. However, as soon as possible and not longer than two court days after the removal, the agency shall notify the court, the caretaker who is or may be a designated prospective adoptive parent, the child's attorney, and the child, if the child is 10 years of age or older, of the removal. Within five court days or seven calendar days, whichever is longer, of the date of notification of the removal, the child, the child's attorney, or the caretaker who is or may be a designated prospective adoptive parent may petition for, or the

court on its own motion may set, a noticed hearing pursuant to paragraph (3). The court may, for good cause, extend the filing period.

(5) Except as provided in subdivision (b) of Section 366.28, an order by the court issued after a hearing pursuant to this subdivision shall not be appealable.

(6) Nothing in this section shall preclude a county child protective services agency from fully investigating and responding to alleged abuse or neglect of a child pursuant to Section 11165.5 of the Penal Code.

(7) The Judicial Council shall prepare forms to facilitate the filing of the petitions described in this subdivision, which shall become effective on January 1, 2006.

SECTION 1.1. Section 366.26 of the Welfare and Institutions Code is amended to read:

366.26. (a) This section applies to children who are adjudged dependent children of the juvenile court pursuant to subdivision (c) of Section 360. The procedures specified herein are the exclusive procedures for conducting these hearings; Part 2 (commencing with Section 3020) of Division 8 of the Family Code is not applicable to these proceedings. Section 8714.7 of the Family Code is applicable and available to all dependent children meeting the requirements of that section, if the postadoption contact agreement has been entered into voluntarily. For children who are adjudged dependent children of the juvenile court pursuant to subdivision (c) of Section 360, this section and Sections 8604, 8605, 8606, and 8700 of the Family Code and Chapter 5 (commencing with Section 7660) of Part 3 of Division 12 of the Family Code specify the exclusive procedures for permanently terminating parental rights with regard to, or establishing legal guardianship of, the child while the child is a dependent child of the juvenile court.

(b) At the hearing, shall be held in juvenile court for all children who are dependents of the juvenile court, the court, in order to provide stable, permanent homes for these children, shall review the report as specified in Section 361.5, 366.21, or 366.22, shall indicate that the court has read and considered it, shall receive other evidence that the parties may present, and then shall make findings and orders in the following order of preference:

(1) Terminate the rights of the parent or parents and order that the child be placed for adoption and, upon the filing of a petition for adoption in the juvenile court, order that a hearing be set. The court shall proceed with the adoption after the appellate rights of the natural parents have been exhausted.

(2) On making a finding under paragraph (3) of subdivision (c), identify adoption as the permanent placement goal and order that efforts

be made to locate an appropriate adoptive family for the child within a period not to exceed 180 days.

(3) Appoint a legal guardian for the child and order that letters of guardianship issue.

(4) Order that the child be placed in long-term foster care, subject to the periodic review of the juvenile court under Section 366.3.

In choosing among the above alternatives the court shall proceed pursuant to subdivision (c).

(c) (1) If the court determines, based on the assessment provided as ordered under subdivision (i) of Section 366.21 or subdivision (b) of Section 366.22, and any other relevant evidence, by a clear and convincing standard, that it is likely the child will be adopted, the court shall terminate parental rights and order the child placed for adoption. The fact that the child is not yet placed in a preadoptive home nor with a relative or foster family who is prepared to adopt the child, shall not constitute a basis for the court to conclude that it is not likely the child will be adopted. A finding under subdivision (b) or paragraph (1) of subdivision (e) of Section 361.5 that reunification services shall not be offered, under subdivision (e) of Section 366.21 that the whereabouts of a parent have been unknown for six months or that the parent has failed to visit or contact the child for six months or that the parent has been convicted of a felony indicating parental unfitness, or, under Section 366.21 or 366.22, that the court has continued to remove the child from the custody of the parent or guardian and has terminated reunification services, shall constitute a sufficient basis for termination of parental rights unless the court finds a compelling reason for determining that termination would be detrimental to the child due to one or more of the following circumstances:

(A) The parents or guardians have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship.

(B) A child 12 years of age or older objects to termination of parental rights.

(C) The child is placed in a residential treatment facility, adoption is unlikely or undesirable, and continuation of parental rights will not prevent finding the child a permanent family placement if the parents cannot resume custody when residential care is no longer needed.

(D) The child is living with a relative or foster parent who is unable or unwilling to adopt the child because of exceptional circumstances, that do not include an unwillingness to accept legal or financial responsibility for the child, but who is willing and capable of providing the child with a stable and permanent environment and the removal of the child from the physical custody of his or her relative or foster parent

would be detrimental to the emotional well-being of the child. This subparagraph does not apply to any child who is living with a nonrelative and who is either (i) under six years of age or (ii) a member of a sibling group where at least one child is under six years of age and the siblings are, or should be, permanently placed together.

(E) There would be substantial interference with a child's sibling relationship, taking into consideration the nature and extent of the relationship, including, but not limited to, whether the child was raised with a sibling in the same home, whether the child shared significant common experiences or has existing close and strong bonds with a sibling, and whether ongoing contact is in the child's best interest, including the child's long-term emotional interest, as compared to the benefit of legal permanence through adoption.

If the court finds that termination of parental rights would be detrimental to the child pursuant to subparagraph (A), (B), (C), (D), or (E), it shall state its reasons in writing or on the record.

(2) The court shall not terminate parental rights if at each hearing at which the court was required to consider reasonable efforts or services, the court has found that reasonable efforts were not made or that reasonable services were not offered or provided.

(3) If the court finds that termination of parental rights would not be detrimental to the child pursuant to paragraph (1) and that the child has a probability for adoption but is difficult to place for adoption and there is no identified or available prospective adoptive parent, the court may identify adoption as the permanent placement goal and without terminating parental rights, order that efforts be made to locate an appropriate adoptive family for the child within a period not to exceed 180 days. During this 180-day period, the public agency responsible for seeking adoptive parents for each child shall, to the extent possible, ask each child who is 10 years of age or older who is placed in a group home for six months or longer from the date the child entered foster care, to identify any individuals, other than the child's siblings, who are important to the child, in order to identify potential adoptive parents. The public agency may ask any other child to provide that information, as appropriate. During the 180-day period, the public agency shall, to the extent possible, contact other private and public adoption agencies regarding the availability of the child for adoption. During the 180-day period, the public agency shall conduct the search for adoptive parents in the same manner as prescribed for children in Sections 8708 and 8709 of the Family Code. At the expiration of this period, another hearing shall be held and the court shall proceed pursuant to paragraph (1) or (3) of subdivision (b). For purposes of this section, a child may only be found to be difficult to place for adoption if there is no identified or

available prospective adoptive parent for the child because of the child's membership in a sibling group, or the presence of a diagnosed medical, physical, or mental handicap, or the child is the age of seven years or more.

(4) (A) If the court finds that adoption of the child or termination of parental rights is not in the best interest of the child, because one of the conditions in subparagraph (A), (B), (C), (D), or (E) of paragraph (1) or in paragraph (2) applies, the court shall either order that the present caretakers or other appropriate persons shall become legal guardians of the child or order that the child remain in long-term foster care. Legal guardianship shall be considered before long-term foster care, if it is in the best interests of the child and if a suitable guardian can be found. A child who is 10 years of age or older who is placed in a group home for six months or longer from the date the child entered foster care, shall be asked to identify any individuals, other than the child's siblings, who are important to the child, in order to identify potential guardians. The agency may ask any other child to provide that information, as appropriate.

(B) If the child is living with a relative or a foster parent who is willing and capable of providing a stable and permanent environment, but not willing to become a legal guardian, the child shall not be removed from the home if the court finds the removal would be seriously detrimental to the emotional well-being of the child because the child has substantial psychological ties to the relative caretaker or foster parents.

(C) The court shall also make an order for visitation with the parents or guardians unless the court finds by a preponderance of the evidence that the visitation would be detrimental to the physical or emotional well-being of the child.

(5) If the court finds that the child should not be placed for adoption, that legal guardianship shall not be established, and that there are no suitable foster parents except exclusive-use homes available to provide the child with a stable and permanent environment, the court may order the care, custody, and control of the child transferred from the county welfare department to a licensed foster family agency. The court shall consider the written recommendation of the county welfare director regarding the suitability of the transfer. The transfer shall be subject to further court orders.

The licensed foster family agency shall place the child in a suitable licensed or exclusive-use home that has been certified by the agency as meeting licensing standards. The licensed foster family agency shall be responsible for supporting the child and providing appropriate services to the child, including those services ordered by the court. Responsibility for the support of the child shall not, in and of itself, create liability on

the part of the foster family agency to third persons injured by the child. Those children whose care, custody, and control are transferred to a foster family agency shall not be eligible for foster care maintenance payments or child welfare services, except for emergency response services pursuant to Section 16504.

(d) The proceeding for the appointment of a guardian for a child who is a dependent of the juvenile court shall be in the juvenile court. If the court finds pursuant to this section that legal guardianship is the appropriate permanent plan, it shall appoint the legal guardian and issue letters of guardianship. The assessment prepared pursuant to subdivision (g) of Section 361.5, subdivision (i) of Section 366.21, and subdivision (b) of Section 366.22 shall be read and considered by the court prior to the appointment, and this shall be reflected in the minutes of the court. The person preparing the assessment may be called and examined by any party to the proceeding.

(e) The proceeding for the adoption of a child who is a dependent of the juvenile court shall be in the juvenile court if the court finds pursuant to this section that adoption is the appropriate permanent plan and the petition for adoption is filed in the juvenile court. Upon the filing of a petition for adoption, the juvenile court shall order that an adoption hearing be set. The court shall proceed with the adoption after the appellate rights of the natural parents have been exhausted. The full report required by Section 8715 of the Family Code shall be read and considered by the court prior to the adoption and this shall be reflected in the minutes of the court. The person preparing the report may be called and examined by any party to the proceeding. It is the intent of the Legislature, pursuant to this subdivision, to give potential adoptive parents the option of filing in the juvenile court the petition for the adoption of a child who is a dependent of the juvenile court. Nothing in this section is intended to prevent the filing of a petition for adoption in any other court as permitted by law, instead of in the juvenile court.

(f) At the beginning of any proceeding pursuant to this section, if the child or the parents are not being represented by previously retained or appointed counsel, the court shall proceed as follows:

(1) In accordance with subdivision (c) of Section 317, if a child before the court is without counsel, the court shall appoint counsel unless the court finds that the child would not benefit from the appointment of counsel. The court shall state on the record its reasons for that finding.

(2) If a parent appears without counsel and is unable to afford counsel, the court shall appoint counsel for the parent, unless this representation is knowingly and intelligently waived. The same counsel shall not be appointed to represent both the child and his or her parent. The public defender or private counsel may be appointed as counsel for the parent.

(3) Private counsel appointed under this section shall receive a reasonable sum for compensation and expenses, the amount of which shall be determined by the court. The amount shall be paid by the real parties in interest, other than the child, in any proportions the court deems just. However, if the court finds that any of the real parties in interest are unable to afford counsel, the amount shall be paid out of the general fund of the county.

(g) The court may continue the proceeding for not to exceed 30 days as necessary to appoint counsel, and to enable counsel to become acquainted with the case.

(h) (1) At all proceedings under this section, the court shall consider the wishes of the child and shall act in the best interests of the child.

(2) In accordance with Section 349, the child shall be present in court if the child or the child's counsel so requests or the court so orders. If the child is 10 years of age or older and is not present at a hearing held pursuant to this section, the court shall determine whether the minor was properly notified of his or her right to attend the hearing and inquire as to the reason why the child is not present.

(3) (A) The testimony of the child may be taken in chambers and outside the presence of the child's parent or parents, if the child's parent or parents are represented by counsel, the counsel is present, and any of the following circumstances exists:

(i) The court determines that testimony in chambers is necessary to ensure truthful testimony.

(ii) The child is likely to be intimidated by a formal courtroom setting.

(iii) The child is afraid to testify in front of his or her parent or parents.

(B) After testimony in chambers, the parent or parents of the child may elect to have the court reporter read back the testimony or have the testimony summarized by counsel for the parent or parents.

(C) The testimony of a child also may be taken in chambers and outside the presence of the guardian or guardians of a child under the circumstances specified in this subdivision.

(i) (1) Any order of the court permanently terminating parental rights under this section shall be conclusive and binding upon the child, upon the parent or parents and upon all other persons who have been served with citation by publication or otherwise as provided in this chapter. After making the order, the juvenile court shall have no power to set aside, change, or modify it, except as provided in paragraph (2), but nothing in this section shall be construed to limit the right to appeal the order.

(2) A child who has not been adopted after the passage of at least three years from the date the court terminated parental rights and for whom the court has determined that adoption is no longer the permanent

plan may petition the juvenile court to reinstate parental rights pursuant to the procedure prescribed by Section 388. The child may file the petition prior to the expiration of this three-year period if the State Department of Social Services or licensed adoption agency that is responsible for custody and supervision of the child as described in subdivision (j) and the child stipulate that the child is no longer likely to be adopted. A child over 12 years of age shall sign the petition in the absence of a showing of good cause as to why the child could not do so. If it appears that the best interests of the child may be promoted by reinstatement of parental rights, the court shall order that a hearing be held and shall give prior notice, or cause prior notice to be given, to the social worker or probation officer and to the child's attorney of record, or, if there is no attorney of record for the child, to the child, and the child's tribe, if applicable, by means prescribed by subdivision (c) of Section 297. The court shall order the child or the social worker or probation officer to give prior notice of the hearing to the child's former parent or parents whose parental rights were terminated in the manner prescribed by subdivision (f) of Section 294 where the recommendation is adoption. The juvenile court shall grant the petition if it finds by clear and convincing evidence that the child is no longer likely to be adopted and that reinstatement of parental rights is in the child's best interest. If the court reinstates parental rights over a child who is under 12 years of age and for whom the new permanent plan will not be reunification with a parent or legal guardian, the court shall specify the factual basis for its findings that it is in the best interest of the child to reinstate parental rights. This subdivision is intended to be retroactive and applies to any child who is under the jurisdiction of the juvenile court at the time of the hearing regardless of the date parental rights were terminated.

(j) If the court, by order or judgment, declares the child free from the custody and control of both parents, or one parent if the other does not have custody and control, the court shall at the same time order the child referred to the State Department of Social Services or a licensed adoption agency for adoptive placement by the agency. However, a petition for adoption may not be granted until the appellate rights of the natural parents have been exhausted. The State Department of Social Services or licensed adoption agency shall be responsible for the custody and supervision of the child and shall be entitled to the exclusive care and control of the child at all times until a petition for adoption is granted, except as specified in subdivision (n). With the consent of the agency, the court may appoint a guardian of the child, who shall serve until the child is adopted.

(k) Notwithstanding any other provision of law, the application of any person who, as a relative caretaker or foster parent, has cared for a

dependent child for whom the court has approved a permanent plan for adoption, or who has been freed for adoption, shall be given preference with respect to that child over all other applications for adoptive placement if the agency making the placement determines that the child has substantial emotional ties to the relative caretaker or foster parent and removal from the relative caretaker or foster parent would be seriously detrimental to the child's emotional well-being.

As used in this subdivision, "preference" means that the application shall be processed and, if satisfactory, the family study shall be completed before the processing of the application of any other person for the adoptive placement of the child.

(l) (1) An order by the court that a hearing pursuant to this section be held is not appealable at any time unless all of the following apply:

(A) A petition for extraordinary writ review was filed in a timely manner.

(B) The petition substantively addressed the specific issues to be challenged and supported that challenge by an adequate record.

(C) The petition for extraordinary writ review was summarily denied or otherwise not decided on the merits.

(2) Failure to file a petition for extraordinary writ review within the period specified by rule, to substantively address the specific issues challenged, or to support that challenge by an adequate record shall preclude subsequent review by appeal of the findings and orders made pursuant to this section.

(3) The Judicial Council shall adopt rules of court, effective January 1, 1995, to ensure all of the following:

(A) A trial court, after issuance of an order directing a hearing pursuant to this section be held, shall advise all parties of the requirement of filing a petition for extraordinary writ review as set forth in this subdivision in order to preserve any right to appeal in these issues. This notice shall be made orally to a party if the party is present at the time of the making of the order or by first-class mail by the clerk of the court to the last known address of a party not present at the time of the making of the order.

(B) The prompt transmittal of the records from the trial court to the appellate court.

(C) That adequate time requirements for counsel and court personnel exist to implement the objective of this subdivision.

(D) That the parent or guardian, or their trial counsel or other counsel, is charged with the responsibility of filing a petition for extraordinary writ relief pursuant to this subdivision.

(4) The intent of this subdivision is to do both of the following:

(A) Make every reasonable attempt to achieve a substantive and meritorious review by the appellate court within the time specified in Sections 366.21 and 366.22 for holding a hearing pursuant to this section.

(B) Encourage the appellate court to determine all writ petitions filed pursuant to this subdivision on their merits.

(5) This subdivision shall only apply to cases in which an order to set a hearing pursuant to this section is issued on or after January 1, 1995.

(m) Except for subdivision (j), this section shall also apply to minors adjudged wards pursuant to Section 727.31.

(n) (1) Notwithstanding Section 8704 of the Family Code or any other provision of law, the court, at a hearing held pursuant to this section or anytime thereafter, may designate a current caretaker as a prospective adoptive parent if the child has lived with the caretaker for at least six months, the caretaker currently expresses a commitment to adopt the child, and the caretaker has taken at least one step to facilitate the adoption process. In determining whether to make that designation, the court may take into consideration whether the caretaker is listed in the preliminary assessment prepared by the county department in accordance with subdivision (i) of Section 366.21 as an appropriate person to be considered as an adoptive parent for the child and the recommendation of the State Department of Social Services or licensed adoption agency.

(2) For purposes of this subdivision, steps to facilitate the adoption process include, but are not limited to, the following:

(A) Applying for an adoption homestudy.

(B) Cooperating with an adoption homestudy.

(C) Being designated by the court or the licensed adoption agency as the adoptive family.

(D) Requesting de facto parent status.

(E) Signing an adoptive placement agreement.

(F) Engaging in discussions regarding a postadoption contact agreement.

(G) Working to overcome any impediments that have been identified by the State Department of Social Services and the licensed adoption agency.

(H) Attending classes required of prospective adoptive parents.

(3) Prior to a change in placement and as soon as possible after a decision is made to remove a child from the home of a designated prospective adoptive parent, the agency shall notify the court, the designated prospective adoptive parent or the current caretaker, if that caretaker would have met the threshold criteria to be designated as a prospective adoptive parent pursuant to paragraph (1) on the date of service of this notice, the child's attorney, and the child, if the child is

10 years of age or older, of the proposal in the manner described in Section 16010.6.

(A) Within five court days or seven calendar days, whichever is longer, of the date of notification, the child, the child's attorney, or the designated prospective adoptive parent may file a petition with the court objecting to the proposal to remove the child, or the court, upon its own motion, may set a hearing regarding the proposal. The court may, for good cause, extend the filing period. A caretaker who would have met the threshold criteria to be designated as a prospective adoptive parent pursuant to paragraph (1) on the date of service of the notice of proposed removal of the child may file, together with the petition under this subparagraph, a petition for an order designating the caretaker as a prospective adoptive parent for purposes of this subdivision.

(B) A hearing ordered pursuant to this paragraph shall be held as soon as possible and not later than five court days after the petition is filed with the court or the court sets a hearing upon its own motion, unless the court for good cause is unable to set the matter for hearing five court days after the petition is filed, in which case the court shall set the matter for hearing as soon as possible. At the hearing, the court shall determine whether the caretaker has met the threshold criteria to be designated as a prospective adoptive parent pursuant to paragraph (1), and whether the proposed removal of the child from the home of the designated prospective adoptive parent is in the child's best interest, and the child may not be removed from the home of the designated prospective adoptive parent unless the court finds that removal is in the child's best interest. If the court determines that the caretaker did not meet the threshold criteria to be designated as a prospective adoptive parent on the date of service of the notice of proposed removal of the child, the petition objecting to the proposed removal filed by the caretaker shall be dismissed. If the caretaker was designated as a prospective adoptive parent prior to this hearing, the court shall inquire into any progress made by the caretaker towards the adoption of the child since the caretaker was designated as a prospective adoptive parent.

(C) A determination by the court that the caretaker is a designated prospective adoptive parent pursuant to paragraph (1) or subparagraph (B) does not make the caretaker a party to the dependency proceeding nor does it confer on the caretaker any standing to object to any other action of the department or licensed adoption agency, unless the caretaker has been declared a de facto parent by the court prior to the notice of removal served pursuant to paragraph (3).

(D) If a petition objecting to the proposal to remove the child is not filed, and the court, upon its own motion, does not set a hearing, the

child may be removed from the home of the designated prospective adoptive parent without a hearing.

(4) Notwithstanding paragraph (3), if the State Department of Social Services or a licensed adoption agency determines that the child must be removed from the home of the caretaker who is or may be a designated prospective adoptive parent immediately, due to a risk of physical or emotional harm, the agency may remove the child from that home and is not required to provide notice prior to the removal. However, as soon as possible and not longer than two court days after the removal, the agency shall notify the court, the caretaker who is or may be a designated prospective adoptive parent, the child's attorney, and the child, if the child is 10 years of age or older, of the removal. Within five court days or seven calendar days, whichever is longer, of the date of notification of the removal, the child, the child's attorney, or the caretaker who is or may be a designated prospective adoptive parent may petition for, or the court on its own motion may set, a noticed hearing pursuant to paragraph (3). The court may, for good cause, extend the filing period.

(5) Except as provided in subdivision (b) of Section 366.28, an order by the court issued after a hearing pursuant to this subdivision shall not be appealable.

(6) Nothing in this section shall preclude a county child protective services agency from fully investigating and responding to alleged abuse or neglect of a child pursuant to Section 11165.5 of the Penal Code.

(7) The Judicial Council shall prepare forms to facilitate the filing of the petitions described in this subdivision, which shall become effective on January 1, 2006.

SEC. 1.2. Section 366.26 of the Welfare and Institutions Code is amended to read:

366.26. (a) This section applies to children who are adjudged dependent children of the juvenile court pursuant to subdivision (c) of Section 360. The procedures specified in this section are the exclusive procedures for conducting these hearings; Part 2 (commencing with Section 3020) of Division 8 of the Family Code is not applicable to these proceedings. Section 8714.7 of the Family Code is applicable and available to all dependent children meeting the requirements of that section, if the postadoption contact agreement has been entered into voluntarily. For children who are adjudged dependent children of the juvenile court pursuant to subdivision (c) of Section 360, this section and Sections 8604, 8605, 8606, and 8700 of the Family Code and Chapter 5 (commencing with Section 7660) of Part 3 of Division 12 of the Family Code specify the exclusive procedures for permanently terminating parental rights with regard to, or establishing legal guardianship of, the child while the child is a dependent child of the juvenile court.

(b) At the hearing, shall be held in juvenile court for all children who are dependents of the juvenile court, the court, in order to provide stable, permanent homes for these children, shall review the report as specified in Section 361.5, 366.21, or 366.22, shall indicate that the court has read and considered it, shall receive other evidence that the parties may present, and then shall make findings and orders in the following order of preference:

(1) Terminate the rights of the parent or parents and order that the child be placed for adoption and, upon the filing of a petition for adoption in the juvenile court, order that a hearing be set. The court shall proceed with the adoption after the appellate rights of the natural parents have been exhausted.

(2) On making a finding under paragraph (3) of subdivision (c), identify adoption as the permanent placement goal and order that efforts be made to locate an appropriate adoptive family for the child within a period not to exceed 180 days.

(3) Appoint a legal guardian for the child and order that letters of guardianship issue.

(4) Order that the child be placed in long-term foster care, subject to the periodic review of the juvenile court under Section 366.3.

In choosing among the above alternatives, the court shall proceed pursuant to subdivision (c).

(c) (1) If the court determines, based on the assessment provided as ordered under subdivision (i) of Section 366.21 or subdivision (b) of Section 366.22, and any other relevant evidence, by a clear and convincing standard, that it is likely the child will be adopted, the court shall terminate parental rights and order the child placed for adoption. The fact that the child is not yet placed in a preadoptive home nor with a relative or foster family who is prepared to adopt the child, shall not constitute a basis for the court to conclude that it is not likely the child will be adopted. A finding under subdivision (b) or paragraph (1) of subdivision (e) of Section 361.5 that reunification services shall not be offered, under subdivision (e) of Section 366.21 that the whereabouts of a parent have been unknown for six months or that the parent has failed to visit or contact the child for six months or that the parent has been convicted of a felony indicating parental unfitness, or, under Section 366.21 or 366.22, that the court has continued to remove the child from the custody of the parent or guardian and has terminated reunification services, shall constitute a sufficient basis for termination of parental rights unless the court finds a compelling reason for determining that termination would be detrimental to the child due to one or more of the following circumstances:

(A) The parents or guardians have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship.

(B) A child 12 years of age or older objects to termination of parental rights.

(C) The child is placed in a residential treatment facility, adoption is unlikely or undesirable, and continuation of parental rights will not prevent finding the child a permanent family placement if the parents cannot resume custody when residential care is no longer needed.

(D) The child is living with a relative or foster parent who is unable or unwilling to adopt the child because of exceptional circumstances, that do not include an unwillingness to accept legal or financial responsibility for the child, but who is willing and capable of providing the child with a stable and permanent environment and the removal of the child from the physical custody of his or her relative or foster parent would be detrimental to the emotional well-being of the child. This subparagraph does not apply to any child who is living with a nonrelative and who is either (i) under six years of age or (ii) a member of a sibling group where at least one child is under six years of age and the siblings are, or should be, permanently placed together.

(E) There would be substantial interference with a child's sibling relationship, taking into consideration the nature and extent of the relationship, including, but not limited to, whether the child was raised with a sibling in the same home, whether the child shared significant common experiences or has existing close and strong bonds with a sibling, and whether ongoing contact is in the child's best interest, including the child's long-term emotional interest, as compared to the benefit of legal permanence through adoption.

If the court finds that termination of parental rights would be detrimental to the child pursuant to subparagraph (A), (B), (C), (D), or (E), it shall state its reasons in writing or on the record.

(2) The court shall not terminate parental rights if at each and every hearing at which the court was required to consider reasonable efforts or services, the court has found that reasonable efforts were not made or that reasonable services were not offered or provided.

(3) If the court finds that termination of parental rights would not be detrimental to the child pursuant to paragraph (1) and that the child has a probability for adoption but is difficult to place for adoption and there is no identified or available prospective adoptive parent, the court may identify adoption as the permanent placement goal and without terminating parental rights, order that efforts be made to locate an appropriate adoptive family for the child within a period not to exceed 180 days. During this 180-day period, the public agency responsible for

seeking adoptive parents for each child shall, to the extent possible, ask each child who is 10 years of age or older who is placed in a group home for six months or longer from the date the child entered foster care, to identify any individuals, other than the child's siblings, who are important to the child, in order to identify potential adoptive parents. The public agency may ask any other child to provide that information, as appropriate. During the 180-day period, the public agency shall, to the extent possible, contact other private and public adoption agencies regarding the availability of the child for adoption. During the 180-day period, the public agency shall conduct the search for adoptive parents in the same manner as prescribed for children in Sections 8708 and 8709 of the Family Code. At the expiration of this period, another hearing shall be held and the court shall proceed pursuant to paragraph (1) or (3) of subdivision (b). For purposes of this section, a child may only be found to be difficult to place for adoption if there is no identified or available prospective adoptive parent for the child because of the child's membership in a sibling group, or the presence of a diagnosed medical, physical, or mental handicap, or the child is the age of seven years or more.

(4) (A) If the court finds that adoption of the child or termination of parental rights is not in the best interest of the child, because one of the conditions in subparagraph (A), (B), (C), (D), or (E) of paragraph (1) or in paragraph (2) applies, the court shall either order that the present caretakers or other appropriate persons shall become legal guardians of the child or order that the child remain in long-term foster care. Legal guardianship shall be considered before long-term foster care, if it is in the best interest of the child and if a suitable guardian can be found. A child who is 10 years of age or older who is placed in a group home for six months or longer from the date the child entered foster care, shall be asked to identify any individuals, other than the child's siblings, who are important to the child, in order to identify potential guardians. The agency may ask any other child to provide that information, as appropriate.

(B) If the child is living with a relative or a foster parent who is willing and capable of providing a stable and permanent environment, but not willing to become a legal guardian, the child shall not be removed from the home if the court finds the removal would be seriously detrimental to the emotional well-being of the child because the child has substantial psychological ties to the relative caretaker or foster parents.

(C) The court shall also make an order for visitation with the parents or guardians unless the court finds by a preponderance of the evidence that the visitation would be detrimental to the physical or emotional well-being of the child.

(5) If the court finds that the child should not be placed for adoption, that legal guardianship shall not be established, and that there are no suitable foster parents except exclusive-use homes available to provide the child with a stable and permanent environment, the court may order the care, custody, and control of the child transferred from the county welfare department to a licensed foster family agency. The court shall consider the written recommendation of the county welfare director regarding the suitability of the transfer. The transfer shall be subject to further court orders.

The licensed foster family agency shall place the child in a suitable licensed or exclusive-use home that has been certified by the agency as meeting licensing standards. The licensed foster family agency shall be responsible for supporting the child and providing appropriate services to the child, including those services ordered by the court. Responsibility for the support of the child shall not, in and of itself, create liability on the part of the foster family agency to third persons injured by the child. Those children whose care, custody, and control are transferred to a foster family agency shall not be eligible for foster care maintenance payments or child welfare services, except for emergency response services pursuant to Section 16504.

(d) The proceeding for the appointment of a guardian for a child who is a dependent of the juvenile court shall be in the juvenile court. If the court finds pursuant to this section that legal guardianship is the appropriate permanent plan, it shall appoint the legal guardian and issue letters of guardianship. The assessment prepared pursuant to subdivision (g) of Section 361.5, subdivision (i) of Section 366.21, and subdivision (b) of Section 366.22 shall be read and considered by the court prior to the appointment, and this shall be reflected in the minutes of the court. The person preparing the assessment may be called and examined by any party to the proceeding.

(e) The proceeding for the adoption of a child who is a dependent of the juvenile court shall be in the juvenile court if the court finds pursuant to this section that adoption is the appropriate permanent plan and the petition for adoption is filed in the juvenile court. Upon the filing of a petition for adoption, the juvenile court shall order that an adoption hearing be set. The court shall proceed with the adoption after the appellate rights of the natural parents have been exhausted. The full report required by Section 8715 of the Family Code shall be read and considered by the court prior to the adoption and this shall be reflected in the minutes of the court. The person preparing the report may be called and examined by any party to the proceeding. It is the intent of the Legislature, pursuant to this subdivision, to give potential adoptive parents the option of filing in the juvenile court the petition for the

adoption of a child who is a dependent of the juvenile court. Nothing in this section is intended to prevent the filing of a petition for adoption in any other court as permitted by law, instead of in the juvenile court.

(f) At the beginning of any proceeding pursuant to this section, if the child or the parents are not being represented by previously retained or appointed counsel, including, in the case of any child who is not a lawful permanent resident or citizen of the United States, counsel appointed pursuant to subdivision (i) of Section 317, the court shall proceed as follows:

(1) In accordance with subdivision (c) of Section 317, if a child before the court is without counsel, the court shall appoint counsel unless the court finds that the child would not benefit from the appointment of counsel. The court shall state on the record its reasons for that finding.

(2) If a parent appears without counsel and is unable to afford counsel, the court shall appoint counsel for the parent, unless this representation is knowingly and intelligently waived. The same counsel shall not be appointed to represent both the child and his or her parent. The public defender or private counsel may be appointed as counsel for the parent.

(3) Private counsel appointed under this section shall receive a reasonable sum for compensation and expenses, the amount of which shall be determined by the court. The amount shall be paid by the real parties in interest, other than the child, in any proportions the court deems just. However, if the court finds that any of the real parties in interest are unable to afford counsel, the amount shall be paid out of the general fund of the county.

(g) The court may continue the proceeding for not to exceed 30 days as necessary to appoint counsel, and to enable counsel to become acquainted with the case.

(h) (1) At all proceedings under this section, the court shall consider the wishes of the child and shall act in the best interests of the child.

(2) In accordance with Section 349, the child shall be present in court if the child or the child's counsel so requests or the court so orders. If the child is 10 years of age or older and is not present at a hearing held pursuant to this section, the court shall determine whether the minor was properly notified of his or her right to attend the hearing and inquire as to the reason why the child is not present.

(3) (A) The testimony of the child may be taken in chambers and outside the presence of the child's parent or parents, if the child's parent or parents are represented by counsel, the counsel is present, and any of the following circumstances exist:

(i) The court determines that testimony in chambers is necessary to ensure truthful testimony.

(ii) The child is likely to be intimidated by a formal courtroom setting.

(iii) The child is afraid to testify in front of his or her parent or parents.

(B) After testimony in chambers, the parent or parents of the child may elect to have the court reporter read back the testimony or have the testimony summarized by counsel for the parent or parents.

(C) The testimony of a child also may be taken in chambers and outside the presence of the guardian or guardians of a child under the circumstances specified in this subdivision.

(i) Any order of the court permanently terminating parental rights under this section shall be conclusive and binding upon the child, upon the parent or parents and upon all other persons who have been served with a citation by publication or otherwise as provided in this chapter. After making the order, the court shall have no power to set aside, change, or modify it, but nothing in this section shall be construed to limit the right to appeal the order.

(j) If the court, by order or judgment, declares the child free from the custody and control of both parents, or one parent if the other does not have custody and control, the court shall at the same time order the child referred to the State Department of Social Services or a licensed adoption agency for adoptive placement by the agency. However, a petition for adoption may not be granted until the appellate rights of the natural parents have been exhausted. The State Department of Social Services or licensed adoption agency shall be responsible for the custody and supervision of the child and shall be entitled to the exclusive care and control of the child at all times until a petition for adoption is granted, except as specified in subdivision (n). With the consent of the agency, the court may appoint a guardian of the child, who shall serve until the child is adopted.

(k) Notwithstanding any other provision of law, the application of any person who, as a relative caretaker or foster parent, has cared for a dependent child for whom the court has approved a permanent plan for adoption, or who has been freed for adoption, shall be given preference with respect to that child over all other applications for adoptive placement if the agency making the placement determines that the child has substantial emotional ties to the relative caretaker or foster parent and removal from the relative caretaker or foster parent would be seriously detrimental to the child's emotional well-being.

As used in this subdivision, "preference" means that the application shall be processed and, if satisfactory, the family study shall be completed before the processing of the application of any other person for the adoptive placement of the child.

(l) (1) An order by the court that a hearing pursuant to this section be held is not appealable at any time unless all of the following applies:

(A) A petition for extraordinary writ review was filed in a timely manner.

(B) The petition substantively addressed the specific issues to be challenged and supported that challenge by an adequate record.

(C) The petition for extraordinary writ review was summarily denied or otherwise not decided on the merits.

(2) Failure to file a petition for extraordinary writ review within the period specified by rule, to substantively address the specific issues challenged, or to support that challenge by an adequate record shall preclude subsequent review by appeal of the findings and orders made pursuant to this section.

(3) The Judicial Council shall adopt rules of court, effective January 1, 1995, to ensure all of the following:

(A) A trial court, after issuance of an order directing a hearing pursuant to this section be held, shall advise all parties of the requirement of filing a petition for extraordinary writ review as set forth in this subdivision in order to preserve any right to appeal in these issues. This notice shall be made orally to a party if the party is present at the time of the making of the order or by first-class mail by the clerk of the court to the last known address of a party not present at the time of the making of the order.

(B) The prompt transmittal of the records from the trial court to the appellate court.

(C) That adequate time requirements for counsel and court personnel exist to implement the objective of this subdivision.

(D) That the parent or guardian, or their trial counsel or other counsel, is charged with the responsibility of filing a petition for extraordinary writ relief pursuant to this subdivision.

(4) The intent of this subdivision is to do both of the following:

(A) Make every reasonable attempt to achieve a substantive and meritorious review by the appellate court within the time specified in Sections 366.21 and 366.22 for holding a hearing pursuant to this section.

(B) Encourage the appellate court to determine all writ petitions filed pursuant to this subdivision on their merits.

(5) This subdivision shall only apply to cases in which an order to set a hearing pursuant to this section is issued on or after January 1, 1995.

(m) Except for subdivision (j), this section shall also apply to minors adjudged wards pursuant to Section 727.31.

(n) (1) Notwithstanding Section 8704 of the Family Code or any other provision of law, the court, at a hearing held pursuant to this section or anytime thereafter, may designate a current caretaker as a prospective adoptive parent if the child has lived with the caretaker for at least six months, the caretaker currently expresses a commitment to adopt the

child, and the caretaker has taken at least one step to facilitate the adoption process. In determining whether to make that designation, the court may take into consideration whether the caretaker is listed in the preliminary assessment prepared by the county department in accordance with subdivision (i) of Section 366.21 as an appropriate person to be considered as an adoptive parent for the child and the recommendation of the State Department of Social Services or licensed adoption agency.

(2) For purposes of this subdivision, steps to facilitate the adoption process include, but are not limited to, the following:

- (A) Applying for an adoption homestudy.
- (B) Cooperating with an adoption homestudy.
- (C) Being designated by the court or the licensed adoption agency as the adoptive family.
- (D) Requesting de facto parent status.
- (E) Signing an adoptive placement agreement.
- (F) Engaging in discussions regarding a postadoption contact agreement.
- (G) Working to overcome any impediments that have been identified by the State Department of Social Services and the licensed adoption agency.

(H) Attending classes required of prospective adoptive parents.

(3) Prior to a change in placement and as soon as possible after a decision is made to remove a child from the home of a designated prospective adoptive parent, the agency shall notify the court, the designated prospective adoptive parent or the current caretaker, if that caretaker would have met the threshold criteria to be designated as a prospective adoptive parent pursuant to paragraph (1) on the date of service of this notice, the child's attorney, and the child, if the child is 10 years of age or older, of the proposal in the manner described in Section 16010.6.

(A) Within five court days or seven calendar days, whichever is longer, of the date of notification, the child, the child's attorney, or the designated prospective adoptive parent may file a petition with the court objecting to the proposal to remove the child, or the court, upon its own motion, may set a hearing regarding the proposal. The court may, for good cause, extend the filing period. A caretaker who would have met the threshold criteria to be designated as a prospective adoptive parent pursuant to paragraph (1) on the date of service of the notice of proposed removal of the child may file, together with the petition under this subparagraph, a petition for an order designating the caretaker as a prospective adoptive parent for purposes of this subdivision.

(B) A hearing ordered pursuant to this paragraph shall be held as soon as possible and not later than five court days after the petition is filed

with the court or the court sets a hearing upon its own motion, unless the court for good cause is unable to set the matter for hearing five court days after the petition is filed, in which case the court shall set the matter for hearing as soon as possible. At the hearing, the court shall determine whether the caretaker has met the threshold criteria to be designated as a prospective adoptive parent pursuant to paragraph (1), and whether the proposed removal of the child from the home of the designated prospective adoptive parent is in the child's best interest, and the child may not be removed from the home of the designated prospective adoptive parent unless the court finds that removal is in the child's best interest. If the court determines that the caretaker did not meet the threshold criteria to be designated as a prospective adoptive parent on the date of service of the notice of proposed removal of the child, the petition objecting to the proposed removal filed by the caretaker shall be dismissed. If the caretaker was designated as a prospective adoptive parent prior to this hearing, the court shall inquire into any progress made by the caretaker towards the adoption of the child since the caretaker was designated as a prospective adoptive parent.

(C) A determination by the court that the caretaker is a designated prospective adoptive parent pursuant to paragraph (1) or subparagraph (B) does not make the caretaker a party to the dependency proceeding nor does it confer on the caretaker any standing to object to any other action of the department or licensed adoption agency, unless the caretaker has been declared a de facto parent by the court prior to the notice of removal served pursuant to paragraph (3).

(D) If a petition objecting to the proposal to remove the child is not filed, and the court, upon its own motion, does not set a hearing, the child may be removed from the home of the designated prospective adoptive parent without a hearing.

(4) Notwithstanding paragraph (3), if the State Department of Social Services or a licensed adoption agency determines that the child must be removed from the home of the caretaker who is or may be a designated prospective adoptive parent immediately, due to a risk of physical or emotional harm, the agency may remove the child from that home and is not required to provide notice prior to the removal. However, as soon as possible and not longer than two court days after the removal, the agency shall notify the court, the caretaker who is or may be a designated prospective adoptive parent, the child's attorney, and the child, if the child is 10 years of age or older, of the removal. Within five court days or seven calendar days, whichever is longer, of the date of notification of the removal, the child, the child's attorney, or the caretaker who is or may be a designated prospective adoptive parent may petition for, or the

court on its own motion may set, a noticed hearing pursuant to paragraph (3). The court may, for good cause, extend the filing period.

(5) Except as provided in subdivision (b) of Section 366.28, an order by the court issued after a hearing pursuant to this subdivision shall not be appealable.

(6) Nothing in this section shall preclude a county child protective services agency from fully investigating and responding to alleged abuse or neglect of a child pursuant to Section 11165.5 of the Penal Code.

(7) The Judicial Council shall prepare forms to facilitate the filing of the petitions described in this subdivision, which shall become effective on January 1, 2006.

SEC. 1.3. Section 366.26 of the Welfare and Institutions Code is amended to read:

366.26. (a) This section applies to children who are adjudged dependent children of the juvenile court pursuant to subdivision (c) of Section 360. The procedures specified herein are the exclusive procedures for conducting these hearings; Part 2 (commencing with Section 3020) of Division 8 of the Family Code is not applicable to these proceedings. Section 8714.7 of the Family Code is applicable and available to all dependent children meeting the requirements of that section, if the postadoption contact agreement has been entered into voluntarily. For children who are adjudged dependent children of the juvenile court pursuant to subdivision (c) of Section 360, this section and Sections 8604, 8605, 8606, and 8700 of the Family Code and Chapter 5 (commencing with Section 7660) of Part 3 of Division 12 of the Family Code specify the exclusive procedures for permanently terminating parental rights with regard to, or establishing legal guardianship of, the child while the child is a dependent child of the juvenile court.

(b) At the hearing, that shall be held in juvenile court for all children who are dependents of the juvenile court, the court, in order to provide stable, permanent homes for these children, shall review the report as specified in Section 361.5, 366.21, or 366.22, shall indicate that the court has read and considered it, shall receive other evidence that the parties may present, and then shall make findings and orders in the following order of preference:

(1) Terminate the rights of the parent or parents and order that the child be placed for adoption and, upon the filing of a petition for adoption in the juvenile court, order that a hearing be set. The court shall proceed with the adoption after the appellate rights of the natural parents have been exhausted.

(2) On making a finding under paragraph (3) of subdivision (c), identify adoption as the permanent placement goal and order that efforts

be made to locate an appropriate adoptive family for the child within a period not to exceed 180 days.

(3) Appoint a legal guardian for the child and order that letters of guardianship issue.

(4) Order that the child be placed in long-term foster care, subject to the periodic review of the juvenile court under Section 366.3.

In choosing among the above alternatives the court shall proceed pursuant to subdivision (c).

(c) (1) If the court determines, based on the assessment provided as ordered under subdivision (i) of Section 366.21 or subdivision (b) of Section 366.22, and any other relevant evidence, by a clear and convincing standard, that it is likely the child will be adopted, the court shall terminate parental rights and order the child placed for adoption. The fact that the child is not yet placed in a preadoptive home nor with a relative or foster family who is prepared to adopt the child, shall not constitute a basis for the court to conclude that it is not likely the child will be adopted. A finding under subdivision (b) or paragraph (1) of subdivision (e) of Section 361.5 that reunification services shall not be offered, under subdivision (e) of Section 366.21 that the whereabouts of a parent have been unknown for six months or that the parent has failed to visit or contact the child for six months or that the parent has been convicted of a felony indicating parental unfitness, or, under Section 366.21 or 366.22, that the court has continued to remove the child from the custody of the parent or guardian and has terminated reunification services, shall constitute a sufficient basis for termination of parental rights unless the court finds a compelling reason for determining that termination would be detrimental to the child due to one or more of the following circumstances:

(A) The parents or guardians have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship.

(B) A child 12 years of age or older objects to termination of parental rights.

(C) The child is placed in a residential treatment facility, adoption is unlikely or undesirable, and continuation of parental rights will not prevent finding the child a permanent family placement if the parents cannot resume custody when residential care is no longer needed.

(D) The child is living with a relative or foster parent who is unable or unwilling to adopt the child because of exceptional circumstances, that do not include an unwillingness to accept legal or financial responsibility for the child, but who is willing and capable of providing the child with a stable and permanent environment and the removal of the child from the physical custody of his or her relative or foster parent

would be detrimental to the emotional well-being of the child. This subparagraph does not apply to any child who is living with a nonrelative and who is either (i) under six years of age or (ii) a member of a sibling group where at least one child is under six years of age and the siblings are, or should be, permanently placed together.

(E) There would be substantial interference with a child's sibling relationship, taking into consideration the nature and extent of the relationship, including, but not limited to, whether the child was raised with a sibling in the same home, whether the child shared significant common experiences or has existing close and strong bonds with a sibling, and whether ongoing contact is in the child's best interest, including the child's long-term emotional interest, as compared to the benefit of legal permanence through adoption.

If the court finds that termination of parental rights would be detrimental to the child pursuant to subparagraph (A), (B), (C), (D), or (E), it shall state its reasons in writing or on the record.

(2) The court shall not terminate parental rights if at each and every hearing at which the court was required to consider reasonable efforts or services, the court has found that reasonable efforts were not made or that reasonable services were not offered or provided.

(3) If the court finds that termination of parental rights would not be detrimental to the child pursuant to paragraph (1) and that the child has a probability for adoption but is difficult to place for adoption and there is no identified or available prospective adoptive parent, the court may identify adoption as the permanent placement goal and without terminating parental rights, order that efforts be made to locate an appropriate adoptive family for the child within a period not to exceed 180 days. During this 180-day period, the public agency responsible for seeking adoptive parents for each child shall, to the extent possible, ask each child who is 10 years of age or older, to identify any individuals, other than the child's siblings, who are important to the child, in order to identify potential adoptive parents. The public agency may ask any other child to provide that information, as appropriate. During the 180-day period, the public agency shall, to the extent possible, contact other private and public adoption agencies regarding the availability of the child for adoption. During the 180-day period, the public agency shall conduct the search for adoptive parents in the same manner as prescribed for children in Sections 8708 and 8709 of the Family Code. At the expiration of this period, another hearing shall be held and the court shall proceed pursuant to paragraph (1) or (3) of subdivision (b). For purposes of this section, a child may only be found to be difficult to place for adoption if there is no identified or available prospective adoptive parent for the child because of the child's membership in a

sibling group, or the presence of a diagnosed medical, physical, or mental handicap, or the child is the age of seven years or more.

(4) (A) If the court finds that adoption of the child or termination of parental rights is not in the best interest of the child, because one of the conditions in subparagraph (A), (B), (C), (D), or (E) of paragraph (1) or in paragraph (2) applies, the court shall either order that the present caretakers or other appropriate persons shall become legal guardians of the child or order that the child remain in long-term foster care. Legal guardianship shall be considered before long-term foster care, if it is in the best interests of the child and if a suitable guardian can be found. A child who is 10 years of age or older, shall be asked to identify any individuals, other than the child's siblings, who are important to the child, in order to identify potential guardians. The agency may ask any other child to provide that information, as appropriate.

(B) If the child is living with a relative or a foster parent who is willing and capable of providing a stable and permanent environment, but not willing to become a legal guardian, the child shall not be removed from the home if the court finds the removal would be seriously detrimental to the emotional well-being of the child because the child has substantial psychological ties to the relative caretaker or foster parents.

(C) The court shall also make an order for visitation with the parents or guardians unless the court finds by a preponderance of the evidence that the visitation would be detrimental to the physical or emotional well-being of the child.

(5) If the court finds that the child should not be placed for adoption, that legal guardianship shall not be established, and that there are no suitable foster parents except exclusive-use homes available to provide the child with a stable and permanent environment, the court may order the care, custody, and control of the child transferred from the county welfare department to a licensed foster family agency. The court shall consider the written recommendation of the county welfare director regarding the suitability of the transfer. The transfer shall be subject to further court orders.

The licensed foster family agency shall place the child in a suitable licensed or exclusive-use home that has been certified by the agency as meeting licensing standards. The licensed foster family agency shall be responsible for supporting the child and providing appropriate services to the child, including those services ordered by the court. Responsibility for the support of the child shall not, in and of itself, create liability on the part of the foster family agency to third persons injured by the child. Those children whose care, custody, and control are transferred to a foster family agency shall not be eligible for foster care maintenance

payments or child welfare services, except for emergency response services pursuant to Section 16504.

(d) The proceeding for the appointment of a guardian for a child who is a dependent of the juvenile court shall be in the juvenile court. If the court finds pursuant to this section that legal guardianship is the appropriate permanent plan, it shall appoint the legal guardian and issue letters of guardianship. The assessment prepared pursuant to subdivision (g) of Section 361.5, subdivision (i) of Section 366.21, and subdivision (b) of Section 366.22 shall be read and considered by the court prior to the appointment, and this shall be reflected in the minutes of the court. The person preparing the assessment may be called and examined by any party to the proceeding.

(e) The proceeding for the adoption of a child who is a dependent of the juvenile court shall be in the juvenile court if the court finds pursuant to this section that adoption is the appropriate permanent plan and the petition for adoption is filed in the juvenile court. Upon the filing of a petition for adoption, the juvenile court shall order that an adoption hearing be set. The court shall proceed with the adoption after the appellate rights of the natural parents have been exhausted. The full report required by Section 8715 of the Family Code shall be read and considered by the court prior to the adoption and this shall be reflected in the minutes of the court. The person preparing the report may be called and examined by any party to the proceeding. It is the intent of the Legislature, pursuant to this subdivision, to give potential adoptive parents the option of filing in the juvenile court the petition for the adoption of a child who is a dependent of the juvenile court. Nothing in this section is intended to prevent the filing of a petition for adoption in any other court as permitted by law, instead of in the juvenile court.

(f) At the beginning of any proceeding pursuant to this section, if the child or the parents are not being represented by previously retained or appointed counsel, the court shall proceed as follows:

(1) In accordance with subdivision (c) of Section 317, if a child before the court is without counsel, the court shall appoint counsel unless the court finds that the child would not benefit from the appointment of counsel. The court shall state on the record its reasons for that finding.

(2) If a parent appears without counsel and is unable to afford counsel, the court shall appoint counsel for the parent, unless this representation is knowingly and intelligently waived. The same counsel shall not be appointed to represent both the child and his or her parent. The public defender or private counsel may be appointed as counsel for the parent.

(3) Private counsel appointed under this section shall receive a reasonable sum for compensation and expenses, the amount of which shall be determined by the court. The amount shall be paid by the real

parties in interest, other than the child, in any proportions the court deems just. However, if the court finds that any of the real parties in interest are unable to afford counsel, the amount shall be paid out of the general fund of the county.

(g) The court may continue the proceeding for a period of time not to exceed 30 days as necessary to appoint counsel, and to enable counsel to become acquainted with the case.

(h) (1) At all proceedings under this section, the court shall consider the wishes of the child and shall act in the best interests of the child.

(2) In accordance with Section 349, the child shall be present in court if the child or the child's counsel so requests or the court so orders. If the child is 10 years of age or older and is not present at a hearing held pursuant to this section, the court shall determine whether the minor was properly notified of his or her right to attend the hearing and inquire as to the reason why the child is not present.

(3) (A) The testimony of the child may be taken in chambers and outside the presence of the child's parent or parents, if the child's parent or parents are represented by counsel, the counsel is present, and any of the following circumstances exist:

(i) The court determines that testimony in chambers is necessary to ensure truthful testimony.

(ii) The child is likely to be intimidated by a formal courtroom setting.

(iii) The child is afraid to testify in front of his or her parent or parents.

(B) After testimony in chambers, the parent or parents of the child may elect to have the court reporter read back the testimony or have the testimony summarized by counsel for the parent or parents.

(C) The testimony of a child also may be taken in chambers and outside the presence of the guardian or guardians of a child under the circumstances specified in this subdivision.

(i) Any order of the court permanently terminating parental rights under this section shall be conclusive and binding upon the child, upon the parent or parents and upon all other persons who have been served with citation by publication or otherwise as provided in this chapter. After making the order, the court shall have no power to set aside, change, or modify it, but nothing in this section shall be construed to limit the right to appeal the order.

(j) If the court, by order or judgment, declares the child free from the custody and control of both parents, or one parent if the other does not have custody and control, the court shall at the same time order the child referred to the State Department of Social Services or a licensed adoption agency for adoptive placement by the agency. However, a petition for adoption may not be granted until the appellate rights of the natural parents have been exhausted. The State Department of Social Services

or licensed adoption agency shall be responsible for the custody and supervision of the child and shall be entitled to the exclusive care and control of the child at all times until a petition for adoption is granted, except as specified in subdivision (n). With the consent of the agency, the court may appoint a guardian of the child, who shall serve until the child is adopted.

(k) Notwithstanding any other provision of law, the application of any person who, as a relative caretaker or foster parent, has cared for a dependent child for whom the court has approved a permanent plan for adoption, or who has been freed for adoption, shall be given preference with respect to that child over all other applications for adoptive placement if the agency making the placement determines that the child has substantial emotional ties to the relative caretaker or foster parent and removal from the relative caretaker or foster parent would be seriously detrimental to the child's emotional well-being.

As used in this subdivision, "preference" means that the application shall be processed and, if satisfactory, the family study shall be completed before the processing of the application of any other person for the adoptive placement of the child.

(l) (1) An order by the court that a hearing pursuant to this section be held is not appealable at any time unless all of the following applies:

(A) A petition for extraordinary writ review was filed in a timely manner.

(B) The petition substantively addressed the specific issues to be challenged and supported that challenge by an adequate record.

(C) The petition for extraordinary writ review was summarily denied or otherwise not decided on the merits.

(2) Failure to file a petition for extraordinary writ review within the period specified by rule, to substantively address the specific issues challenged, or to support that challenge by an adequate record shall preclude subsequent review by appeal of the findings and orders made pursuant to this section.

(3) The Judicial Council shall adopt rules of court, effective January 1, 1995, to ensure all of the following:

(A) A trial court, after issuance of an order directing a hearing pursuant to this section be held, shall advise all parties of the requirement of filing a petition for extraordinary writ review as set forth in this subdivision in order to preserve any right to appeal in these issues. This notice shall be made orally to a party if the party is present at the time of the making of the order or by first-class mail by the clerk of the court to the last known address of a party not present at the time of the making of the order.

(B) The prompt transmittal of the records from the trial court to the appellate court.

(C) That adequate time requirements for counsel and court personnel exist to implement the objective of this subdivision.

(D) That the parent or guardian, or their trial counsel or other counsel, is charged with the responsibility of filing a petition for extraordinary writ relief pursuant to this subdivision.

(4) The intent of this subdivision is to do both of the following:

(A) Make every reasonable attempt to achieve a substantive and meritorious review by the appellate court within the time specified in Sections 366.21 and 366.22 for holding a hearing pursuant to this section.

(B) Encourage the appellate court to determine all writ petitions filed pursuant to this subdivision on their merits.

(5) This subdivision shall only apply to cases in which an order to set a hearing pursuant to this section is issued on or after January 1, 1995.

(m) Except for subdivision (j), this section shall also apply to minors adjudged wards pursuant to Section 727.31.

(n) (1) Notwithstanding Section 8704 of the Family Code or any other provision of law, the court, at a hearing held pursuant to this section or anytime thereafter, may designate a current caretaker as a prospective adoptive parent if the child has lived with the caretaker for at least six months, the caretaker currently expresses a commitment to adopt the child, and the caretaker has taken at least one step to facilitate the adoption process. In determining whether to make that designation, the court may take into consideration whether the caretaker is listed in the preliminary assessment prepared by the county department in accordance with subdivision (i) of Section 366.21 as an appropriate person to be considered as an adoptive parent for the child and the recommendation of the State Department of Social Services or licensed adoption agency.

(2) For purposes of this subdivision, steps to facilitate the adoption process include, but are not limited to, the following:

(A) Applying for an adoption homestudy.

(B) Cooperating with an adoption homestudy.

(C) Being designated by the court or the licensed adoption agency as the adoptive family.

(D) Requesting de facto parent status.

(E) Signing an adoptive placement agreement.

(F) Engaging in discussions regarding a postadoption contact agreement.

(G) Working to overcome any impediments that have been identified by the State Department of Social Services and the licensed adoption agency.

(H) Attending classes required of prospective adoptive parents.

(3) Prior to a change in placement and as soon as possible after a decision is made to remove a child from the home of a designated prospective adoptive parent, the agency shall notify the court, the designated prospective adoptive parent or the current caretaker, if that caretaker would have met the threshold criteria to be designated as a prospective adoptive parent pursuant to paragraph (1) on the date of service of this notice, the child's attorney, and the child, if the child is 10 years of age or older, of the proposal in the manner described in Section 16010.6.

(A) Within five court days or seven calendar days, whichever is longer, of the date of notification, the child, the child's attorney, or the designated prospective adoptive parent may file a petition with the court objecting to the proposal to remove the child, or the court, upon its own motion, may set a hearing regarding the proposal. The court may, for good cause, extend the filing period. A caretaker who would have met the threshold criteria to be designated as a prospective adoptive parent pursuant to paragraph (1) on the date of service of the notice of proposed removal of the child may file, together with the petition under this subparagraph, a petition for an order designating the caretaker as a prospective adoptive parent for purposes of this subdivision.

(B) A hearing ordered pursuant to this paragraph shall be held as soon as possible and not later than five court days after the petition is filed with the court or the court sets a hearing upon its own motion, unless the court for good cause is unable to set the matter for hearing five court days after the petition is filed, in which case the court shall set the matter for hearing as soon as possible. At the hearing, the court shall determine whether the caretaker has met the threshold criteria to be designated as a prospective adoptive parent pursuant to paragraph (1), and whether the proposed removal of the child from the home of the designated prospective adoptive parent is in the child's best interest, and the child may not be removed from the home of the designated prospective adoptive parent unless the court finds that removal is in the child's best interest. If the court determines that the caretaker did not meet the threshold criteria to be designated as a prospective adoptive parent on the date of service of the notice of proposed removal of the child, the petition objecting to the proposed removal filed by the caretaker shall be dismissed. If the caretaker was designated as a prospective adoptive parent prior to this hearing, the court shall inquire into any progress made by the caretaker towards the adoption of the child since the caretaker was designated as a prospective adoptive parent.

(C) A determination by the court that the caretaker is a designated prospective adoptive parent pursuant to paragraph (1) or subparagraph (B) does not make the caretaker a party to the dependency proceeding

nor does it confer on the caretaker any standing to object to any other action of the department or licensed adoption agency, unless the caretaker has been declared a de facto parent by the court prior to the notice of removal served pursuant to paragraph (3).

(D) If a petition objecting to the proposal to remove the child is not filed, and the court, upon its own motion, does not set a hearing, the child may be removed from the home of the designated prospective adoptive parent without a hearing.

(4) Notwithstanding paragraph (3), if the State Department of Social Services or a licensed adoption agency determines that the child must be removed from the home of the caretaker who is or may be a designated prospective adoptive parent immediately, due to a risk of physical or emotional harm, the agency may remove the child from that home and is not required to provide notice prior to the removal. However, as soon as possible and not longer than two court days after the removal, the agency shall notify the court, the caretaker who is or may be a designated prospective adoptive parent, the child's attorney, and the child, if the child is 10 years of age or older, of the removal. Within five court days or seven calendar days, whichever is longer, of the date of notification of the removal, the child, the child's attorney, or the caretaker who is or may be a designated prospective adoptive parent may petition for, or the court on its own motion may set, a noticed hearing pursuant to paragraph (3). The court may, for good cause, extend the filing period.

(5) Except as provided in subdivision (b) of Section 366.28, an order by the court issued after a hearing pursuant to this subdivision shall not be appealable.

(6) Nothing in this section shall preclude a county child protective services agency from fully investigating and responding to alleged abuse or neglect of a child pursuant to Section 11165.5 of the Penal Code.

(7) The Judicial Council shall prepare forms to facilitate the filing of the petitions described in this subdivision, which shall become effective on January 1, 2006.

(o) The implementation and operation of the amendments to paragraph (3) of subdivision (c) and subparagraph (A) of paragraph (4) of subdivision (c) enacted at the 2005-06 Regular Session shall be subject to appropriation through the budget process and by phase, as provided in Section 366.35.

SEC. 1.4. Section 366.26 of the Welfare and Institutions Code is amended to read:

366.26. (a) This section applies to children who are adjudged dependent children of the juvenile court pursuant to subdivision (c) of Section 360. The procedures specified in this section are the exclusive procedures for conducting these hearings; Part 2 (commencing with

Section 3020) of Division 8 of the Family Code is not applicable to these proceedings. Section 8714.7 of the Family Code is applicable and available to all dependent children meeting the requirements of that section, if the postadoption contact agreement has been entered into voluntarily. For children who are adjudged dependent children of the juvenile court pursuant to subdivision (c) of Section 360, this section and Sections 8604, 8605, 8606, and 8700 of the Family Code and Chapter 5 (commencing with Section 7660) of Part 3 of Division 12 of the Family Code specify the exclusive procedures for permanently terminating parental rights with regard to, or establishing legal guardianship of, the child while the child is a dependent child of the juvenile court.

(b) At the hearing, which shall be held in juvenile court for all children who are dependents of the juvenile court, the court, in order to provide stable, permanent homes for these children, shall review the report as specified in Section 361.5, 366.21, or 366.22, shall indicate that the court has read and considered it, shall receive other evidence that the parties may present, and then shall make findings and orders in the following order of preference:

(1) Terminate the rights of the parent or parents and order that the child be placed for adoption and, upon the filing of a petition for adoption in the juvenile court, order that a hearing be set. The court shall proceed with the adoption after the appellate rights of the natural parents have been exhausted.

(2) On making a finding under paragraph (3) of subdivision (c), identify adoption as the permanent placement goal and order that efforts be made to locate an appropriate adoptive family for the child within a period not to exceed 180 days.

(3) Appoint a legal guardian for the child and order that letters of guardianship issue.

(4) Order that the child be placed in long-term foster care, subject to the periodic review of the juvenile court under Section 366.3.

In choosing among the above alternatives, the court shall proceed pursuant to subdivision (c).

(c) (1) If the court determines, based on the assessment provided as ordered under subdivision (i) of Section 366.21 or subdivision (b) of Section 366.22, and any other relevant evidence, by a clear and convincing standard, that it is likely the child will be adopted, the court shall terminate parental rights and order the child placed for adoption. The fact that the child is not yet placed in a preadoptive home nor with a relative or foster family who is prepared to adopt the child, shall not constitute a basis for the court to conclude that it is not likely the child will be adopted. A finding under subdivision (b) or paragraph (1) of subdivision (e) of Section 361.5 that reunification services shall not be

offered, under subdivision (e) of Section 366.21 that the whereabouts of a parent have been unknown for six months or that the parent has failed to visit or contact the child for six months or that the parent has been convicted of a felony indicating parental unfitness, or, under Section 366.21 or 366.22, that the court has continued to remove the child from the custody of the parent or guardian and has terminated reunification services, shall constitute a sufficient basis for termination of parental rights unless the court finds a compelling reason for determining that termination would be detrimental to the child due to one or more of the following circumstances:

(A) The parents or guardians have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship.

(B) A child 12 years of age or older objects to termination of parental rights.

(C) The child is placed in a residential treatment facility, adoption is unlikely or undesirable, and continuation of parental rights will not prevent finding the child a permanent family placement if the parents cannot resume custody when residential care is no longer needed.

(D) The child is living with a relative or foster parent who is unable or unwilling to adopt the child because of exceptional circumstances, that do not include an unwillingness to accept legal or financial responsibility for the child, but who is willing and capable of providing the child with a stable and permanent environment and the removal of the child from the physical custody of his or her relative or foster parent would be detrimental to the emotional well-being of the child. This subparagraph does not apply to any child who is living with a nonrelative and who is either (i) under six years of age or (ii) a member of a sibling group where at least one child is under six years of age and the siblings are, or should be, permanently placed together.

(E) There would be substantial interference with a child's sibling relationship, taking into consideration the nature and extent of the relationship, including, but not limited to, whether the child was raised with a sibling in the same home, whether the child shared significant common experiences or has existing close and strong bonds with a sibling, and whether ongoing contact is in the child's best interest, including the child's long-term emotional interest, as compared to the benefit of legal permanence through adoption.

If the court finds that termination of parental rights would be detrimental to the child pursuant to subparagraph (A), (B), (C), (D), or (E), it shall state its reasons in writing or on the record.

(2) The court shall not terminate parental rights if at each hearing at which the court was required to consider reasonable efforts or services,

the court has found that reasonable efforts were not made or that reasonable services were not offered or provided.

(3) If the court finds that termination of parental rights would not be detrimental to the child pursuant to paragraph (1) and that the child has a probability for adoption but is difficult to place for adoption and there is no identified or available prospective adoptive parent, the court may identify adoption as the permanent placement goal and without terminating parental rights, order that efforts be made to locate an appropriate adoptive family for the child within a period not to exceed 180 days. During this 180-day period, the public agency responsible for seeking adoptive parents for each child shall, to the extent possible, ask each child who is 10 years of age or older who is placed in a group home for six months or longer from the date the child entered foster care, to identify any individuals, other than the child's siblings, who are important to the child, in order to identify potential adoptive parents. The public agency may ask any other child to provide that information, as appropriate. During the 180-day period, the public agency shall, to the extent possible, contact other private and public adoption agencies regarding the availability of the child for adoption. During the 180-day period, the public agency shall conduct the search for adoptive parents in the same manner as prescribed for children in Sections 8708 and 8709 of the Family Code. At the expiration of this period, another hearing shall be held and the court shall proceed pursuant to paragraph (1) or (3) of subdivision (b). For purposes of this section, a child may only be found to be difficult to place for adoption if there is no identified or available prospective adoptive parent for the child because of the child's membership in a sibling group, or the presence of a diagnosed medical, physical, or mental handicap, or the child is the age of seven years or more.

(4) (A) If the court finds that adoption of the child or termination of parental rights is not in the best interest of the child, because one of the conditions in subparagraph (A), (B), (C), (D), or (E) of paragraph (1) or in paragraph (2) applies, the court shall either order that the present caretakers or other appropriate persons shall become legal guardians of the child or order that the child remain in long-term foster care. Legal guardianship shall be considered before long-term foster care, if it is in the best interest of the child and if a suitable guardian can be found. A child who is 10 years of age or older who is placed in a group home for six months or longer from the date the child entered foster care, shall be asked to identify any individuals, other than the child's siblings, who are important to the child, in order to identify potential guardians. The agency may ask any other child to provide that information, as appropriate.

(B) If the child is living with a relative or a foster parent who is willing and capable of providing a stable and permanent environment, but not willing to become a legal guardian, the child shall not be removed from the home if the court finds the removal would be seriously detrimental to the emotional well-being of the child because the child has substantial psychological ties to the relative caretaker or foster parents.

(C) The court shall also make an order for visitation with the parents or guardians unless the court finds by a preponderance of the evidence that the visitation would be detrimental to the physical or emotional well-being of the child.

(5) If the court finds that the child should not be placed for adoption, that legal guardianship shall not be established, and that there are no suitable foster parents except exclusive-use homes available to provide the child with a stable and permanent environment, the court may order the care, custody, and control of the child transferred from the county welfare department to a licensed foster family agency. The court shall consider the written recommendation of the county welfare director regarding the suitability of the transfer. The transfer shall be subject to further court orders.

The licensed foster family agency shall place the child in a suitable licensed or exclusive-use home that has been certified by the agency as meeting licensing standards. The licensed foster family agency shall be responsible for supporting the child and providing appropriate services to the child, including those services ordered by the court. Responsibility for the support of the child shall not, in and of itself, create liability on the part of the foster family agency to third persons injured by the child. Those children whose care, custody, and control are transferred to a foster family agency shall not be eligible for foster care maintenance payments or child welfare services, except for emergency response services pursuant to Section 16504.

(d) The proceeding for the appointment of a guardian for a child who is a dependent of the juvenile court shall be in the juvenile court. If the court finds pursuant to this section that legal guardianship is the appropriate permanent plan, it shall appoint the legal guardian and issue letters of guardianship. The assessment prepared pursuant to subdivision (g) of Section 361.5, subdivision (i) of Section 366.21, and subdivision (b) of Section 366.22 shall be read and considered by the court prior to the appointment, and this shall be reflected in the minutes of the court. The person preparing the assessment may be called and examined by any party to the proceeding.

(e) The proceeding for the adoption of a child who is a dependent of the juvenile court shall be in the juvenile court if the court finds pursuant to this section that adoption is the appropriate permanent plan and the

petition for adoption is filed in the juvenile court. Upon the filing of a petition for adoption, the juvenile court shall order that an adoption hearing be set. The court shall proceed with the adoption after the appellate rights of the natural parents have been exhausted. The full report required by Section 8715 of the Family Code shall be read and considered by the court prior to the adoption and this shall be reflected in the minutes of the court. The person preparing the report may be called and examined by any party to the proceeding. It is the intent of the Legislature, pursuant to this subdivision, to give potential adoptive parents the option of filing in the juvenile court the petition for the adoption of a child who is a dependent of the juvenile court. Nothing in this section is intended to prevent the filing of a petition for adoption in any other court as permitted by law, instead of in the juvenile court.

(f) At the beginning of any proceeding pursuant to this section, if the child or the parents are not being represented by previously retained or appointed counsel, including, in the case of any child who is not a lawful permanent resident or citizen of the United States, counsel appointed pursuant to subdivision (i) of Section 317, the court shall proceed as follows:

(1) In accordance with subdivision (c) of Section 317, if a child before the court is without counsel, the court shall appoint counsel unless the court finds that the child would not benefit from the appointment of counsel. The court shall state on the record its reasons for that finding.

(2) If a parent appears without counsel and is unable to afford counsel, the court shall appoint counsel for the parent, unless this representation is knowingly and intelligently waived. The same counsel shall not be appointed to represent both the child and his or her parent. The public defender or private counsel may be appointed as counsel for the parent.

(3) Private counsel appointed under this section shall receive a reasonable sum for compensation and expenses, the amount of which shall be determined by the court. The amount shall be paid by the real parties in interest, other than the child, in any proportions the court deems just. However, if the court finds that any of the real parties in interest are unable to afford counsel, the amount shall be paid out of the general fund of the county.

(g) The court may continue the proceeding for not to exceed 30 days as necessary to appoint counsel, and to enable counsel to become acquainted with the case.

(h) (1) At all proceedings under this section, the court shall consider the wishes of the child and shall act in the best interests of the child.

(2) In accordance with Section 349, the child shall be present in court if the child or the child's counsel so requests or the court so orders. If the child is 10 years of age or older and is not present at a hearing held

pursuant to this section, the court shall determine whether the minor was properly notified of his or her right to attend the hearing and inquire as to the reason why the child is not present.

(3) (A) The testimony of the child may be taken in chambers and outside the presence of the child's parent or parents, if the child's parent or parents are represented by counsel, the counsel is present, and any of the following circumstances exists:

(i) The court determines that testimony in chambers is necessary to ensure truthful testimony.

(ii) The child is likely to be intimidated by a formal courtroom setting.

(iii) The child is afraid to testify in front of his or her parent or parents.

(B) After testimony in chambers, the parent or parents of the child may elect to have the court reporter read back the testimony or have the testimony summarized by counsel for the parent or parents.

(C) The testimony of a child also may be taken in chambers and outside the presence of the guardian or guardians of a child under the circumstances specified in this subdivision.

(i) (1) Any order of the court permanently terminating parental rights under this section shall be conclusive and binding upon the child, upon the parent or parents and upon all other persons who have been served with a citation by publication or otherwise as provided in this chapter. After making the order, the juvenile court shall have no power to set aside, change, or modify it, except as provided in paragraph (2), but nothing in this section shall be construed to limit the right to appeal the order.

(2) A child who has not been adopted after the passage of at least three years from the date the court terminated parental rights and for whom the court has determined that adoption is no longer the permanent plan may petition the juvenile court to reinstate parental rights pursuant to the procedure prescribed by Section 388. The child may file the petition prior to the expiration of this three-year period if the State Department of Social Services or licensed adoption agency that is responsible for custody and supervision of the child as described in subdivision (j) and the child stipulate that the child is no longer likely to be adopted. A child over 12 years of age shall sign the petition in the absence of a showing of good cause as to why the child could not do so. If it appears that the best interests of the child may be promoted by reinstatement of parental rights, the court shall order that a hearing be held and shall give prior notice, or cause prior notice to be given, to the social worker or probation officer and to the child's attorney of record, or, if there is no attorney of record for the child, to the child, and the child's tribe, if applicable, by means prescribed by subdivision (c) of Section 297. The court shall order the child or the social worker or

probation officer to give prior notice of the hearing to the child's former parent or parents whose parental rights were terminated in the manner prescribed by subdivision (f) of Section 294 where the recommendation is adoption. The juvenile court shall grant the petition if it finds by clear and convincing evidence that the child is no longer likely to be adopted and that reinstatement of parental rights is in the child's best interest. If the court reinstates parental rights over a child who is under 12 years of age and for whom the new permanent plan will not be reunification with a parent or legal guardian, the court shall specify the factual basis for its findings that it is in the best interest of the child to reinstate parental rights. This subdivision is intended to be retroactive and applies to any child who is under the jurisdiction of the juvenile court at the time of the hearing regardless of the date parental rights were terminated.

(j) If the court, by order or judgment, declares the child free from the custody and control of both parents, or one parent if the other does not have custody and control, the court shall at the same time order the child referred to the State Department of Social Services or a licensed adoption agency for adoptive placement by the agency. However, a petition for adoption may not be granted until the appellate rights of the natural parents have been exhausted. The State Department of Social Services or licensed adoption agency shall be responsible for the custody and supervision of the child and shall be entitled to the exclusive care and control of the child at all times until a petition for adoption is granted, except as specified in subdivision (n). With the consent of the agency, the court may appoint a guardian of the child, who shall serve until the child is adopted.

(k) Notwithstanding any other provision of law, the application of any person who, as a relative caretaker or foster parent, has cared for a dependent child for whom the court has approved a permanent plan for adoption, or who has been freed for adoption, shall be given preference with respect to that child over all other applications for adoptive placement if the agency making the placement determines that the child has substantial emotional ties to the relative caretaker or foster parent and removal from the relative caretaker or foster parent would be seriously detrimental to the child's emotional well-being.

As used in this subdivision, "preference" means that the application shall be processed and, if satisfactory, the family study shall be completed before the processing of the application of any other person for the adoptive placement of the child.

(l) (1) An order by the court that a hearing pursuant to this section be held is not appealable at any time unless all of the following apply:

(A) A petition for extraordinary writ review was filed in a timely manner.

(B) The petition substantively addressed the specific issues to be challenged and supported that challenge by an adequate record.

(C) The petition for extraordinary writ review was summarily denied or otherwise not decided on the merits.

(2) Failure to file a petition for extraordinary writ review within the period specified by rule, to substantively address the specific issues challenged, or to support that challenge by an adequate record shall preclude subsequent review by appeal of the findings and orders made pursuant to this section.

(3) The Judicial Council shall adopt rules of court, effective January 1, 1995, to ensure all of the following:

(A) A trial court, after issuance of an order directing a hearing pursuant to this section be held, shall advise all parties of the requirement of filing a petition for extraordinary writ review as set forth in this subdivision in order to preserve any right to appeal in these issues. This notice shall be made orally to a party if the party is present at the time of the making of the order or by first-class mail by the clerk of the court to the last known address of a party not present at the time of the making of the order.

(B) The prompt transmittal of the records from the trial court to the appellate court.

(C) That adequate time requirements for counsel and court personnel exist to implement the objective of this subdivision.

(D) That the parent or guardian, or their trial counsel or other counsel, is charged with the responsibility of filing a petition for extraordinary writ relief pursuant to this subdivision.

(4) The intent of this subdivision is to do both of the following:

(A) Make every reasonable attempt to achieve a substantive and meritorious review by the appellate court within the time specified in Sections 366.21 and 366.22 for holding a hearing pursuant to this section.

(B) Encourage the appellate court to determine all writ petitions filed pursuant to this subdivision on their merits.

(5) This subdivision shall only apply to cases in which an order to set a hearing pursuant to this section is issued on or after January 1, 1995.

(m) Except for subdivision (j), this section shall also apply to minors adjudged wards pursuant to Section 727.31.

(n) (1) Notwithstanding Section 8704 of the Family Code or any other provision of law, the court, at a hearing held pursuant to this section or anytime thereafter, may designate a current caretaker as a prospective adoptive parent if the child has lived with the caretaker for at least six months, the caretaker currently expresses a commitment to adopt the child, and the caretaker has taken at least one step to facilitate the adoption process. In determining whether to make that designation, the

court may take into consideration whether the caretaker is listed in the preliminary assessment prepared by the county department in accordance with subdivision (i) of Section 366.21 as an appropriate person to be considered as an adoptive parent for the child and the recommendation of the State Department of Social Services or licensed adoption agency.

(2) For purposes of this subdivision, steps to facilitate the adoption process include, but are not limited to, the following:

- (A) Applying for an adoption homestudy.
- (B) Cooperating with an adoption homestudy.
- (C) Being designated by the court or the licensed adoption agency as the adoptive family.
- (D) Requesting de facto parent status.
- (E) Signing an adoptive placement agreement.
- (F) Engaging in discussions regarding a postadoption contact agreement.
- (G) Working to overcome any impediments that have been identified by the State Department of Social Services and the licensed adoption agency.

(H) Attending classes required of prospective adoptive parents.

(3) Prior to a change in placement and as soon as possible after a decision is made to remove a child from the home of a designated prospective adoptive parent, the agency shall notify the court, the designated prospective adoptive parent or the current caretaker, if that caretaker would have met the threshold criteria to be designated as a prospective adoptive parent pursuant to paragraph (1) on the date of service of this notice, the child's attorney, and the child, if the child is 10 years of age or older, of the proposal in the manner described in Section 16010.6.

(A) Within five court days or seven calendar days, whichever is longer, of the date of notification, the child, the child's attorney, or the designated prospective adoptive parent may file a petition with the court objecting to the proposal to remove the child, or the court, upon its own motion, may set a hearing regarding the proposal. The court may, for good cause, extend the filing period. A caretaker who would have met the threshold criteria to be designated as a prospective adoptive parent pursuant to paragraph (1) on the date of service of the notice of proposed removal of the child may file, together with the petition under this subparagraph, a petition for an order designating the caretaker as a prospective adoptive parent for purposes of this subdivision.

(B) A hearing ordered pursuant to this paragraph shall be held as soon as possible and not later than five court days after the petition is filed with the court or the court sets a hearing upon its own motion, unless the court for good cause is unable to set the matter for hearing five court

days after the petition is filed, in which case the court shall set the matter for hearing as soon as possible. At the hearing, the court shall determine whether the caretaker has met the threshold criteria to be designated as a prospective adoptive parent pursuant to paragraph (1), and whether the proposed removal of the child from the home of the designated prospective adoptive parent is in the child's best interest, and the child may not be removed from the home of the designated prospective adoptive parent unless the court finds that removal is in the child's best interest. If the court determines that the caretaker did not meet the threshold criteria to be designated as a prospective adoptive parent on the date of service of the notice of proposed removal of the child, the petition objecting to the proposed removal filed by the caretaker shall be dismissed. If the caretaker was designated as a prospective adoptive parent prior to this hearing, the court shall inquire into any progress made by the caretaker towards the adoption of the child since the caretaker was designated as a prospective adoptive parent.

(C) A determination by the court that the caretaker is a designated prospective adoptive parent pursuant to paragraph (1) or subparagraph (B) does not make the caretaker a party to the dependency proceeding nor does it confer on the caretaker any standing to object to any other action of the department or licensed adoption agency, unless the caretaker has been declared a de facto parent by the court prior to the notice of removal served pursuant to paragraph (3).

(D) If a petition objecting to the proposal to remove the child is not filed, and the court, upon its own motion, does not set a hearing, the child may be removed from the home of the designated prospective adoptive parent without a hearing.

(4) Notwithstanding paragraph (3), if the State Department of Social Services or a licensed adoption agency determines that the child must be removed from the home of the caretaker who is or may be a designated prospective adoptive parent immediately, due to a risk of physical or emotional harm, the agency may remove the child from that home and is not required to provide notice prior to the removal. However, as soon as possible and not longer than two court days after the removal, the agency shall notify the court, the caretaker who is or may be a designated prospective adoptive parent, the child's attorney, and the child, if the child is 10 years of age or older, of the removal. Within five court days or seven calendar days, whichever is longer, of the date of notification of the removal, the child, the child's attorney, or the caretaker who is or may be a designated prospective adoptive parent may petition for, or the court on its own motion may set, a noticed hearing pursuant to paragraph (3). The court may, for good cause, extend the filing period.

(5) Except as provided in subdivision (b) of Section 366.28, an order by the court issued after a hearing pursuant to this subdivision shall not be appealable.

(6) Nothing in this section shall preclude a county child protective services agency from fully investigating and responding to alleged abuse or neglect of a child pursuant to Section 11165.5 of the Penal Code.

(7) The Judicial Council shall prepare forms to facilitate the filing of the petitions described in this subdivision, which shall become effective on January 1, 2006.

SEC. 1.5. Section 366.26 of the Welfare and Institutions Code is amended to read:

366.26. (a) This section applies to children who are adjudged dependent children of the juvenile court pursuant to subdivision (c) of Section 360. The procedures specified herein are the exclusive procedures for conducting these hearings; Part 2 (commencing with Section 3020) of Division 8 of the Family Code is not applicable to these proceedings. Section 8714.7 of the Family Code is applicable and available to all dependent children meeting the requirements of that section, if the postadoption contact agreement has been entered into voluntarily. For children who are adjudged dependent children of the juvenile court pursuant to subdivision (c) of Section 360, this section and Sections 8604, 8605, 8606, and 8700 of the Family Code and Chapter 5 (commencing with Section 7660) of Part 3 of Division 12 of the Family Code specify the exclusive procedures for permanently terminating parental rights with regard to, or establishing legal guardianship of, the child while the child is a dependent child of the juvenile court.

(b) At the hearing, which shall be held in juvenile court for all children who are dependents of the juvenile court, the court, in order to provide stable, permanent homes for these children, shall review the report as specified in Section 361.5, 366.21, or 366.22, shall indicate that the court has read and considered it, shall receive other evidence that the parties may present, and then shall make findings and orders in the following order of preference:

(1) Terminate the rights of the parent or parents and order that the child be placed for adoption and, upon the filing of a petition for adoption in the juvenile court, order that a hearing be set. The court shall proceed with the adoption after the appellate rights of the natural parents have been exhausted.

(2) On making a finding under paragraph (3) of subdivision (c), identify adoption as the permanent placement goal and order that efforts be made to locate an appropriate adoptive family for the child within a period not to exceed 180 days.

(3) Appoint a legal guardian for the child and order that letters of guardianship issue.

(4) Order that the child be placed in long-term foster care, subject to the periodic review of the juvenile court under Section 366.3.

In choosing among the above alternatives the court shall proceed pursuant to subdivision (c).

(c) (1) If the court determines, based on the assessment provided as ordered under subdivision (i) of Section 366.21 or subdivision (b) of Section 366.22, and any other relevant evidence, by a clear and convincing standard, that it is likely the child will be adopted, the court shall terminate parental rights and order the child placed for adoption. The fact that the child is not yet placed in a preadoptive home nor with a relative or foster family who is prepared to adopt the child, shall not constitute a basis for the court to conclude that it is not likely the child will be adopted. A finding under subdivision (b) or paragraph (1) of subdivision (e) of Section 361.5 that reunification services shall not be offered, under subdivision (e) of Section 366.21 that the whereabouts of a parent have been unknown for six months or that the parent has failed to visit or contact the child for six months or that the parent has been convicted of a felony indicating parental unfitness, or, under Section 366.21 or 366.22, that the court has continued to remove the child from the custody of the parent or guardian and has terminated reunification services, shall constitute a sufficient basis for termination of parental rights unless the court finds a compelling reason for determining that termination would be detrimental to the child due to one or more of the following circumstances:

(A) The parents or guardians have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship.

(B) A child 12 years of age or older objects to termination of parental rights.

(C) The child is placed in a residential treatment facility, adoption is unlikely or undesirable, and continuation of parental rights will not prevent finding the child a permanent family placement if the parents cannot resume custody when residential care is no longer needed.

(D) The child is living with a relative or foster parent who is unable or unwilling to adopt the child because of exceptional circumstances, that do not include an unwillingness to accept legal or financial responsibility for the child, but who is willing and capable of providing the child with a stable and permanent environment and the removal of the child from the physical custody of his or her relative or foster parent would be detrimental to the emotional well-being of the child. This subparagraph does not apply to any child who is living with a nonrelative

and who is either (i) under six years of age or (ii) a member of a sibling group where at least one child is under six years of age and the siblings are, or should be, permanently placed together.

(E) There would be substantial interference with a child's sibling relationship, taking into consideration the nature and extent of the relationship, including, but not limited to, whether the child was raised with a sibling in the same home, whether the child shared significant common experiences or has existing close and strong bonds with a sibling, and whether ongoing contact is in the child's best interest, including the child's long-term emotional interest, as compared to the benefit of legal permanence through adoption.

If the court finds that termination of parental rights would be detrimental to the child pursuant to subparagraph (A), (B), (C), (D), or (E), it shall state its reasons in writing or on the record.

(2) The court shall not terminate parental rights if at each hearing at which the court was required to consider reasonable efforts or services, the court has found that reasonable efforts were not made or that reasonable services were not offered or provided.

(3) If the court finds that termination of parental rights would not be detrimental to the child pursuant to paragraph (1) and that the child has a probability for adoption but is difficult to place for adoption and there is no identified or available prospective adoptive parent, the court may identify adoption as the permanent placement goal and without terminating parental rights, order that efforts be made to locate an appropriate adoptive family for the child within a period not to exceed 180 days. During this 180-day period, the public agency responsible for seeking adoptive parents for each child shall, to the extent possible, ask each child who is 10 years of age or older, to identify any individuals, other than the child's siblings, who are important to the child, in order to identify potential adoptive parents. The public agency may ask any other child to provide that information, as appropriate. During the 180-day period, the public agency shall, to the extent possible, contact other private and public adoption agencies regarding the availability of the child for adoption. During the 180-day period, the public agency shall conduct the search for adoptive parents in the same manner as prescribed for children in Sections 8708 and 8709 of the Family Code. At the expiration of this period, another hearing shall be held and the court shall proceed pursuant to paragraph (1) or (3) of subdivision (b). For purposes of this section, a child may only be found to be difficult to place for adoption if there is no identified or available prospective adoptive parent for the child because of the child's membership in a sibling group, or the presence of a diagnosed medical, physical, or mental handicap, or the child is the age of seven years or more.

(4) (A) If the court finds that adoption of the child or termination of parental rights is not in the best interest of the child, because one of the conditions in subparagraph (A), (B), (C), (D), or (E) of paragraph (1) or in paragraph (2) applies, the court shall either order that the present caretakers or other appropriate persons shall become legal guardians of the child or order that the child remain in long-term foster care. Legal guardianship shall be considered before long-term foster care, if it is in the best interests of the child and if a suitable guardian can be found. A child who is 10 years of age or older, shall be asked to identify any individuals, other than the child's siblings, who are important to the child, in order to identify potential guardians. The agency may ask any other child to provide that information, as appropriate.

(B) If the child is living with a relative or a foster parent who is willing and capable of providing a stable and permanent environment, but not willing to become a legal guardian, the child shall not be removed from the home if the court finds the removal would be seriously detrimental to the emotional well-being of the child because the child has substantial psychological ties to the relative caretaker or foster parents.

(C) The court shall also make an order for visitation with the parents or guardians unless the court finds by a preponderance of the evidence that the visitation would be detrimental to the physical or emotional well-being of the child.

(5) If the court finds that the child should not be placed for adoption, that legal guardianship shall not be established, and that there are no suitable foster parents except exclusive-use homes available to provide the child with a stable and permanent environment, the court may order the care, custody, and control of the child transferred from the county welfare department to a licensed foster family agency. The court shall consider the written recommendation of the county welfare director regarding the suitability of the transfer. The transfer shall be subject to further court orders.

The licensed foster family agency shall place the child in a suitable licensed or exclusive-use home that has been certified by the agency as meeting licensing standards. The licensed foster family agency shall be responsible for supporting the child and providing appropriate services to the child, including those services ordered by the court. Responsibility for the support of the child shall not, in and of itself, create liability on the part of the foster family agency to third persons injured by the child. Those children whose care, custody, and control are transferred to a foster family agency shall not be eligible for foster care maintenance payments or child welfare services, except for emergency response services pursuant to Section 16504.

(d) The proceeding for the appointment of a guardian for a child who is a dependent of the juvenile court shall be in the juvenile court. If the court finds pursuant to this section that legal guardianship is the appropriate permanent plan, it shall appoint the legal guardian and issue letters of guardianship. The assessment prepared pursuant to subdivision (g) of Section 361.5, subdivision (i) of Section 366.21, and subdivision (b) of Section 366.22 shall be read and considered by the court prior to the appointment, and this shall be reflected in the minutes of the court. The person preparing the assessment may be called and examined by any party to the proceeding.

(e) The proceeding for the adoption of a child who is a dependent of the juvenile court shall be in the juvenile court if the court finds pursuant to this section that adoption is the appropriate permanent plan and the petition for adoption is filed in the juvenile court. Upon the filing of a petition for adoption, the juvenile court shall order that an adoption hearing be set. The court shall proceed with the adoption after the appellate rights of the natural parents have been exhausted. The full report required by Section 8715 of the Family Code shall be read and considered by the court prior to the adoption and this shall be reflected in the minutes of the court. The person preparing the report may be called and examined by any party to the proceeding. It is the intent of the Legislature, pursuant to this subdivision, to give potential adoptive parents the option of filing in the juvenile court the petition for the adoption of a child who is a dependent of the juvenile court. Nothing in this section is intended to prevent the filing of a petition for adoption in any other court as permitted by law, instead of in the juvenile court.

(f) At the beginning of any proceeding pursuant to this section, if the child or the parents are not being represented by previously retained or appointed counsel, the court shall proceed as follows:

(1) In accordance with subdivision (c) of Section 317, if a child before the court is without counsel, the court shall appoint counsel unless the court finds that the child would not benefit from the appointment of counsel. The court shall state on the record its reasons for that finding.

(2) If a parent appears without counsel and is unable to afford counsel, the court shall appoint counsel for the parent, unless this representation is knowingly and intelligently waived. The same counsel shall not be appointed to represent both the child and his or her parent. The public defender or private counsel may be appointed as counsel for the parent.

(3) Private counsel appointed under this section shall receive a reasonable sum for compensation and expenses, the amount of which shall be determined by the court. The amount shall be paid by the real parties in interest, other than the child, in any proportions the court deems just. However, if the court finds that any of the real parties in interest

are unable to afford counsel, the amount shall be paid out of the general fund of the county.

(g) The court may continue the proceeding for a period of time not to exceed 30 days as necessary to appoint counsel, and to enable counsel to become acquainted with the case.

(h) (1) At all proceedings under this section, the court shall consider the wishes of the child and shall act in the best interests of the child.

(2) In accordance with Section 349, the child shall be present in court if the child or the child's counsel so requests or the court so orders. If the child is 10 years of age or older and is not present at a hearing held pursuant to this section, the court shall determine whether the minor was properly notified of his or her right to attend the hearing and inquire as to the reason why the child is not present.

(3) (A) The testimony of the child may be taken in chambers and outside the presence of the child's parent or parents, if the child's parent or parents are represented by counsel, the counsel is present, and any of the following circumstances exists:

(i) The court determines that testimony in chambers is necessary to ensure truthful testimony.

(ii) The child is likely to be intimidated by a formal courtroom setting.

(iii) The child is afraid to testify in front of his or her parent or parents.

(B) After testimony in chambers, the parent or parents of the child may elect to have the court reporter read back the testimony or have the testimony summarized by counsel for the parent or parents.

(C) The testimony of a child also may be taken in chambers and outside the presence of the guardian or guardians of a child under the circumstances specified in this subdivision.

(i) (1) Any order of the court permanently terminating parental rights under this section shall be conclusive and binding upon the child, upon the parent or parents and upon all other persons who have been served with citation by publication or otherwise as provided in this chapter. After making the order, the juvenile court shall have no power to set aside, change, or modify it, except as provided in paragraph (2), but nothing in this section shall be construed to limit the right to appeal the order.

(2) A child who has not been adopted after the passage of at least three years from the date the court terminated parental rights and for whom the court has determined that adoption is no longer the permanent plan may petition the juvenile court to reinstate parental rights pursuant to the procedure prescribed by Section 388. The child may file the petition prior to the expiration of this three-year period if the State Department of Social Services or licensed adoption agency that is responsible for custody and supervision of the child as described in

subdivision (j) and the child stipulate that the child is no longer likely to be adopted. A child over 12 years of age shall sign the petition in the absence of a showing of good cause as to why the child could not do so. If it appears that the best interests of the child may be promoted by reinstatement of parental rights, the court shall order that a hearing be held and shall give prior notice, or cause prior notice to be given, to the social worker or probation officer and to the child's attorney of record, or, if there is no attorney of record for the child, to the child, and the child's tribe, if applicable, by means prescribed by subdivision (c) of Section 297. The court shall order the child or the social worker or probation officer to give prior notice of the hearing to the child's former parent or parents whose parental rights were terminated in the manner prescribed by subdivision (f) of Section 294 where the recommendation is adoption. The juvenile court shall grant the petition if it finds by clear and convincing evidence that the child is no longer likely to be adopted and that reinstatement of parental rights is in the child's best interest. If the court reinstates parental rights over a child who is under 12 years of age and for whom the new permanent plan will not be reunification with a parent or legal guardian, the court shall specify the factual basis for its findings that it is in the best interest of the child to reinstate parental rights. This subdivision is intended to be retroactive and applies to any child who is under the jurisdiction of the juvenile court at the time of the hearing regardless of the date parental rights were terminated.

(j) If the court, by order or judgment, declares the child free from the custody and control of both parents, or one parent if the other does not have custody and control, the court shall at the same time order the child referred to the State Department of Social Services or a licensed adoption agency for adoptive placement by the agency. However, a petition for adoption may not be granted until the appellate rights of the natural parents have been exhausted. The State Department of Social Services or licensed adoption agency shall be responsible for the custody and supervision of the child and shall be entitled to the exclusive care and control of the child at all times until a petition for adoption is granted, except as specified in subdivision (n). With the consent of the agency, the court may appoint a guardian of the child, who shall serve until the child is adopted.

(k) Notwithstanding any other provision of law, the application of any person who, as a relative caretaker or foster parent, has cared for a dependent child for whom the court has approved a permanent plan for adoption, or who has been freed for adoption, shall be given preference with respect to that child over all other applications for adoptive placement if the agency making the placement determines that the child has substantial emotional ties to the relative caretaker or foster parent

and removal from the relative caretaker or foster parent would be seriously detrimental to the child's emotional well-being.

As used in this subdivision, "preference" means that the application shall be processed and, if satisfactory, the family study shall be completed before the processing of the application of any other person for the adoptive placement of the child.

(l) (1) An order by the court that a hearing pursuant to this section be held is not appealable at any time unless all of the following apply:

(A) A petition for extraordinary writ review was filed in a timely manner.

(B) The petition substantively addressed the specific issues to be challenged and supported that challenge by an adequate record.

(C) The petition for extraordinary writ review was summarily denied or otherwise not decided on the merits.

(2) Failure to file a petition for extraordinary writ review within the period specified by rule, to substantively address the specific issues challenged, or to support that challenge by an adequate record shall preclude subsequent review by appeal of the findings and orders made pursuant to this section.

(3) The Judicial Council shall adopt rules of court, effective January 1, 1995, to ensure all of the following:

(A) A trial court, after issuance of an order directing a hearing pursuant to this section be held, shall advise all parties of the requirement of filing a petition for extraordinary writ review as set forth in this subdivision in order to preserve any right to appeal in these issues. This notice shall be made orally to a party if the party is present at the time of the making of the order or by first-class mail by the clerk of the court to the last known address of a party not present at the time of the making of the order.

(B) The prompt transmittal of the records from the trial court to the appellate court.

(C) That adequate time requirements for counsel and court personnel exist to implement the objective of this subdivision.

(D) That the parent or guardian, or their trial counsel or other counsel, is charged with the responsibility of filing a petition for extraordinary writ relief pursuant to this subdivision.

(4) The intent of this subdivision is to do both of the following:

(A) Make every reasonable attempt to achieve a substantive and meritorious review by the appellate court within the time specified in Sections 366.21 and 366.22 for holding a hearing pursuant to this section.

(B) Encourage the appellate court to determine all writ petitions filed pursuant to this subdivision on their merits.

(5) This subdivision shall only apply to cases in which an order to set a hearing pursuant to this section is issued on or after January 1, 1995.

(m) Except for subdivision (j), this section shall also apply to minors adjudged wards pursuant to Section 727.31.

(n) (1) Notwithstanding Section 8704 of the Family Code or any other provision of law, the court, at a hearing held pursuant to this section or anytime thereafter, may designate a current caretaker as a prospective adoptive parent if the child has lived with the caretaker for at least six months, the caretaker currently expresses a commitment to adopt the child, and the caretaker has taken at least one step to facilitate the adoption process. In determining whether to make that designation, the court may take into consideration whether the caretaker is listed in the preliminary assessment prepared by the county department in accordance with subdivision (i) of Section 366.21 as an appropriate person to be considered as an adoptive parent for the child and the recommendation of the State Department of Social Services or licensed adoption agency.

(2) For purposes of this subdivision, steps to facilitate the adoption process include, but are not limited to, the following:

- (A) Applying for an adoption homestudy.
- (B) Cooperating with an adoption homestudy.
- (C) Being designated by the court or the licensed adoption agency as the adoptive family.
- (D) Requesting de facto parent status.
- (E) Signing an adoptive placement agreement.
- (F) Engaging in discussions regarding a postadoption contact agreement.
- (G) Working to overcome any impediments that have been identified by the State Department of Social Services and the licensed adoption agency.

(H) Attending classes required of prospective adoptive parents.

(3) Prior to a change in placement and as soon as possible after a decision is made to remove a child from the home of a designated prospective adoptive parent, the agency shall notify the court, the designated prospective adoptive parent or the current caretaker, if that caretaker would have met the threshold criteria to be designated as a prospective adoptive parent pursuant to paragraph (1) on the date of service of this notice, the child's attorney, and the child, if the child is 10 years of age or older, of the proposal in the manner described in Section 16010.6.

(A) Within five court days or seven calendar days, whichever is longer, of the date of notification, the child, the child's attorney, or the designated prospective adoptive parent may file a petition with the court objecting to the proposal to remove the child, or the court, upon its own motion,

may set a hearing regarding the proposal. The court may, for good cause, extend the filing period. A caretaker who would have met the threshold criteria to be designated as a prospective adoptive parent pursuant to paragraph (1) on the date of service of the notice of proposed removal of the child may file, together with the petition under this subparagraph, a petition for an order designating the caretaker as a prospective adoptive parent for purposes of this subdivision.

(B) A hearing ordered pursuant to this paragraph shall be held as soon as possible and not later than five court days after the petition is filed with the court or the court sets a hearing upon its own motion, unless the court for good cause is unable to set the matter for hearing five court days after the petition is filed, in which case the court shall set the matter for hearing as soon as possible. At the hearing, the court shall determine whether the caretaker has met the threshold criteria to be designated as a prospective adoptive parent pursuant to paragraph (1), and whether the proposed removal of the child from the home of the designated prospective adoptive parent is in the child's best interest, and the child may not be removed from the home of the designated prospective adoptive parent unless the court finds that removal is in the child's best interest. If the court determines that the caretaker did not meet the threshold criteria to be designated as a prospective adoptive parent on the date of service of the notice of proposed removal of the child, the petition objecting to the proposed removal filed by the caretaker shall be dismissed. If the caretaker was designated as a prospective adoptive parent prior to this hearing, the court shall inquire into any progress made by the caretaker towards the adoption of the child since the caretaker was designated as a prospective adoptive parent.

(C) A determination by the court that the caretaker is a designated prospective adoptive parent pursuant to paragraph (1) or subparagraph (B) does not make the caretaker a party to the dependency proceeding nor does it confer on the caretaker any standing to object to any other action of the department or licensed adoption agency, unless the caretaker has been declared a de facto parent by the court prior to the notice of removal served pursuant to paragraph (3).

(D) If a petition objecting to the proposal to remove the child is not filed, and the court, upon its own motion, does not set a hearing, the child may be removed from the home of the designated prospective adoptive parent without a hearing.

(4) Notwithstanding paragraph (3), if the State Department of Social Services or a licensed adoption agency determines that the child must be removed from the home of the caretaker who is or may be a designated prospective adoptive parent immediately, due to a risk of physical or emotional harm, the agency may remove the child from that home and

is not required to provide notice prior to the removal. However, as soon as possible and not longer than two court days after the removal, the agency shall notify the court, the caretaker who is or may be a designated prospective adoptive parent, the child's attorney, and the child, if the child is 10 years of age or older, of the removal. Within five court days or seven calendar days, whichever is longer, of the date of notification of the removal, the child, the child's attorney, or the caretaker who is or may be a designated prospective adoptive parent may petition for, or the court on its own motion may set, a noticed hearing pursuant to paragraph (3). The court may, for good cause, extend the filing period.

(5) Except as provided in subdivision (b) of Section 366.28, an order by the court issued after a hearing pursuant to this subdivision shall not be appealable.

(6) Nothing in this section shall preclude a county child protective services agency from fully investigating and responding to alleged abuse or neglect of a child pursuant to Section 11165.5 of the Penal Code.

(7) The Judicial Council shall prepare forms to facilitate the filing of the petitions described in this subdivision, which shall become effective on January 1, 2006.

(o) The implementation and operation of the amendments to paragraph (3) of subdivision (c) and subparagraph (A) of paragraph (4) of subdivision (c) enacted at the 2005-06 Regular Session shall be subject to appropriation through the budget process and by phase, as provided in Section 366.35.

SEC. 1.6. Section 366.26 of the Welfare and Institutions Code is amended to read:

366.26. (a) This section applies to children who are adjudged dependent children of the juvenile court pursuant to subdivision (c) of Section 360. The procedures specified in this section are the exclusive procedures for conducting these hearings; Part 2 (commencing with Section 3020) of Division 8 of the Family Code is not applicable to these proceedings. Section 8714.7 of the Family Code is applicable and available to all dependent children meeting the requirements of that section, if the postadoption contact agreement has been entered into voluntarily. For children who are adjudged dependent children of the juvenile court pursuant to subdivision (c) of Section 360, this section and Sections 8604, 8605, 8606, and 8700 of the Family Code and Chapter 5 (commencing with Section 7660) of Part 3 of Division 12 of the Family Code specify the exclusive procedures for permanently terminating parental rights with regard to, or establishing legal guardianship of, the child while the child is a dependent child of the juvenile court.

(b) At the hearing, which shall be held in juvenile court for all children who are dependents of the juvenile court, the court, in order to provide

stable, permanent homes for these children, shall review the report as specified in Section 361.5, 366.21, or 366.22, shall indicate that the court has read and considered it, shall receive other evidence that the parties may present, and then shall make findings and orders in the following order of preference:

(1) Terminate the rights of the parent or parents and order that the child be placed for adoption and, upon the filing of a petition for adoption in the juvenile court, order that a hearing be set. The court shall proceed with the adoption after the appellate rights of the natural parents have been exhausted.

(2) On making a finding under paragraph (3) of subdivision (c), identify adoption as the permanent placement goal and order that efforts be made to locate an appropriate adoptive family for the child within a period not to exceed 180 days.

(3) Appoint a legal guardian for the child and order that letters of guardianship issue.

(4) Order that the child be placed in long-term foster care, subject to the periodic review of the juvenile court under Section 366.3.

In choosing among the above alternatives, the court shall proceed pursuant to subdivision (c).

(c) (1) If the court determines, based on the assessment provided as ordered under subdivision (i) of Section 366.21 or subdivision (b) of Section 366.22, and any other relevant evidence, by a clear and convincing standard, that it is likely the child will be adopted, the court shall terminate parental rights and order the child placed for adoption. The fact that the child is not yet placed in a preadoptive home nor with a relative or foster family who is prepared to adopt the child, shall not constitute a basis for the court to conclude that it is not likely the child will be adopted. A finding under subdivision (b) or paragraph (1) of subdivision (e) of Section 361.5 that reunification services shall not be offered, under subdivision (e) of Section 366.21 that the whereabouts of a parent have been unknown for six months or that the parent has failed to visit or contact the child for six months or that the parent has been convicted of a felony indicating parental unfitness, or, under Section 366.21 or 366.22, that the court has continued to remove the child from the custody of the parent or guardian and has terminated reunification services, shall constitute a sufficient basis for termination of parental rights unless the court finds a compelling reason for determining that termination would be detrimental to the child due to one or more of the following circumstances:

(A) The parents or guardians have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship.

(B) A child 12 years of age or older objects to termination of parental rights.

(C) The child is placed in a residential treatment facility, adoption is unlikely or undesirable, and continuation of parental rights will not prevent finding the child a permanent family placement if the parents cannot resume custody when residential care is no longer needed.

(D) The child is living with a relative or foster parent who is unable or unwilling to adopt the child because of exceptional circumstances, that do not include an unwillingness to accept legal or financial responsibility for the child, but who is willing and capable of providing the child with a stable and permanent environment and the removal of the child from the physical custody of his or her relative or foster parent would be detrimental to the emotional well-being of the child. This subparagraph does not apply to any child who is living with a nonrelative and who is either (i) under six years of age or (ii) a member of a sibling group where at least one child is under six years of age and the siblings are, or should be, permanently placed together.

(E) There would be substantial interference with a child's sibling relationship, taking into consideration the nature and extent of the relationship, including, but not limited to, whether the child was raised with a sibling in the same home, whether the child shared significant common experiences or has existing close and strong bonds with a sibling, and whether ongoing contact is in the child's best interest, including the child's long-term emotional interest, as compared to the benefit of legal permanence through adoption.

If the court finds that termination of parental rights would be detrimental to the child pursuant to subparagraph (A), (B), (C), (D), or (E), it shall state its reasons in writing or on the record.

(2) The court shall not terminate parental rights if at each and every hearing at which the court was required to consider reasonable efforts or services, the court has found that reasonable efforts were not made or that reasonable services were not offered or provided.

(3) If the court finds that termination of parental rights would not be detrimental to the child pursuant to paragraph (1) and that the child has a probability for adoption but is difficult to place for adoption and there is no identified or available prospective adoptive parent, the court may identify adoption as the permanent placement goal and without terminating parental rights, order that efforts be made to locate an appropriate adoptive family for the child within a period not to exceed 180 days. During this 180-day period, the public agency responsible for seeking adoptive parents for each child shall, to the extent possible, ask each child who is 10 years of age or older, to identify any individuals, other than the child's siblings, who are important to the child, in order

to identify potential adoptive parents. The public agency may ask any other child to provide that information, as appropriate. During the 180-day period, the public agency shall, to the extent possible, contact other private and public adoption agencies regarding the availability of the child for adoption. During the 180-day period, the public agency shall conduct the search for adoptive parents in the same manner as prescribed for children in Sections 8708 and 8709 of the Family Code. At the expiration of this period, another hearing shall be held and the court shall proceed pursuant to paragraph (1) or (3) of subdivision (b). For purposes of this section, a child may only be found to be difficult to place for adoption if there is no identified or available prospective adoptive parent for the child because of the child's membership in a sibling group, or the presence of a diagnosed medical, physical, or mental handicap, or the child is the age of seven years or more.

(4) (A) If the court finds that adoption of the child or termination of parental rights is not in the best interest of the child, because one of the conditions in subparagraph (A), (B), (C), (D), or (E) of paragraph (1) or in paragraph (2) applies, the court shall either order that the present caretakers or other appropriate persons shall become legal guardians of the child or order that the child remain in long-term foster care. Legal guardianship shall be considered before long-term foster care, if it is in the best interest of the child and if a suitable guardian can be found. A child who is 10 years of age or older, shall be asked to identify any individuals, other than the child's siblings, who are important to the child, in order to identify potential guardians. The agency may ask any other child to provide that information, as appropriate.

(B) If the child is living with a relative or a foster parent who is willing and capable of providing a stable and permanent environment, but not willing to become a legal guardian, the child shall not be removed from the home if the court finds the removal would be seriously detrimental to the emotional well-being of the child because the child has substantial psychological ties to the relative caretaker or foster parents.

(C) The court shall also make an order for visitation with the parents or guardians unless the court finds by a preponderance of the evidence that the visitation would be detrimental to the physical or emotional well-being of the child.

(5) If the court finds that the child should not be placed for adoption, that legal guardianship shall not be established, and that there are no suitable foster parents except exclusive-use homes available to provide the child with a stable and permanent environment, the court may order the care, custody, and control of the child transferred from the county welfare department to a licensed foster family agency. The court shall consider the written recommendation of the county welfare director

regarding the suitability of the transfer. The transfer shall be subject to further court orders.

The licensed foster family agency shall place the child in a suitable licensed or exclusive-use home that has been certified by the agency as meeting licensing standards. The licensed foster family agency shall be responsible for supporting the child and providing appropriate services to the child, including those services ordered by the court. Responsibility for the support of the child shall not, in and of itself, create liability on the part of the foster family agency to third persons injured by the child. Those children whose care, custody, and control are transferred to a foster family agency shall not be eligible for foster care maintenance payments or child welfare services, except for emergency response services pursuant to Section 16504.

(d) The proceeding for the appointment of a guardian for a child who is a dependent of the juvenile court shall be in the juvenile court. If the court finds pursuant to this section that legal guardianship is the appropriate permanent plan, it shall appoint the legal guardian and issue letters of guardianship. The assessment prepared pursuant to subdivision (g) of Section 361.5, subdivision (i) of Section 366.21, and subdivision (b) of Section 366.22 shall be read and considered by the court prior to the appointment, and this shall be reflected in the minutes of the court. The person preparing the assessment may be called and examined by any party to the proceeding.

(e) The proceeding for the adoption of a child who is a dependent of the juvenile court shall be in the juvenile court if the court finds pursuant to this section that adoption is the appropriate permanent plan and the petition for adoption is filed in the juvenile court. Upon the filing of a petition for adoption, the juvenile court shall order that an adoption hearing be set. The court shall proceed with the adoption after the appellate rights of the natural parents have been exhausted. The full report required by Section 8715 of the Family Code shall be read and considered by the court prior to the adoption and this shall be reflected in the minutes of the court. The person preparing the report may be called and examined by any party to the proceeding. It is the intent of the Legislature, pursuant to this subdivision, to give potential adoptive parents the option of filing in the juvenile court the petition for the adoption of a child who is a dependent of the juvenile court. Nothing in this section is intended to prevent the filing of a petition for adoption in any other court as permitted by law, instead of in the juvenile court.

(f) At the beginning of any proceeding pursuant to this section, if the child or the parents are not being represented by previously retained or appointed counsel, including, in the case of any child who is not a lawful permanent resident or citizen of the United States, counsel appointed

pursuant to subdivision (i) of Section 317, the court shall proceed as follows:

(1) In accordance with subdivision (c) of Section 317, if a child before the court is without counsel, the court shall appoint counsel unless the court finds that the child would not benefit from the appointment of counsel. The court shall state on the record its reasons for that finding.

(2) If a parent appears without counsel and is unable to afford counsel, the court shall appoint counsel for the parent, unless this representation is knowingly and intelligently waived. The same counsel shall not be appointed to represent both the child and his or her parent. The public defender or private counsel may be appointed as counsel for the parent.

(3) Private counsel appointed under this section shall receive a reasonable sum for compensation and expenses, the amount of which shall be determined by the court. The amount shall be paid by the real parties in interest, other than the child, in any proportions the court deems just. However, if the court finds that any of the real parties in interest are unable to afford counsel, the amount shall be paid out of the general fund of the county.

(g) The court may continue the proceeding for a period of time not to exceed 30 days as necessary to appoint counsel, and to enable counsel to become acquainted with the case.

(h) (1) At all proceedings under this section, the court shall consider the wishes of the child and shall act in the best interests of the child.

(2) In accordance with Section 349, the child shall be present in court if the child or the child's counsel so requests or the court so orders. If the child is 10 years of age or older and is not present at a hearing held pursuant to this section, the court shall determine whether the minor was properly notified of his or her right to attend the hearing and inquire as to the reason why the child is not present.

(3) (A) The testimony of the child may be taken in chambers and outside the presence of the child's parent or parents, if the child's parent or parents are represented by counsel, the counsel is present, and any of the following circumstances exist:

(i) The court determines that testimony in chambers is necessary to ensure truthful testimony.

(ii) The child is likely to be intimidated by a formal courtroom setting.

(iii) The child is afraid to testify in front of his or her parent or parents.

(B) After testimony in chambers, the parent or parents of the child may elect to have the court reporter read back the testimony or have the testimony summarized by counsel for the parent or parents.

(C) The testimony of a child also may be taken in chambers and outside the presence of the guardian or guardians of a child under the circumstances specified in this subdivision.

(i) Any order of the court permanently terminating parental rights under this section shall be conclusive and binding upon the child, upon the parent or parents and upon all other persons who have been served with a citation by publication or otherwise as provided in this chapter. After making the order, the court shall have no power to set aside, change, or modify it, but nothing in this section shall be construed to limit the right to appeal the order.

(j) If the court, by order or judgment, declares the child free from the custody and control of both parents, or one parent if the other does not have custody and control, the court shall at the same time order the child referred to the State Department of Social Services or a licensed adoption agency for adoptive placement by the agency. However, a petition for adoption may not be granted until the appellate rights of the natural parents have been exhausted. The State Department of Social Services or licensed adoption agency shall be responsible for the custody and supervision of the child and shall be entitled to the exclusive care and control of the child at all times until a petition for adoption is granted, except as specified in subdivision (n). With the consent of the agency, the court may appoint a guardian of the child, who shall serve until the child is adopted.

(k) Notwithstanding any other provision of law, the application of any person who, as a relative caretaker or foster parent, has cared for a dependent child for whom the court has approved a permanent plan for adoption, or who has been freed for adoption, shall be given preference with respect to that child over all other applications for adoptive placement if the agency making the placement determines that the child has substantial emotional ties to the relative caretaker or foster parent and removal from the relative caretaker or foster parent would be seriously detrimental to the child's emotional well-being.

As used in this subdivision, "preference" means that the application shall be processed and, if satisfactory, the family study shall be completed before the processing of the application of any other person for the adoptive placement of the child.

(l) (1) An order by the court that a hearing pursuant to this section be held is not appealable at any time unless all of the following applies:

(A) A petition for extraordinary writ review was filed in a timely manner.

(B) The petition substantively addressed the specific issues to be challenged and supported that challenge by an adequate record.

(C) The petition for extraordinary writ review was summarily denied or otherwise not decided on the merits.

(2) Failure to file a petition for extraordinary writ review within the period specified by rule, to substantively address the specific issues

challenged, or to support that challenge by an adequate record shall preclude subsequent review by appeal of the findings and orders made pursuant to this section.

(3) The Judicial Council shall adopt rules of court, effective January 1, 1995, to ensure all of the following:

(A) A trial court, after issuance of an order directing a hearing pursuant to this section be held, shall advise all parties of the requirement of filing a petition for extraordinary writ review as set forth in this subdivision in order to preserve any right to appeal in these issues. This notice shall be made orally to a party if the party is present at the time of the making of the order or by first-class mail by the clerk of the court to the last known address of a party not present at the time of the making of the order.

(B) The prompt transmittal of the records from the trial court to the appellate court.

(C) That adequate time requirements for counsel and court personnel exist to implement the objective of this subdivision.

(D) That the parent or guardian, or their trial counsel or other counsel, is charged with the responsibility of filing a petition for extraordinary writ relief pursuant to this subdivision.

(4) The intent of this subdivision is to do both of the following:

(A) Make every reasonable attempt to achieve a substantive and meritorious review by the appellate court within the time specified in Sections 366.21 and 366.22 for holding a hearing pursuant to this section.

(B) Encourage the appellate court to determine all writ petitions filed pursuant to this subdivision on their merits.

(5) This subdivision shall only apply to cases in which an order to set a hearing pursuant to this section is issued on or after January 1, 1995.

(m) Except for subdivision (j), this section shall also apply to minors adjudged wards pursuant to Section 727.31.

(n) (1) Notwithstanding Section 8704 of the Family Code or any other provision of law, the court, at a hearing held pursuant to this section or anytime thereafter, may designate a current caretaker as a prospective adoptive parent if the child has lived with the caretaker for at least six months, the caretaker currently expresses a commitment to adopt the child, and the caretaker has taken at least one step to facilitate the adoption process. In determining whether to make that designation, the court may take into consideration whether the caretaker is listed in the preliminary assessment prepared by the county department in accordance with subdivision (i) of Section 366.21 as an appropriate person to be considered as an adoptive parent for the child and the recommendation of the State Department of Social Services or licensed adoption agency.

(2) For purposes of this subdivision, steps to facilitate the adoption process include, but are not limited to, the following:

- (A) Applying for an adoption homestudy.
- (B) Cooperating with an adoption homestudy.
- (C) Being designated by the court or the licensed adoption agency as the adoptive family.
- (D) Requesting de facto parent status.
- (E) Signing an adoptive placement agreement.
- (F) Engaging in discussions regarding a postadoption contact agreement.
- (G) Working to overcome any impediments that have been identified by the State Department of Social Services and the licensed adoption agency.

(H) Attending classes required of prospective adoptive parents.

(3) Prior to a change in placement and as soon as possible after a decision is made to remove a child from the home of a designated prospective adoptive parent, the agency shall notify the court, the designated prospective adoptive parent or the current caretaker, if that caretaker would have met the threshold criteria to be designated as a prospective adoptive parent pursuant to paragraph (1) on the date of service of this notice, the child's attorney, and the child, if the child is 10 years of age or older, of the proposal in the manner described in Section 16010.6.

(A) Within five court days or seven calendar days, whichever is longer, of the date of notification, the child, the child's attorney, or the designated prospective adoptive parent may file a petition with the court objecting to the proposal to remove the child, or the court, upon its own motion, may set a hearing regarding the proposal. The court may, for good cause, extend the filing period. A caretaker who would have met the threshold criteria to be designated as a prospective adoptive parent pursuant to paragraph (1) on the date of service of the notice of proposed removal of the child may file, together with the petition under this subparagraph, a petition for an order designating the caretaker as a prospective adoptive parent for purposes of this subdivision.

(B) A hearing ordered pursuant to this paragraph shall be held as soon as possible and not later than five court days after the petition is filed with the court or the court sets a hearing upon its own motion, unless the court for good cause is unable to set the matter for hearing five court days after the petition is filed, in which case the court shall set the matter for hearing as soon as possible. At the hearing, the court shall determine whether the caretaker has met the threshold criteria to be designated as a prospective adoptive parent pursuant to paragraph (1), and whether the proposed removal of the child from the home of the designated

prospective adoptive parent is in the child's best interest, and the child may not be removed from the home of the designated prospective adoptive parent unless the court finds that removal is in the child's best interest. If the court determines that the caretaker did not meet the threshold criteria to be designated as a prospective adoptive parent on the date of service of the notice of proposed removal of the child, the petition objecting to the proposed removal filed by the caretaker shall be dismissed. If the caretaker was designated as a prospective adoptive parent prior to this hearing, the court shall inquire into any progress made by the caretaker towards the adoption of the child since the caretaker was designated as a prospective adoptive parent.

(C) A determination by the court that the caretaker is a designated prospective adoptive parent pursuant to paragraph (1) or subparagraph (B) does not make the caretaker a party to the dependency proceeding nor does it confer on the caretaker any standing to object to any other action of the department or licensed adoption agency, unless the caretaker has been declared a de facto parent by the court prior to the notice of removal served pursuant to paragraph (3).

(D) If a petition objecting to the proposal to remove the child is not filed, and the court, upon its own motion, does not set a hearing, the child may be removed from the home of the designated prospective adoptive parent without a hearing.

(4) Notwithstanding paragraph (3), if the State Department of Social Services or a licensed adoption agency determines that the child must be removed from the home of the caretaker who is or may be a designated prospective adoptive parent immediately, due to a risk of physical or emotional harm, the agency may remove the child from that home and is not required to provide notice prior to the removal. However, as soon as possible and not longer than two court days after the removal, the agency shall notify the court, the caretaker who is or may be a designated prospective adoptive parent, the child's attorney, and the child, if the child is 10 years of age or older, of the removal. Within five court days or seven calendar days, whichever is longer, of the date of notification of the removal, the child, the child's attorney, or the caretaker who is or may be a designated prospective adoptive parent may petition for, or the court on its own motion may set, a noticed hearing pursuant to paragraph (3). The court may, for good cause, extend the filing period.

(5) Except as provided in subdivision (b) of Section 366.28, an order by the court issued after a hearing pursuant to this subdivision shall not be appealable.

(6) Nothing in this section shall preclude a county child protective services agency from fully investigating and responding to alleged abuse or neglect of a child pursuant to Section 11165.5 of the Penal Code.

(7) The Judicial Council shall prepare forms to facilitate the filing of the petitions described in this subdivision, which shall become effective on January 1, 2006.

(o) The implementation and operation of the amendments to paragraph (3) of subdivision (c) and subparagraph (A) of paragraph (4) of subdivision (c) enacted at the 2005-06 Regular Session shall be subject to appropriation through the budget process and by phase, as provided in Section 366.35.

SEC. 1.7 Section 366.26 of the Welfare and Institutions Code is amended to read:

366.26. (a) This section applies to children who are adjudged dependent children of the juvenile court pursuant to subdivision (c) of Section 360. The procedures specified in this section are the exclusive procedures for conducting these hearings; Part 2 (commencing with Section 3020) of Division 8 of the Family Code is not applicable to these proceedings. Section 8714.7 of the Family Code is applicable and available to all dependent children meeting the requirements of that section, if the postadoption contact agreement has been entered into voluntarily. For children who are adjudged dependent children of the juvenile court pursuant to subdivision (c) of Section 360, this section and Sections 8604, 8605, 8606, and 8700 of the Family Code and Chapter 5 (commencing with Section 7660) of Part 3 of Division 12 of the Family Code specify the exclusive procedures for permanently terminating parental rights with regard to, or establishing legal guardianship of, the child while the child is a dependent child of the juvenile court.

(b) At the hearing, which shall be held in juvenile court for all children who are dependents of the juvenile court, the court, in order to provide stable, permanent homes for these children, shall review the report as specified in Section 361.5, 366.21, or 366.22, shall indicate that the court has read and considered it, shall receive other evidence that the parties may present, and then shall make findings and orders in the following order of preference:

(1) Terminate the rights of the parent or parents and order that the child be placed for adoption and, upon the filing of a petition for adoption in the juvenile court, order that a hearing be set. The court shall proceed with the adoption after the appellate rights of the natural parents have been exhausted.

(2) On making a finding under paragraph (3) of subdivision (c), identify adoption as the permanent placement goal and order that efforts be made to locate an appropriate adoptive family for the child within a period not to exceed 180 days.

(3) Appoint a legal guardian for the child and order that letters of guardianship issue.

(4) Order that the child be placed in long-term foster care, subject to the periodic review of the juvenile court under Section 366.3.

In choosing among the above alternatives, the court shall proceed pursuant to subdivision (c).

(c) (1) If the court determines, based on the assessment provided as ordered under subdivision (i) of Section 366.21 or subdivision (b) of Section 366.22, and any other relevant evidence, by a clear and convincing standard, that it is likely the child will be adopted, the court shall terminate parental rights and order the child placed for adoption. The fact that the child is not yet placed in a preadoptive home nor with a relative or foster family who is prepared to adopt the child, shall not constitute a basis for the court to conclude that it is not likely the child will be adopted. A finding under subdivision (b) or paragraph (1) of subdivision (e) of Section 361.5 that reunification services shall not be offered, under subdivision (e) of Section 366.21 that the whereabouts of a parent have been unknown for six months or that the parent has failed to visit or contact the child for six months or that the parent has been convicted of a felony indicating parental unfitness, or, under Section 366.21 or 366.22, that the court has continued to remove the child from the custody of the parent or guardian and has terminated reunification services, shall constitute a sufficient basis for termination of parental rights unless the court finds a compelling reason for determining that termination would be detrimental to the child due to one or more of the following circumstances:

(A) The parents or guardians have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship.

(B) A child 12 years of age or older objects to termination of parental rights.

(C) The child is placed in a residential treatment facility, adoption is unlikely or undesirable, and continuation of parental rights will not prevent finding the child a permanent family placement if the parents cannot resume custody when residential care is no longer needed.

(D) The child is living with a relative or foster parent who is unable or unwilling to adopt the child because of exceptional circumstances, that do not include an unwillingness to accept legal or financial responsibility for the child, but who is willing and capable of providing the child with a stable and permanent environment and the removal of the child from the physical custody of his or her relative or foster parent would be detrimental to the emotional well-being of the child. This subparagraph does not apply to any child who is living with a nonrelative and who is either (i) under six years of age or (ii) a member of a sibling

group where at least one child is under six years of age and the siblings are, or should be, permanently placed together.

(E) There would be substantial interference with a child's sibling relationship, taking into consideration the nature and extent of the relationship, including, but not limited to, whether the child was raised with a sibling in the same home, whether the child shared significant common experiences or has existing close and strong bonds with a sibling, and whether ongoing contact is in the child's best interest, including the child's long-term emotional interest, as compared to the benefit of legal permanence through adoption.

If the court finds that termination of parental rights would be detrimental to the child pursuant to subparagraph (A), (B), (C), (D), or (E), it shall state its reasons in writing or on the record.

(2) The court shall not terminate parental rights if at each hearing at which the court was required to consider reasonable efforts or services, the court has found that reasonable efforts were not made or that reasonable services were not offered or provided.

(3) If the court finds that termination of parental rights would not be detrimental to the child pursuant to paragraph (1) and that the child has a probability for adoption but is difficult to place for adoption and there is no identified or available prospective adoptive parent, the court may identify adoption as the permanent placement goal and without terminating parental rights, order that efforts be made to locate an appropriate adoptive family for the child within a period not to exceed 180 days. During this 180-day period, the public agency responsible for seeking adoptive parents for each child shall, to the extent possible, ask each child who is 10 years of age or older, to identify any individuals, other than the child's siblings, who are important to the child, in order to identify potential adoptive parents. The public agency may ask any other child to provide that information, as appropriate. During the 180-day period, the public agency shall, to the extent possible, contact other private and public adoption agencies regarding the availability of the child for adoption. During the 180-day period, the public agency shall conduct the search for adoptive parents in the same manner as prescribed for children in Sections 8708 and 8709 of the Family Code. At the expiration of this period, another hearing shall be held and the court shall proceed pursuant to paragraph (1) or (3) of subdivision (b). For purposes of this section, a child may only be found to be difficult to place for adoption if there is no identified or available prospective adoptive parent for the child because of the child's membership in a sibling group, or the presence of a diagnosed medical, physical, or mental handicap, or the child is the age of seven years or more.

(4) (A) If the court finds that adoption of the child or termination of parental rights is not in the best interest of the child, because one of the conditions in subparagraph (A), (B), (C), (D), or (E) of paragraph (1) or in paragraph (2) applies, the court shall either order that the present caretakers or other appropriate persons shall become legal guardians of the child or order that the child remain in long-term foster care. Legal guardianship shall be considered before long-term foster care, if it is in the best interest of the child and if a suitable guardian can be found. A child who is 10 years of age or older, shall be asked to identify any individuals, other than the child's siblings, who are important to the child, in order to identify potential guardians. The agency may ask any other child to provide that information, as appropriate.

(B) If the child is living with a relative or a foster parent who is willing and capable of providing a stable and permanent environment, but not willing to become a legal guardian, the child shall not be removed from the home if the court finds the removal would be seriously detrimental to the emotional well-being of the child because the child has substantial psychological ties to the relative caretaker or foster parents.

(C) The court shall also make an order for visitation with the parents or guardians unless the court finds by a preponderance of the evidence that the visitation would be detrimental to the physical or emotional well-being of the child.

(5) If the court finds that the child should not be placed for adoption, that legal guardianship shall not be established, and that there are no suitable foster parents except exclusive-use homes available to provide the child with a stable and permanent environment, the court may order the care, custody, and control of the child transferred from the county welfare department to a licensed foster family agency. The court shall consider the written recommendation of the county welfare director regarding the suitability of the transfer. The transfer shall be subject to further court orders.

The licensed foster family agency shall place the child in a suitable licensed or exclusive-use home that has been certified by the agency as meeting licensing standards. The licensed foster family agency shall be responsible for supporting the child and providing appropriate services to the child, including those services ordered by the court. Responsibility for the support of the child shall not, in and of itself, create liability on the part of the foster family agency to third persons injured by the child. Those children whose care, custody, and control are transferred to a foster family agency shall not be eligible for foster care maintenance payments or child welfare services, except for emergency response services pursuant to Section 16504.

(d) The proceeding for the appointment of a guardian for a child who is a dependent of the juvenile court shall be in the juvenile court. If the court finds pursuant to this section that legal guardianship is the appropriate permanent plan, it shall appoint the legal guardian and issue letters of guardianship. The assessment prepared pursuant to subdivision (g) of Section 361.5, subdivision (i) of Section 366.21, and subdivision (b) of Section 366.22 shall be read and considered by the court prior to the appointment, and this shall be reflected in the minutes of the court. The person preparing the assessment may be called and examined by any party to the proceeding.

(e) The proceeding for the adoption of a child who is a dependent of the juvenile court shall be in the juvenile court if the court finds pursuant to this section that adoption is the appropriate permanent plan and the petition for adoption is filed in the juvenile court. Upon the filing of a petition for adoption, the juvenile court shall order that an adoption hearing be set. The court shall proceed with the adoption after the appellate rights of the natural parents have been exhausted. The full report required by Section 8715 of the Family Code shall be read and considered by the court prior to the adoption and this shall be reflected in the minutes of the court. The person preparing the report may be called and examined by any party to the proceeding. It is the intent of the Legislature, pursuant to this subdivision, to give potential adoptive parents the option of filing in the juvenile court the petition for the adoption of a child who is a dependent of the juvenile court. Nothing in this section is intended to prevent the filing of a petition for adoption in any other court as permitted by law, instead of in the juvenile court.

(f) At the beginning of any proceeding pursuant to this section, if the child or the parents are not being represented by previously retained or appointed counsel, including, in the case of any child who is not a lawful permanent resident or citizen of the United States, counsel appointed pursuant to subdivision (i) of Section 317, the court shall proceed as follows:

(1) In accordance with subdivision (c) of Section 317, if a child before the court is without counsel, the court shall appoint counsel unless the court finds that the child would not benefit from the appointment of counsel. The court shall state on the record its reasons for that finding.

(2) If a parent appears without counsel and is unable to afford counsel, the court shall appoint counsel for the parent, unless this representation is knowingly and intelligently waived. The same counsel shall not be appointed to represent both the child and his or her parent. The public defender or private counsel may be appointed as counsel for the parent.

(3) Private counsel appointed under this section shall receive a reasonable sum for compensation and expenses, the amount of which

shall be determined by the court. The amount shall be paid by the real parties in interest, other than the child, in any proportions the court deems just. However, if the court finds that any of the real parties in interest are unable to afford counsel, the amount shall be paid out of the general fund of the county.

(g) The court may continue the proceeding for a period of time not to exceed 30 days as necessary to appoint counsel, and to enable counsel to become acquainted with the case.

(h) (1) At all proceedings under this section, the court shall consider the wishes of the child and shall act in the best interests of the child.

(2) In accordance with Section 349, the child shall be present in court if the child or the child's counsel so requests or the court so orders. If the child is 10 years of age or older and is not present at a hearing held pursuant to this section, the court shall determine whether the minor was properly notified of his or her right to attend the hearing and inquire as to the reason why the child is not present.

(3) (A) The testimony of the child may be taken in chambers and outside the presence of the child's parent or parents, if the child's parent or parents are represented by counsel, the counsel is present, and any of the following circumstances exists:

(i) The court determines that testimony in chambers is necessary to ensure truthful testimony.

(ii) The child is likely to be intimidated by a formal courtroom setting.

(iii) The child is afraid to testify in front of his or her parent or parents.

(B) After testimony in chambers, the parent or parents of the child may elect to have the court reporter read back the testimony or have the testimony summarized by counsel for the parent or parents.

(C) The testimony of a child also may be taken in chambers and outside the presence of the guardian or guardians of a child under the circumstances specified in this subdivision.

(i) (1) Any order of the court permanently terminating parental rights under this section shall be conclusive and binding upon the child, upon the parent or parents and upon all other persons who have been served with a citation by publication or otherwise as provided in this chapter. After making the order, the juvenile court shall have no power to set aside, change, or modify it, except as provided in paragraph (2), but nothing in this section shall be construed to limit the right to appeal the order.

(2) A child who has not been adopted after the passage of at least three years from the date the court terminated parental rights and for whom the court has determined that adoption is no longer the permanent plan may petition the juvenile court to reinstate parental rights pursuant to the procedure prescribed by Section 388. The child may file the

petition prior to the expiration of this three-year period if the State Department of Social Services or licensed adoption agency that is responsible for custody and supervision of the child as described in subdivision (j) and the child stipulate that the child is no longer likely to be adopted. A child over 12 years of age shall sign the petition in the absence of a showing of good cause as to why the child could not do so. If it appears that the best interests of the child may be promoted by reinstatement of parental rights, the court shall order that a hearing be held and shall give prior notice, or cause prior notice to be given, to the social worker or probation officer and to the child's attorney of record, or, if there is no attorney of record for the child, to the child, and the child's tribe, if applicable, by means prescribed by subdivision (c) of Section 297. The court shall order the child or the social worker or probation officer to give prior notice of the hearing to the child's former parent or parents whose parental rights were terminated in the manner prescribed by subdivision (f) of Section 294 where the recommendation is adoption. The juvenile court shall grant the petition if it finds by clear and convincing evidence that the child is no longer likely to be adopted and that reinstatement of parental rights is in the child's best interest. If the court reinstates parental rights over a child who is under 12 years of age and for whom the new permanent plan will not be reunification with a parent or legal guardian, the court shall specify the factual basis for its findings that it is in the best interest of the child to reinstate parental rights. This subdivision is intended to be retroactive and applies to any child who is under the jurisdiction of the juvenile court at the time of the hearing regardless of the date parental rights were terminated.

(j) If the court, by order or judgment, declares the child free from the custody and control of both parents, or one parent if the other does not have custody and control, the court shall at the same time order the child referred to the State Department of Social Services or a licensed adoption agency for adoptive placement by the agency. However, a petition for adoption may not be granted until the appellate rights of the natural parents have been exhausted. The State Department of Social Services or licensed adoption agency shall be responsible for the custody and supervision of the child and shall be entitled to the exclusive care and control of the child at all times until a petition for adoption is granted, except as specified in subdivision (n). With the consent of the agency, the court may appoint a guardian of the child, who shall serve until the child is adopted.

(k) Notwithstanding any other provision of law, the application of any person who, as a relative caretaker or foster parent, has cared for a dependent child for whom the court has approved a permanent plan for adoption, or who has been freed for adoption, shall be given preference

with respect to that child over all other applications for adoptive placement if the agency making the placement determines that the child has substantial emotional ties to the relative caretaker or foster parent and removal from the relative caretaker or foster parent would be seriously detrimental to the child's emotional well-being.

As used in this subdivision, "preference" means that the application shall be processed and, if satisfactory, the family study shall be completed before the processing of the application of any other person for the adoptive placement of the child.

(l) (1) An order by the court that a hearing pursuant to this section be held is not appealable at any time unless all of the following apply:

(A) A petition for extraordinary writ review was filed in a timely manner.

(B) The petition substantively addressed the specific issues to be challenged and supported that challenge by an adequate record.

(C) The petition for extraordinary writ review was summarily denied or otherwise not decided on the merits.

(2) Failure to file a petition for extraordinary writ review within the period specified by rule, to substantively address the specific issues challenged, or to support that challenge by an adequate record shall preclude subsequent review by appeal of the findings and orders made pursuant to this section.

(3) The Judicial Council shall adopt rules of court, effective January 1, 1995, to ensure all of the following:

(A) A trial court, after issuance of an order directing a hearing pursuant to this section be held, shall advise all parties of the requirement of filing a petition for extraordinary writ review as set forth in this subdivision in order to preserve any right to appeal in these issues. This notice shall be made orally to a party if the party is present at the time of the making of the order or by first-class mail by the clerk of the court to the last known address of a party not present at the time of the making of the order.

(B) The prompt transmittal of the records from the trial court to the appellate court.

(C) That adequate time requirements for counsel and court personnel exist to implement the objective of this subdivision.

(D) That the parent or guardian, or their trial counsel or other counsel, is charged with the responsibility of filing a petition for extraordinary writ relief pursuant to this subdivision.

(4) The intent of this subdivision is to do both of the following:

(A) Make every reasonable attempt to achieve a substantive and meritorious review by the appellate court within the time specified in Sections 366.21 and 366.22 for holding a hearing pursuant to this section.

(B) Encourage the appellate court to determine all writ petitions filed pursuant to this subdivision on their merits.

(5) This subdivision shall only apply to cases in which an order to set a hearing pursuant to this section is issued on or after January 1, 1995.

(m) Except for subdivision (j), this section shall also apply to minors adjudged wards pursuant to Section 727.31.

(n) (1) Notwithstanding Section 8704 of the Family Code or any other provision of law, the court, at a hearing held pursuant to this section or anytime thereafter, may designate a current caretaker as a prospective adoptive parent if the child has lived with the caretaker for at least six months, the caretaker currently expresses a commitment to adopt the child, and the caretaker has taken at least one step to facilitate the adoption process. In determining whether to make that designation, the court may take into consideration whether the caretaker is listed in the preliminary assessment prepared by the county department in accordance with subdivision (i) of Section 366.21 as an appropriate person to be considered as an adoptive parent for the child and the recommendation of the State Department of Social Services or licensed adoption agency.

(2) For purposes of this subdivision, steps to facilitate the adoption process include, but are not limited to, the following:

(A) Applying for an adoption homestudy.

(B) Cooperating with an adoption homestudy.

(C) Being designated by the court or the licensed adoption agency as the adoptive family.

(D) Requesting de facto parent status.

(E) Signing an adoptive placement agreement.

(F) Engaging in discussions regarding a postadoption contact agreement.

(G) Working to overcome any impediments that have been identified by the State Department of Social Services and the licensed adoption agency.

(H) Attending classes required of prospective adoptive parents.

(3) Prior to a change in placement and as soon as possible after a decision is made to remove a child from the home of a designated prospective adoptive parent, the agency shall notify the court, the designated prospective adoptive parent or the current caretaker, if that caretaker would have met the threshold criteria to be designated as a prospective adoptive parent pursuant to paragraph (1) on the date of service of this notice, the child's attorney, and the child, if the child is 10 years of age or older, of the proposal in the manner described in Section 16010.6.

(A) Within five court days or seven calendar days, whichever is longer, of the date of notification, the child, the child's attorney, or the designated

prospective adoptive parent may file a petition with the court objecting to the proposal to remove the child, or the court, upon its own motion, may set a hearing regarding the proposal. The court may, for good cause, extend the filing period. A caretaker who would have met the threshold criteria to be designated as a prospective adoptive parent pursuant to paragraph (1) on the date of service of the notice of proposed removal of the child may file, together with the petition under this subparagraph, a petition for an order designating the caretaker as a prospective adoptive parent for purposes of this subdivision.

(B) A hearing ordered pursuant to this paragraph shall be held as soon as possible and not later than five court days after the petition is filed with the court or the court sets a hearing upon its own motion, unless the court for good cause is unable to set the matter for hearing five court days after the petition is filed, in which case the court shall set the matter for hearing as soon as possible. At the hearing, the court shall determine whether the caretaker has met the threshold criteria to be designated as a prospective adoptive parent pursuant to paragraph (1), and whether the proposed removal of the child from the home of the designated prospective adoptive parent is in the child's best interest, and the child may not be removed from the home of the designated prospective adoptive parent unless the court finds that removal is in the child's best interest. If the court determines that the caretaker did not meet the threshold criteria to be designated as a prospective adoptive parent on the date of service of the notice of proposed removal of the child, the petition objecting to the proposed removal filed by the caretaker shall be dismissed. If the caretaker was designated as a prospective adoptive parent prior to this hearing, the court shall inquire into any progress made by the caretaker towards the adoption of the child since the caretaker was designated as a prospective adoptive parent.

(C) A determination by the court that the caretaker is a designated prospective adoptive parent pursuant to paragraph (1) or subparagraph (B) does not make the caretaker a party to the dependency proceeding nor does it confer on the caretaker any standing to object to any other action of the department or licensed adoption agency, unless the caretaker has been declared a de facto parent by the court prior to the notice of removal served pursuant to paragraph (3).

(D) If a petition objecting to the proposal to remove the child is not filed, and the court, upon its own motion, does not set a hearing, the child may be removed from the home of the designated prospective adoptive parent without a hearing.

(4) Notwithstanding paragraph (3), if the State Department of Social Services or a licensed adoption agency determines that the child must be removed from the home of the caretaker who is or may be a designated

prospective adoptive parent immediately, due to a risk of physical or emotional harm, the agency may remove the child from that home and is not required to provide notice prior to the removal. However, as soon as possible and not longer than two court days after the removal, the agency shall notify the court, the caretaker who is or may be a designated prospective adoptive parent, the child's attorney, and the child, if the child is 10 years of age or older, of the removal. Within five court days or seven calendar days, whichever is longer, of the date of notification of the removal, the child, the child's attorney, or the caretaker who is or may be a designated prospective adoptive parent may petition for, or the court on its own motion may set, a noticed hearing pursuant to paragraph (3). The court may, for good cause, extend the filing period.

(5) Except as provided in subdivision (b) of Section 366.28, an order by the court issued after a hearing pursuant to this subdivision shall not be appealable.

(6) Nothing in this section shall preclude a county child protective services agency from fully investigating and responding to alleged abuse or neglect of a child pursuant to Section 11165.5 of the Penal Code.

(7) The Judicial Council shall prepare forms to facilitate the filing of the petitions described in this subdivision, which shall become effective on January 1, 2006.

(o) The implementation and operation of the amendments to paragraph (3) of subdivision (c) and subparagraph (A) of paragraph (4) of subdivision (c) enacted at the 2005-06 Regular Session shall be subject to appropriation through the budget process and by phase, as provided in Section 366.35.

SEC. 2. (a) Section 1.1 of this bill incorporates amendments to Section 366.26 of the Welfare and Institutions Code proposed by both this bill and AB 519. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2006, (2) each bill amends Section 366.26 of the Welfare and Institutions Code, (3) AB 1338 and AB 1412 are not enacted or as enacted do not amend that section, and (4) this bill is enacted after AB 519, in which case Sections 1, 1.2, 1.3, 1.4, 1.5, 1.6, and 1.7 of this bill shall not become operative.

(b) Section 1.2 of this bill incorporates amendments to Section 366.26 of the Welfare and Institutions Code proposed by both this bill and AB 1338. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2006, (2) each bill amends Section 366.26 of the Welfare and Institutions Code, (3) AB 519 and AB 1412 are not enacted or as enacted do not amend that section, and (4) this bill is enacted after AB 1338 in which case Sections 1, 1.1, 1.3, 1.4, 1.5, 1.6, and 1.7 of this bill shall not become operative.

(c) Section 1.3 of this bill incorporates amendments to Section 366.26 of the Welfare and Institutions Code proposed by both this bill and AB 1412. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2006, (2) each bill amends Section 366.26 of the Welfare and Institutions Code, (3) AB 519 and AB 1338 are not enacted or as enacted do not amend that section, and (4) this bill is enacted after AB 1412, in which case Sections 1, 1.1, 1.2, 1.4, 1.5, 1.6, and 1.7 of this bill shall not become operative.

(d) Section 1.4 of this bill incorporates amendments to Section 366.26 of the Welfare and Institutions Code proposed by this bill, AB 519, and AB 1338. It shall only become operative if (1) all three bills are enacted and become effective on or before January 1, 2006, (2) all three bills amend Section 366.26 of the Welfare and Institutions Code, (3) AB 1412 is not enacted or as enacted does not amend that section and (4) this bill is enacted after AB 519 and AB 1338, in which case Sections 1, 1.1, 1.2, 1.3, 1.5, 1.6, and 1.7 of this bill shall not become operative.

(e) Section 1.5 of this bill incorporates amendments to Section 366.26 of the Welfare and Institutions Code proposed by this bill, AB 519, and AB 1412. It shall only become operative if (1) all three bills are enacted and become effective on or before January 1, 2006, (2) all three bills amend Section 366.26 of the Welfare and Institutions Code, (3) AB 1338 is not enacted or as enacted does not amend that section and (4) this bill is enacted after AB 519 and AB 1412, in which case Sections 1, 1.1, 1.2, 1.3, 1.4, 1.6, and 1.7 of this bill shall not become operative.

(f) Section 1.6 of this bill incorporates amendments to Section 366.26 of the Welfare and Institutions Code proposed by this bill, AB 1338, and AB 1412. It shall only become operative if (1) all three bills are enacted and become effective on or before January 1, 2006, (2) all three bills amend Section 366.26 of the Welfare and Institutions Code, (3) AB 519 is not enacted or as enacted does not amend that section and (4) this bill is enacted after AB 1338 and AB 1412, in which case Sections 1, 1.1, 1.2, 1.3, 1.4, 1.5, and 1.7 of this bill shall not become operative.

(g) Section 1.7 of this bill incorporates amendments to Section 366.26 of the Welfare and Institutions Code proposed by this bill, AB 519, AB 1338, and AB 1412. It shall only become operative if (1) all four bills are enacted and become effective on or before January 1, 2006, (2) all four bills amend Section 366.26 of the Welfare and Institutions Code, and (3) this bill is enacted after AB 519, AB 1338, and AB 1412 in which case Sections 1, 1.1, 1.2, 1.3, 1.4, 1.5, and 1.6 of this bill shall not become operative.

CHAPTER 627

An act to amend Sections 7620, 7630, 8604, and 9003 of the Family Code, and to amend Section 294 of the Welfare and Institutions Code, relating to adoption.

[Approved by Governor October 7, 2005. Filed with
Secretary of State October 7, 2005.]

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

SECTION 1. Section 7620 of the Family Code is amended to read:
7620. (a) A person who has sexual intercourse in this state thereby submits to the jurisdiction of the courts of this state as to an action brought under this part with respect to a child who may have been conceived by that act of intercourse.

(b) An action under this part shall be brought in one of the following:

(1) The county in which the child resides or is found.

(2) The county in which a licensed California adoption agency maintains an office if that agency brings the action.

(3) If the father is deceased, the county in which proceedings for probate of the estate of the father of the child have been or could be commenced.

SEC. 2. Section 7630 of the Family Code is amended to read:

7630. (a) A child, the child's natural mother, a man presumed to be the child's father under subdivision (a), (b), or (c) of Section 7611, an adoption agency to whom the child has been relinquished or a prospective adoptive parent of the child, may bring an action as follows:

(1) At any time for the purpose of declaring the existence of the father and child relationship presumed under subdivision (a), (b), or (c) of Section 7611.

(2) For the purpose of declaring the nonexistence of the father and child relationship presumed under subdivision (a), (b), or (c) of Section 7611 only if the action is brought within a reasonable time after obtaining knowledge of relevant facts. After the presumption has been rebutted, paternity of the child by another man may be determined in the same action, if he has been made a party.

(b) Any interested party may bring an action at any time for the purpose of determining the existence or nonexistence of the father and child relationship presumed under subdivision (d) or (f) of Section 7611.

(c) An action to determine the existence of the father and child relationship with respect to a child who has no presumed father under Section 7611 or whose presumed father is deceased may be brought by

the child or personal representative of the child, the Department of Child Support Services, the mother or the personal representative or a parent of the mother if the mother has died or is a minor, a man alleged or alleging himself to be the father, or the personal representative or a parent of the alleged father if the alleged father has died or is a minor.

(d) An action under subdivision (c) shall be consolidated with a proceeding pursuant to Section 7662 whenever a proceeding has been filed under Chapter 5 (commencing with Section 7660). The parental rights of the alleged natural father shall be determined as set forth in Section 7664. The consolidated action shall be heard in the court in which the Section 7662 proceeding is filed, unless the court in which the action under subdivision (c) is filed finds, by clear and convincing evidence, that transferring the action to the other court poses a substantial hardship to the petitioner. Mere inconvenience does not constitute a sufficient basis for a finding of substantial hardship. If the court determines there is a substantial hardship, the consolidated action shall be heard in the court in which the paternity action is filed.

SEC. 3. Section 8604 of the Family Code is amended to read:

8604. (a) Except as provided in subdivision (b), a child having a presumed father under Section 7611 may not be adopted without the consent of the child's birth parents, if living. The consent of a presumed father is not required for the child's adoption unless he became a presumed father as described in Chapter 1 (commencing with Section 7540) or Chapter 3 (commencing with Section 7570) of Part 2 of Division 12, or subdivision (a), (b), or (c) of Section 7611 before the mother's relinquishment or consent becomes irrevocable or before the mother's parental rights have been terminated.

(b) If one birth parent has been awarded custody by judicial order, or has custody by agreement of both parents, and the other birth parent for a period of one year willfully fails to communicate with and to pay for the care, support, and education of the child when able to do so, then the birth parent having sole custody may consent to the adoption, but only after the birth parent not having custody has been served with a copy of a citation in the manner provided by law for the service of a summons in a civil action that requires the birth parent not having custody to appear at the time and place set for the appearance in court under Section 8718, 8823, 8913, or 9007.

(c) Failure of a birth parent to pay for the care, support, and education of the child for the period of one year or failure of a birth parent to communicate with the child for the period of one year is prima facie evidence that the failure was willful and without lawful excuse.

SEC. 4. Section 9003 of the Family Code is amended to read:

9003. (a) In a stepparent adoption, the consent of either or both birth parents shall be signed in the presence of a notary public, court clerk, probation officer, qualified court investigator, or county welfare department staff member of any county of this state. The notary public, court clerk, probation officer, qualified court investigator, or county welfare department staff member before whom the consent is signed shall immediately file the consent with the clerk of the court where the adoption petition is filed. The clerk shall immediately notify the probation officer or, at the option of the board of supervisors, the county welfare department of that county.

(b) If the birth parent of a child to be adopted is outside this state at the time of signing the consent, the consent may be signed before a notary or other person authorized to perform notarial acts.

(c) The consent, when reciting that the person giving it is entitled to sole custody of the child and when acknowledged before the notary public, court clerk, probation officer, qualified court investigator, or county welfare department staff member, is prima facie evidence of the right of the person signing the consent to the sole custody of the child and that person's sole right to consent.

(d) A birth parent who is a minor has the right to sign a consent for the adoption of the birth parent's child and the consent is not subject to revocation by reason of the minority.

SEC. 5. 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.

(8) To any unknown parent by publication, if ordered by the court pursuant to paragraph (2) of subdivision (g).

(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 a parent's identity is known but his or her 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, if their identities and addresses are known, 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, if their identities and addresses are known, 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).

(g) (1) 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 filed with the court at least 75 days before the hearing date and the court, consistent with the provisions of Sections 7665 and 7666 of the Family Code, shall issue an order dispensing with notice to a natural parent or possible natural parent under this section if, after inquiry and a determination that there has been due diligence in attempting to identify the unknown parent, the court is unable to identify the natural parent or possible natural parent and no person has appeared claiming to be the natural parent.

(2) After a determination that there has been due diligence in attempting to identify an unknown parent pursuant to paragraph (1) and the probation officer or social worker recommends adoption, the court shall consider whether publication notice would be likely to lead to actual notice to the unknown parent. The court may order publication notice if, on the basis of all information before the court, the court determines that notice by publication is likely to lead to actual notice to the parent. If publication notice to an unknown parent is ordered, the court 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. An order of publication pursuant to this paragraph shall be based on an affidavit describing efforts made to identify the unknown parent or parents. Service made by publication pursuant to this paragraph shall require the unknown parent or parents to appear at the date, time, and place stated in the

citation. Publication shall be made once a week for four consecutive weeks.

(3) If the court determines that there has been due diligence in attempting to identify one or both of the parents, or alleged parents, of the child and the probation officer or social worker recommends legal guardianship or long-term foster care, no further notice to the parent shall be required.

(h) Notice to the child and all counsel of record shall be by first-class mail.

(i) In the case of an Indian child, notice to the tribe shall be by registered mail, return receipt requested.

(j) 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).

(k) This section shall also apply to children adjudged wards pursuant to Section 727.31.

(l) The court shall state the reasons on the record explaining why good cause exists for granting any continuance of a hearing held pursuant to Section 366.26 to fulfill the requirements of this section.

SEC. 6. 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.

CHAPTER 628

An act to amend Section 1522 of the Health and Safety Code, and to amend Section 362.05 of, and to add Section 362.04 to, the Welfare and Institutions Code, relating to child care.

[Approved by Governor October 7, 2005. Filed with
Secretary of State October 7, 2005.]

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

SECTION 1. It is the intent of the Legislature to streamline the process by which foster parents, relative caregivers, and adoptive parents become licensed by the state, while ensuring the safety and security of children in their care. Duplicative background checks and fingerprinting, now required under current law and regulation, should be eliminated in

a manner that both expedites permanent planning and protects foster children.

SEC. 2. Section 1522 of the Health and Safety Code is amended to read:

1522. The Legislature recognizes the need to generate timely and accurate positive fingerprint identification of applicants as a condition of issuing licenses, permits, or certificates of approval for persons to operate or provide direct care services in a community care facility, foster family home, or a certified family home of a licensed foster family agency. Therefore, the Legislature supports the use of the fingerprint live-scan technology, as identified in the long-range plan of the Department of Justice for fully automating the processing of fingerprints and other data by the year 1999, otherwise known as the California Crime Information Intelligence System (CAL-CII), to be used for applicant fingerprints. It is the intent of the Legislature in enacting this section to require the fingerprints of those individuals whose contact with community care clients may pose a risk to the clients' health and safety.

(a) (1) Before issuing a license or special permit to any person or persons to operate or manage a community care facility, the State Department of Social Services shall secure from an appropriate law enforcement agency a criminal record to determine whether the applicant or any other person specified in subdivision (b) has ever been convicted of a crime other than a minor traffic violation or arrested for any crime specified in Section 290 of the Penal Code, for violating Section 245 or 273.5, of the Penal Code, subdivision (b) of Section 273a of the Penal Code, or, prior to January 1, 1994, paragraph (2) of Section 273a of the Penal Code, or for any crime for which the department cannot grant an exemption if the person was convicted and the person has not been exonerated.

(2) The criminal history information shall include the full criminal record, if any, of those persons, and subsequent arrest information pursuant to Section 11105.2 of the Penal Code.

(3) Except during the 2003-04, 2004-05, and 2005-06 fiscal years, neither the Department of Justice nor the State Department of Social Services may charge a fee for the fingerprinting of an applicant for a license or special permit to operate a facility providing nonmedical board, room, and care for six or less children or for obtaining a criminal record of the applicant pursuant to this section.

(4) The following shall apply to the criminal record information:

(A) If the State Department of Social Services finds that the applicant, or any other person specified in subdivision (b), has been convicted of a crime other than a minor traffic violation, the application shall be

denied, unless the director grants an exemption pursuant to subdivision (g).

(B) If the State Department of Social Services finds that the applicant, or any other person specified in subdivision (b) is awaiting trial for a crime other than a minor traffic violation, the State Department of Social Services may cease processing the application until the conclusion of the trial.

(C) If no criminal record information has been recorded, the Department of Justice shall provide the applicant and the State Department of Social Services with a statement of that fact.

(D) If the State Department of Social Services finds after licensure that the licensee, or any other person specified in paragraph (2) of subdivision (b), has been convicted of a crime other than a minor traffic violation, the license may be revoked, unless the director grants an exemption pursuant to subdivision (g).

(E) An applicant and any other person specified in subdivision (b) shall submit a second set of fingerprints to the Department of Justice for the purpose of searching the criminal records of the Federal Bureau of Investigation, in addition to the criminal records search required by this subdivision. If an applicant and all other persons described in subdivision (b) meet all of the conditions for licensure, except receipt of the Federal Bureau of Investigation's criminal history information for the applicant or any of the persons described in subdivision (b), the department may issue a license if the applicant and each person described in subdivision (b) has signed and submitted a statement that he or she has never been convicted of a crime in the United States, other than a traffic infraction, as defined in paragraph (1) of subdivision (a) of Section 42001 of the Vehicle Code. If, after licensure, the department determines that the licensee or any other person specified in subdivision (b) has a criminal record, the license may be revoked pursuant to Section 1550. The department may also suspend the license pending an administrative hearing pursuant to Section 1550.5.

(b) (1) In addition to the applicant, this section shall be applicable to criminal convictions of the following persons:

(A) Adults responsible for administration or direct supervision of staff.

(B) Any person, other than a client, residing in the facility.

(C) Any person who provides client assistance in dressing, grooming, bathing, or personal hygiene. Any nurse assistant or home health aide meeting the requirements of Section 1338.5 or 1736.6, respectively, who is not employed, retained, or contracted by the licensee, and who has been certified or recertified on or after July 1, 1998, shall be deemed to meet the criminal record clearance requirements of this section. A

certified nurse assistant and certified home health aide who will be providing client assistance and who falls under this exemption shall provide one copy of his or her current certification, prior to providing care, to the community care facility. The facility shall maintain the copy of the certification on file as long as care is being provided by the certified nurse assistant or certified home health aide at the facility. Nothing in this paragraph restricts the right of the department to exclude a certified nurse assistant or certified home health aide from a licensed community care facility pursuant to Section 1558.

(D) Any staff person, volunteer, or employee who has contact with the clients.

(E) If the applicant is a firm, partnership, association, or corporation, the chief executive officer or other person serving in like capacity.

(F) Additional officers of the governing body of the applicant, or other persons with a financial interest in the applicant, as determined necessary by the department by regulation. The criteria used in the development of these regulations shall be based on the person's capability to exercise substantial influence over the operation of the facility.

(2) The following persons are exempt from the requirements applicable under paragraph (1):

(A) A medical professional as defined in department regulations who holds a valid license or certification from the person's governing California medical care regulatory entity and who is not employed, retained, or contracted by the licensee if all of the following apply:

(i) The criminal record of the person has been cleared as a condition of licensure or certification by the person's governing California medical care regulatory entity.

(ii) The person is providing time-limited specialized clinical care or services.

(iii) The person is providing care or services within the person's scope of practice.

(iv) The person is not a community care facility licensee or an employee of the facility.

(B) A third-party repair person or similar retained contractor if all of the following apply:

(i) The person is hired for a defined, time-limited job.

(ii) The person is not left alone with clients.

(iii) When clients are present in the room in which the repairperson or contractor is working, a staff person who has a criminal record clearance or exemption is also present.

(C) Employees of a licensed home health agency and other members of licensed hospice interdisciplinary teams who have a contract with a client or resident of the facility and are in the facility at the request of

that client or resident's legal decisionmaker. The exemption does not apply to a person who is a community care facility licensee or an employee of the facility.

(D) Clergy and other spiritual caregivers who are performing services in common areas of the community care facility or who are advising an individual client at the request of, or with the permission of, the client or legal decisionmaker, are exempt from fingerprint and criminal background check requirements imposed by community care licensing. This exemption does not apply to a person who is a community care licensee or employee of the facility.

(E) Members of fraternal, service, or similar organizations who conduct group activities for clients if all of the following apply:

- (i) Members are not left alone with clients.
- (ii) Members do not transport clients off the facility premises.
- (iii) The same organization does not conduct group activities for clients more often than defined by the department's regulations.

(3) In addition to the exemptions in paragraph (2), the following persons in foster family homes, certified family homes, and small family homes are exempt from the requirements applicable under paragraph (1):

(A) Adult friends and family of the licensed or certified foster parent, who come into the home to visit for a length of time no longer than defined by the department in regulations, provided that the adult friends and family of the licensee are not left alone with the foster children. However, the licensee, acting as a reasonable and prudent parent, as defined in paragraph (2) of subdivision (a) of Section 362.04 of the Welfare and Institutions Code, may allow his or her adult friends and family to provide short-term care to the foster child and act as an appropriate occasional short-term babysitter for the child.

(B) Parents of a foster child's friends when the foster child is visiting the friend's home and the friend, licensed or certified foster parent, or both are also present. However, the licensee, acting as a reasonable and prudent parent, may allow the parent of the foster child's friends to act as an appropriate short-term babysitter for the child without the friend being present.

(C) Individuals who are engaged by any licensed or certified foster parent to provide short-term care to the child for periods not to exceed 24 hours. Caregivers shall use a reasonable and prudent parent standard in selecting appropriate individuals to act as appropriate occasional short-term babysitters.

(4) In addition to the exemptions specified in paragraph (2), the following persons in adult day care and adult day support centers are exempt from the requirements applicable under paragraph (1):

(A) Unless contraindicated by the client's individualized program plan (IPP) or needs and service plan, a spouse, significant other, relative, or close friend of a client, or an attendant or a facilitator for a client with a developmental disability if the attendant or facilitator is not employed, retained, or contracted by the licensee. This exemption applies only if the person is visiting the client or providing direct care and supervision to the client.

(B) A volunteer if all of the following applies:

(i) The volunteer is supervised by the licensee or a facility employee with a criminal record clearance or exemption.

(ii) The volunteer is never left alone with clients.

(iii) The volunteer does not provide any client assistance with dressing, grooming, bathing, or personal hygiene other than washing of hands.

(5) (A) In addition to the exemptions specified in paragraph (2), the following persons in adult residential and social rehabilitation facilities, unless contraindicated by the client's individualized program plan (IPP) or needs and services plan, are exempt from the requirements applicable under paragraph (1): a spouse, significant other, relative, or close friend of a client, or an attendant or a facilitator for a client with a developmental disability if the attendant or facilitator is not employed, retained, or contracted by the licensee. This exemption applies only if the person is visiting the client or providing direct care and supervision to that client.

(B) Nothing in this subdivision shall prevent a licensee from requiring a criminal record clearance of any individual exempt from the requirements of this section, provided that the individual has client contact.

(6) Any person similar to those described in this subdivision, as defined by the department in regulations.

(c) (1) Subsequent to initial licensure, any person specified in subdivision (b) and not exempted from fingerprinting shall, as a condition to employment, residence, or presence in a community care facility, be fingerprinted and sign a declaration under penalty of perjury regarding any prior criminal convictions. The licensee shall submit these fingerprints to the Department of Justice, along with a second set of fingerprints for the purpose of searching the records of the Federal Bureau of Investigation, or to comply with paragraph (1) of subdivision (h), prior to the person's employment, residence, or initial presence in the community care facility. These fingerprints shall be on a card provided by the State Department of Social Services or sent by electronic transmission in a manner approved by the State Department of Social Services and the Department of Justice for the purpose of obtaining a permanent set of fingerprints, and shall be submitted to the Department

of Justice by the licensee. A licensee's failure to submit fingerprints to the Department of Justice or to comply with paragraph (1) of subdivision (h), as required in this section, shall result in the citation of a deficiency and the immediate assessment of civil penalties in the amount of one hundred dollars (\$100) per violation, per day for a maximum of five days, unless the violation is a second or subsequent violation within a 12-month period in which case the civil penalties shall be in the amount of one hundred dollars (\$100) per violation for a maximum of 30 days, and shall be grounds for disciplining the licensee pursuant to Section 1550. The department may assess civil penalties for continued violations as permitted by Section 1548. The fingerprints shall then be submitted to the State Department of Social Services for processing. Upon request of the licensee, who shall enclose a self-addressed stamped postcard for this purpose, the Department of Justice shall verify receipt of the fingerprints.

(2) Within 14 calendar days of the receipt of the fingerprints, the Department of Justice shall notify the State Department of Social Services of the criminal record information, as provided for in subdivision (a). If no criminal record information has been recorded, the Department of Justice shall provide the licensee and the State Department of Social Services with a statement of that fact within 14 calendar days of receipt of the fingerprints. Documentation of the individual's clearance or exemption shall be maintained by the licensee and be available for inspection. If new fingerprints are required for processing, the Department of Justice shall, within 14 calendar days from the date of receipt of the fingerprints, notify the licensee that the fingerprints were illegible. When live-scan technology is operational, as defined in Section 1522.04, the Department of Justice shall notify the State Department of Social Services, as required by that section, and shall also notify the licensee by mail, within 14 days of electronic transmission of the fingerprints to the Department of Justice, if the person has no criminal history recorded. A violation of the regulations adopted pursuant to Section 1522.04 shall result in the citation of a deficiency and an immediate assessment of civil penalties in the amount of one hundred dollars (\$100) per violation, per day for a maximum of five days, unless the violation is a second or subsequent violation within a 12-month period in which case the civil penalties shall be in the amount of one hundred dollars (\$100) per violation for a maximum of 30 days, and shall be grounds for disciplining the licensee pursuant to Section 1550. The department may assess civil penalties for continued violations as permitted by Section 1548.

(3) Except for persons specified in paragraph (2) of subdivision (b), the licensee shall endeavor to ascertain the previous employment history

of persons required to be fingerprinted under this subdivision. If it is determined by the State Department of Social Services, on the basis of the fingerprints submitted to the Department of Justice, that the person has been convicted of, or is awaiting trial for, a sex offense against a minor, or has been convicted for an offense specified in Section 243.4, 273a, 273d, 273g, or 368 of the Penal Code, or a felony, the State Department of Social Services shall notify the licensee to act immediately to terminate the person's employment, remove the person from the community care facility, or bar the person from entering the community care facility. The State Department of Social Services may subsequently grant an exemption pursuant to subdivision (g). If the conviction or arrest was for another crime, except a minor traffic violation, the licensee shall, upon notification by the State Department of Social Services, act immediately to either (A) terminate the person's employment, remove the person from the community care facility, or bar the person from entering the community care facility; or (B) seek an exemption pursuant to subdivision (g). The State Department of Social Services shall determine if the person shall be allowed to remain in the facility until a decision on the exemption is rendered. A licensee's failure to comply with the department's prohibition of employment, contact with clients, or presence in the facility as required by this paragraph shall be grounds for disciplining the licensee pursuant to Section 1550.

(4) The department may issue an exemption on its own motion pursuant to subdivision (g) if the person's criminal history indicates that the person is of good character based on the age, seriousness, and frequency of the conviction or convictions. The department, in consultation with interested parties, shall develop regulations to establish the criteria to grant an exemption pursuant to this paragraph.

(5) Concurrently with notifying the licensee pursuant to paragraph (3), the department shall notify the affected individual of his or her right to seek an exemption pursuant to subdivision (g). The individual may seek an exemption only if the licensee terminates the person's employment or removes the person from the facility after receiving notice from the department pursuant to paragraph (3).

(d) (1) Before issuing a license, special permit, or certificate of approval to any person or persons to operate or manage a foster family home or certified family home as described in Section 1506, the State Department of Social Services or other approving authority shall secure from an appropriate law enforcement agency a criminal record to determine whether the applicant or any person specified in subdivision (b) has ever been convicted of a crime other than a minor traffic violation or arrested for any crime specified in Section 290 of the Penal Code, for violating Section 245 or 273.5, subdivision (b) of Section 273a or, prior

to January 1, 1994, paragraph (2) of Section 273a of the Penal Code, or for any crime for which the department cannot grant an exemption if the person was convicted and the person has not been exonerated.

(2) The criminal history information shall include the full criminal record, if any, of those persons.

(3) Neither the Department of Justice nor the State Department of Social Services may charge a fee for the fingerprinting of an applicant for a license, special permit, or certificate of approval described in this subdivision. The record, if any, shall be taken into consideration when evaluating a prospective applicant.

(4) The following shall apply to the criminal record information:

(A) If the applicant or other persons specified in subdivision (b) have convictions that would make the applicant's home unfit as a foster family home or a certified family home, the license, special permit, or certificate of approval shall be denied.

(B) If the State Department of Social Services finds that the applicant, or any person specified in subdivision (b) is awaiting trial for a crime other than a minor traffic violation, the State Department of Social Services or other approving authority may cease processing the application until the conclusion of the trial.

(C) For the purposes of this subdivision, a criminal record clearance provided under Section 8712 of the Family Code may be used by the department or other approving agency.

(D) An applicant for a foster family home license or for certification as a family home, and any other person specified in subdivision (b), shall submit a set of fingerprints to the Department of Justice for the purpose of searching the criminal records of the Federal Bureau of Investigation, in addition to the criminal records search required by subdivision (a). If an applicant meets all other conditions for licensure, except receipt of the Federal Bureau of Investigation's criminal history information for the applicant and all persons described in subdivision (b), the department may issue a license, or the foster family agency may issue a certificate of approval, if the applicant, and each person described in subdivision (b), has signed and submitted a statement that he or she has never been convicted of a crime in the United States, other than a traffic infraction, as defined in paragraph (1) of subdivision (a) of Section 42001 of the Vehicle Code. If, after licensure or certification, the department determines that the licensee, certified foster parent, or any person specified in subdivision (b) has a criminal record, the license may be revoked pursuant to Section 1550 and the certificate of approval revoked pursuant to subdivision (b) of Section 1534. The department may also suspend the license pending an administrative hearing pursuant to Section 1550.5.

(5) Any person specified in this subdivision shall, as a part of the application, be fingerprinted and sign a declaration under penalty of perjury regarding any prior criminal convictions or arrests for any crime against a child, spousal or cohabitant abuse or, any crime for which the department cannot grant an exemption if the person was convicted and shall submit these fingerprints to the licensing agency or other approving authority.

(6) (A) The foster family agency shall obtain fingerprints from certified home applicants and from persons specified in subdivision (b) and shall submit them directly to the Department of Justice or send them by electronic transmission in a manner approved by the State Department of Social Services. A foster family home licensee or foster family agency shall submit these fingerprints to the Department of Justice, along with a second set of fingerprints for the purpose of searching the records of the Federal Bureau of Investigation or to comply with paragraph (1) of subdivision (b) prior to the person's employment, residence, or initial presence. A foster family agency's failure to submit fingerprints to the Department of Justice, or comply with paragraph (1) of subdivision (h), as required in this section, shall result in a citation of a deficiency, and the immediate civil penalties of one hundred dollars (\$100) per violation, per day for a maximum of five days, unless the violation is a second or subsequent violation within a 12-month period in which case the civil penalties shall be in the amount of one hundred dollars (\$100) per violation for a maximum of 30 days, and shall be grounds for disciplining the licensee pursuant to Section 1550. A violation of the regulation adopted pursuant to Section 1522.04 shall result in the citation of a deficiency and an immediate assessment of civil penalties in the amount of one hundred dollars (\$100) per violation, per day for a maximum of five days, unless the violation is a second or subsequent violation within a 12-month period in which case the civil penalties shall be in the amount of one hundred dollars (\$100) per violation for a maximum of 30 days, and shall be grounds for disciplining the foster family agency pursuant to Section 1550. A licensee's failure to submit fingerprints to the Department of Justice, or comply with paragraph (1) of subdivision (h), as required in this section, may result in the citation of a deficiency and immediate civil penalties of one hundred dollars (\$100) per violation. A licensee's violation of regulations adopted pursuant to Section 1522.04 may result in the citation of a deficiency and an immediate assessment of civil penalties in the amount of one hundred dollars (\$100) per violation. The State Department of Social Services may assess penalties for continued violations, as permitted by Section 1548. The fingerprints shall then be submitted to the State Department of Social Services for processing.

(B) Upon request of the licensee, who shall enclose a self-addressed envelope for this purpose, the Department of Justice shall verify receipt of the fingerprints. Within five working days of the receipt of the criminal record or information regarding criminal convictions from the Department of Justice, the department shall notify the applicant of any criminal arrests or convictions. If no arrests or convictions are recorded, the Department of Justice shall provide the foster family home licensee or the foster family agency with a statement of that fact concurrent with providing the information to the State Department of Social Services.

(7) If the State Department of Social Services finds that the applicant, or any other person specified in subdivision (b), has been convicted of a crime other than a minor traffic violation, the application shall be denied, unless the director grants an exemption pursuant to subdivision (g).

(8) If the State Department of Social Services finds after licensure or the granting of the certificate of approval that the licensee, certified foster parent, or any other person specified in paragraph (2) of subdivision (b), has been convicted of a crime other than a minor traffic violation, the license or certificate of approval may be revoked by the department or the foster family agency, whichever is applicable, unless the director grants an exemption pursuant to subdivision (g). A licensee's failure to comply with the department's prohibition of employment, contact with clients, or presence in the facility as required by paragraph (3) of subdivision (c) shall be grounds for disciplining the licensee pursuant to Section 1550.

(e) The State Department of Social Services may not use a record of arrest to deny, revoke, or terminate any application, license, employment, or residence unless the department investigates the incident and secures evidence, whether or not related to the incident of arrest, that is admissible in an administrative hearing to establish conduct by the person that may pose a risk to the health and safety of any person who is or may become a client. The State Department of Social Services is authorized to obtain any arrest or conviction records or reports from any law enforcement agency as necessary to the performance of its duties to inspect, license, and investigate community care facilities and individuals associated with a community care facility.

(f) (1) For purposes of this section or any other provision of this chapter, a conviction means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that the State Department of Social Services is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, when the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence,

notwithstanding a subsequent order pursuant to Sections 1203.4 and 1203.4a of the Penal Code permitting the person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or indictment. For purposes of this section or any other provision of this chapter, the record of a conviction, or a copy thereof certified by the clerk of the court or by a judge of the court in which the conviction occurred, shall be conclusive evidence of the conviction. For purposes of this section or any other provision of this chapter, the arrest disposition report certified by the Department of Justice, or documents admissible in a criminal action pursuant to Section 969b of the Penal Code, shall be prima facie evidence of the conviction, notwithstanding any other provision of law prohibiting the admission of these documents in a civil or administrative action.

(2) For purposes of this section or any other provision of this chapter, the department shall consider criminal convictions from another state or federal court as if the criminal offense was committed in this state.

(g) (1) After review of the record, the director may grant an exemption from disqualification for a license or special permit as specified in paragraphs (1) and (4) of subdivision (a), or for a license, special permit, or certificate of approval as specified in paragraphs (4) and (5) of subdivision (d), or for employment, residence, or presence in a community care facility as specified in paragraphs (3), (4), and (5) of subdivision (c), if the director has substantial and convincing evidence to support a reasonable belief that the applicant and the person convicted of the crime, if other than the applicant, are of good character as to justify issuance of the license or special permit or granting an exemption for purposes of subdivision (c). Except as otherwise provided in this subdivision, an exemption may not be granted pursuant to this subdivision if the conviction was for any of the following offenses:

(A) (i) An offense specified in Section 220, 243.4, or 264.1, subdivision (a) of Section 273a or, prior to January 1, 1994, paragraph (1) of Section 273a, Section 273d, 288, or 289, subdivision (a) of Section 290, or Section 368 of the Penal Code, or was a conviction of another crime against an individual specified in subdivision (c) of Section 667.5 of the Penal Code.

(ii) Notwithstanding clause (i), the director may grant an exemption regarding the conviction for an offense described in paragraph (1), (2), (7), or (8) of subdivision (c) of Section 667.5 of the Penal Code, if the employee or prospective employee has been rehabilitated as provided in Section 4852.03 of the Penal Code, has maintained the conduct required in Section 4852.05 of the Penal Code for at least 10 years, and has the recommendation of the district attorney representing the

employee's county of residence, or if the employee or prospective employee has received a certificate of rehabilitation pursuant to Chapter 3.5 (commencing with Section 4852.01) of Title 6 of Part 3 of the Penal Code.

(B) A felony offense specified in Section 729 of the Business and Professions Code or Section 206 or 215, subdivision (a) of Section 347, subdivision (b) of Section 417, or subdivision (a) of Section 451 of the Penal Code.

(2) The department may not prohibit a person from being employed or having contact with clients in a facility on the basis of a denied criminal record exemption request or arrest information unless the department complies with the requirements of Section 1558.

(h) (1) For purposes of compliance with this section, the department may permit an individual to transfer a current criminal record clearance, as defined in subdivision (a), from one facility to another, as long as the criminal record clearance has been processed through a state licensing district office, and is being transferred to another facility licensed by a state licensing district office. The request shall be in writing to the State Department of Social Services, and shall include a copy of the person's driver's license or valid identification card issued by the Department of Motor Vehicles, or a valid photo identification issued by another state or the United States government if the person is not a California resident. Upon request of the licensee, who shall enclose a self-addressed envelope for this purpose, the State Department of Social Services shall verify whether the individual has a clearance that can be transferred.

(2) The State Department of Social Services shall hold criminal record clearances in its active files for a minimum of two years after an employee is no longer employed at a licensed facility in order for the criminal record clearance to be transferred.

(3) The following shall apply to a criminal record clearance or exemption from the department or a county office with department delegated licensing authority:

(A) A county office with department delegated licensing authority may accept a clearance or exemption from the department.

(B) The department may accept a clearance or exemption from any county office with department delegated licensing authority.

(C) A county office with department delegated licensing authority may accept a clearance or exemption from any other county office with department delegated licensing authority.

(4) With respect to notifications issued by the Department of Justice pursuant to Section 11105.2 of the Penal Code concerning an individual whose criminal record clearance was originally processed by the

department or a county office with department delegated licensing authority, all of the following shall apply:

(A) The Department of Justice shall process a request from the department or a county office with department delegated licensing authority to receive the notice only if all of the following conditions are met:

(i) The request shall be submitted to the Department of Justice by the agency to be substituted to receive the notification.

(ii) The request shall be for the same applicant type as the type for which the original clearance was obtained.

(iii) The request shall contain all prescribed data elements and format protocols pursuant to a written agreement between the department and the Department of Justice.

(B) (i) On or before January 7, 2005, the department shall notify the Department of Justice of all county offices that have department delegated licensing authority.

(ii) The department shall notify the Department of Justice within 15 calendar days of the date on which a new county office receives department delegated licensing authority or a county's delegated licensing authority is rescinded.

(C) The Department of Justice shall charge the department or a county office with department delegated licensing authority a fee for each time a request to substitute the recipient agency is received for purposes of this paragraph. This fee shall not exceed the cost of providing the service.

(i) The full criminal record obtained for purposes of this section may be used by the department or by a licensed adoption agency as a clearance required for adoption purposes.

(j) If a licensee or facility is required by law to deny employment or to terminate employment of any employee based on written notification from the state department that the employee has a prior criminal conviction or is determined unsuitable for employment under Section 1558, the licensee or facility shall not incur civil liability or unemployment insurance liability as a result of that denial or termination.

(k) (1) The Department of Justice shall coordinate with the State Department of Social Services to establish and implement an automated live-scan processing system for fingerprints in the district offices of the Community Care Licensing Division of the State Department of Social Services by July 1, 1999. These live-scan processing units shall be connected to the main system at the Department of Justice by July 1, 1999, and shall become part of that department's pilot project in accordance with its long-range plan. The State Department of Social Services may charge a fee for the costs of processing a set of live-scan fingerprints.

(2) The Department of Justice shall provide a report to the Senate and Assembly fiscal committees, the Assembly Human Services Committee, and to the Senate Health and Human Services Committee by April 15, 1999, regarding the completion of backlogged criminal record clearance requests for all facilities licensed by the State Department of Social Services and the progress on implementing the automated live-scan processing system in the two district offices pursuant to paragraph (1).

(l) Amendments to this section made in the 1999 portion of the 1999-2000 Regular Session shall be implemented commencing 60 days after the effective date of the act amending this section in the 1999 portion of the 1999-2000 Regular Session, except that those provisions for the submission of fingerprints for searching the records of the Federal Bureau of Investigation shall be implemented 90 days after the effective date of that act.

SEC. 3. Section 362.04 is added to the Welfare and Institutions Code, to read:

362.04. (a) For purposes of this section:

(1) "Caregiver" means any licensed or certified foster parent, approved relative caregiver, or approved nonrelative extended family member.

(2) "Reasonable and prudent parent" or "reasonable and prudent parent standard" means the standard characterized by careful and sensible parental decisions that maintain the child's health, safety, and best interest.

(3) "Short-term" means no more than 24 consecutive hours.

(b) Every caregiver may arrange for occasional short-term babysitting of their foster child and allow individuals to supervise the foster child for the purposes set forth in Section 362.05, or on occasions, including, but not limited to, when the foster parent has a medical or other health care appointment, grocery or other shopping, personal grooming appointments, special occasions for the foster parents, foster parent training classes, school-related meetings (such as parent-teacher conferences), business meetings, adult social gatherings, or an occasional evening out by the foster parent.

(c) Caregivers shall use a reasonable and prudent parent standard in determining and selecting appropriate babysitters for occasional short-term use.

(d) The caregiver shall endeavor to provide the babysitter with the following information before leaving the child for purposes of short-term care:

(1) Information about the child's emotional, behavioral, medical or physical conditions, if any, necessary to provide care for the child during the time the foster child is being supervised by the babysitter.

(2) Any medication that should be administered to the foster child during the time the foster child is being supervised by the babysitter.

(3) Emergency contact information that is valid during the time the foster child is being supervised by the babysitter.

(e) Babysitters selected by the caregiver to provide occasional short-term care to a foster child under the provisions of this section shall be exempt from any department regulation requiring health screening or cardiopulmonary resuscitation certification or training.

(f) Each state and local entity shall ensure that private agencies that provide foster care services to dependent children have policies consistent with this section. Policies that are not consistent with this section include those that are incompatible with, contradictory to, or more restrictive than this section.

SEC. 4. Section 362.05 of the Welfare and Institutions Code is amended to read:

362.05. Every child adjudged a dependent child of the juvenile court shall be entitled to participate in age-appropriate extracurricular, enrichment, and social activities. No state or local regulation or policy may prevent or create barriers to participation in those activities. Each state and local entity shall ensure that private agencies that provide foster care services to dependent children have policies consistent with this section and that those agencies promote and protect the ability of dependent children to participate in age-appropriate extracurricular, enrichment, and social activities. Caregivers, as defined in paragraph (1) of subdivision (a) of Section 362.04, shall use a reasonable and prudent parent standard, as defined in paragraph (2) of subdivision (a) of Section 362.04, in determining whether to give permission for a child residing in foster care to participate in extracurricular, enrichment, and social activities. The caretaker shall take reasonable steps to determine the appropriateness of the activity in consideration of the child's age, maturity, and developmental level.

CHAPTER 629

An act to amend Section 10609.4 of the Welfare and Institutions Code, relating to foster care.

[Approved by Governor October 7, 2005. Filed with
Secretary of State October 7, 2005.]

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

SECTION 1. Section 10609.4 of the Welfare and Institutions Code is amended to read:

10609.4. (a) On or before July 1, 2000, the State Department of Social Services, in consultation with county and state representatives, foster youth, and advocates, shall do both of the following:

(1) Develop statewide standards for the implementation and administration of the Independent Living Program established pursuant to the federal Consolidated Omnibus Budget Reconciliation Act of 1985 (Public Law 99-272).

(2) Define the outcomes for the Independent Living Program and the characteristics of foster youth enrolled in the program for data collection purposes.

(b) Each county department of social services shall include in its annual Independent Living Program report both of the following:

(1) An accounting of federal and state funds allocated for implementation of the program. Expenditures shall be related to the specific purposes of the program. Program purposes may include, but are not limited to, all of the following:

(A) Enabling participants to seek a high school diploma or its equivalent or to take part in appropriate vocational training, and providing job readiness training and placement services, or building work experience and marketable skills, or both.

(B) Providing training in daily living skills, budgeting, locating and maintaining housing, and career planning.

(C) Providing for individual and group counseling.

(D) Integrating and coordinating services otherwise available to participants.

(E) Providing each participant with a written transitional independent living plan that will be based on an assessment of his or her needs, that includes information provided by persons who have been identified by the participant as important to the participant in cases in which the participant has been in out-of-home placement in a group home for six months or longer from the date the participant entered foster care, consistent with the participant's best interests, and that will be incorporated into his or her case plan.

(F) Providing participants with other services and assistance designed to improve independent living.

(G) Convening persons who have been identified by the participant as important to him or her for the purpose of providing information to be included in his or her written transitional independent living plan.

(2) A detail of the characteristics of foster youth enrolled in their independent living programs and the outcomes achieved based on the information developed by the department pursuant to subdivision (a).

(c) The county department of social services in a county that provides transitional housing placement services pursuant to paragraph (2) of subdivision (a) of Section 11403.2 shall include in its annual Independent Living Program report a description of currently available transitional housing resources in relation to the number of emancipating pregnant or parenting foster youth in the county, and a plan for meeting any unmet transitional housing needs of the emancipating pregnant or parenting foster youth.

(d) In consultation with the department, a county may use different methods and strategies to achieve the standards and outcomes of the Independent Living Program developed pursuant to subdivision (a).

(e) In consultation with the County Welfare Directors Association, the California Youth Connection, and other stakeholders, the department shall develop and adopt emergency regulations in accordance with Section 11346.1 of the Government Code that counties shall be required to meet when administering the Independent Living Program and that are achievable within existing program resources. The initial adoption of emergency regulations and one readoption of the initial regulations shall be deemed to be an emergency and necessary for the immediate preservation of the public peace, health and safety, or general welfare. Initial emergency regulations and the first readoption of those regulations shall be exempt from review by the Office of Administrative Law. The initial emergency regulations and the first readoption of those regulations authorized by this subdivision shall be submitted to the Office of Administrative Law for filing with the Secretary of State and each shall remain in effect for no more than 180 days.

CHAPTER 630

An act to amend Sections 300, 362.1, 11400, 11401, and 11465 of, and to add Section 16501.25 to, the Welfare and Institutions Code, relating to foster care, and making an appropriation therefor.

[Approved by Governor October 7, 2005. Filed with
Secretary of State October 7, 2005.]

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

SECTION 1. Section 300 of the Welfare and Institutions Code, as amended by Section 3 of Chapter 824 of the Statutes of 2000, is amended to read:

300. Any child who comes within any of the following descriptions is within the jurisdiction of the juvenile court which may adjudicate that person to be a dependent child of the court:

(a) The child has suffered, or there is a substantial risk that the child will suffer, serious physical harm inflicted nonaccidentally upon the child by the child's parent or guardian. For the purposes of this subdivision, a court may find there is a substantial risk of serious future injury based on the manner in which a less serious injury was inflicted, a history of repeated inflictions of injuries on the child or the child's siblings, or a combination of these and other actions by the parent or guardian which indicate the child is at risk of serious physical harm. For purposes of this subdivision, "serious physical harm" does not include reasonable and age-appropriate spanking to the buttocks where there is no evidence of serious physical injury.

(b) The child has suffered, or there is a substantial risk that the child will suffer, serious physical harm or illness, as a result of the failure or inability of his or her parent or guardian to adequately supervise or protect the child, or the willful or negligent failure of the child's parent or guardian to adequately supervise or protect the child from the conduct of the custodian with whom the child has been left, or by the willful or negligent failure of the parent or guardian to provide the child with adequate food, clothing, shelter, or medical treatment, or by the inability of the parent or guardian to provide regular care for the child due to the parent's or guardian's mental illness, developmental disability, or substance abuse. No child shall be found to be a person described by this subdivision solely due to the lack of an emergency shelter for the family. Whenever it is alleged that a child comes within the jurisdiction of the court on the basis of the parent's or guardian's willful failure to provide adequate medical treatment or specific decision to provide spiritual treatment through prayer, the court shall give deference to the parent's or guardian's medical treatment, nontreatment, or spiritual treatment through prayer alone in accordance with the tenets and practices of a recognized church or religious denomination, by an accredited practitioner thereof, and shall not assume jurisdiction unless necessary to protect the child from suffering serious physical harm or illness. In making its determination, the court shall consider (1) the nature of the treatment proposed by the parent or guardian, (2) the risks to the child posed by the course of treatment or nontreatment proposed by the parent

or guardian, (3) the risk, if any, of the course of treatment being proposed by the petitioning agency, and (4) the likely success of the courses of treatment or nontreatment proposed by the parent or guardian and agency. The child shall continue to be a dependent child pursuant to this subdivision only so long as is necessary to protect the child from risk of suffering serious physical harm or illness.

(c) The child is suffering serious emotional damage, or is at substantial risk of suffering serious emotional damage, evidenced by severe anxiety, depression, withdrawal, or untoward aggressive behavior toward self or others, as a result of the conduct of the parent or guardian or who has no parent or guardian capable of providing appropriate care. No child shall be found to be a person described by this subdivision if the willful failure of the parent or guardian to provide adequate mental health treatment is based on a sincerely held religious belief and if a less intrusive judicial intervention is available.

(d) The child has been sexually abused, or there is a substantial risk that the child will be sexually abused, as defined in Section 11165.1 of the Penal Code, by his or her parent or guardian or a member of his or her household, or the parent or guardian has failed to adequately protect the child from sexual abuse when the parent or guardian knew or reasonably should have known that the child was in danger of sexual abuse.

(e) The child is under the age of five years and has suffered severe physical abuse by a parent, or by any person known by the parent, if the parent knew or reasonably should have known that the person was physically abusing the child. For the purposes of this subdivision, "severe physical abuse" means any of the following: any single act of abuse which causes physical trauma of sufficient severity that, if left untreated, would cause permanent physical disfigurement, permanent physical disability, or death; any single act of sexual abuse which causes significant bleeding, deep bruising, or significant external or internal swelling; or more than one act of physical abuse, each of which causes bleeding, deep bruising, significant external or internal swelling, bone fracture, or unconsciousness; or the willful, prolonged failure to provide adequate food. A child may not be removed from the physical custody of his or her parent or guardian on the basis of a finding of severe physical abuse unless the social worker has made an allegation of severe physical abuse pursuant to Section 332.

(f) The child's parent or guardian caused the death of another child through abuse or neglect.

(g) The child has been left without any provision for support; physical custody of the child has been voluntarily surrendered pursuant to Section 1255.7 of the Health and Safety Code and the child has not been

reclaimed within the 14-day period specified in subdivision (e) of that section; the child's parent has been incarcerated or institutionalized and cannot arrange for the care of the child; or a relative or other adult custodian with whom the child resides or has been left is unwilling or unable to provide care or support for the child, the whereabouts of the parent are unknown, and reasonable efforts to locate the parent have been unsuccessful.

(h) The child has been freed for adoption by one or both parents for 12 months by either relinquishment or termination of parental rights or an adoption petition has not been granted.

(i) The child has been subjected to an act or acts of cruelty by the parent or guardian or a member of his or her household, or the parent or guardian has failed to adequately protect the child from an act or acts of cruelty when the parent or guardian knew or reasonably should have known that the child was in danger of being subjected to an act or acts of cruelty.

(j) The child's sibling has been abused or neglected, as defined in subdivision (a), (b), (d), (e), or (i), and there is a substantial risk that the child will be abused or neglected, as defined in those subdivisions. The court shall consider the circumstances surrounding the abuse or neglect of the sibling, the age and gender of each child, the nature of the abuse or neglect of the sibling, the mental condition of the parent or guardian, and any other factors the court considers probative in determining whether there is a substantial risk to the child.

It is the intent of the Legislature that nothing in this section disrupt the family unnecessarily or intrude inappropriately into family life, prohibit the use of reasonable methods of parental discipline, or prescribe a particular method of parenting. Further, nothing in this section is intended to limit the offering of voluntary services to those families in need of assistance but who do not come within the descriptions of this section. To the extent that savings accrue to the state from child welfare services funding obtained as a result of the enactment of the act that enacted this section, those savings shall be used to promote services which support family maintenance and family reunification plans, such as client transportation, out-of-home respite care, parenting training, and the provision of temporary or emergency in-home caretakers and persons teaching and demonstrating homemaking skills. The Legislature further declares that a physical disability, such as blindness or deafness, is no bar to the raising of happy and well-adjusted children and that a court's determination pursuant to this section shall center upon whether a parent's disability prevents him or her from exercising care and control. The Legislature further declares that a child whose parent has been adjudged a dependent child of the court pursuant to this section shall not be

considered to be at risk of abuse or neglect solely because of the age, dependent status, or foster care status of the parent.

As used in this section, “guardian” means the legal guardian of the child.

SEC. 1.5. Section 300 of the Welfare and Institutions Code, as added by Section 3.5 of Chapter 824 of the Statutes of 2000, is amended to read:

300. Any child who comes within any of the following descriptions is within the jurisdiction of the juvenile court which may adjudge that person to be a dependent child of the court:

(a) The child has suffered, or there is a substantial risk that the child will suffer, serious physical harm inflicted nonaccidentally upon the child by the child’s parent or guardian. For the purposes of this subdivision, a court may find there is a substantial risk of serious future injury based on the manner in which a less serious injury was inflicted, a history of repeated inflictions of injuries on the child or the child’s siblings, or a combination of these and other actions by the parent or guardian which indicate the child is at risk of serious physical harm. For purposes of this subdivision, “serious physical harm” does not include reasonable and age-appropriate spanking to the buttocks where there is no evidence of serious physical injury.

(b) The child has suffered, or there is a substantial risk that the child will suffer, serious physical harm or illness, as a result of the failure or inability of his or her parent or guardian to adequately supervise or protect the child, or the willful or negligent failure of the child’s parent or guardian to adequately supervise or protect the child from the conduct of the custodian with whom the child has been left, or by the willful or negligent failure of the parent or guardian to provide the child with adequate food, clothing, shelter, or medical treatment, or by the inability of the parent or guardian to provide regular care for the child due to the parent’s or guardian’s mental illness, developmental disability, or substance abuse. No child shall be found to be a person described by this subdivision solely due to the lack of an emergency shelter for the family. Whenever it is alleged that a child comes within the jurisdiction of the court on the basis of the parent’s or guardian’s willful failure to provide adequate medical treatment or specific decision to provide spiritual treatment through prayer, the court shall give deference to the parent’s or guardian’s medical treatment, nontreatment, or spiritual treatment through prayer alone in accordance with the tenets and practices of a recognized church or religious denomination, by an accredited practitioner thereof, and shall not assume jurisdiction unless necessary to protect the child from suffering serious physical harm or illness. In making its determination, the court shall consider (1) the nature of the

treatment proposed by the parent or guardian, (2) the risks to the child posed by the course of treatment or nontreatment proposed by the parent or guardian, (3) the risk, if any, of the course of treatment being proposed by the petitioning agency, and (4) the likely success of the courses of treatment or nontreatment proposed by the parent or guardian and agency. The child shall continue to be a dependent child pursuant to this subdivision only so long as is necessary to protect the child from risk of suffering serious physical harm or illness.

(c) The child is suffering serious emotional damage, or is at substantial risk of suffering serious emotional damage, evidenced by severe anxiety, depression, withdrawal, or untoward aggressive behavior toward self or others, as a result of the conduct of the parent or guardian or who has no parent or guardian capable of providing appropriate care. No child shall be found to be a person described by this subdivision if the willful failure of the parent or guardian to provide adequate mental health treatment is based on a sincerely held religious belief and if a less intrusive judicial intervention is available.

(d) The child has been sexually abused, or there is a substantial risk that the child will be sexually abused, as defined in Section 11165.1 of the Penal Code, by his or her parent or guardian or a member of his or her household, or the parent or guardian has failed to adequately protect the child from sexual abuse when the parent or guardian knew or reasonably should have known that the child was in danger of sexual abuse.

(e) The child is under the age of five and has suffered severe physical abuse by a parent, or by any person known by the parent, if the parent knew or reasonably should have known that the person was physically abusing the child. For the purposes of this subdivision, "severe physical abuse" means any of the following: any single act of abuse which causes physical trauma of sufficient severity that, if left untreated, would cause permanent physical disfigurement, permanent physical disability, or death; any single act of sexual abuse which causes significant bleeding, deep bruising, or significant external or internal swelling; or more than one act of physical abuse, each of which causes bleeding, deep bruising, significant external or internal swelling, bone fracture, or unconsciousness; or the willful, prolonged failure to provide adequate food. A child may not be removed from the physical custody of his or her parent or guardian on the basis of a finding of severe physical abuse unless the social worker has made an allegation of severe physical abuse pursuant to Section 332.

(f) The child's parent or guardian caused the death of another child through abuse or neglect.

(g) The child has been left without any provision for support; the child's parent has been incarcerated or institutionalized and cannot arrange for the care of the child; or a relative or other adult custodian with whom the child resides or has been left is unwilling or unable to provide care or support for the child, the whereabouts of the parent are unknown, and reasonable efforts to locate the parent have been unsuccessful.

(h) The child has been freed for adoption by one or both parents for 12 months by either relinquishment or termination of parental rights or an adoption petition has not been granted.

(i) The child has been subjected to an act or acts of cruelty by the parent or guardian or a member of his or her household, or the parent or guardian has failed to adequately protect the child from an act or acts of cruelty when the parent or guardian knew or reasonably should have known that the child was in danger of being subjected to an act or acts of cruelty.

(j) The child's sibling has been abused or neglected, as defined in subdivision (a), (b), (d), (e), or (i), and there is a substantial risk that the child will be abused or neglected, as defined in those subdivisions. The court shall consider the circumstances surrounding the abuse or neglect of the sibling, the age and gender of each child, the nature of the abuse or neglect of the sibling, the mental condition of the parent or guardian, and any other factors the court considers probative in determining whether there is a substantial risk to the child.

It is the intent of the Legislature that nothing in this section disrupt the family unnecessarily or intrude inappropriately into family life, prohibit the use of reasonable methods of parental discipline, or prescribe a particular method of parenting. Further, nothing in this section is intended to limit the offering of voluntary services to those families in need of assistance but who do not come within the descriptions of this section. To the extent that savings accrue to the state from child welfare services funding obtained as a result of the enactment of the act that enacted this section, those savings shall be used to promote services which support family maintenance and family reunification plans, such as client transportation, out-of-home respite care, parenting training, and the provision of temporary or emergency in-home caretakers and persons teaching and demonstrating homemaking skills. The Legislature further declares that a physical disability, such as blindness or deafness, is no bar to the raising of happy and well-adjusted children and that a court's determination pursuant to this section shall center upon whether a parent's disability prevents him or her from exercising care and control. The Legislature further declares that a child whose parent has been adjudged a dependent child of the court pursuant to this section shall not be

considered to be at risk of abuse or neglect solely because of the age, dependent status, or foster care status of the parent.

As used in this section, “guardian” means the legal guardian of the child.

SEC. 2. Section 362.1 of the Welfare and Institutions Code is amended to read:

362.1. (a) In order to maintain ties between the parent or guardian and any siblings and the child, and to provide information relevant to deciding if, and when, to return a child to the custody of his or her parent or guardian, or to encourage or suspend sibling interaction, any order placing a child in foster care, and ordering reunification services, shall provide as follows:

(1) (A) Subject to subparagraph (B), for visitation between the parent or guardian and the child. Visitation shall be as frequent as possible, consistent with the well-being of the child.

(B) No visitation order shall jeopardize the safety of the child. To protect the safety of the child, the court may keep the child’s address confidential. If the parent of the child has been convicted of murder in the first degree, as defined in Section 189 of the Penal Code, and the victim of the murder was the other parent of the child, the court shall order visitation between the child and the parent only if that order would be consistent with Section 3030 of the Family Code.

(2) Pursuant to subdivision (b) of Section 16002, for visitation between the child and any siblings, unless the court finds by clear and convincing evidence that sibling interaction is detrimental to either child.

(3) If the child is a teen parent who has custody of his or her child and that child is not a dependent of the court pursuant to this chapter, for visitation among the teen parent, the child’s noncustodial parent, and appropriate family members, unless the court finds by clear and convincing evidence that visitation would be detrimental to the teen parent.

(b) When reunification services are not ordered pursuant to Section 361.5, the child’s plan for legal permanency shall include consideration of the existence of and the relationship with any sibling pursuant to Section 16002, including their impact on placement and visitation.

(c) As used in this section, “sibling” means a child related to another person by blood, adoption, or affinity through a common legal or biological parent.

SEC. 3. Section 11400 of the Welfare and Institutions Code, as amended by Section 6 of Chapter 664 of the Statutes of 2004, is amended to read:

11400. For the purposes of this article, the following definitions shall apply:

(a) “Aid to Families with Dependent Children-Foster Care (AFDC-FC)” means the aid provided on behalf of needy children in foster care under the terms of this division.

(b) “Case plan” means a written document that, at a minimum, specifies the type of home in which the child shall be placed, the safety of that home, and the appropriateness of that home to meet the child’s needs. It shall also include the agency’s plan for ensuring that the child receive proper care and protection in a safe environment, and shall set forth the appropriate services to be provided to the child, the child’s family, and the foster parents, in order to meet the child’s needs while in foster care, and to reunify the child with the child’s family. In addition, the plan shall specify the services that will be provided or steps that will be taken to facilitate an alternate permanent plan if reunification is not possible.

(c) “Certified family home” means a family residence certified by a licensed foster family agency and issued a certificate of approval by that agency as meeting licensing standards, and used only by that foster family agency for placements.

(d) “Family home” means the family residency of a licensee in which 24-hour care and supervision are provided for children.

(e) “Small family home” means any residential facility, in the licensee’s family residence, which provides 24-hour care for six or fewer foster children who have mental disorders or developmental or physical disabilities and who require special care and supervision as a result of their disabilities.

(f) “Foster care” means the 24-hour out-of-home care provided to children whose own families are unable or unwilling to care for them, and who are in need of temporary or long-term substitute parenting.

(g) “Foster family agency” means any individual or organization engaged in the recruiting, certifying, and training of, and providing professional support to, foster parents, or in finding homes or other places for placement of children for temporary or permanent care who require that level of care as an alternative to a group home. Private foster family agencies shall be organized and operated on a nonprofit basis.

(h) “Group home” means a nondetention privately operated residential home, organized and operated on a nonprofit basis only, of any capacity, that provides services in a group setting to children in need of care and supervision, as required by paragraph (1) of subdivision (a) of Section 1502 of the Health and Safety Code.

(i) “Periodic review” means review of a child’s status by the juvenile court or by an administrative review panel, that shall include a consideration of the safety of the child, a determination of the continuing need for placement in foster care, evaluation of the goals for the

placement and the progress toward meeting these goals, and development of a target date for the child's return home or establishment of alternative permanent placement.

(j) "Permanency planning hearing" means a hearing conducted by the juvenile court in which the child's future status, including whether the child shall be returned home or another permanent plan shall be developed, is determined.

(k) "Placement and care" refers to the responsibility for the welfare of a child vested in an agency or organization by virtue of the agency or organization having (1) been delegated care, custody, and control of a child by the juvenile court, (2) taken responsibility, pursuant to a relinquishment or termination of parental rights on a child, (3) taken the responsibility of supervising a child detained by the juvenile court pursuant to Section 319 or 636, or (4) signed a voluntary placement agreement for the child's placement; or to the responsibility designated to an individual by virtue of his or her being appointed the child's legal guardian.

(l) "Preplacement preventive services" means services that are designed to help children remain with their families by preventing or eliminating the need for removal.

(m) "Relative" means an adult who is related to the child by blood, adoption, or affinity within the fifth degree of kinship, including stepparents, stepsiblings, and all relatives whose status is preceded by the words "great," "great-great," or "grand" or the spouse of any of these persons even if the marriage was terminated by death or dissolution.

(n) "Nonrelative extended family member" means an adult caregiver who has an established familial or mentoring relationship with the child, as described in Section 362.7.

(o) "Voluntary placement" means an out-of-home placement of a child by (1) the county welfare department after the parents or guardians have requested the assistance of the county welfare department and have signed a voluntary placement agreement; or (2) the county welfare department licensed public or private adoption agency, or the department acting as an adoption agency, after the parents have requested the assistance of either the county welfare department, the licensed public or private adoption agency, or the department acting as an adoption agency for the purpose of adoption planning, and have signed a voluntary placement agreement.

(p) "Voluntary placement agreement" means a written agreement between either the county welfare department, a licensed public or private adoption agency, or the department acting as an adoption agency, and the parents or guardians of a child that specifies, at a minimum, the following:

- (1) The legal status of the child.
- (2) The rights and obligations of the parents or guardians, the child, and the agency in which the child is placed.

(q) "Original placement date" means the most recent date on which the court detained a child and ordered an agency to be responsible for supervising the child or the date on which an agency assumed responsibility for a child due to termination of parental rights, relinquishment, or voluntary placement.

(r) "Transitional housing placement facility" means either of the following:

- (1) A community care facility licensed by the State Department of Social Services pursuant to Section 1559.110 of the Health and Safety Code to provide transitional housing opportunities to persons at least 16 years of age, and not more than 18 years of age unless they satisfy the requirements of Section 11403, who are in out-of-home placement under the supervision of the county department of social services or the county probation department, and who are participating in an independent living program.

- (2) A facility certified to provide transitional housing services pursuant to subdivision (e) of Section 1559.110 of the Health and Safety Code.

(s) "Transitional housing placement program" means a program that provides supervised housing opportunities to eligible youth pursuant to Article 4 (commencing with Section 16522) of Chapter 5 of Part 4.

(t) "Crisis nursery" means a facility licensed to provide short-term, 24-hour nonmedical residential care and supervision for children under six years of age who are either voluntarily placed for temporary care by a parent or legal guardian due to a family crisis or stressful situation for no more than 30 days or, except as provided in subdivision (e) of Section 1516 of the Health and Safety Code, who are temporarily placed by a county child welfare service agency for no more than 14 days.

(u) "Whole family foster home" means a family home, approved relative caregiver or nonrelative extended family member's home, or certified family home that provides foster care for a minor parent and his or her child, and is specifically recruited and trained to assist the minor parent in developing the skills necessary to provide a safe, stable, and permanent home for his or her child. The child of the minor parent need not be the subject of a petition filed pursuant to Section 300 to qualify for placement in a whole family foster home.

(v) 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. 3.5. Section 11400 of the Welfare and Institutions Code, as amended by Section 6 of Chapter 664 of the Statutes of 2004, is amended to read:

11400. For the purposes of this article, the following definitions shall apply:

(a) "Aid to Families with Dependent Children-Foster Care (AFDC-FC)" means the aid provided on behalf of needy children in foster care under the terms of this division.

(b) "Case plan" means a written document that, at a minimum, specifies the type of home in which the child shall be placed, the safety of that home, and the appropriateness of that home to meet the child's needs. It shall also include the agency's plan for ensuring that the child receive proper care and protection in a safe environment, and shall set forth the appropriate services to be provided to the child, the child's family, and the foster parents, in order to meet the child's needs while in foster care, and to reunify the child with the child's family. In addition, the plan shall specify the services that will be provided or steps that will be taken to facilitate an alternate permanent plan if reunification is not possible.

(c) "Certified family home" means a family residence certified by a licensed foster family agency and issued a certificate of approval by that agency as meeting licensing standards, and used only by that foster family agency for placements.

(d) "Family home" means the family residency of a licensee in which 24-hour care and supervision are provided for children.

(e) "Small family home" means any residential facility, in the licensee's family residence, which provides 24-hour care for six or fewer foster children who have mental disorders or developmental or physical disabilities and who require special care and supervision as a result of their disabilities.

(f) "Foster care" means the 24-hour out-of-home care provided to children whose own families are unable or unwilling to care for them, and who are in need of temporary or long-term substitute parenting.

(g) "Foster family agency" means any individual or organization engaged in the recruiting, certifying, and training of, and providing professional support to, foster parents, or in finding homes or other places for placement of children for temporary or permanent care who require that level of care as an alternative to a group home. Private foster family agencies shall be organized and operated on a nonprofit basis.

(h) "Group home" means a nondetention privately operated residential home, organized and operated on a nonprofit basis only, of any capacity, or a nondetention licensed residential care home operated by the County of San Mateo with a capacity of up to 25 beds, that provides services in

a group setting to children in need of care and supervision, as required by paragraph (1) of subdivision (a) of Section 1502 of the Health and Safety Code.

(i) "Periodic review" means review of a child's status by the juvenile court or by an administrative review panel, that shall include a consideration of the safety of the child, a determination of the continuing need for placement in foster care, evaluation of the goals for the placement and the progress toward meeting these goals, and development of a target date for the child's return home or establishment of alternative permanent placement.

(j) "Permanency planning hearing" means a hearing conducted by the juvenile court in which the child's future status, including whether the child shall be returned home or another permanent plan shall be developed, is determined.

(k) "Placement and care" refers to the responsibility for the welfare of a child vested in an agency or organization by virtue of the agency or organization having (1) been delegated care, custody, and control of a child by the juvenile court, (2) taken responsibility, pursuant to a relinquishment or termination of parental rights on a child, (3) taken the responsibility of supervising a child detained by the juvenile court pursuant to Section 319 or 636, or (4) signed a voluntary placement agreement for the child's placement; or to the responsibility designated to an individual by virtue of his or her being appointed the child's legal guardian.

(l) "Preplacement preventive services" means services that are designed to help children remain with their families by preventing or eliminating the need for removal.

(m) "Relative" means an adult who is related to the child by blood, adoption, or affinity within the fifth degree of kinship, including stepparents, stepsiblings, and all relatives whose status is preceded by the words "great," "great-great," or "grand" or the spouse of any of these persons even if the marriage was terminated by death or dissolution.

(n) "Nonrelative extended family member" means an adult caregiver who has an established familial or mentoring relationship with the child, as described in Section 362.7.

(o) "Voluntary placement" means an out-of-home placement of a child by (1) the county welfare department after the parents or guardians have requested the assistance of the county welfare department and have signed a voluntary placement agreement; or (2) the county welfare department licensed public or private adoption agency, or the department acting as an adoption agency, after the parents have requested the assistance of either the county welfare department, the licensed public or private adoption agency, or the department acting as an adoption

agency for the purpose of adoption planning, and have signed a voluntary placement agreement.

(p) “Voluntary placement agreement” means a written agreement between either the county welfare department, a licensed public or private adoption agency, or the department acting as an adoption agency, and the parents or guardians of a child that specifies, at a minimum, the following:

- (1) The legal status of the child.
- (2) The rights and obligations of the parents or guardians, the child, and the agency in which the child is placed.

(q) “Original placement date” means the most recent date on which the court detained a child and ordered an agency to be responsible for supervising the child or the date on which an agency assumed responsibility for a child due to termination of parental rights, relinquishment, or voluntary placement.

(r) “Transitional housing placement facility” means either of the following:

- (1) A community care facility licensed by the State Department of Social Services pursuant to Section 1559.110 of the Health and Safety Code to provide transitional housing opportunities to persons at least 16 years of age, and not more than 18 years of age unless they satisfy the requirements of Section 11403, who are in out-of-home placement under the supervision of the county department of social services or the county probation department, and who are participating in an independent living program.

- (2) A facility certified to provide transitional housing services pursuant to subdivision (e) of Section 1559.110 of the Health and Safety Code.

(s) “Transitional housing placement program” means a program that provides supervised housing opportunities to eligible youth pursuant to Article 4 (commencing with Section 16522) of Chapter 5 of Part 4.

(t) “Crisis nursery” means a facility licensed to provide short-term, 24-hour nonmedical residential care and supervision for children under six years of age who are either voluntarily placed for temporary care by a parent or legal guardian due to a family crisis or stressful situation for no more than 30 days or, except as provided in subdivision (e) of Section 1516 of the Health and Safety Code, who are temporarily placed by a county child welfare service agency for no more than 14 days.

(u) “Whole family foster home” means a family home, approved relative caregiver or nonrelative extended family member’s home, or certified family home that provides foster care for a minor parent and his or her child, and is specifically recruited and trained to assist the minor parent in developing the skills necessary to provide a safe, stable, and permanent home for his or her child. The child of the minor parent

need not be the subject of a petition filed pursuant to Section 300 to qualify for placement in a whole family foster home.

(v) 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. 4. Section 11400 of the Welfare and Institutions Code, as added by Section 7 of Chapter 664 of the Statutes of 2004, is amended to read:

11400. For the purposes of this article, the following definitions shall apply:

(a) "Aid to Families with Dependent Children-Foster Care (AFDC-FC)" means the aid provided on behalf of needy children in foster care under the terms of this division.

(b) "Case plan" means a written document that, at a minimum, specifies the type of home in which the child shall be placed, the safety of that home, and the appropriateness of that home to meet the child's needs. It shall also include the agency's plan for ensuring that the child receive proper care and protection in a safe environment, and shall set forth the appropriate services to be provided to the child, the child's family, and the foster parents, in order to meet the child's needs while in foster care, and to reunify the child with the child's family. In addition, the plan shall specify the services that will be provided or steps that will be taken to facilitate an alternate permanent plan if reunification is not possible.

(c) "Certified family home" means a family residence certified by a licensed foster family agency and issued a certificate of approval by that agency as meeting licensing standards, and used only by that foster family agency for placements.

(d) "Family home" means the family residency of a licensee in which 24-hour care and supervision are provided for children.

(e) "Small family home" means any residential facility, in the licensee's family residence, which provides 24-hour care for six or fewer foster children who have mental disorders or developmental or physical disabilities and who require special care and supervision as a result of their disabilities.

(f) "Foster care" means the 24-hour out-of-home care provided to children whose own families are unable or unwilling to care for them, and who are in need of temporary or long-term substitute parenting.

(g) "Foster family agency" means any individual or organization engaged in the recruiting, certifying, and training of, and providing professional support to, foster parents, or in finding homes or other places for placement of children for temporary or permanent care who require that level of care as an alternative to a group home. Private foster family agencies shall be organized and operated on a nonprofit basis.

(h) “Group home” means a nondetention privately operated residential home, organized and operated on a nonprofit basis only, of any capacity, that provides services in a group setting to children in need of care and supervision, as required by paragraph (1) of subdivision (a) of Section 1502 of the Health and Safety Code.

(i) “Periodic review” means review of a child’s status by the juvenile court or by an administrative review panel, that shall include a consideration of the safety of the child, a determination of the continuing need for placement in foster care, evaluation of the goals for the placement and the progress toward meeting these goals, and development of a target date for the child’s return home or establishment of alternative permanent placement.

(j) “Permanency planning hearing” means a hearing conducted by the juvenile court in which the child’s future status, including whether the child shall be returned home or another permanent plan shall be developed, is determined.

(k) “Placement and care” refers to the responsibility for the welfare of a child vested in an agency or organization by virtue of the agency or organization having (1) been delegated care, custody, and control of a child by the juvenile court, (2) taken responsibility, pursuant to a relinquishment or termination of parental rights on a child, (3) taken the responsibility of supervising a child detained by the juvenile court pursuant to Section 319 or 636, or (4) signed a voluntary placement agreement for the child’s placement; or to the responsibility designated to an individual by virtue of his or her being appointed the child’s legal guardian.

(l) “Preplacement preventive services” means services that are designed to help children remain with their families by preventing or eliminating the need for removal.

(m) “Relative” means an adult who is related to the child by blood, adoption, or affinity within the fifth degree of kinship, including stepparents, stepsiblings, and all relatives whose status is preceded by the words “great,” “great-great,” or “grand” or the spouse of any of these persons even if the marriage was terminated by death or dissolution.

(n) “Nonrelative extended family member” means an adult caregiver who has an established familial or mentoring relationship with the child, as described in Section 362.7.

(o) “Voluntary placement” means an out-of-home placement of a child by (1) the county welfare department after the parents or guardians have requested the assistance of the county welfare department and have signed a voluntary placement agreement; or (2) the county welfare department licensed public or private adoption agency, or the department acting as an adoption agency, after the parents have requested the

assistance of either the county welfare department, the licensed public or private adoption agency, or the department acting as an adoption agency for the purpose of adoption planning, and have signed a voluntary placement agreement.

(p) "Voluntary placement agreement" means a written agreement between either the county welfare department, a licensed public or private adoption agency, or the department acting as an adoption agency, and the parents or guardians of a child that specifies, at a minimum, the following:

- (1) The legal status of the child.
- (2) The rights and obligations of the parents or guardians, the child, and the agency in which the child is placed.

(q) "Original placement date" means the most recent date on which the court detained a child and ordered an agency to be responsible for supervising the child or the date on which an agency assumed responsibility for a child due to termination of parental rights, relinquishment, or voluntary placement.

(r) "Transitional housing placement facility" means either of the following:

- (1) A community care facility licensed by the State Department of Social Services pursuant to Section 1559.110 of the Health and Safety Code to provide transitional housing opportunities to persons at least 16 years of age, and not more than 18 years of age unless they satisfy the requirements of Section 11403, who are in out-of-home placement under the supervision of the county department of social services or the county probation department, and who are participating in an independent living program.

- (2) A facility certified to provide transitional housing services pursuant to subdivision (e) of Section 1559.110 of the Health and Safety Code.

(s) "Transitional housing placement program" means a program that provides supervised housing opportunities to eligible youth pursuant to Article 4 (commencing with Section 16522) of Chapter 5 of Part 4.

(t) "Whole family foster home" means a family home, approved relative caregiver or nonrelative extended family member's home, or certified family home that provides foster care for a minor parent and his or her child, and is specifically recruited and trained to assist the minor parent in developing the skills necessary to provide a safe, stable, and permanent home for his or her child. The child of the minor parent need not be the subject of a petition filed pursuant to Section 300 to qualify for placement in a whole family foster home.

(u) This section shall become operative on January 1, 2008.

SEC. 4.5. Section 11400 of the Welfare and Institutions Code, as added by Section 7 of Chapter 664 of the Statutes of 2004, is amended to read:

11400. For the purposes of this article, the following definitions shall apply:

(a) "Aid to Families with Dependent Children-Foster Care (AFDC-FC)" means the aid provided on behalf of needy children in foster care under the terms of this division.

(b) "Case plan" means a written document that, at a minimum, specifies the type of home in which the child shall be placed, the safety of that home, and the appropriateness of that home to meet the child's needs. It shall also include the agency's plan for ensuring that the child receive proper care and protection in a safe environment, and shall set forth the appropriate services to be provided to the child, the child's family, and the foster parents, in order to meet the child's needs while in foster care, and to reunify the child with the child's family. In addition, the plan shall specify the services that will be provided or steps that will be taken to facilitate an alternate permanent plan if reunification is not possible.

(c) "Certified family home" means a family residence certified by a licensed foster family agency and issued a certificate of approval by that agency as meeting licensing standards, and used only by that foster family agency for placements.

(d) "Family home" means the family residency of a licensee in which 24-hour care and supervision are provided for children.

(e) "Small family home" means any residential facility, in the licensee's family residence, which provides 24-hour care for six or fewer foster children who have mental disorders or developmental or physical disabilities and who require special care and supervision as a result of their disabilities.

(f) "Foster care" means the 24-hour out-of-home care provided to children whose own families are unable or unwilling to care for them, and who are in need of temporary or long-term substitute parenting.

(g) "Foster family agency" means any individual or organization engaged in the recruiting, certifying, and training of, and providing professional support to, foster parents, or in finding homes or other places for placement of children for temporary or permanent care who require that level of care as an alternative to a group home. Private foster family agencies shall be organized and operated on a nonprofit basis.

(h) "Group home" means a nondetention privately operated residential home, organized and operated on a nonprofit basis only, of any capacity, or a nondetention licensed residential care home operated by the County of San Mateo with a capacity of up to 25 beds, that provides services in

a group setting to children in need of care and supervision, as required by paragraph (1) of subdivision (a) of Section 1502 of the Health and Safety Code.

(i) "Periodic review" means review of a child's status by the juvenile court or by an administrative review panel, that shall include a consideration of the safety of the child, a determination of the continuing need for placement in foster care, evaluation of the goals for the placement and the progress toward meeting these goals, and development of a target date for the child's return home or establishment of alternative permanent placement.

(j) "Permanency planning hearing" means a hearing conducted by the juvenile court in which the child's future status, including whether the child shall be returned home or another permanent plan shall be developed, is determined.

(k) "Placement and care" refers to the responsibility for the welfare of a child vested in an agency or organization by virtue of the agency or organization having (1) been delegated care, custody, and control of a child by the juvenile court, (2) taken responsibility, pursuant to a relinquishment or termination of parental rights on a child, (3) taken the responsibility of supervising a child detained by the juvenile court pursuant to Section 319 or 636, or (4) signed a voluntary placement agreement for the child's placement; or to the responsibility designated to an individual by virtue of his or her being appointed the child's legal guardian.

(l) "Preplacement preventive services" means services that are designed to help children remain with their families by preventing or eliminating the need for removal.

(m) "Relative" means an adult who is related to the child by blood, adoption, or affinity within the fifth degree of kinship, including stepparents, stepsiblings, and all relatives whose status is preceded by the words "great," "great-great," or "grand" or the spouse of any of these persons even if the marriage was terminated by death or dissolution.

(n) "Nonrelative extended family member" means an adult caregiver who has an established familial or mentoring relationship with the child, as described in Section 362.7.

(o) "Voluntary placement" means an out-of-home placement of a child by (1) the county welfare department after the parents or guardians have requested the assistance of the county welfare department and have signed a voluntary placement agreement; or (2) the county welfare department licensed public or private adoption agency, or the department acting as an adoption agency, after the parents have requested the assistance of either the county welfare department, the licensed public or private adoption agency, or the department acting as an adoption

agency for the purpose of adoption planning, and have signed a voluntary placement agreement.

(p) "Voluntary placement agreement" means a written agreement between either the county welfare department, a licensed public or private adoption agency, or the department acting as an adoption agency, and the parents or guardians of a child that specifies, at a minimum, the following:

- (1) The legal status of the child.
- (2) The rights and obligations of the parents or guardians, the child, and the agency in which the child is placed.

(q) "Original placement date" means the most recent date on which the court detained a child and ordered an agency to be responsible for supervising the child or the date on which an agency assumed responsibility for a child due to termination of parental rights, relinquishment, or voluntary placement.

(r) "Transitional housing placement facility" means either of the following:

- (1) A community care facility licensed by the State Department of Social Services pursuant to Section 1559.110 of the Health and Safety Code to provide transitional housing opportunities to persons at least 16 years of age, and not more than 18 years of age unless they satisfy the requirements of Section 11403, who are in out-of-home placement under the supervision of the county department of social services or the county probation department, and who are participating in an independent living program.

- (2) A facility certified to provide transitional housing services pursuant to subdivision (e) of Section 1559.110 of the Health and Safety Code.

(s) "Transitional housing placement program" means a program that provides supervised housing opportunities to eligible youth pursuant to Article 4 (commencing with Section 16522) of Chapter 5 of Part 4.

(t) "Whole family foster home" means a family home, approved relative caregiver or nonrelative extended family member's home, or certified family home that provides foster care for a minor parent and his or her child, and is specifically recruited and trained to assist the minor parent in developing the skills necessary to provide a safe, stable, and permanent home for his or her child. The child of the minor parent need not be the subject of a petition filed pursuant to Section 300 to qualify for placement in a whole family foster home.

(u) This section shall become operative on January 1, 2008.

SEC. 5. Section 11401 of the Welfare and Institutions Code is amended to read:

11401. Aid in the form of AFDC-FC shall be provided under this chapter on behalf of any child under the age of 18 years, except as

provided in Section 11403, who meets the conditions of subdivision (a), (b), (c), (d), (e), (f), or (g):

(a) The child has been relinquished, for purposes of adoption, to a licensed adoption agency, or the department, or the parental rights of either or both of his or her parents have been terminated after an action under the Family Code has been brought by a licensed adoption agency or the department, provided that the licensed adoption agency or the department, if responsible for placement and care, provides to those children all services as required by the department to children in foster care.

(b) The child has been removed from the physical custody of his or her parent, relative, or guardian as a result of a voluntary placement agreement or a judicial determination that continuance in the home would be contrary to the child's welfare and that, if the child was placed in foster care, reasonable efforts were made, consistent with Chapter 5 (commencing with Section 16500) of Part 4, to prevent or eliminate the need for removal of the child from his or her home and to make it possible for the child to return to his or her home, and any of the following applies:

(1) The child has been adjudged a dependent child of the court on the grounds that he or she is a person described by Section 300.

(2) The child has been adjudged a ward of the court on the grounds that he or she is a person described by Sections 601 and 602.

(3) The child has been detained under a court order, pursuant to Section 319 or 636, that remains in effect.

(4) The child's dependency jurisdiction has resumed pursuant to Section 387.

(c) The child has been voluntarily placed by his or her parent or guardian pursuant to Section 11401.1.

(d) The child is living in the home of a nonrelated legal guardian.

(e) The child has been placed in foster care under the federal Indian Child Welfare Act. Sections 11402, 11404, and 11405 shall not be construed as limiting payments to Indian children, as defined in the federal Indian Child Welfare Act, placed in accordance with that act.

(f) To be eligible for federal financial participation, either of the following conditions shall be satisfied:

(1) (A) The child meets the conditions of subdivision (b).

(B) The child has been deprived of parental support or care for any of the reasons set forth in Section 11250.

(C) The child has been removed from the home of a relative as defined in Section 233.90(c)(1) of Title 45 of the Code of Federal Regulations, as amended.

(D) The requirements of Sections 671 and 672 of Title 42 of the United States Code, as amended, have been met.

(2) (A) The child meets the requirements of subdivision (g).

(B) The requirements of Sections 671 and 672 of Title 42 of the United States Code, as amended, have been met.

(C) This paragraph shall be implemented only if federal financial participation is available for the children described in this paragraph.

(g) The child meets all of the following conditions:

(1) The child has been adjudged to be a dependent child or ward of the court on the grounds that he or she is a person described in Section 300.

(2) The child's parent also has been adjudged to be a dependent child of the court on the grounds that he or she is a person described by Section 300 or Section 602 and is receiving benefits under this chapter.

(3) The child is placed in the same licensed or approved foster care facility in which his or her parent is placed and the child's parent is receiving reunification services with respect to that child.

SEC. 6. Section 11465 of the Welfare and Institutions Code is amended to read:

11465. (a) When a child is living with a parent who receives AFDC-FC or Kin-GAP benefits, the rate paid to the provider on behalf of the parent shall include an amount for care and supervision of the child.

(b) For each category of eligible licensed community care facility, as defined in Section 1502 of the Health and Safety Code, the department shall adopt regulations setting forth a uniform rate to cover the cost of care and supervision of the child in each category of eligible licensed community care facility.

(c) (1) On and after July 1, 1998, the uniform rate to cover the cost of care and supervision of a child pursuant to this section shall be increased by 6 percent, rounded to the nearest dollar. The resultant amounts shall constitute the new uniform rate.

(2) (A) On and after July 1, 1999, the uniform rate to cover the cost of care and supervision of a child pursuant to this section shall be adjusted by an amount equal to the California Necessities Index computed pursuant to Section 11453, rounded to the nearest dollar. The resultant amounts shall constitute the new uniform rate, subject to further adjustment pursuant to subparagraph (B).

(B) In addition to the adjustment specified in subparagraph (A), on and after January 1, 2000, the uniform rate to cover the cost of care and supervision of a child pursuant to this section shall be increased by 2.36 percent, rounded to the nearest dollar. The resultant amounts shall constitute the new uniform rate.

(3) Subject to the availability of funds, for the 2000-01 fiscal year and annually thereafter, these rates shall be adjusted for cost of living pursuant to procedures in Section 11453.

(d) (1) Notwithstanding subdivisions (a) to (c), inclusive, the payment made pursuant to this section for care and supervision of a child who is living with a teen parent in a whole family foster home, as defined in subdivision (u) of Section 11400, shall equal the basic rate for children placed in a licensed or approved home as specified in subdivisions (a) to (d), inclusive, of Section 11461.

(2) The caregiver shall provide the county child welfare agency or probation department with a copy of the shared responsibility plan developed pursuant to Section 16501.25 and shall advise the county child welfare agency or probation department of any subsequent changes to the plan. Once the plan has been completed and provided to the appropriate agencies, the payment made pursuant to this section shall be increased by an additional two hundred dollars (\$200) per month to reflect the increased care and supervision while he or she is placed in the whole family foster home.

(3) In any year in which the payment provided pursuant to this section is adjusted for the cost of living as provided in paragraph (1) of subdivision (c), the payments provided for in this subdivision shall also be increased by the same procedures.

SEC. 7. Section 16501.25 is added to the Welfare and Institutions Code, to read:

16501.25. (a) For the purposes of this section, "teen parent" means a child who has been adjudged to be a dependent child or ward of the court on the grounds that he or she is a person described under Section 300 or Section 602, living in out-of-home placement in a whole family foster home, as defined in subdivision (u) of Section 11400, who is a parent.

(b) (1) When the child of a teen parent is not subject to the jurisdiction of the dependency court but is in the full or partial physical custody of the teen parent, a written shared responsibility plan shall be developed. The plan shall be developed between the teen parent, caregiver, and a representative of the county child welfare agency or probation department, and in the case of a certified home, a representative of the agency providing direct and immediate supervision to the caregiver. Additional input may be provided by any individuals identified by the teen parent, the other parent of the child, if appropriate, and other extended family members. The plan shall be developed as soon as is practicably possible. However, if one or more of the above stakeholders are not available to participate in the creation of the plan within the first 30 days of the teen parent's placement, the teen parent and caregiver

may enter into a plan for the purposes of fulfilling the requirements of paragraph (2) of subdivision (d) of Section 11465, which may be modified at a later time when the other individuals become available.

(2) The plan shall be designed to preserve and strengthen the teen parent family unit, as described in Section 16002.5, to assist the teen parent in meeting the goals outlined in Section 16002.5, to facilitate a supportive home environment for the teen parent and the child, and to ultimately enable the teen parent to independently provide a safe, stable, and permanent home for the child. The plan shall in no way limit the teen parent's legal right to make decisions regarding the care, custody, and control of the child.

(3) The plan shall be written for the express purpose of aiding the teen parent and the caregiver to reach agreements aimed at reducing conflict and misunderstandings. The plan shall outline, with as much specificity as is practicable, the duties, rights, and responsibilities of both the teen parent and the caregiver with regard to the child, and identify supportive services to be offered to the teen parent by the caregiver or, in the case of a certified home, the agency providing direct and immediate supervision to the caregiver, or both. The plan shall be updated, as needed, to account for the changing needs of infants and toddlers, and in accordance with the teen parent's changing school, employment, or other outside responsibilities. The plan shall not conflict with the teen parent's case plan. Areas to be addressed by the plan include, but are not limited to, all of the following:

- (A) Feeding.
- (B) Clothing.
- (C) Hygiene.
- (D) Purchase of necessary items, including, but not limited to, safety items, food, clothing, and developmentally appropriate toys and books. This includes both one-time purchases and items needed on an ongoing basis.
- (E) Health care.
- (F) Transportation to health care appointments, child care, and school, as appropriate.
- (G) Provision of child care and babysitting.
- (H) Discipline.
- (I) Sleeping arrangements.
- (J) Visits among the child, his or her noncustodial parent, and other appropriate family members, including the responsibilities of the teen parent, the caregiver, and the foster family agency, as appropriate, for facilitating the visitation. The shared responsibility plan shall not conflict with the teen parent's case plan and any visitation orders made by the court.

(c) Upon completion of the shared responsibility plan and any subsequent updates to the plan, a copy shall be provided to the teen parent and his or her attorney, the caregiver, the county child welfare agency or probation department and, in the case of a certified home, the agency providing direct and immediate supervision to the caregiver.

SEC. 8. 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.

SEC. 9. (a) Section 1 of this bill incorporates amendments to Section 300 of the Welfare and Institutions Code proposed by both this bill and SB 116. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2006, (2) SB 116 bill amends Section 300 of the Welfare and Institutions Code, as amended by Section 3 of Chapter 824 of the Statutes of 2000, and (3) this bill is enacted after SB 116, in which case Section 1.5 of this bill shall not become operative.

(b) Section 1.5 of this bill shall only become operative if (1) this bill is enacted and becomes effective on or before January 1, 2006, and (2) SB 116 is not enacted, in which case Section 1 of this bill shall not become operative.

SEC. 10. Section 3.5 of this bill incorporates amendments to Section 11400 of the Welfare and Institutions Code proposed by both this bill and SB 679. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2006, (2) each bill amends Section 11400 of the Welfare and Institutions Code, as amended by Section 6 of Chapter 664 of the Statutes of 2004, and (3) this bill is enacted after SB 679, in which case Section 3 of this bill shall not become operative.

SEC. 11. Section 4.5 of this bill incorporates amendments to Section 11400 of the Welfare and Institutions Code proposed by both this bill and SB 679. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2006, (2) each bill amends Section 11400 of the Welfare and Institutions Code, as amended by Section 7 of Chapter 664 of the Statutes of 2004, and (3) this bill is enacted after SB 679, in which case Section 4 of this bill shall not become operative.

CHAPTER 631

An act to amend Section 1218 of the Code of Civil Procedure, to amend Section 6380 of the Family Code, and to amend Section 136.2 of the Penal Code, relating to court orders.

[Approved by Governor October 7, 2005. Filed with
Secretary of State October 7, 2005.]

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

SECTION 1. Section 1218 of the Code of Civil Procedure, as amended by Section 44 of Chapter 75 of the Statutes of 2005, is amended to read:

1218. (a) Upon the answer and evidence taken, the court or judge shall determine whether the person proceeded against is guilty of the contempt charged, and if it be adjudged that he or she is guilty of the contempt, a fine may be imposed on him or her not exceeding one thousand dollars (\$1,000), payable to the court, or he or she may be imprisoned not exceeding five days, or both. In addition, a person who is subject to a court order as a party to the action, or any agent of this person, who is adjudged guilty of contempt for violating that court order may be ordered to pay to the party initiating the contempt proceeding the reasonable attorney's fees and costs incurred by this party in connection with the contempt proceeding.

(b) No party, who is in contempt of a court order or judgment in a dissolution of marriage, dissolution of domestic partnership, or legal separation action, shall be permitted to enforce such an order or judgment, by way of execution or otherwise, either in the same action or by way of a separate action, against the other party. This restriction shall not affect nor apply to the enforcement of child or spousal support orders.

(c) In any court action in which a party is found in contempt of court for failure to comply with a court order pursuant to the Family Code, the court shall order the following:

(1) Upon a first finding of contempt, the court shall order the contemner to perform community service of up to 120 hours, or to be imprisoned up to 120 hours, for each count of contempt.

(2) Upon the second finding of contempt, the court shall order the contemner to perform community service of up to 120 hours, in addition to ordering imprisonment of the contemner up to 120 hours, for each count of contempt.

(3) Upon the third or any subsequent finding of contempt, the court shall order both of the following:

(A) The court shall order the contemner to serve a term of imprisonment of up to 240 hours, and to perform community service of up to 240 hours, for each count of contempt.

(B) The court shall order the contemner to pay an administrative fee, not to exceed the actual cost of the contemner's administration and supervision, while assigned to a community service program pursuant to this paragraph.

(4) The court shall take parties' employment schedules into consideration when ordering either community service or imprisonment, or both.

(d) Pursuant to Section 1211 and this section, a district attorney or city attorney may initiate and pursue a court action for contempt against a party for failing to comply with a court order entered pursuant to the Domestic Violence Protection Act (Division 10 (commencing with Section 6200) of the Family Code). Any attorney's fees and costs ordered by the court pursuant to subdivision (a) against a party who is adjudged guilty of contempt under this subdivision shall be paid to the Office of Emergency Services' account established for the purpose of funding domestic violence shelter service providers pursuant to subdivision (f) of Section 13823.15 of the Penal Code.

SEC. 2. Section 6380 of the Family Code is amended to read:

6380. (a) Each county, with the approval of the Department of Justice, shall, by July 1, 1996, develop a procedure, using existing systems, for the electronic transmission of data, as described in subdivision (b), to the Department of Justice. The data shall be electronically transmitted through the California Law Enforcement Telecommunications System (CLETS) of the Department of Justice by law enforcement personnel, or with the approval of the Department of Justice, court personnel, or another appropriate agency capable of maintaining and preserving the integrity of both the CLETS and the Domestic Violence Restraining Order System, as described in subdivision (e). Data entry is required to be entered only once under the requirements of this section, unless the order is served at a later time. A portion of all fees payable to the Department of Justice under subdivision (a) of Section 1203.097 of the Penal Code for the entry of the information required under this section, based upon the proportion of the costs incurred by the local agency and those incurred by the Department of Justice, shall be transferred to the local agency actually providing the data. All data with respect to criminal court protective orders issued, modified, extended, or terminated under subdivision (g) of Section 136.2 of the Penal Code, and all data filed with the court on the required Judicial Council forms with respect to protective orders, including their issuance, modification, extension, or termination, to which this division applies

pursuant to Section 6221, shall be transmitted by the court or its designee within one business day to law enforcement personnel by either one of the following methods:

(1) Transmitting a physical copy of the order to a local law enforcement agency authorized by the Department of Justice to enter orders into CLETS.

(2) With the approval of the Department of Justice, entering the order into CLETS directly.

(b) Upon the issuance of a protective order to which this division applies pursuant to Section 6221, or the issuance of a temporary restraining order or injunction relating to harassment or domestic violence pursuant to Section 527.6 or 527.8 of the Code of Civil Procedure, or the issuance of a criminal court protective order under subdivision (g) of Section 136.2 of the Penal Code, or the issuance of a juvenile court restraining order related to domestic violence pursuant to Section 213.5, 304, or 362.4 of the Welfare and Institutions Code, or the issuance of a protective order pursuant to Section 15657.03 of the Welfare and Institutions Code, or upon registration with the court clerk of a domestic violence protective or restraining order issued by the tribunal of another state, as defined in Section 6401, and including any of the foregoing orders issued in connection with an order for modification of a custody or visitation order issued pursuant to a dissolution, legal separation, nullity, or paternity proceeding the Department of Justice shall be immediately notified of the contents of the order and the following information:

(1) The name, race, date of birth, and other personal descriptive information of the respondent as required by a form prescribed by the Department of Justice.

(2) The names of the protected persons.

(3) The date of issuance of the order.

(4) The duration or expiration date of the order.

(5) The terms and conditions of the protective order, including stay-away, no-contact, residency exclusion, custody, and visitation provisions of the order.

(6) The department or division number and the address of the court.

(7) Whether or not the order was served upon the respondent.

(8) The terms and conditions of any restrictions on the ownership or possession of firearms.

All available information shall be included; however, the inability to provide all categories of information shall not delay the entry of the information available.

(c) The information conveyed to the Department of Justice shall also indicate whether the respondent was present in court to be informed of

the contents of the court order. The respondent's presence in court shall provide proof of service of notice of the terms of the protective order. The respondent's failure to appear shall also be included in the information provided to the Department of Justice.

(d) (1) Within one business day of service, any law enforcement officer who served a protective order shall submit the proof of service directly into the Department of Justice Domestic Violence Restraining Order System, including his or her name and law enforcement agency, and shall transmit the original proof of service form to the issuing court.

(2) Within one business day of receipt of proof of service by a person other than a law enforcement officer, the clerk of the court shall submit the proof of service of a protective order directly into the Department of Justice Domestic Violation Restraining Order System, including the name of the person who served the order. If the court is unable to provide this notification to the Department of Justice by electronic transmission, the court shall, within one business day of receipt, transmit a copy of the proof of service to a local law enforcement agency. The local law enforcement agency shall submit the proof of service directly into the Department of Justice Domestic Violence Restraining Order System within one business day of receipt from the court.

(e) The Department of Justice shall maintain a Domestic Violence Restraining Order System and shall make available to court clerks and law enforcement personnel, through computer access, all information regarding the protective and restraining orders and injunctions described in subdivision (b), whether or not served upon the respondent.

(f) If a court issues a modification, extension, or termination of a protective order, it shall be on forms adopted by the Judicial Council of California and that have been approved by the Department of Justice, and the transmitting agency for the county shall immediately notify the Department of Justice, by electronic transmission, of the terms of the modification, extension, or termination.

(g) The Judicial Council shall assist local courts charged with the responsibility for issuing protective orders by developing informational packets describing the general procedures for obtaining a domestic violence restraining order and indicating the appropriate Judicial Council forms. The informational packets shall include a design, that local courts shall complete, that describes local court procedures and maps to enable applicants to locate filing windows and appropriate courts, and shall also include information on how to return proofs of service, including mailing addresses and fax numbers. The court clerk shall provide a fee waiver form to all applicants for domestic violence protective orders. The court clerk shall provide all Judicial Council forms required by this chapter to applicants free of charge. The informational packet shall also contain

a statement that the protective order is enforceable in any state, as defined in Section 6401, and general information about agencies in other jurisdictions that may be contacted regarding enforcement of an order issued by a court of this state.

(h) For the purposes of this part, “electronic transmission” shall include computer access through the California Law Enforcement Telecommunications System (CLETS).

(i) Only protective and restraining orders issued on forms adopted by the Judicial Council of California and that have been approved by the Department of Justice shall be transmitted to the Department of Justice. However, this provision shall not apply to a valid protective or restraining order related to domestic or family violence issued by a tribunal of another state, as defined in Section 6401. Those orders shall, upon request, be registered pursuant to Section 6404.

SEC. 3. Section 136.2 of the Penal Code is amended to read:

136.2. Upon a good cause belief that harm to, or intimidation or dissuasion of, a victim or witness has occurred or is reasonably likely to occur, any court with jurisdiction over a criminal matter may issue orders including, but not limited to, the following:

(a) Any order issued pursuant to Section 6320 of the Family Code.
(b) An order that a defendant shall not violate any provision of Section 136.1.

(c) An order that a person before the court other than a defendant, including, but not limited to, a subpoenaed witness or other person entering the courtroom of the court, shall not violate any provisions of Section 136.1.

(d) An order that any person described in this section shall have no communication whatsoever with any specified witness or any victim, except through an attorney under any reasonable restrictions that the court may impose.

(e) An order calling for a hearing to determine if an order as described in subdivisions (a) to (d), inclusive, should be issued.

(f) An order that a particular law enforcement agency within the jurisdiction of the court provide protection for a victim or a witness, or both, or for immediate family members of a victim or a witness who reside in the same household as the victim or witness or within reasonable proximity of the victim’s or witness’ household, as determined by the court. The order shall not be made without the consent of the law enforcement agency except for limited and specified periods of time and upon an express finding by the court of a clear and present danger of harm to the victim or witness or immediate family members of the victim or witness.

For purposes of this subdivision, “immediate family members” include the spouse, children, or parents of the victim or witness.

(g) (1) Any order protecting victims of violent crime from all contact by the defendant, or contact, with the intent to annoy, harass, threaten, or commit acts of violence, by the defendant. The court or its designee shall transmit orders made under this subdivision to law enforcement personnel within one business day of the issuance, modification, extension, or termination of the order, pursuant to subdivision (a) of Section 6380 of the Family Code. It is the responsibility of the court to transmit the modification, extension, or termination orders made under this subdivision to the same agency that entered the original protective order into the Domestic Violence Restraining Order System.

(2) Any order issued, modified, extended, or terminated by a court pursuant to this subdivision shall be issued on forms adopted by the Judicial Council of California and that have been approved by the Department of Justice pursuant to subdivision (i) of Section 6380 of the Family Code. However, the fact that an order issued by a court pursuant to this section was not issued on forms adopted by the Judicial Council and approved by the Department of Justice shall not, in and of itself, make the order unenforceable.

(3) Any person violating any order made pursuant to subdivisions (a) to (g), inclusive, may be punished for any substantive offense described in Section 136.1, or for a contempt of the court making the order. A finding of contempt shall not be a bar to prosecution for a violation of Section 136.1. However, any person so held in contempt shall be entitled to credit for any punishment imposed therein against any sentence imposed upon conviction of an offense described in Section 136.1. Any conviction or acquittal for any substantive offense under Section 136.1 shall be a bar to a subsequent punishment for contempt arising out of the same act.

(h) (1) A person subject to a protective order issued under this section shall not own, possess, purchase, receive, or attempt to purchase or receive a firearm while the protective order is in effect.

(2) The court shall order a person subject to a protective order issued under this section to relinquish any firearms he or she owns or possesses pursuant to Section 527.9 of the Code of Civil Procedure.

(3) Every person who owns, possesses, purchases or receives, or attempts to purchase or receive a firearm while the protective order is in effect is punishable pursuant to subdivision (g) of Section 12021 of the Penal Code.

(i) (1) In all cases where the defendant is charged with a crime of domestic violence, as defined in Section 13700, the court shall consider issuing the above-described orders on its own motion. All interested

parties shall receive a copy of those orders. In order to facilitate this, the court's records of all criminal cases involving domestic violence shall be marked to clearly alert the court to this issue.

(2) In those cases in which a complaint, information, or indictment charging a crime of domestic violence, as defined in Section 13700, has been issued, a restraining order or protective order against the defendant issued by the criminal court in that case has precedence in enforcement over any civil court order against the defendant.

(3) Custody and visitation with respect to the defendant and his or her minor children may be ordered by a family or juvenile court consistent with the protocol established pursuant to subdivision (j).

(j) On or before January 1, 2003, the Judicial Council shall promulgate a protocol, for adoption by each local court in substantially similar terms, to provide for the timely coordination of all orders against the same defendant and in favor of the same named victim or victims. The protocol shall include, but shall not be limited to, mechanisms for assuring appropriate communication and information sharing between criminal, family, and juvenile courts concerning orders and cases that involve the same parties, and shall permit a family or juvenile court order to coexist with a criminal court protective order subject to the following conditions:

(1) Any order that permits contact between the restrained person and his or her children shall provide for the safe exchange of the children and shall not contain language either printed or handwritten that violates a "no contact order" issued by a criminal court.

(2) Safety of all parties shall be the courts' paramount concern. The family or juvenile court shall specify the time, day, place, and manner of transfer of the child, as provided in Section 3100 of the Family Code.

(k) On or before January 1, 2003, the Judicial Council shall modify the criminal and civil court protective order forms consistent with this section.

SEC. 3.1. Section 136.2 of the Penal Code is amended to read:

136.2. (a) Except as provided in subdivision (b), upon a good cause belief that harm to, or intimidation or dissuasion of, a victim or witness has occurred or is reasonably likely to occur, any court with jurisdiction over a criminal matter may issue orders including, but not limited to, the following:

(1) Any order issued pursuant to Section 6320 of the Family Code.

(2) An order that a defendant shall not violate any provision of Section 136.1.

(3) An order that a person before the court other than a defendant, including, but not limited to, a subpoenaed witness or other person entering the courtroom of the court, shall not violate any provisions of Section 136.1.

(4) An order that any person described in this section shall have no communication whatsoever with any specified witness or any victim, except through an attorney under any reasonable restrictions that the court may impose.

(5) An order calling for a hearing to determine if an order as described in paragraphs (1) to (4), inclusive, should be issued.

(6) An order that a particular law enforcement agency within the jurisdiction of the court provide protection for a victim or a witness, or both, or for immediate family members of a victim or a witness who reside in the same household as the victim or witness or within reasonable proximity of the victim's or witness' household, as determined by the court. The order shall not be made without the consent of the law enforcement agency except for limited and specified periods of time and upon an express finding by the court of a clear and present danger of harm to the victim or witness or immediate family members of the victim or witness.

For purposes of this paragraph, "immediate family members" include the spouse, children, or parents of the victim or witness.

(7) (A) Any order protecting victims of violent crime from all contact by the defendant, or contact, with the intent to annoy, harass, threaten, or commit acts of violence, by the defendant. The court or its designee shall transmit orders made under this subdivision to law enforcement personnel within one business day of the issuance, modification, extension, or termination of the order, pursuant to subdivision (a) of Section 6380 of the Family Code. It is the responsibility of the court to transmit the modification, extension, or termination orders made under this subdivision to the same agency that entered the original protective order into the Domestic Violence Restraining Order System.

(B) Any order issued, modified, extended, or terminated by a court pursuant to this subdivision shall be issued on forms adopted by the Judicial Council of California and that have been approved by the Department of Justice pursuant to subdivision (i) of Section 6380 of the Family Code. However, the fact that an order issued by a court pursuant to this section was not issued on forms adopted by the Judicial Council and approved by the Department of Justice shall not, in and of itself, make the order unenforceable.

(b) (1) Notwithstanding subdivisions (a) and (e), an emergency protective order issued pursuant to Chapter 2 (commencing with Section 6250) of Part 3 of Division 10 of the Family Code or Section 646.91 of the Penal Code shall have precedence in enforcement over any other restraining or protective order, provided the emergency protective order meets all of the following requirements:

(A) The emergency protective order is issued to protect one or more individuals who are already protected persons under another restraining or protective order.

(B) The emergency protective order restrains the individual who is the restrained person in the other restraining or protective order specified in subparagraph (A).

(C) The provisions of the emergency protective order are more restrictive in relation to the restrained person than are the provisions of the other restraining or protective order specified in subparagraph (A).

(2) An emergency protective order that meets the requirements of paragraph (1) shall have precedence in enforcement over the provisions of any other restraining or protective order only with respect to those provisions of the emergency protective order that are more restrictive in relation to the restrained person.

(c) Any person violating any order made pursuant to paragraphs (1) to (7), inclusive, of subdivision (a) may be punished for any substantive offense described in Section 136.1, or for a contempt of the court making the order. A finding of contempt shall not be a bar to prosecution for a violation of Section 136.1. However, any person so held in contempt shall be entitled to credit for any punishment imposed therein against any sentence imposed upon conviction of an offense described in Section 136.1. Any conviction or acquittal for any substantive offense under Section 136.1 shall be a bar to a subsequent punishment for contempt arising out of the same act.

(d) (1) A person subject to a protective order issued under this section shall not own, possess, purchase, receive, or attempt to purchase or receive a firearm while the protective order is in effect.

(2) The court shall order a person subject to a protective order issued under this section to relinquish any firearms he or she owns or possesses pursuant to Section 527.9 of the Code of Civil Procedure.

(3) Every person who owns, possesses, purchases or receives, or attempts to purchase or receive a firearm while the protective order is in effect is punishable pursuant to subdivision (g) of Section 12021 of the Penal Code.

(e) (1) In all cases where the defendant is charged with a crime of domestic violence, as defined in Section 13700, the court shall consider issuing the above-described orders on its own motion. All interested parties shall receive a copy of those orders. In order to facilitate this, the court's records of all criminal cases involving domestic violence shall be marked to clearly alert the court to this issue.

(2) In those cases in which a complaint, information, or indictment charging a crime of domestic violence, as defined in Section 13700, has been issued, a restraining order or protective order against the defendant

issued by the criminal court in that case has precedence in enforcement over any civil court order against the defendant, unless a court issues an emergency protective order pursuant to Chapter 2 (commencing with Section 6250) of Part 3 of Division 10 of the Family Code or Section 646.91 of the Penal Code, in which case the emergency protective order shall have precedence in enforcement over any other restraining or protective order, provided the emergency protective order meets the following requirements:

(A) The emergency protective order is issued to protect one or more individuals who are already protected persons under another restraining or protective order.

(B) The emergency protective order restrains the individual who is the restrained person in the other restraining or protective order specified in subparagraph (A).

(C) The provisions of the emergency protective order are more restrictive in relation to the restrained person than are the provisions of the other restraining or protective order specified in subparagraph (A).

(3) Custody and visitation with respect to the defendant and his or her minor children may be ordered by a family or juvenile court consistent with the protocol established pursuant to subdivision (f).

(f) On or before January 1, 2003, the Judicial Council shall promulgate a protocol, for adoption by each local court in substantially similar terms, to provide for the timely coordination of all orders against the same defendant and in favor of the same named victim or victims. The protocol shall include, but shall not be limited to, mechanisms for assuring appropriate communication and information sharing between criminal, family, and juvenile courts concerning orders and cases that involve the same parties, and shall permit a family or juvenile court order to coexist with a criminal court protective order subject to the following conditions:

(1) Any order that permits contact between the restrained person and his or her children shall provide for the safe exchange of the children and shall not contain language either printed or handwritten that violates a "no contact order" issued by a criminal court.

(2) Safety of all parties shall be the courts' paramount concern. The family or juvenile court shall specify the time, day, place, and manner of transfer of the child, as provided in Section 3100 of the Family Code.

(g) On or before January 1, 2003, the Judicial Council shall modify the criminal and civil court protective order forms consistent with this section.

SEC. 3.2. Section 136.2 of the Penal Code is amended to read:

136.2. (a) Upon a good cause belief that harm to, or intimidation or dissuasion of, a victim or witness has occurred or is reasonably likely

to occur, any court with jurisdiction over a criminal matter may issue orders including, but not limited to, the following:

- (1) Any order issued pursuant to Section 6320 of the Family Code.
- (2) An order that a defendant shall not violate any provision of Section 136.1.
- (3) An order that a person before the court other than a defendant, including, but not limited to, a subpoenaed witness or other person entering the courtroom of the court, shall not violate any provisions of Section 136.1.
- (4) An order that any person described in this section shall have no communication whatsoever with any specified witness or any victim, except through an attorney under any reasonable restrictions that the court may impose.

(5) An order calling for a hearing to determine if an order as described in paragraphs (1) to (4), inclusive, should be issued.

(6) An order that a particular law enforcement agency within the jurisdiction of the court provide protection for a victim or a witness, or both, or for immediate family members of a victim or a witness who reside in the same household as the victim or witness or within reasonable proximity of the victim's or witness' household, as determined by the court. The order shall not be made without the consent of the law enforcement agency except for limited and specified periods of time and upon an express finding by the court of a clear and present danger of harm to the victim or witness or immediate family members of the victim or witness.

For purposes of this paragraph, "immediate family members" include the spouse, children, or parents of the victim or witness.

(7) (A) Any order protecting victims of violent crime from all contact by the defendant, or contact, with the intent to annoy, harass, threaten, or commit acts of violence, by the defendant. The court or its designee shall transmit orders made under this paragraph to law enforcement personnel within one business day of the issuance, modification, extension, or termination of the order, pursuant to subdivision (a) of Section 6380 of the Family Code. It is the responsibility of the court to transmit the modification, extension, or termination orders made under this paragraph to the same agency that entered the original protective order into the Domestic Violence Restraining Order System.

(B) Any order issued, modified, extended, or terminated by a court pursuant to this paragraph shall be issued on forms adopted by the Judicial Council of California and that have been approved by the Department of Justice pursuant to subdivision (i) of Section 6380 of the Family Code. However, the fact that an order issued by a court pursuant to this section was not issued on forms adopted by the Judicial Council

and approved by the Department of Justice shall not, in and of itself, make the order unenforceable.

(b) Any person violating any order made pursuant to subdivision (a) may be punished for any substantive offense described in Section 136.1, or for a contempt of the court making the order. A finding of contempt shall not be a bar to prosecution for a violation of Section 136.1. However, any person so held in contempt shall be entitled to credit for any punishment imposed therein against any sentence imposed upon conviction of an offense described in Section 136.1. Any conviction or acquittal for any substantive offense under Section 136.1 shall be a bar to a subsequent punishment for contempt arising out of the same act.

(c) (1) A person subject to a protective order issued under this section shall not own, possess, purchase, receive, or attempt to purchase or receive a firearm while the protective order is in effect.

(2) The court shall order a person subject to a protective order issued under this section to relinquish any firearms he or she owns or possesses pursuant to Section 527.9 of the Code of Civil Procedure.

(3) Every person who owns, possesses, purchases or receives, or attempts to purchase or receive a firearm while the protective order is in effect is punishable pursuant to subdivision (g) of Section 12021 of the Penal Code.

(d) (1) In all cases where the defendant is charged with a crime of domestic violence, as defined in Section 13700, the court shall consider issuing the above-described orders on its own motion. All interested parties shall receive a copy of those orders. In order to facilitate this, the court's records of all criminal cases involving domestic violence shall be marked to clearly alert the court to this issue.

(2) In those cases in which a complaint, information, or indictment charging a crime of domestic violence, as defined in Section 13700, has been issued, a restraining order or protective order against the defendant issued by the criminal court in that case has precedence in enforcement over any civil court order against the defendant.

(3) Custody and visitation with respect to the defendant and his or her minor children may be ordered by a family or juvenile court consistent with the protocol established pursuant to subdivision (e), but if ordered after a criminal protective order has been issued pursuant to this section, the custody and visitation order shall make reference to, and acknowledge the precedence of enforcement of, any appropriate criminal protective order. On or before July 1, 2006, the Judicial Council shall modify the criminal and civil court forms consistent with this subdivision.

(e) On or before January 1, 2003, the Judicial Council shall promulgate a protocol, for adoption by each local court in substantially similar terms,

to provide for the timely coordination of all orders against the same defendant and in favor of the same named victim or victims. The protocol shall include, but shall not be limited to, mechanisms for assuring appropriate communication and information sharing between criminal, family, and juvenile courts concerning orders and cases that involve the same parties, and shall permit a family or juvenile court order to coexist with a criminal court protective order subject to the following conditions:

(1) Any order that permits contact between the restrained person and his or her children shall provide for the safe exchange of the children and shall not contain language either printed or handwritten that violates a “no contact order” issued by a criminal court.

(2) Safety of all parties shall be the courts’ paramount concern. The family or juvenile court shall specify the time, day, place, and manner of transfer of the child, as provided in Section 3100 of the Family Code.

(f) On or before January 1, 2003, the Judicial Council shall modify the criminal and civil court protective order forms consistent with this section.

SEC. 3.3. Section 136.2 of the Penal Code is amended to read:

136.2. Upon a good cause belief that harm to, or intimidation or dissuasion of, a victim or witness has occurred or is reasonably likely to occur, any court with jurisdiction over a criminal matter may issue orders including, but not limited to, the following:

(a) Any order issued pursuant to Section 6320 of the Family Code.

(b) An order that a defendant shall not violate any provision of Section 136.1.

(c) An order that a person before the court other than a defendant, including, but not limited to, a subpoenaed witness or other person entering the courtroom of the court, shall not violate any provisions of Section 136.1.

(d) An order that any person described in this section shall have no communication whatsoever with any specified witness or any victim, except through an attorney under any reasonable restrictions that the court may impose.

(e) An order calling for a hearing to determine if an order as described in subdivisions (a) to (d), inclusive, should be issued.

(f) An order that a particular law enforcement agency within the jurisdiction of the court provide protection for a victim or a witness, or both, or for immediate family members of a victim or a witness who reside in the same household as the victim or witness or within reasonable proximity of the victim’s or witness’ household, as determined by the court. The order shall not be made without the consent of the law enforcement agency except for limited and specified periods of time and upon an express finding by the court of a clear and present danger of

harm to the victim or witness or immediate family members of the victim or witness.

For purposes of this subdivision, "immediate family members" include the spouse, children, or parents of the victim or witness.

(g) (1) Any order protecting victims of violent crime from all contact by the defendant, or contact, with the intent to annoy, harass, threaten, or commit acts of violence, by the defendant. The court or its designee shall transmit orders made under this subdivision to law enforcement personnel within one business day of the issuance, modification, extension, or termination of the order, pursuant to subdivision (a) of Section 6380 of the Family Code. It is the responsibility of the court to transmit the modification, extension, or termination orders made under this subdivision to the same agency that entered the original protective order into the Domestic Violence Restraining Order System.

(2) (A) If a court does not issue an order pursuant to paragraph (1) in a case in which the defendant is charged with a crime of domestic violence as defined in Section 13700, the court on its own motion shall consider issuing a protective order upon a good cause belief that harm to, or intimidation or dissuasion of, a victim or witness has occurred or is reasonably likely to occur, that provides as follows:

(i) The defendant shall not own, possess, purchase, receive, or attempt to purchase or receive, a firearm while the protective order is in effect.

(ii) The defendant shall relinquish any firearms that he or she owns or possesses pursuant to Section 527.9 of the Code of Civil Procedure.

(B) Every person who owns, possesses, purchases, or receives, or attempts to purchase or receive, a firearm while this protective order is in effect is punishable pursuant to subdivision (g) of Section 12021.

(3) Any order issued, modified, extended, or terminated by a court pursuant to this subdivision shall be issued on forms adopted by the Judicial Council of California and that have been approved by the Department of Justice pursuant to subdivision (i) of Section 6380 of the Family Code. However, the fact that an order issued by a court pursuant to this section was not issued on forms adopted by the Judicial Council and approved by the Department of Justice shall not, in and of itself, make the order unenforceable.

(4) Any person violating any order made pursuant to subdivisions (a) to (g), inclusive, may be punished for any substantive offense described in Section 136.1, or for a contempt of the court making the order. A finding of contempt shall not be a bar to prosecution for a violation of Section 136.1. However, any person so held in contempt shall be entitled to credit for any punishment imposed therein against any sentence imposed upon conviction of an offense described in Section 136.1. Any conviction or acquittal for any substantive offense under Section 136.1

shall be a bar to a subsequent punishment for contempt arising out of the same act.

(h) (1) A person subject to a protective order issued under this section shall not own, possess, purchase, receive, or attempt to purchase or receive a firearm while the protective order is in effect.

(2) The court shall order a person subject to a protective order issued under this section to relinquish any firearms he or she owns or possesses pursuant to Section 527.9 of the Code of Civil Procedure.

(3) Every person who owns, possesses, purchases or receives, or attempts to purchase or receive a firearm while the protective order is in effect is punishable pursuant to subdivision (g) of Section 12021 of the Penal Code.

(i) (1) In all cases where the defendant is charged with a crime of domestic violence, as defined in Section 13700, the court shall consider issuing the above-described orders on its own motion. All interested parties shall receive a copy of those orders. In order to facilitate this, the court's records of all criminal cases involving domestic violence shall be marked to clearly alert the court to this issue.

(2) In those cases in which a complaint, information, or indictment charging a crime of domestic violence, as defined in Section 13700, has been issued, a restraining order or protective order against the defendant issued by the criminal court in that case has precedence in enforcement over any civil court order against the defendant.

(3) Custody and visitation with respect to the defendant and his or her minor children may be ordered by a family or juvenile court consistent with the protocol established pursuant to subdivision (j).

(j) On or before January 1, 2003, the Judicial Council shall promulgate a protocol, for adoption by each local court in substantially similar terms, to provide for the timely coordination of all orders against the same defendant and in favor of the same named victim or victims. The protocol shall include, but shall not be limited to, mechanisms for assuring appropriate communication and information sharing between criminal, family, and juvenile courts concerning orders and cases that involve the same parties, and shall permit a family or juvenile court order to coexist with a criminal court protective order subject to the following conditions:

(1) Any order that permits contact between the restrained person and his or her children shall provide for the safe exchange of the children and shall not contain language either printed or handwritten that violates a "no contact order" issued by a criminal court.

(2) Safety of all parties shall be the courts' paramount concern. The family or juvenile court shall specify the time, day, place, and manner of transfer of the child, as provided in Section 3100 of the Family Code.

(k) On or before January 1, 2003, the Judicial Council shall modify the criminal and civil court protective order forms consistent with this section.

SEC. 3.4. Section 136.2 of the Penal Code is amended to read:

136.2. (a) Except as provided in subdivision (b), upon a good cause belief that harm to, or intimidation or dissuasion of, a victim or witness has occurred or is reasonably likely to occur, any court with jurisdiction over a criminal matter may issue orders including, but not limited to, the following:

(1) Any order issued pursuant to Section 6320 of the Family Code.
(2) An order that a defendant shall not violate any provision of Section 136.1.

(3) An order that a person before the court other than a defendant, including, but not limited to, a subpoenaed witness or other person entering the courtroom of the court, shall not violate any provisions of Section 136.1.

(4) An order that any person described in this section shall have no communication whatsoever with any specified witness or any victim, except through an attorney under any reasonable restrictions that the court may impose.

(5) An order calling for a hearing to determine if an order as described in paragraphs (1) to (4), inclusive, should be issued.

(6) An order that a particular law enforcement agency within the jurisdiction of the court provide protection for a victim or a witness, or both, or for immediate family members of a victim or a witness who reside in the same household as the victim or witness or within reasonable proximity of the victim's or witness' household, as determined by the court. The order shall not be made without the consent of the law enforcement agency except for limited and specified periods of time and upon an express finding by the court of a clear and present danger of harm to the victim or witness or immediate family members of the victim or witness.

For purposes of this paragraph, "immediate family members" include the spouse, children, or parents of the victim or witness.

(7) (A) Any order protecting victims of violent crime from all contact by the defendant, or contact, with the intent to annoy, harass, threaten, or commit acts of violence, by the defendant. The court or its designee shall transmit orders made under this paragraph to law enforcement personnel within one business day of the issuance, modification, extension, or termination of the order, pursuant to subdivision (a) of Section 6380 of the Family Code. It is the responsibility of the court to transmit the modification, extension, or termination orders made under

this paragraph to the same agency that entered the original protective order into the Domestic Violence Restraining Order System.

(B) Any order issued, modified, extended, or terminated by a court pursuant to this paragraph shall be issued on forms adopted by the Judicial Council of California and that have been approved by the Department of Justice pursuant to subdivision (i) of Section 6380 of the Family Code. However, the fact that an order issued by a court pursuant to this section was not issued on forms adopted by the Judicial Council and approved by the Department of Justice shall not, in and of itself, make the order unenforceable.

(b) (1) Notwithstanding subdivisions (a) and (e), an emergency protective order issued pursuant to Chapter 2 (commencing with Section 6250) of Part 3 of Division 10 of the Family Code or Section 646.91 of the Penal Code shall have precedence in enforcement over any other restraining or protective order, provided the emergency protective order meets all of the following requirements:

(A) The emergency protective order is issued to protect one or more individuals who are already protected persons under another restraining or protective order.

(B) The emergency protective order restrains the individual who is the restrained person in the other restraining or protective order specified in subparagraph (A).

(C) The provisions of the emergency protective order are more restrictive in relation to the restrained person than are the provisions of the other restraining or protective order specified in subparagraph (A).

(2) An emergency protective order that meets the requirements of paragraph (1) shall have precedence in enforcement over the provisions of any other restraining or protective order only with respect to those provisions of the emergency protective order that are more restrictive in relation to the restrained person.

(c) Any person violating any order made pursuant to paragraphs (1) to (7), inclusive, of subdivision (a) may be punished for any substantive offense described in Section 136.1, or for a contempt of the court making the order. A finding of contempt shall not be a bar to prosecution for a violation of Section 136.1. However, any person so held in contempt shall be entitled to credit for any punishment imposed therein against any sentence imposed upon conviction of an offense described in Section 136.1. Any conviction or acquittal for any substantive offense under Section 136.1 shall be a bar to a subsequent punishment for contempt arising out of the same act.

(d) (1) A person subject to a protective order issued under this section shall not own, possess, purchase, receive, or attempt to purchase or receive a firearm while the protective order is in effect.

(2) The court shall order a person subject to a protective order issued under this section to relinquish any firearms he or she owns or possesses pursuant to Section 527.9 of the Code of Civil Procedure.

(3) Every person who owns, possesses, purchases or receives, or attempts to purchase or receive a firearm while the protective order is in effect is punishable pursuant to subdivision (g) of Section 12021 of the Penal Code.

(e) (1) In all cases where the defendant is charged with a crime of domestic violence, as defined in Section 13700, the court shall consider issuing the above-described orders on its own motion. All interested parties shall receive a copy of those orders. In order to facilitate this, the court's records of all criminal cases involving domestic violence shall be marked to clearly alert the court to this issue.

(2) In those cases in which a complaint, information, or indictment charging a crime of domestic violence, as defined in Section 13700, has been issued, a restraining order or protective order against the defendant issued by the criminal court in that case has precedence in enforcement over any civil court order against the defendant, unless a court issues an emergency protective order pursuant to Chapter 2 (commencing with Section 6250) of Part 3 of Division 10 of the Family Code or Section 646.91 of the Penal Code, in which case the emergency protective order shall have precedence in enforcement over any other restraining or protective order, provided the emergency protective order meets the following requirements:

(A) The emergency protective order is issued to protect one or more individuals who are already protected persons under another restraining or protective order.

(B) The emergency protective order restrains the individual who is the restrained person in the other restraining or protective order specified in subparagraph (A).

(C) The provisions of the emergency protective order are more restrictive in relation to the restrained person than are the provisions of the other restraining or protective order specified in subparagraph (A).

(3) Custody and visitation with respect to the defendant and his or her minor children may be ordered by a family or juvenile court consistent with the protocol established pursuant to subdivision (f), but if ordered after a criminal protective order has been issued pursuant to this section, the custody and visitation order shall make reference to, and acknowledge the precedence of enforcement of, any appropriate criminal protective order. On or before July 1, 2006, the Judicial Council shall modify the criminal and civil court forms consistent with this subdivision.

(f) On or before January 1, 2003, the Judicial Council shall promulgate a protocol, for adoption by each local court in substantially similar terms, to provide for the timely coordination of all orders against the same defendant and in favor of the same named victim or victims. The protocol shall include, but shall not be limited to, mechanisms for assuring appropriate communication and information sharing between criminal, family, and juvenile courts concerning orders and cases that involve the same parties, and shall permit a family or juvenile court order to coexist with a criminal court protective order subject to the following conditions:

(1) Any order that permits contact between the restrained person and his or her children shall provide for the safe exchange of the children and shall not contain language either printed or handwritten that violates a “no contact order” issued by a criminal court.

(2) Safety of all parties shall be the courts’ paramount concern. The family or juvenile court shall specify the time, day, place, and manner of transfer of the child, as provided in Section 3100 of the Family Code.

(g) On or before January 1, 2003, the Judicial Council shall modify the criminal and civil court protective order forms consistent with this section.

SEC. 3.5. Section 136.2 of the Penal Code is amended to read:

136.2. (a) Except as provided in subdivision (c), upon a good cause belief that harm to, or intimidation or dissuasion of, a victim or witness has occurred or is reasonably likely to occur, any court with jurisdiction over a criminal matter may issue orders including, but not limited to, the following:

(1) Any order issued pursuant to Section 6320 of the Family Code.

(2) An order that a defendant shall not violate any provision of Section 136.1.

(3) An order that a person before the court other than a defendant, including, but not limited to, a subpoenaed witness or other person entering the courtroom of the court, shall not violate any provisions of Section 136.1.

(4) An order that any person described in this section shall have no communication whatsoever with any specified witness or any victim, except through an attorney under any reasonable restrictions that the court may impose.

(5) An order calling for a hearing to determine if an order as described in paragraphs (1) to (4), inclusive, should be issued.

(6) An order that a particular law enforcement agency within the jurisdiction of the court provide protection for a victim or a witness, or both, or for immediate family members of a victim or a witness who reside in the same household as the victim or witness or within reasonable proximity of the victim’s or witness’ household, as determined by the

court. The order shall not be made without the consent of the law enforcement agency except for limited and specified periods of time and upon an express finding by the court of a clear and present danger of harm to the victim or witness or immediate family members of the victim or witness.

For purposes of this paragraph, "immediate family members" include the spouse, children, or parents of the victim or witness.

(7) (A) Any order protecting victims of violent crime from all contact by the defendant, or contact, with the intent to annoy, harass, threaten, or commit acts of violence, by the defendant. The court or its designee shall transmit orders made under this subdivision to law enforcement personnel within one business day of the issuance, modification, extension, or termination of the order, pursuant to subdivision (a) of Section 6380 of the Family Code. It is the responsibility of the court to transmit the modification, extension, or termination orders made under this subdivision to the same agency that entered the original protective order into the Domestic Violence Restraining Order System.

(B) (i) If a court does not issue an order pursuant to subparagraph (A) in a case in which the defendant is charged with a crime of domestic violence as defined in Section 13700, the court on its own motion shall consider issuing a protective order upon a good cause belief that harm to, or intimidation or dissuasion of, a victim or witness has occurred or is reasonably likely to occur, that provides as follows:

(I) The defendant shall not own, possess, purchase, receive, or attempt to purchase or receive, a firearm while the protective order is in effect.

(II) The defendant shall relinquish any firearms that he or she owns or possesses pursuant to Section 527.9 of the Code of Civil Procedure.

(ii) Every person who owns, possesses, purchases, or receives, or attempts to purchase or receive, a firearm while this protective order is in effect is punishable pursuant to subdivision (g) of Section 12021.

(C) Any order issued, modified, extended, or terminated by a court pursuant to this subdivision shall be issued on forms adopted by the Judicial Council of California and that have been approved by the Department of Justice pursuant to subdivision (i) of Section 6380 of the Family Code. However, the fact that an order issued by a court pursuant to this section was not issued on forms adopted by the Judicial Council and approved by the Department of Justice shall not, in and of itself, make the order unenforceable.

(b) Any person violating any order made pursuant to paragraphs (1) to (7), inclusive, of subdivision (a) may be punished for any substantive offense described in Section 136.1, or for a contempt of the court making the order. A finding of contempt shall not be a bar to prosecution for a violation of Section 136.1. However, any person so held in contempt

shall be entitled to credit for any punishment imposed therein against any sentence imposed upon conviction of an offense described in Section 136.1. Any conviction or acquittal for any substantive offense under Section 136.1 shall be a bar to a subsequent punishment for contempt arising out of the same act.

(c) (1) Notwithstanding subdivisions (a) and (e), an emergency protective order issued pursuant to Chapter 2 (commencing with Section 6250) of Part 3 of Division 10 of the Family Code or Section 646.91 of the Penal Code shall have precedence in enforcement over any other restraining or protective order, provided the emergency protective order meets all of the following requirements:

(A) The emergency protective order is issued to protect one or more individuals who are already protected persons under another restraining or protective order.

(B) The emergency protective order restrains the individual who is the restrained person in the other restraining or protective order specified in subparagraph (A).

(C) The provisions of the emergency protective order are more restrictive in relation to the restrained person than are the provisions of the other restraining or protective order specified in subparagraph (A).

(2) An emergency protective order that meets the requirements of paragraph (1) shall have precedence in enforcement over the provisions of any other restraining or protective order only with respect to those provisions of the emergency protective order that are more restrictive in relation to the restrained person.

(d) (1) A person subject to a protective order issued under this section shall not own, possess, purchase, receive, or attempt to purchase or receive a firearm while the protective order is in effect.

(2) The court shall order a person subject to a protective order issued under this section to relinquish any firearms he or she owns or possesses pursuant to Section 527.9 of the Code of Civil Procedure.

(3) Every person who owns, possesses, purchases or receives, or attempts to purchase or receive a firearm while the protective order is in effect is punishable pursuant to subdivision (g) of Section 12021 of the Penal Code.

(e) (1) In all cases where the defendant is charged with a crime of domestic violence, as defined in Section 13700, the court shall consider issuing the above-described orders on its own motion. All interested parties shall receive a copy of those orders. In order to facilitate this, the court's records of all criminal cases involving domestic violence shall be marked to clearly alert the court to this issue.

(2) In those cases in which a complaint, information, or indictment charging a crime of domestic violence, as defined in Section 13700, has

been issued, a restraining order or protective order against the defendant issued by the criminal court in that case has precedence in enforcement over any civil court order against the defendant, unless a court issues an emergency protective order pursuant to Chapter 2 (commencing with Section 6250) of Part 3 of Division 10 of the Family Code or Section 646.91 of the Penal Code, in which case the emergency protective order shall have precedence in enforcement over any other restraining or protective order, provided the emergency protective order meets the following requirements:

(A) The emergency protective order is issued to protect one or more individuals who are already protected persons under another restraining or protective order.

(B) The emergency protective order restrains the individual who is the restrained person in the other restraining or protective order specified in subparagraph (A).

(C) The provisions of the emergency protective order are more restrictive in relation to the restrained person than are the provisions of the other restraining or protective order specified in subparagraph (A).

(3) Custody and visitation with respect to the defendant and his or her minor children may be ordered by a family or juvenile court consistent with the protocol established pursuant to subdivision (f).

(f) On or before January 1, 2003, the Judicial Council shall promulgate a protocol, for adoption by each local court in substantially similar terms, to provide for the timely coordination of all orders against the same defendant and in favor of the same named victim or victims. The protocol shall include, but shall not be limited to, mechanisms for assuring appropriate communication and information sharing between criminal, family, and juvenile courts concerning orders and cases that involve the same parties, and shall permit a family or juvenile court order to coexist with a criminal court protective order subject to the following conditions:

(1) Any order that permits contact between the restrained person and his or her children shall provide for the safe exchange of the children and shall not contain language either printed or handwritten that violates a “no contact order” issued by a criminal court.

(2) Safety of all parties shall be the courts’ paramount concern. The family or juvenile court shall specify the time, day, place, and manner of transfer of the child, as provided in Section 3100 of the Family Code.

(g) On or before January 1, 2003, the Judicial Council shall modify the criminal and civil court protective order forms consistent with this section.

SEC. 3.6. Section 136.2 of the Penal Code is amended to read:

136.2. (a) Upon a good cause belief that harm to, or intimidation or dissuasion of, a victim or witness has occurred or is reasonably likely

to occur, any court with jurisdiction over a criminal matter may issue orders including, but not limited to, the following:

- (1) Any order issued pursuant to Section 6320 of the Family Code.
- (2) An order that a defendant shall not violate any provision of Section 136.1.
- (3) An order that a person before the court other than a defendant, including, but not limited to, a subpoenaed witness or other person entering the courtroom of the court, shall not violate any provisions of Section 136.1.
- (4) An order that any person described in this section shall have no communication whatsoever with any specified witness or any victim, except through an attorney under any reasonable restrictions that the court may impose.

(5) An order calling for a hearing to determine if an order as described in paragraphs (1) to (4), inclusive, should be issued.

(6) An order that a particular law enforcement agency within the jurisdiction of the court provide protection for a victim or a witness, or both, or for immediate family members of a victim or a witness who reside in the same household as the victim or witness or within reasonable proximity of the victim's or witness' household, as determined by the court. The order shall not be made without the consent of the law enforcement agency except for limited and specified periods of time and upon an express finding by the court of a clear and present danger of harm to the victim or witness or immediate family members of the victim or witness.

For purposes of this paragraph, "immediate family members" include the spouse, children, or parents of the victim or witness.

(7) (A) Any order protecting victims of violent crime from all contact by the defendant, or contact, with the intent to annoy, harass, threaten, or commit acts of violence, by the defendant. The court or its designee shall transmit orders made under this paragraph to law enforcement personnel within one business day of the issuance, modification, extension, or termination of the order, pursuant to subdivision (a) of Section 6380 of the Family Code. It is the responsibility of the court to transmit the modification, extension, or termination orders made under this paragraph to the same agency that entered the original protective order into the Domestic Violence Restraining Order System.

(B) (i) If a court does not issue an order pursuant to subparagraph (A) in a case in which the defendant is charged with a crime of domestic violence as defined in Section 13700, the court on its own motion shall consider issuing a protective order upon a good cause belief that harm to, or intimidation or dissuasion of, a victim or witness has occurred or is reasonably likely to occur, that provides as follows:

(I) The defendant shall not own, possess, purchase, receive, or attempt to purchase or receive, a firearm while the protective order is in effect.

(II) The defendant shall relinquish any firearms that he or she owns or possesses pursuant to Section 527.9 of the Code of Civil Procedure.

(ii) Every person who owns, possesses, purchases, or receives, or attempts to purchase or receive, a firearm while this protective order is in effect is punishable pursuant to subdivision (g) of Section 12021.

(C) Any order issued, modified, extended, or terminated by a court pursuant to this paragraph shall be issued on forms adopted by the Judicial Council of California and that have been approved by the Department of Justice pursuant to subdivision (i) of Section 6380 of the Family Code. However, the fact that an order issued by a court pursuant to this section was not issued on forms adopted by the Judicial Council and approved by the Department of Justice shall not, in and of itself, make the order unenforceable.

(b) Any person violating any order made pursuant to subdivision (a) may be punished for any substantive offense described in Section 136.1, or for a contempt of the court making the order. A finding of contempt shall not be a bar to prosecution for a violation of Section 136.1. However, any person so held in contempt shall be entitled to credit for any punishment imposed therein against any sentence imposed upon conviction of an offense described in Section 136.1. Any conviction or acquittal for any substantive offense under Section 136.1 shall be a bar to a subsequent punishment for contempt arising out of the same act.

(c) (1) A person subject to a protective order issued under this section shall not own, possess, purchase, receive, or attempt to purchase or receive a firearm while the protective order is in effect.

(2) The court shall order a person subject to a protective order issued under this section to relinquish any firearms he or she owns or possesses pursuant to Section 527.9 of the Code of Civil Procedure.

(3) Every person who owns, possesses, purchases or receives, or attempts to purchase or receive a firearm while the protective order is in effect is punishable pursuant to subdivision (g) of Section 12021 of the Penal Code.

(d) (1) In all cases where the defendant is charged with a crime of domestic violence, as defined in Section 13700, the court shall consider issuing the above-described orders on its own motion. All interested parties shall receive a copy of those orders. In order to facilitate this, the court's records of all criminal cases involving domestic violence shall be marked to clearly alert the court to this issue.

(2) In those cases in which a complaint, information, or indictment charging a crime of domestic violence, as defined in Section 13700, has been issued, a restraining order or protective order against the defendant

issued by the criminal court in that case has precedence in enforcement over any civil court order against the defendant.

(3) Custody and visitation with respect to the defendant and his or her minor children may be ordered by a family or juvenile court consistent with the protocol established pursuant to subdivision (e), but if ordered after a criminal protective order has been issued pursuant to this section, the custody and visitation order shall make reference to, and acknowledge the precedence of enforcement of, any appropriate criminal protective order. On or before July 1, 2006, the Judicial Council shall modify the criminal and civil court forms consistent with this subdivision.

(e) On or before January 1, 2003, the Judicial Council shall promulgate a protocol, for adoption by each local court in substantially similar terms, to provide for the timely coordination of all orders against the same defendant and in favor of the same named victim or victims. The protocol shall include, but shall not be limited to, mechanisms for assuring appropriate communication and information sharing between criminal, family, and juvenile courts concerning orders and cases that involve the same parties, and shall permit a family or juvenile court order to coexist with a criminal court protective order subject to the following conditions:

(1) Any order that permits contact between the restrained person and his or her children shall provide for the safe exchange of the children and shall not contain language either printed or handwritten that violates a “no contact order” issued by a criminal court.

(2) Safety of all parties shall be the courts’ paramount concern. The family or juvenile court shall specify the time, day, place, and manner of transfer of the child, as provided in Section 3100 of the Family Code.

(f) On or before January 1, 2003, the Judicial Council shall modify the criminal and civil court protective order forms consistent with this section.

SEC. 3.7. Section 136.2 of the Penal Code is amended to read:

136.2. (a) Except as provided in subdivision (c), upon a good cause belief that harm to, or intimidation or dissuasion of, a victim or witness has occurred or is reasonably likely to occur, any court with jurisdiction over a criminal matter may issue orders including, but not limited to, the following:

(1) Any order issued pursuant to Section 6320 of the Family Code.

(2) An order that a defendant shall not violate any provision of Section 136.1.

(3) An order that a person before the court other than a defendant, including, but not limited to, a subpoenaed witness or other person entering the courtroom of the court, shall not violate any provisions of Section 136.1.

(4) An order that any person described in this section shall have no communication whatsoever with any specified witness or any victim, except through an attorney under any reasonable restrictions that the court may impose.

(5) An order calling for a hearing to determine if an order as described in paragraphs (1) to (4), inclusive, should be issued.

(6) An order that a particular law enforcement agency within the jurisdiction of the court provide protection for a victim or a witness, or both, or for immediate family members of a victim or a witness who reside in the same household as the victim or witness or within reasonable proximity of the victim's or witness' household, as determined by the court. The order shall not be made without the consent of the law enforcement agency except for limited and specified periods of time and upon an express finding by the court of a clear and present danger of harm to the victim or witness or immediate family members of the victim or witness.

For purposes of this paragraph, "immediate family members" include the spouse, children, or parents of the victim or witness.

(7) (A) Any order protecting victims of violent crime from all contact by the defendant, or contact, with the intent to annoy, harass, threaten, or commit acts of violence, by the defendant. The court or its designee shall transmit orders made under this paragraph to law enforcement personnel within one business day of the issuance, modification, extension, or termination of the order, pursuant to subdivision (a) of Section 6380 of the Family Code. It is the responsibility of the court to transmit the modification, extension, or termination orders made under this paragraph to the same agency that entered the original protective order into the Domestic Violence Restraining Order System.

(B) (i) If a court does not issue an order pursuant to subparagraph (A) in a case in which the defendant is charged with a crime of domestic violence as defined in Section 13700, the court on its own motion shall consider issuing a protective order upon a good cause belief that harm to, or intimidation or dissuasion of, a victim or witness has occurred or is reasonably likely to occur, that provides as follows:

(I) The defendant shall not own, possess, purchase, receive, or attempt to purchase or receive, a firearm while the protective order is in effect.

(II) The defendant shall relinquish any firearms that he or she owns or possesses pursuant to Section 527.9 of the Code of Civil Procedure.

(ii) Every person who owns, possesses, purchases, or receives, or attempts to purchase or receive, a firearm while this protective order is in effect is punishable pursuant to subdivision (g) of Section 12021.

(C) Any order issued, modified, extended, or terminated by a court pursuant to this paragraph shall be issued on forms adopted by the

Judicial Council of California and that have been approved by the Department of Justice pursuant to subdivision (i) of Section 6380 of the Family Code. However, the fact that an order issued by a court pursuant to this section was not issued on forms adopted by the Judicial Council and approved by the Department of Justice shall not, in and of itself, make the order unenforceable.

(b) Any person violating any order made pursuant to paragraphs (1) to (7), inclusive, of subdivision (a) may be punished for any substantive offense described in Section 136.1, or for a contempt of the court making the order. A finding of contempt shall not be a bar to prosecution for a violation of Section 136.1. However, any person so held in contempt shall be entitled to credit for any punishment imposed therein against any sentence imposed upon conviction of an offense described in Section 136.1. Any conviction or acquittal for any substantive offense under Section 136.1 shall be a bar to a subsequent punishment for contempt arising out of the same act.

(c) (1) Notwithstanding subdivisions (a) and (e), an emergency protective order issued pursuant to Chapter 2 (commencing with Section 6250) of Part 3 of Division 10 of the Family Code or Section 646.91 of the Penal Code shall have precedence in enforcement over any other restraining or protective order, provided the emergency protective order meets all of the following requirements:

(A) The emergency protective order is issued to protect one or more individuals who are already protected persons under another restraining or protective order.

(B) The emergency protective order restrains the individual who is the restrained person in the other restraining or protective order specified in subparagraph (A).

(C) The provisions of the emergency protective order are more restrictive in relation to the restrained person than are the provisions of the other restraining or protective order specified in subparagraph (A).

(2) An emergency protective order that meets the requirements of paragraph (1) shall have precedence in enforcement over the provisions of any other restraining or protective order only with respect to those provisions of the emergency protective order that are more restrictive in relation to the restrained person.

(d) (1) A person subject to a protective order issued under this section shall not own, possess, purchase, receive, or attempt to purchase or receive a firearm while the protective order is in effect.

(2) The court shall order a person subject to a protective order issued under this section to relinquish any firearms he or she owns or possesses pursuant to Section 527.9 of the Code of Civil Procedure.

(3) Every person who owns, possesses, purchases or receives, or attempts to purchase or receive a firearm while the protective order is in effect is punishable pursuant to subdivision (g) of Section 12021 of the Penal Code.

(e) (1) In all cases where the defendant is charged with a crime of domestic violence, as defined in Section 13700, the court shall consider issuing the above-described orders on its own motion. All interested parties shall receive a copy of those orders. In order to facilitate this, the court's records of all criminal cases involving domestic violence shall be marked to clearly alert the court to this issue.

(2) In those cases in which a complaint, information, or indictment charging a crime of domestic violence, as defined in Section 13700, has been issued, a restraining order or protective order against the defendant issued by the criminal court in that case has precedence in enforcement over any civil court order against the defendant, unless a court issues an emergency protective order pursuant to Chapter 2 (commencing with Section 6250) of Part 3 of Division 10 of the Family Code or Section 646.91 of the Penal Code, in which case the emergency protective order shall have precedence in enforcement over any other restraining or protective order, provided the emergency protective order meets the following requirements:

(A) The emergency protective order is issued to protect one or more individuals who are already protected persons under another restraining or protective order.

(B) The emergency protective order restrains the individual who is the restrained person in the other restraining or protective order specified in subparagraph (A).

(C) The provisions of the emergency protective order are more restrictive in relation to the restrained person than are the provisions of the other restraining or protective order specified in subparagraph (A).

(3) Custody and visitation with respect to the defendant and his or her minor children may be ordered by a family or juvenile court consistent with the protocol established pursuant to subdivision (f), but if ordered after a criminal protective order has been issued pursuant to this section, the custody and visitation order shall make reference to, and acknowledge the precedence of enforcement of, any appropriate criminal protective order. On or before July 1, 2006, the Judicial Council shall modify the criminal and civil court forms consistent with this subdivision.

(f) On or before January 1, 2003, the Judicial Council shall promulgate a protocol, for adoption by each local court in substantially similar terms, to provide for the timely coordination of all orders against the same defendant and in favor of the same named victim or victims. The protocol

shall include, but shall not be limited to, mechanisms for assuring appropriate communication and information sharing between criminal, family, and juvenile courts concerning orders and cases that involve the same parties, and shall permit a family or juvenile court order to coexist with a criminal court protective order subject to the following conditions:

(1) Any order that permits contact between the restrained person and his or her children shall provide for the safe exchange of the children and shall not contain language either printed or handwritten that violates a “no contact order” issued by a criminal court.

(2) Safety of all parties shall be the courts’ paramount concern. The family or juvenile court shall specify the time, day, place, and manner of transfer of the child, as provided in Section 3100 of the Family Code.

(g) On or before January 1, 2003, the Judicial Council shall modify the criminal and civil court protective order forms consistent with this section.

SEC. 4. (a) Section 3.1 of this bill incorporates amendments to Section 136.2 of the Penal Code proposed by both this bill and AB 112. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2006, (2) each bill amends Section 136.2 of the Penal Code, (3) AB 118 and AB 1288 are not enacted or as enacted do not amend that section, and (4) this bill is enacted after AB 112, in which case Sections 3, 3.2, 3.3, 3.4, 3.5, 3.6, and 3.7 of this bill shall not become operative.

(b) Section 3.2 of this bill incorporates amendments to Section 136.2 of the Penal Code proposed by both this bill and AB 118. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2006, (2) each bill amends Section 136.2 of the Penal Code, (3) AB 112 and AB 1288 are not enacted or as enacted do not amend that section, and (4) this bill is enacted after AB 118, in which case Sections 3, 3.1, 3.3, 3.4, 3.5, 3.6, and 3.7 of this bill shall not become operative.

(c) Section 3.3 of this bill incorporates amendments to Section 136.2 of the Penal Code proposed by both this bill and AB 1288. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2006, (2) each bill amends Section 136.2 of the Penal Code, (3) AB 112 and AB 118 are not enacted or as enacted do not amend that section, and (4) this bill is enacted after AB 1288, in which case Sections 3, 3.1, 3.2, 3.4, 3.5, 3.6, and 3.7 of this bill shall not become operative.

(d) Section 3.4 of this bill incorporates amendments to Section 136.2 of the Penal Code proposed by this bill, AB 112, and AB 118. It shall only become operative if (1) all three bills are enacted and become effective on or before January 1, 2006, (2) each bill amends Section

136.2 of the Penal Code, (3) AB 1288 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after AB 112 and AB 118, in which case Sections 3, 3.1, 3.2, 3.3, 3.5, 3.6, and 3.7 of this bill shall not become operative.

(e) Section 3.5 of this bill incorporates amendments to Section 136.2 of the Penal Code proposed by this bill, AB 112, and AB 1288. It shall only become operative if (1) all three bills are enacted and become effective on or before January 1, 2006, (2) each bill amends Section 136.2 of the Penal Code, (3) AB 118 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after AB 112 and AB 1288, in which case Sections 3, 3.1, 3.2, 3.3, 3.4, 3.6, and 3.7 of this bill shall not become operative.

(f) Section 3.6 of this bill incorporates amendments to Section 136.2 of the Penal Code proposed by this bill, AB 118, and AB 1288. It shall only become operative if (1) all three bills are enacted and become effective on or before January 1, 2006, (2) each bill amends Section 136.2 of the Penal Code, (3) AB 112 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after AB 118 and AB 1288, in which case Sections 3, 3.1, 3.2, 3.3, 3.4, 3.5, and 3.7 of this bill shall not become operative.

(g) Section 3.7 of this bill incorporates amendments to Section 136.2 of the Penal Code proposed by this bill, AB 112, AB 118, and AB 1288. It shall only become operative if (1) all four bills are enacted and become effective on or before January 1, 2006, (2) all four bills amend Section 136.2 of the Penal Code, and (3) this bill is enacted after AB 112, AB 118, and AB 1288, in which case Sections 3, 3.1, 3.2, 3.3, 3.4, 3.5, and 3.6 of this bill shall not become operative.

CHAPTER 632

An act to amend Section 361.2 of, and to add Section 366.23 to, the Welfare and Institutions Code, relating to dependent children.

[Approved by Governor October 7, 2005. Filed with
Secretary of State October 7, 2005.]

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

SECTION 1. This act shall be known and may be cited as “Adam’s Law.”

SEC. 2. Section 361.2 of the Welfare and Institutions Code is amended to read:

361.2. (a) When a court orders removal of a child pursuant to Section 361, the court shall first determine whether there is a parent of the child, with whom the child was not residing at the time that the events or conditions arose that brought the child within the provisions of Section 300, who desires to assume custody of the child. If that parent requests custody, the court shall place the child with the parent unless it finds that placement with that parent would be detrimental to the safety, protection, or physical or emotional well-being of the child.

(b) If the court places the child with that parent it may do any of the following:

(1) Order that the parent become legal and physical custodian of the child. The court may also provide reasonable visitation by the noncustodial parent. The court shall then terminate its jurisdiction over the child. The custody order shall continue unless modified by a subsequent order of the superior court. The order of the juvenile court shall be filed in any domestic relation proceeding between the parents.

(2) Order that the parent assume custody subject to the jurisdiction of the juvenile court and require that a home visit be conducted within three months. In determining whether to take the action described in this paragraph, the court shall consider any concerns that have been raised by the child's current caregiver regarding the parent. After the social worker conducts the home visit and files his or her report with the court, the court may then take the action described in paragraph (1), (3), or this paragraph. However, nothing in this paragraph shall be interpreted to imply that the court is required to take the action described in this paragraph as a prerequisite to the court taking the action described in either paragraph (1) or paragraph (3).

(3) Order that the parent assume custody subject to the supervision of the juvenile court. In that case the court may order that reunification services be provided to the parent or guardian from whom the child is being removed, or the court may order that services be provided solely to the parent who is assuming physical custody in order to allow that parent to retain later custody without court supervision, or that services be provided to both parents, in which case the court shall determine, at review hearings held pursuant to Section 366, which parent, if either, shall have custody of the child.

(c) The court shall make a finding either in writing or on the record of the basis for its determination under subdivisions (a) and (b).

(d) Part 6 (commencing with Section 7950) of Division 12 of the Family Code shall apply to the placement of a child pursuant to paragraphs (1) and (2) of subdivision (e).

(e) When the court orders removal pursuant to Section 361, the court shall order the care, custody, control, and conduct of the child to be under

the supervision of the social worker who may place the child in any of the following:

(1) The home of a noncustodial parent as described in subdivision (a).

(2) The approved home of a relative.

(3) The approved home of a nonrelative extended family member as defined in Section 362.7.

(4) A foster home in which the child has been placed before an interruption in foster care, if that placement is in the best interest of the child and space is available.

(5) A suitable licensed community care facility.

(6) With a foster family agency to be placed in a suitable licensed foster family home or certified family home which has been certified by the agency as meeting licensing standards.

(7) A home or facility in accordance with the federal Indian Child Welfare Act.

(8) A child under the age of six years may be placed in a community care facility licensed as a group home for children, or a temporary shelter care facility as defined in Section 1530.8 of the Health and Safety Code, only under any of the following circumstances:

(A) When a case plan indicates that placement is for purposes of providing specialized treatment to the child, the case plan specifies the need for, nature of, and anticipated duration of this treatment, and the facility meets the applicable regulations adopted under Section 1530.8 of the Health and Safety Code and standards developed pursuant to Section 11467.1. The specialized treatment period shall not exceed 120 days, unless additional time is needed pursuant to the case plan as documented by the caseworker and approved by the caseworker's supervisor.

(B) When a case plan indicates that placement is for purposes of providing family reunification services. In addition, the facility offers family reunification services that meet the needs of the individual child and his or her family, permits parents to have reasonable access to their children 24 hours a day, encourages extensive parental involvement in meeting the daily needs of their children, and employs staff trained to provide family reunification services. In addition, one of the following conditions exists:

(i) The child's parent is also a ward of the court and resides in the facility.

(ii) The child's parent is participating in a treatment program affiliated with the facility and the child's placement in the facility facilitates the coordination and provision of reunification services.

(iii) Placement in the facility is the only alternative that permits the parent to have daily 24-hour access to the child in accordance with the case plan, to participate fully in meeting all of the daily needs of the child, including feeding and personal hygiene, and to have access to necessary reunification services.

(f) (1) If the child is taken from the physical custody of the child's parent or guardian and unless the child is placed with relatives, the child shall be placed in foster care in the county of residence of the child's parent or guardian in order to facilitate reunification of the family.

(2) In the event that there are no appropriate placements available in the parent's or guardian's county of residence, a placement may be made in an appropriate place in another county, preferably a county located adjacent to the parent's or guardian's community of residence.

(3) Nothing in this section shall be interpreted as requiring multiple disruptions of the child's placement corresponding to frequent changes of residence by the parent or guardian. In determining whether the child should be moved, the social worker shall take into consideration the potential harmful effects of disrupting the placement of the child and the parent's or guardian's reason for the move.

(4) When it has been determined that it is necessary for a child to be placed in a county other than the child's parent's or guardian's county of residence, the specific reason the out-of-county placement is necessary shall be documented in the child's case plan. If the reason the out-of-county placement is necessary is the lack of resources in the sending county to meet the specific needs of the child, those specific resource needs shall be documented in the case plan.

(5) When it has been determined that a child is to be placed out-of-county either in a group home or with a foster family agency for subsequent placement in a certified foster family home, and the sending county is to maintain responsibility for supervision and visitation of the child, the sending county shall develop a plan of supervision and visitation that specifies the supervision and visitation activities to be performed and specifies that the sending county is responsible for performing those activities. In addition to the plan of supervision and visitation, the sending county shall document information regarding any known or suspected dangerous behavior of the child that indicates the child may pose a safety concern in the receiving county. Upon implementation of the Child Welfare Services Case Management System, the plan of supervision and visitation, as well as information regarding any known or suspected dangerous behavior of the child, shall be made available to the receiving county upon placement of the child in the receiving county. If placement occurs on a weekend or holiday, the

information shall be made available to the receiving county on or before the end of the next business day.

(6) When it has been determined that a child is to be placed out-of-county and the sending county plans that the receiving county shall be responsible for the supervision and visitation of the child, the sending county shall develop a formal agreement between the sending and receiving counties. The formal agreement shall specify the supervision and visitation to be provided the child, and shall specify that the receiving county is responsible for providing the supervision and visitation. The formal agreement shall be approved and signed by the sending and receiving counties prior to placement of the child in the receiving county. In addition, upon completion of the case plan, the sending county shall provide a copy of the completed case plan to the receiving county. The case plan shall include information regarding any known or suspected dangerous behavior of the child that indicates the child may pose a safety concern to the receiving county.

(g) Whenever the social worker must change the placement of the child and is unable to find a suitable placement within the county and must place the child outside the county, the placement shall not be made until he or she has served written notice on the parent or guardian at least 14 days prior to the placement, unless the child's health or well-being is endangered by delaying the action or would be endangered if prior notice were given. The notice shall state the reasons which require placement outside the county. The parent or guardian may object to the placement not later than seven days after receipt of the notice and, upon objection, the court shall hold a hearing not later than five days after the objection and prior to the placement. The court shall order out-of-county placement if it finds that the child's particular needs require placement outside the county.

(h) Where the court has ordered removal of the child from the physical custody of his or her parents pursuant to Section 361, the court shall consider whether the family ties and best interest of the child will be served by granting visitation rights to the child's grandparents. The court shall clearly specify those rights to the social worker.

(i) Where the court has ordered removal of the child from the physical custody of his or her parents pursuant to Section 361, the court shall consider whether there are any siblings under the court's jurisdiction, the nature of the relationship between the child and his or her siblings, the appropriateness of developing or maintaining the sibling relationships pursuant to Section 16002, and the impact of the sibling relationships on the child's placement and planning for legal permanence.

SEC. 3. Section 366.23 is added to the Welfare and Institutions Code, to read:

366.23. If a noncustodial parent is seeking placement or custody of a child, the social worker shall inform the caretaker that he or she has the right to provide the court with input regarding the placement of the child. The social worker shall provide the "Caregiver Information Form" to the caretaker to complete and request that the caregiver provide any particular information the caregiver might have regarding the noncustodial parent now seeking custody. If a report is required or otherwise due, the completed form shall be attached to the social worker's report to be filed with the court. If not, the social worker shall ensure that, if the foster parent completes the form, the completed form is returned to the court for review and consideration before the child is placed with the noncustodial parent.

SEC. 4. 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.

CHAPTER 633

An act to add Part 8 (commencing with Section 14950) to Division 12 of the Health and Safety Code, relating to cigarettes.

[Approved by Governor October 7, 2005. Filed with
Secretary of State October 7, 2005.]

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

SECTION 1. (a) The Legislature finds and declares as follows:

(1) Cigarettes are the leading cause of fire deaths in the United States each year, claiming 1,000 lives and causing nearly 2,000 injuries and nearly four hundred million dollars (\$400,000,000) in direct property damage.

(2) Technology exists to significantly reduce the number of fires caused by cigarettes.

(3) The State of New York enacted a cigarette fire safety regulation effective June 28, 2004, that requires cigarettes sold in that state to meet a fire safety performance standard. Canada is scheduled to implement the New York State fire safety standard in the fall of 2005.

(4) New York State's cigarette fire safety standard is based upon decades of research by the National Institute of Standards and Technology, congressional research groups, and private industry.

(5) Cigarettes meeting fire safety standards have been found not to increase the costs to consumers.

(6) It is the intent of the Legislature to adopt the cigarette fire safety standard that is in effect in New York State to reduce the likelihood that cigarettes will cause fires, which result in deaths, injuries, and property damage. It is further the intent of the Legislature to adopt this cigarette fire safety standard with a minimum of cost to the state.

(b) The Legislature hereby determines that it is within the police powers of the state to protect the health and safety of the people of the state by establishing fire safety standards for cigarettes sold in this state.

SEC. 2. Part 8 (commencing with Section 14950) is added to Division 12 of the Health and Safety Code, to read:

PART 8. CIGARETTES

14950. (a) This part shall be known and may be cited as the California Cigarette Fire Safety and Firefighter Protection Act.

(b) As used in this part, the following terms have the following meanings:

(1) "Board" means the State Board of Equalization.

(2) "Cigarette" means a cigarette as defined in Section 30003 of the Revenue and Taxation Code.

(3) "Distributor" means a distributor as defined in Section 30011 of the Revenue and Taxation Code.

(4) "Manufacturer" means any of the following:

(A) An entity that manufactures or otherwise produces cigarettes or causes cigarettes to be manufactured or produced anywhere that the manufacturer intends to be sold in the state, including cigarettes intended to be sold in the United States through an importer.

(B) The first purchaser anywhere that intends to resell in the United States cigarettes manufactured anywhere that the original manufacturer or maker does not intend to be sold in the United States.

(C) An entity that becomes a successor of an entity described in subparagraph (A) or (B).

(5) "Offer to sell" means to offer or agree to sell.

(6) "Package" means package as defined in Section 30015 of the Revenue and Taxation Code.

(7) "Quality control and quality assurance program" means the laboratory procedures implemented to ensure that operator bias, systematic and nonsystematic methodological errors, and equipment-related problems do not affect the results of the testing. This program ensures that the testing repeatability remains within the required repeatability values stated in paragraph (5) of subdivision (a) of Section

14952 for all test trials used to certify cigarettes in accordance with this part.

(8) “Repeatability” means the range of values within which the repeat results of cigarette test trials from a single laboratory will fall 95 percent of the time.

(9) “Retailer” means a person who engages in the sale of cigarettes, but not for the purpose of resale.

(10) “Sale” or “sell” means any transfer, exchange, or barter, in any manner or by any means whatever, or any agreement for these purposes. The giving of cigarettes as samples, prizes, or gifts, and the exchanging of cigarettes for any consideration other than money are considered sales.

(11) “Stamp and meter impression” means stamp and meter impression as defined in Section 30018 of the Revenue and Taxation Code.

(12) “Wholesaler” means a wholesaler as defined in Section 30016 of the Revenue and Taxation Code.

14951. (a) A person shall not sell, offer, or possess for sale in this state cigarettes not in compliance with the following requirements:

(1) The cigarettes are tested by the manufacturer in accordance with the test method prescribed in subdivision (a) of Section 14952.

(2) The cigarettes meet the performance standard specified in subdivision (b) of Section 14952.

(3) The cigarettes meet the marking requirement of Section 14954.

(4) A written certification is filed by the manufacturer with the State Fire Marshal in accordance with Section 14953.

(b) This section does not prohibit distributors, wholesalers, or retailers from selling their inventory of cigarettes existing on January 1, 2007, if both of the following conditions are met:

(1) The distributors, wholesalers, or retailers can establish that California tax stamps or meter impressions were affixed to the cigarettes pursuant to Section 30163 of the Revenue and Taxation Code before January 31, 2007.

(2) The distributors, wholesalers, or retailers can establish that the inventory was purchased before January 1, 2007, in comparable quantity to the inventory purchased during the same period of 2005.

(c) This section does not prohibit a person or entity from manufacturing or selling cigarettes that do not meet the requirements of subdivision (a) if the cigarettes are or will be stamped or metered for sale in another state or are packaged for sale outside the United States.

14952. (a) (1) Testing of cigarettes shall be conducted in accordance with the American Society of Testing and Materials (ASTM) Standard E2187-04, “Standard Test Method for Measuring the Ignition Strength of Cigarettes.” However, a subsequent ASTM Standard Test Method may be adopted upon finding that the subsequent method does not result

in a change in the percentage of full-length burns exhibited by any tested cigarette when compared to the percentage of full-length burns that the same cigarette would exhibit when tested in accordance with ASTM Standard E2187-04 and the testing requirements in paragraphs (2) to (5), inclusive, and the performance standard specified in subdivision (b).

(2) Testing shall be conducted on 10 layers of filter paper.

(3) Forty replicate tests shall comprise a complete test trial for each cigarette tested.

(4) The performance standard required by subdivision (b) shall only be applied to a complete test trial.

(5) Laboratories conducting testing in accordance with this subdivision shall implement a quality control and quality assurance program that includes a procedure that will determine the repeatability of the testing results. The repeatability value shall be no greater than 0.19 pursuant to subdivision (b).

(b) When tested in accordance with subdivision (a), no more than 25 percent of the cigarettes tested in a test trial shall exhibit full-length burns.

(c) Each cigarette listed in a certification submitted pursuant to Section 14953 that uses lowered permeability bands in the cigarette paper to achieve compliance with the performance standard set forth in subdivision (b) shall have at least two nominally identical bands on the paper surrounding the tobacco column. At least one complete band shall be located at least 15 millimeters from the lighting end of the cigarette. For cigarettes on which the bands are positioned by design, there shall be at least two bands fully located at least 15 millimeters from the lighting end and 10 millimeters from the filter end of the tobacco column or 10 millimeters from the labeled end of the tobacco column for a nonfiltered cigarette.

(d) The manufacturer or manufacturers of a cigarette that cannot be tested in accordance with the test method prescribed in subdivision (a) may employ a test method and performance standard for that cigarette that is equivalent to the performance standard prescribed in subdivision (b). The manufacturer or manufacturers may employ that test method and performance standard to certify that cigarette pursuant to Section 14953. All other applicable requirements of this part shall apply to the manufacturer or manufacturers of that cigarette.

(e) This section does not require additional testing if cigarettes are tested consistent with this section for any other purpose.

(f) In order to ensure compliance with the performance standard specified in subdivision (b), data from testing conducted by manufacturers to comply with this performance standard shall be kept on file by these manufacturers for a period of three years after the initial date of

certification and for a period of three years after each recertification required by subdivision (c) of Section 14953 and shall be sent to the State Fire Marshal and the Attorney General upon his or her request.

(g) This section shall be implemented in accordance with the implementation and substance of the New York Fire Safety Standards for Cigarettes that are effective on June 28, 2004.

14953. (a) Each manufacturer shall submit a written certification to the State Fire Marshal attesting that each cigarette listed in the certification has been tested in accordance with subdivision (a) of Section 14952 and meets the performance standard set forth in subdivision (b) of that section.

(b) Each cigarette listed in the certification shall be described with the following information:

- (1) Brand.
- (2) Style (for example, light, ultra light).
- (3) Length in millimeters.
- (4) Circumference in millimeters.
- (5) Flavor (for example, menthol, chocolate) if applicable.
- (6) Filter or nonfilter.
- (7) Package description (for example, soft pack, box).
- (8) Marking approved in accordance with Section 14954.

(c) Each cigarette certified under this section shall be recertified every three years.

(d) Manufacturers certifying cigarettes in accordance with this section shall provide a copy of the certifications to all distributors and wholesalers to which they sell cigarettes and shall also provide sufficient copies of an illustration of the cigarette packaging marking utilized by the manufacturer pursuant to Section 14954 for each retailer to which the distributors and wholesalers sell cigarettes. Distributors and wholesalers shall provide a copy of these cigarette packaging markings received from manufacturers to all retailers to which they sell cigarettes.

14954. (a) Cigarettes that are certified by a manufacturer in accordance with Section 14953 shall be marked on the packaging and case to indicate compliance with the requirements of this part. Marking shall be in 8-point type or larger and consist of one of the following:

(1) Modification of the universal product code to include a visible mark printed at or around the area of that code. The mark may consist of alphanumeric or symbolic characters permanently stamped, engraved, embossed or printed in conjunction with the universal product code.

(2) Any visible combination of alphanumeric or symbolic characters permanently stamped, engraved, or embossed upon the cigarette packaging or cellophane wrap.

(3) Printed, stamped, engraved, or embossed text on the cigarette packaging that indicates that the cigarettes meet California standards.

(b) Before a certified cigarette can be sold in the state, a manufacturer shall submit its proposed marking to the State Fire Marshal. The State Fire Marshal shall approve the marking upon a finding that it is compliant with the criteria outlined in subdivision (a). Proposed markings shall be deemed approved if the State Fire Marshal fails to act within 10 business days of receiving a proposed marking. A marking in use and approved for the sale of cigarettes in the State of New York shall be deemed approved.

(c) A manufacturer must use only one marking and must apply this marking uniformly for all packagings, including, but not limited to, packages, cartons, and cases, and brands marketed by that manufacturer.

(d) A manufacturer who modifies its marking shall notify the State Fire Marshal of this change and submit to the State Fire Marshal a copy of the new marking which shall comply with subdivisions (a) and (b).

14955. (a) Any manufacturer or any other person or entity that knowingly sells or offers to sell cigarettes other than through retail sale in violation of this part is subject to a civil penalty not to exceed ten thousand dollars (\$10,000) for each sale.

(b) Any retailer, distributor, or wholesaler that knowingly sells or offers to sell cigarettes in violation of this part shall be subject to the following:

(1) A civil penalty not to exceed five hundred dollars (\$500) for each sale or offer for sale in which the total number of cigarettes sold or offered for sale does not exceed 50 packages of cigarettes.

(2) A civil penalty not to exceed one thousand dollars (\$1,000) for each sale or offer for sale in which the total number of cigarettes sold or offered for sale exceeds 50 packages of cigarettes.

(c) The civil penalties imposed pursuant to subdivisions (a) and (b) of this section shall be deposited in the Cigarette Fire Safety and Firefighter Protection Fund.

(d) In addition to any other penalty prescribed by law, any corporation, partnership, sole proprietor, limited partnership, or association engaged in the manufacture of cigarettes that knowingly makes a false certification pursuant to Section 14953 shall be subject to a civil penalty not to exceed ten thousand dollars (\$10,000) for each false certification.

(e) Any person violating any other provision in this part shall be subject to a civil penalty not to exceed one thousand dollars (\$1,000) for each violation. Any cigarettes that have been sold or offered for sale that do not comply with the performance standard required by Section 14952 shall be deemed contraband and subject to seizure and disposal by the board or a law enforcement agency.

(f) The Attorney General may bring an action on behalf of the people of the state to restrain further violations of this part and for any other relief that may be appropriate. In any action by the Attorney General to enforce this act, the Attorney General shall be entitled to recover costs of investigation, expert witness fees, costs of the action, and reasonable attorney's fees.

(g) It shall be a defense in any action for civil penalties, that a distributor, wholesaler, retailer, or any person in the stream of commerce relied in good faith on the manufacturer's certificate or marking that the cigarettes comply with the requirements of this part.

14956. (a) Inspections may be made at any place where cigarettes are sold, offered for sale, or stored or at any site where there is evidence of a violation of subdivision (a) of Section 14951.

(b) Manufacturers, distributors, wholesalers, and retailers shall permit an employee of the board, upon presentation of the appropriate identification and credentials, to enter into, and to conduct an inspection of, any building, facility, site, or place described in subdivision (a).

(c) Any person that refuses to allow an inspection authorized under this section is subject to the penalty imposed by Section 14958.

14957. Upon discovery by the board or a law enforcement agency that any person offers or possesses for sale, or has made a sale of, cigarettes in violation of subdivision (a) of Section 14951, the board or that law enforcement agency may seize those cigarettes possessed in violation of this part.

14958. Any person who knowingly fails or refuses to allow an inspection by the board, pursuant to Section 14956, is subject to a civil penalty not to exceed one thousand dollars (\$1,000) for each failure or refusal.

14959. This part shall cease to be applicable if federal fire safety standards for cigarettes that preempt this act are enacted and take effect subsequent to the effective date of this act and the State Fire Marshal so notifies the Secretary of State.

14960. This part shall become operative on January 1, 2007.

SEC. 3. (a) The Cigarette Fire Safety and Firefighter Protection Fund is hereby created in the State Treasury. Upon appropriation by the Legislature, moneys deposited into the fund shall be made available to both of the following:

(1) The State Board of Equalization to offset minor administrative costs for inspecting, seizing, and disposing of cigarettes.

(2) The State Fire Marshal to offset minor administrative costs to implement Part 8 (commencing with Section 14950) of Division 12 of the Health and Safety Code and to offset administrative costs to meet

the fire safety reporting requirements established pursuant to Section 13110.5 of the Health and Safety Code.

(b) This section shall become operative on January 1, 2007.

CHAPTER 634

An act to amend Sections 213.5 and 366.26 of the Welfare and Institutions Code, relating to children.

[Approved by Governor October 7, 2005. Filed with
Secretary of State October 7, 2005.]

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

SECTION 1. Section 213.5 of the Welfare and Institutions Code is amended to read:

213.5. (a) After a petition has been filed pursuant to Section 311 to declare a child a dependent child of the juvenile court, and until the time that the petition is dismissed or dependency is terminated, upon application in the manner provided by Section 527 of the Code of Civil Procedure, the juvenile court may issue ex parte orders (1) enjoining any person from molesting, attacking, striking, sexually assaulting, stalking, or battering the child or any other child in the household; (2) excluding any person from the dwelling of the person who has care, custody, and control of the child; and (3) enjoining any person from behavior, including contacting, threatening, or disturbing the peace of the child, that the court determines is necessary to effectuate orders under paragraph (1) or (2). A court may also issue an ex parte order enjoining any person from contacting, threatening, molesting, attacking, striking, sexually assaulting, stalking, battering, or disturbing the peace of any parent, legal guardian, or current caretaker of the child, regardless of whether the child resides with that parent, legal guardian, or current caretaker, upon application in the manner provided by Section 527 of the Code of Civil Procedure.

(b) After a petition has been filed pursuant to Section 601 or 602 to declare a child a ward of the juvenile court, and until the time that the petition is dismissed or wardship is terminated, upon application in the manner provided by Section 527 of the Code of Civil Procedure, the juvenile court may issue ex parte orders (1) enjoining any person from molesting, attacking, threatening, sexually assaulting, stalking, or battering the child or any other child in the household; (2) excluding any person from the dwelling of the person who has care, custody, and control

of the child; or (3) enjoining the child from contacting, threatening, stalking, or disturbing the peace of any person the court finds to be at risk from the conduct of the child, or with whom association would be detrimental to the child.

(c) If a temporary restraining order is granted without notice, the matter shall be made returnable on an order requiring cause to be shown why the order should not be granted, on the earliest day that the business of the court will permit, but not later than 15 days or, if good cause appears to the court, 20 days from the date the temporary restraining order is granted. The court may, on the motion of the person seeking the restraining order, or on its own motion, shorten the time for service of the order to show cause on the person to be restrained. The court may, upon its own motion or the filing of an affidavit by the person seeking the restraining order, find that the person to be restrained could not be served within the time required by law and reissue an order previously issued and dissolved by the court for failure to serve the person to be restrained. The reissued order shall state on its face the date of expiration of the order. Any hearing pursuant to this section may be held simultaneously with any regularly scheduled hearings held in proceedings to declare a child a dependent child or ward of the juvenile court pursuant to Section 300, 601, or 602, or subsequent hearings regarding the dependent child or ward.

(d) The juvenile court may issue, upon notice and a hearing, any of the orders set forth in subdivisions (a), (b), and (c). Any restraining order granted pursuant to this subdivision shall remain in effect, in the discretion of the court, no more than three years, unless otherwise terminated by the court, extended by mutual consent of all parties to the restraining order, or extended by further order of the court on the motion of any party to the restraining order.

(e) (1) The juvenile court may issue an order made pursuant to subdivision (a), (c), or (d) excluding a person from a residence or dwelling. This order may be issued for the time and on the conditions that the court determines, regardless of which party holds legal or equitable title or is the lessee of the residence or dwelling.

(2) The court may issue an order under paragraph (1) only on a showing of all of the following:

(A) Facts sufficient for the court to ascertain that the party who will stay in the dwelling has a right under color of law to possession of the premises.

(B) That the party to be excluded has assaulted or threatens to assault the other party or any other person under the care, custody, and control of the other party, or any minor child of the parties or of the other party.

(C) That physical or emotional harm would otherwise result to the other party, to any person under the care, custody, and control of the other party, or to any minor child of the parties or of the other party.

(f) Any order issued pursuant to subdivision (a), (b), (c), or (d) shall state on its face the date of expiration of the order.

(g) The juvenile court shall order any designated person or attorney to mail a copy of any order, or extension, modification, or termination thereof, granted pursuant to subdivision (a), (b), (c), or (d), by the close of the business day on which the order, extension, modification, or termination was granted, and any subsequent proof of service thereof, to each local law enforcement agency designated by the person seeking the restraining order or his or her attorney having jurisdiction over the residence of the person who has care, custody, and control of the child and other locations where the court determines that acts of domestic violence or abuse against the child or children are likely to occur. Each appropriate law enforcement agency shall make available through an existing system for verification, information as to the existence, terms, and current status of any order issued pursuant to subdivision (a), (b), (c), or (d) to any law enforcement officer responding to the scene of reported domestic violence or abuse.

(h) Any willful and knowing violation of any order granted pursuant to subdivision (a), (b), (c), or (d) shall be a misdemeanor punishable under Section 273.65 of the Penal Code.

(i) A juvenile court restraining order related to domestic violence issued by a court pursuant to this section shall be issued on forms adopted by the Judicial Council of California and that have been approved by the Department of Justice pursuant to subdivision (i) of Section 6380 of the Family Code. However, the fact that an order issued by a court pursuant to this section was not issued on forms adopted by the Judicial Council and approved by the Department of Justice shall not, in and of itself, make the order unenforceable.

(j) Information on any juvenile court restraining order related to domestic violence issued by a court pursuant to this section shall be transmitted to the Department of Justice in accordance with subdivision (b) of Section 6380 of the Family Code.

(k) (1) Prior to a hearing on the issuance or denial of an order under this part, a search shall be conducted as described in subdivision (a) of Section 6306 of the Family Code.

(2) Prior to deciding whether to issue an order under this part, the court shall consider the following information obtained pursuant to a search conducted under paragraph (1): any conviction for a violent felony specified in Section 667.5 of the Penal Code or a serious felony specified in Section 1192.7 of the Penal Code; any misdemeanor conviction

involving domestic violence, weapons, or other violence; any outstanding warrant; parole or probation status; any prior restraining order; and any violation of a prior restraining order.

(3) (A) If the results of the search conducted pursuant to paragraph (1) indicate that an outstanding warrant exists against the subject of the search, the court shall order the clerk of the court to immediately notify, by the most effective means available, appropriate law enforcement officials of any information obtained through the search that the court determines is appropriate. The law enforcement officials notified shall take all actions necessary to execute any outstanding warrants or any other actions, as appropriate and as soon as practicable.

(B) If the results of the search conducted pursuant to paragraph (1) indicate that the subject of the search is currently on parole or probation, the court shall order the clerk of the court to immediately notify, by the most effective means available, the appropriate parole or probation officer of any information obtained through the search that the court determines is appropriate. The parole or probation officer notified shall take all actions necessary to revoke any parole or probation, or any other actions, with respect to the subject person, as appropriate and as soon as practicable.

(l) Upon making any order for custody or visitation pursuant to this section, the court shall follow the procedures specified in subdivisions (c) and (d) of Section 6323 of the Family Code.

SEC. 2. Section 366.26 of the Welfare and Institutions Code is amended to read:

366.26. (a) This section applies to children who are adjudged dependent children of the juvenile court pursuant to subdivision (c) of Section 360. The procedures specified herein are the exclusive procedures for conducting these hearings; Part 2 (commencing with Section 3020) of Division 8 of the Family Code is not applicable to these proceedings. Section 8714.7 of the Family Code is applicable and available to all dependent children meeting the requirements of that section, if the postadoption contact agreement has been entered into voluntarily. For children who are adjudged dependent children of the juvenile court pursuant to subdivision (c) of Section 360, this section and Sections 8604, 8605, 8606, and 8700 of the Family Code and Chapter 5 (commencing with Section 7660) of Part 3 of Division 12 of the Family Code specify the exclusive procedures for permanently terminating parental rights with regard to, or establishing legal guardianship of, the child while the child is a dependent child of the juvenile court.

(b) At the hearing, which shall be held in juvenile court for all children who are dependents of the juvenile court, the court, in order to provide stable, permanent homes for these children, shall review the report as

specified in Section 361.5, 366.21, or 366.22, shall indicate that the court has read and considered it, shall receive other evidence that the parties may present, and then shall make findings and orders in the following order of preference:

(1) Terminate the rights of the parent or parents and order that the child be placed for adoption and, upon the filing of a petition for adoption in the juvenile court, order that a hearing be set. The court shall proceed with the adoption after the appellate rights of the natural parents have been exhausted.

(2) On making a finding under paragraph (3) of subdivision (c), identify adoption as the permanent placement goal and order that efforts be made to locate an appropriate adoptive family for the child within a period not to exceed 180 days.

(3) Appoint a legal guardian for the child and order that letters of guardianship issue.

(4) Order that the child be placed in long-term foster care, subject to the periodic review of the juvenile court under Section 366.3.

In choosing among the above alternatives the court shall proceed pursuant to subdivision (c).

(c) (1) If the court determines, based on the assessment provided as ordered under subdivision (i) of Section 366.21 or subdivision (b) of Section 366.22, and any other relevant evidence, by a clear and convincing standard, that it is likely the child will be adopted, the court shall terminate parental rights and order the child placed for adoption. The fact that the child is not yet placed in a preadoptive home nor with a relative or foster family who is prepared to adopt the child, shall not constitute a basis for the court to conclude that it is not likely the child will be adopted. A finding under subdivision (b) or paragraph (1) of subdivision (e) of Section 361.5 that reunification services shall not be offered, under subdivision (e) of Section 366.21 that the whereabouts of a parent have been unknown for six months or that the parent has failed to visit or contact the child for six months or that the parent has been convicted of a felony indicating parental unfitness, or, under Section 366.21 or 366.22, that the court has continued to remove the child from the custody of the parent or guardian and has terminated reunification services, shall constitute a sufficient basis for termination of parental rights unless the court finds a compelling reason for determining that termination would be detrimental to the child due to one or more of the following circumstances:

(A) The parents or guardians have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship.

(B) A child 12 years of age or older objects to termination of parental rights.

(C) The child is placed in a residential treatment facility, adoption is unlikely or undesirable, and continuation of parental rights will not prevent finding the child a permanent family placement if the parents cannot resume custody when residential care is no longer needed.

(D) The child is living with a relative or foster parent who is unable or unwilling to adopt the child because of exceptional circumstances, that do not include an unwillingness to accept legal or financial responsibility for the child, but who is willing and capable of providing the child with a stable and permanent environment and the removal of the child from the physical custody of his or her relative or foster parent would be detrimental to the emotional well-being of the child. This subparagraph does not apply to any child who is living with a nonrelative and who is either (i) under six years of age or (ii) a member of a sibling group where at least one child is under six years of age and the siblings are, or should be, permanently placed together.

(E) There would be substantial interference with a child's sibling relationship, taking into consideration the nature and extent of the relationship, including, but not limited to, whether the child was raised with a sibling in the same home, whether the child shared significant common experiences or has existing close and strong bonds with a sibling, and whether ongoing contact is in the child's best interest, including the child's long-term emotional interest, as compared to the benefit of legal permanence through adoption.

If the court finds that termination of parental rights would be detrimental to the child pursuant to subparagraph (A), (B), (C), (D), or (E), it shall state its reasons in writing or on the record.

(2) The court shall not terminate parental rights if at each hearing at which the court was required to consider reasonable efforts or services, the court has found that reasonable efforts were not made or that reasonable services were not offered or provided.

(3) If the court finds that termination of parental rights would not be detrimental to the child pursuant to paragraph (1) and that the child has a probability for adoption but is difficult to place for adoption and there is no identified or available prospective adoptive parent, the court may identify adoption as the permanent placement goal and without terminating parental rights, order that efforts be made to locate an appropriate adoptive family for the child within a period not to exceed 180 days. During this 180-day period, the public agency responsible for seeking adoptive parents for each child shall, to the extent possible, ask each child who is 10 years of age or older who is placed in a group home for six months or longer from the date the child entered foster care, to

identify any individuals, other than the child's siblings, who are important to the child, in order to identify potential adoptive parents. The public agency may ask any other child to provide that information, as appropriate. During the 180-day period, the public agency shall, to the extent possible, contact other private and public adoption agencies regarding the availability of the child for adoption. During the 180-day period, the public agency shall conduct the search for adoptive parents in the same manner as prescribed for children in Sections 8708 and 8709 of the Family Code. At the expiration of this period, another hearing shall be held and the court shall proceed pursuant to paragraph (1) or (3) of subdivision (b). For purposes of this section, a child may only be found to be difficult to place for adoption if there is no identified or available prospective adoptive parent for the child because of the child's membership in a sibling group, or the presence of a diagnosed medical, physical, or mental handicap, or the child is the age of seven years or more.

(4) (A) If the court finds that adoption of the child or termination of parental rights is not in the best interest of the child, because one of the conditions in subparagraph (A), (B), (C), (D), or (E) of paragraph (1) or in paragraph (2) applies, the court shall either order that the present caretakers or other appropriate persons shall become legal guardians of the child or order that the child remain in long-term foster care. Legal guardianship shall be considered before long-term foster care, if it is in the best interests of the child and if a suitable guardian can be found. A child who is 10 years of age or older who is placed in a group home for six months or longer from the date the child entered foster care, shall be asked to identify any individuals, other than the child's siblings, who are important to the child, in order to identify potential guardians. The agency may ask any other child to provide that information, as appropriate.

(B) If the child is living with a relative or a foster parent who is willing and capable of providing a stable and permanent environment, but not willing to become a legal guardian, the child shall not be removed from the home if the court finds the removal would be seriously detrimental to the emotional well-being of the child because the child has substantial psychological ties to the relative caretaker or foster parents.

(C) The court shall also make an order for visitation with the parents or guardians unless the court finds by a preponderance of the evidence that the visitation would be detrimental to the physical or emotional well-being of the child.

(5) If the court finds that the child should not be placed for adoption, that legal guardianship shall not be established, and that there are no suitable foster parents except exclusive-use homes available to provide

the child with a stable and permanent environment, the court may order the care, custody, and control of the child transferred from the county welfare department to a licensed foster family agency. The court shall consider the written recommendation of the county welfare director regarding the suitability of the transfer. The transfer shall be subject to further court orders.

The licensed foster family agency shall place the child in a suitable licensed or exclusive-use home that has been certified by the agency as meeting licensing standards. The licensed foster family agency shall be responsible for supporting the child and providing appropriate services to the child, including those services ordered by the court. Responsibility for the support of the child shall not, in and of itself, create liability on the part of the foster family agency to third persons injured by the child. Those children whose care, custody, and control are transferred to a foster family agency shall not be eligible for foster care maintenance payments or child welfare services, except for emergency response services pursuant to Section 16504.

(d) The proceeding for the appointment of a guardian for a child who is a dependent of the juvenile court shall be in the juvenile court. If the court finds pursuant to this section that legal guardianship is the appropriate permanent plan, it shall appoint the legal guardian and issue letters of guardianship. The assessment prepared pursuant to subdivision (g) of Section 361.5, subdivision (i) of Section 366.21, and subdivision (b) of Section 366.22 shall be read and considered by the court prior to the appointment, and this shall be reflected in the minutes of the court. The person preparing the assessment may be called and examined by any party to the proceeding.

(e) The proceeding for the adoption of a child who is a dependent of the juvenile court shall be in the juvenile court if the court finds pursuant to this section that adoption is the appropriate permanent plan and the petition for adoption is filed in the juvenile court. Upon the filing of a petition for adoption, the juvenile court shall order that an adoption hearing be set. The court shall proceed with the adoption after the appellate rights of the natural parents have been exhausted. The full report required by Section 8715 of the Family Code shall be read and considered by the court prior to the adoption and this shall be reflected in the minutes of the court. The person preparing the report may be called and examined by any party to the proceeding. It is the intent of the Legislature, pursuant to this subdivision, to give potential adoptive parents the option of filing in the juvenile court the petition for the adoption of a child who is a dependent of the juvenile court. Nothing in this section is intended to prevent the filing of a petition for adoption in any other court as permitted by law, instead of in the juvenile court.

(f) At the beginning of any proceeding pursuant to this section, if the child or the parents are not being represented by previously retained or appointed counsel, the court shall proceed as follows:

(1) In accordance with subdivision (c) of Section 317, if a child before the court is without counsel, the court shall appoint counsel unless the court finds that the child would not benefit from the appointment of counsel. The court shall state on the record its reasons for that finding.

(2) If a parent appears without counsel and is unable to afford counsel, the court shall appoint counsel for the parent, unless this representation is knowingly and intelligently waived. The same counsel shall not be appointed to represent both the child and his or her parent. The public defender or private counsel may be appointed as counsel for the parent.

(3) Private counsel appointed under this section shall receive a reasonable sum for compensation and expenses, the amount of which shall be determined by the court. The amount shall be paid by the real parties in interest, other than the child, in any proportions the court deems just. However, if the court finds that any of the real parties in interest are unable to afford counsel, the amount shall be paid out of the general fund of the county.

(g) The court may continue the proceeding for not to exceed 30 days as necessary to appoint counsel, and to enable counsel to become acquainted with the case.

(h) (1) At all proceedings under this section, the court shall consider the wishes of the child and shall act in the best interests of the child.

(2) In accordance with Section 349, the child shall be present in court if the child or the child's counsel so requests or the court so orders. If the child is 10 years of age or older and is not present at a hearing held pursuant to this section, the court shall determine whether the minor was properly notified of his or her right to attend the hearing and inquire as to the reason why the child is not present.

(3) (A) The testimony of the child may be taken in chambers and outside the presence of the child's parent or parents, if the child's parent or parents are represented by counsel, the counsel is present, and any of the following circumstances exists:

(i) The court determines that testimony in chambers is necessary to ensure truthful testimony.

(ii) The child is likely to be intimidated by a formal courtroom setting.

(iii) The child is afraid to testify in front of his or her parent or parents.

(B) After testimony in chambers, the parent or parents of the child may elect to have the court reporter read back the testimony or have the testimony summarized by counsel for the parent or parents.

(C) The testimony of a child also may be taken in chambers and outside the presence of the guardian or guardians of a child under the circumstances specified in this subdivision.

(i) (1) Any order of the court permanently terminating parental rights under this section shall be conclusive and binding upon the child, upon the parent or parents and upon all other persons who have been served with citation by publication or otherwise as provided in this chapter. After making the order, the juvenile court shall have no power to set aside, change, or modify it, except as provided in paragraph (2), but nothing in this section shall be construed to limit the right to appeal the order.

(2) A child who has not been adopted after the passage of at least three years from the date the court terminated parental rights and for whom the court has determined that adoption is no longer the permanent plan may petition the juvenile court to reinstate parental rights pursuant to the procedure prescribed by Section 388. The child may file the petition prior to the expiration of this three-year period if the State Department of Social Services or licensed adoption agency that is responsible for custody and supervision of the child as described in subdivision (j) and the child stipulate that the child is no longer likely to be adopted. A child over 12 years of age shall sign the petition in the absence of a showing of good cause as to why the child could not do so. If it appears that the best interests of the child may be promoted by reinstatement of parental rights, the court shall order that a hearing be held and shall give prior notice, or cause prior notice to be given, to the social worker or probation officer and to the child's attorney of record, or, if there is no attorney of record for the child, to the child, and the child's tribe, if applicable, by means prescribed by subdivision (c) of Section 297. The court shall order the child or the social worker or probation officer to give prior notice of the hearing to the child's former parent or parents whose parental rights were terminated in the manner prescribed by subdivision (f) of Section 294 where the recommendation is adoption. The juvenile court shall grant the petition if it finds by clear and convincing evidence that the child is no longer likely to be adopted and that reinstatement of parental rights is in the child's best interest. If the court reinstates parental rights over a child who is under 12 years of age and for whom the new permanent plan will not be reunification with a parent or legal guardian, the court shall specify the factual basis for its findings that it is in the best interest of the child to reinstate parental rights. This subdivision is intended to be retroactive and applies to any child who is under the jurisdiction of the juvenile court at the time of the hearing regardless of the date parental rights were terminated.

(j) If the court, by order or judgment, declares the child free from the custody and control of both parents, or one parent if the other does not have custody and control, the court shall at the same time order the child referred to the State Department of Social Services or a licensed adoption agency for adoptive placement by the agency. However, a petition for adoption may not be granted until the appellate rights of the natural parents have been exhausted. The State Department of Social Services or licensed adoption agency shall be responsible for the custody and supervision of the child and shall be entitled to the exclusive care and control of the child at all times until a petition for adoption is granted. With the consent of the agency, the court may appoint a guardian of the child, who shall serve until the child is adopted.

(k) Notwithstanding any other provision of law, the application of any person who, as a relative caretaker or foster parent, has cared for a dependent child for whom the court has approved a permanent plan for adoption, or who has been freed for adoption, shall be given preference with respect to that child over all other applications for adoptive placement if the agency making the placement determines that the child has substantial emotional ties to the relative caretaker or foster parent and removal from the relative caretaker or foster parent would be seriously detrimental to the child's emotional well-being.

As used in this subdivision, "preference" means that the application shall be processed and, if satisfactory, the family study shall be completed before the processing of the application of any other person for the adoptive placement of the child.

(l) (1) An order by the court that a hearing pursuant to this section be held is not appealable at any time unless all of the following apply:

(A) A petition for extraordinary writ review was filed in a timely manner.

(B) The petition substantively addressed the specific issues to be challenged and supported that challenge by an adequate record.

(C) The petition for extraordinary writ review was summarily denied or otherwise not decided on the merits.

(2) Failure to file a petition for extraordinary writ review within the period specified by rule, to substantively address the specific issues challenged, or to support that challenge by an adequate record shall preclude subsequent review by appeal of the findings and orders made pursuant to this section.

(3) The Judicial Council shall adopt rules of court, effective January 1, 1995, to ensure all of the following:

(A) A trial court, after issuance of an order directing a hearing pursuant to this section be held, shall advise all parties of the requirement of filing a petition for extraordinary writ review as set forth in this subdivision

in order to preserve any right to appeal in these issues. This notice shall be made orally to a party if the party is present at the time of the making of the order or by first-class mail by the clerk of the court to the last known address of a party not present at the time of the making of the order.

(B) The prompt transmittal of the records from the trial court to the appellate court.

(C) That adequate time requirements for counsel and court personnel exist to implement the objective of this subdivision.

(D) That the parent or guardian, or their trial counsel or other counsel, is charged with the responsibility of filing a petition for extraordinary writ relief pursuant to this subdivision.

(4) The intent of this subdivision is to do both of the following:

(A) Make every reasonable attempt to achieve a substantive and meritorious review by the appellate court within the time specified in Sections 366.21 and 366.22 for holding a hearing pursuant to this section.

(B) Encourage the appellate court to determine all writ petitions filed pursuant to this subdivision on their merits.

(5) This subdivision shall only apply to cases in which an order to set a hearing pursuant to this section is issued on or after January 1, 1995.

(m) Except for subdivision (j), this section shall also apply to minors adjudged wards pursuant to Section 727.31.

SEC. 2.1. Section 366.26 of the Welfare and Institutions Code is amended to read:

366.26. (a) This section applies to children who are adjudged dependent children of the juvenile court pursuant to subdivision (c) of Section 360. The procedures specified in this section are the exclusive procedures for conducting these hearings; Part 2 (commencing with Section 3020) of Division 8 of the Family Code is not applicable to these proceedings. Section 8714.7 of the Family Code is applicable and available to all dependent children meeting the requirements of that section, if the postadoption contact agreement has been entered into voluntarily. For children who are adjudged dependent children of the juvenile court pursuant to subdivision (c) of Section 360, this section and Sections 8604, 8605, 8606, and 8700 of the Family Code and Chapter 5 (commencing with Section 7660) of Part 3 of Division 12 of the Family Code specify the exclusive procedures for permanently terminating parental rights with regard to, or establishing legal guardianship of, the child while the child is a dependent child of the juvenile court.

(b) At the hearing, which shall be held in juvenile court for all children who are dependents of the juvenile court, the court, in order to provide stable, permanent homes for these children, shall review the report as specified in Section 361.5, 366.21, or 366.22, shall indicate that the court

has read and considered it, shall receive other evidence that the parties may present, and then shall make findings and orders in the following order of preference:

(1) Terminate the rights of the parent or parents and order that the child be placed for adoption and, upon the filing of a petition for adoption in the juvenile court, order that a hearing be set. The court shall proceed with the adoption after the appellate rights of the natural parents have been exhausted.

(2) On making a finding under paragraph (3) of subdivision (c), identify adoption as the permanent placement goal and order that efforts be made to locate an appropriate adoptive family for the child within a period not to exceed 180 days.

(3) Appoint a legal guardian for the child and order that letters of guardianship issue.

(4) Order that the child be placed in long-term foster care, subject to the periodic review of the juvenile court under Section 366.3.

In choosing among the above alternatives, the court shall proceed pursuant to subdivision (c).

(c) (1) If the court determines, based on the assessment provided as ordered under subdivision (i) of Section 366.21 or subdivision (b) of Section 366.22, and any other relevant evidence, by a clear and convincing standard, that it is likely the child will be adopted, the court shall terminate parental rights and order the child placed for adoption. The fact that the child is not yet placed in a preadoptive home nor with a relative or foster family who is prepared to adopt the child, shall not constitute a basis for the court to conclude that it is not likely the child will be adopted. A finding under subdivision (b) or paragraph (1) of subdivision (e) of Section 361.5 that reunification services shall not be offered, under subdivision (e) of Section 366.21 that the whereabouts of a parent have been unknown for six months or that the parent has failed to visit or contact the child for six months or that the parent has been convicted of a felony indicating parental unfitness, or, under Section 366.21 or 366.22, that the court has continued to remove the child from the custody of the parent or guardian and has terminated reunification services, shall constitute a sufficient basis for termination of parental rights unless the court finds a compelling reason for determining that termination would be detrimental to the child due to one or more of the following circumstances:

(A) The parents or guardians have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship.

(B) A child 12 years of age or older objects to termination of parental rights.

(C) The child is placed in a residential treatment facility, adoption is unlikely or undesirable, and continuation of parental rights will not prevent finding the child a permanent family placement if the parents cannot resume custody when residential care is no longer needed.

(D) The child is living with a relative or foster parent who is unable or unwilling to adopt the child because of exceptional circumstances, that do not include an unwillingness to accept legal or financial responsibility for the child, but who is willing and capable of providing the child with a stable and permanent environment and the removal of the child from the physical custody of his or her relative or foster parent would be detrimental to the emotional well-being of the child. This subparagraph does not apply to any child who is living with a nonrelative and who is either (i) under six years of age or (ii) a member of a sibling group where at least one child is under six years of age and the siblings are, or should be, permanently placed together.

(E) There would be substantial interference with a child's sibling relationship, taking into consideration the nature and extent of the relationship, including, but not limited to, whether the child was raised with a sibling in the same home, whether the child shared significant common experiences or has existing close and strong bonds with a sibling, and whether ongoing contact is in the child's best interest, including the child's long-term emotional interest, as compared to the benefit of legal permanence through adoption.

If the court finds that termination of parental rights would be detrimental to the child pursuant to subparagraph (A), (B), (C), (D), or (E), it shall state its reasons in writing or on the record.

(2) The court shall not terminate parental rights if at each hearing at which the court was required to consider reasonable efforts or services, the court has found that reasonable efforts were not made or that reasonable services were not offered or provided.

(3) If the court finds that termination of parental rights would not be detrimental to the child pursuant to paragraph (1) and that the child has a probability for adoption but is difficult to place for adoption and there is no identified or available prospective adoptive parent, the court may identify adoption as the permanent placement goal and without terminating parental rights, order that efforts be made to locate an appropriate adoptive family for the child within a period not to exceed 180 days. During this 180-day period, the public agency responsible for seeking adoptive parents for each child shall, to the extent possible, ask each child who is 10 years of age or older who is placed in a group home for six months or longer from the date the child entered foster care, to identify any individuals, other than the child's siblings, who are important to the child, in order to identify potential adoptive parents. The public

agency may ask any other child to provide that information, as appropriate. During the 180-day period, the public agency shall, to the extent possible, contact other private and public adoption agencies regarding the availability of the child for adoption. During the 180-day period, the public agency shall conduct the search for adoptive parents in the same manner as prescribed for children in Sections 8708 and 8709 of the Family Code. At the expiration of this period, another hearing shall be held and the court shall proceed pursuant to paragraph (1) or (3) of subdivision (b). For purposes of this section, a child may only be found to be difficult to place for adoption if there is no identified or available prospective adoptive parent for the child because of the child's membership in a sibling group, or the presence of a diagnosed medical, physical, or mental handicap, or the child is the age of seven years or more.

(4) (A) If the court finds that adoption of the child or termination of parental rights is not in the best interest of the child, because one of the conditions in subparagraph (A), (B), (C), (D), or (E) of paragraph (1) or in paragraph (2) applies, the court shall either order that the present caretakers or other appropriate persons shall become legal guardians of the child or order that the child remain in long-term foster care. Legal guardianship shall be considered before long-term foster care, if it is in the best interest of the child and if a suitable guardian can be found. A child who is 10 years of age or older who is placed in a group home for six months or longer from the date the child entered foster care, shall be asked to identify any individuals, other than the child's siblings, who are important to the child, in order to identify potential guardians. The agency may ask any other child to provide that information, as appropriate.

(B) If the child is living with a relative or a foster parent who is willing and capable of providing a stable and permanent environment, but not willing to become a legal guardian, the child shall not be removed from the home if the court finds the removal would be seriously detrimental to the emotional well-being of the child because the child has substantial psychological ties to the relative caretaker or foster parents.

(C) The court shall also make an order for visitation with the parents or guardians unless the court finds by a preponderance of the evidence that the visitation would be detrimental to the physical or emotional well-being of the child.

(5) If the court finds that the child should not be placed for adoption, that legal guardianship shall not be established, and that there are no suitable foster parents except exclusive-use homes available to provide the child with a stable and permanent environment, the court may order the care, custody, and control of the child transferred from the county

welfare department to a licensed foster family agency. The court shall consider the written recommendation of the county welfare director regarding the suitability of the transfer. The transfer shall be subject to further court orders.

The licensed foster family agency shall place the child in a suitable licensed or exclusive-use home that has been certified by the agency as meeting licensing standards. The licensed foster family agency shall be responsible for supporting the child and providing appropriate services to the child, including those services ordered by the court. Responsibility for the support of the child shall not, in and of itself, create liability on the part of the foster family agency to third persons injured by the child. Those children whose care, custody, and control are transferred to a foster family agency shall not be eligible for foster care maintenance payments or child welfare services, except for emergency response services pursuant to Section 16504.

(d) The proceeding for the appointment of a guardian for a child who is a dependent of the juvenile court shall be in the juvenile court. If the court finds pursuant to this section that legal guardianship is the appropriate permanent plan, it shall appoint the legal guardian and issue letters of guardianship. The assessment prepared pursuant to subdivision (g) of Section 361.5, subdivision (i) of Section 366.21, and subdivision (b) of Section 366.22 shall be read and considered by the court prior to the appointment, and this shall be reflected in the minutes of the court. The person preparing the assessment may be called and examined by any party to the proceeding.

(e) The proceeding for the adoption of a child who is a dependent of the juvenile court shall be in the juvenile court if the court finds pursuant to this section that adoption is the appropriate permanent plan and the petition for adoption is filed in the juvenile court. Upon the filing of a petition for adoption, the juvenile court shall order that an adoption hearing be set. The court shall proceed with the adoption after the appellate rights of the natural parents have been exhausted. The full report required by Section 8715 of the Family Code shall be read and considered by the court prior to the adoption and this shall be reflected in the minutes of the court. The person preparing the report may be called and examined by any party to the proceeding. It is the intent of the Legislature, pursuant to this subdivision, to give potential adoptive parents the option of filing in the juvenile court the petition for the adoption of a child who is a dependent of the juvenile court. Nothing in this section is intended to prevent the filing of a petition for adoption in any other court as permitted by law, instead of in the juvenile court.

(f) At the beginning of any proceeding pursuant to this section, if the child or the parents are not being represented by previously retained or

appointed counsel, including, in the case of any child who is not a lawful permanent resident or citizen of the United States, counsel appointed pursuant to subdivision (i) of Section 317, the court shall proceed as follows:

(1) In accordance with subdivision (c) of Section 317, if a child before the court is without counsel, the court shall appoint counsel unless the court finds that the child would not benefit from the appointment of counsel. The court shall state on the record its reasons for that finding.

(2) If a parent appears without counsel and is unable to afford counsel, the court shall appoint counsel for the parent, unless this representation is knowingly and intelligently waived. The same counsel shall not be appointed to represent both the child and his or her parent. The public defender or private counsel may be appointed as counsel for the parent.

(3) Private counsel appointed under this section shall receive a reasonable sum for compensation and expenses, the amount of which shall be determined by the court. The amount shall be paid by the real parties in interest, other than the child, in any proportions the court deems just. However, if the court finds that any of the real parties in interest are unable to afford counsel, the amount shall be paid out of the general fund of the county.

(g) The court may continue the proceeding for not to exceed 30 days as necessary to appoint counsel, and to enable counsel to become acquainted with the case.

(h) (1) At all proceedings under this section, the court shall consider the wishes of the child and shall act in the best interests of the child.

(2) In accordance with Section 349, the child shall be present in court if the child or the child's counsel so requests or the court so orders. If the child is 10 years of age or older and is not present at a hearing held pursuant to this section, the court shall determine whether the minor was properly notified of his or her right to attend the hearing and inquire as to the reason why the child is not present.

(3) (A) The testimony of the child may be taken in chambers and outside the presence of the child's parent or parents, if the child's parent or parents are represented by counsel, the counsel is present, and any of the following circumstances exists:

(i) The court determines that testimony in chambers is necessary to ensure truthful testimony.

(ii) The child is likely to be intimidated by a formal courtroom setting.

(iii) The child is afraid to testify in front of his or her parent or parents.

(B) After testimony in chambers, the parent or parents of the child may elect to have the court reporter read back the testimony or have the testimony summarized by counsel for the parent or parents.

(C) The testimony of a child also may be taken in chambers and outside the presence of the guardian or guardians of a child under the circumstances specified in this subdivision.

(i) (1) Any order of the court permanently terminating parental rights under this section shall be conclusive and binding upon the child, upon the parent or parents and upon all other persons who have been served with a citation by publication or otherwise as provided in this chapter. After making the order, the juvenile court shall have no power to set aside, change, or modify it, except as provided in paragraph (2), but nothing in this section shall be construed to limit the right to appeal the order.

(2) A child who has not been adopted after the passage of at least three years from the date the court terminated parental rights and for whom the court has determined that adoption is no longer the permanent plan may petition the juvenile court to reinstate parental rights pursuant to the procedure prescribed by Section 388. The child may file the petition prior to the expiration of this three-year period if the State Department of Social Services or licensed adoption agency that is responsible for custody and supervision of the child as described in subdivision (j) and the child stipulate that the child is no longer likely to be adopted. A child over 12 years of age shall sign the petition in the absence of a showing of good cause as to why the child could not do so. If it appears that the best interests of the child may be promoted by reinstatement of parental rights, the court shall order that a hearing be held and shall give prior notice, or cause prior notice to be given, to the social worker or probation officer and to the child's attorney of record, or, if there is no attorney of record for the child, to the child, and the child's tribe, if applicable, by means prescribed by subdivision (c) of Section 297. The court shall order the child or the social worker or probation officer to give prior notice of the hearing to the child's former parent or parents whose parental rights were terminated in the manner prescribed by subdivision (f) of Section 294 where the recommendation is adoption. The juvenile court shall grant the petition if it finds by clear and convincing evidence that the child is no longer likely to be adopted and that reinstatement of parental rights is in the child's best interest. If the court reinstates parental rights over a child who is under 12 years of age and for whom the new permanent plan will not be reunification with a parent or legal guardianship, the court shall specify the factual basis for its findings that it is in the best interest of the child to reinstate parental rights. This subdivision is intended to be retroactive and applies to any child who is under the jurisdiction of the juvenile court at the time of the hearing regardless of the date parental rights were terminated.

(j) If the court, by order or judgment, declares the child free from the custody and control of both parents, or one parent if the other does not have custody and control, the court shall at the same time order the child referred to the State Department of Social Services or a licensed adoption agency for adoptive placement by the agency. However, a petition for adoption may not be granted until the appellate rights of the natural parents have been exhausted. The State Department of Social Services or licensed adoption agency shall be responsible for the custody and supervision of the child and shall be entitled to the exclusive care and control of the child at all times until a petition for adoption is granted. With the consent of the agency, the court may appoint a guardian of the child, who shall serve until the child is adopted.

(k) Notwithstanding any other provision of law, the application of any person who, as a relative caretaker or foster parent, has cared for a dependent child for whom the court has approved a permanent plan for adoption, or who has been freed for adoption, shall be given preference with respect to that child over all other applications for adoptive placement if the agency making the placement determines that the child has substantial emotional ties to the relative caretaker or foster parent and removal from the relative caretaker or foster parent would be seriously detrimental to the child's emotional well-being.

As used in this subdivision, "preference" means that the application shall be processed and, if satisfactory, the family study shall be completed before the processing of the application of any other person for the adoptive placement of the child.

(l) (1) An order by the court that a hearing pursuant to this section be held is not appealable at any time unless all of the following apply:

(A) A petition for extraordinary writ review was filed in a timely manner.

(B) The petition substantively addressed the specific issues to be challenged and supported that challenge by an adequate record.

(C) The petition for extraordinary writ review was summarily denied or otherwise not decided on the merits.

(2) Failure to file a petition for extraordinary writ review within the period specified by rule, to substantively address the specific issues challenged, or to support that challenge by an adequate record shall preclude subsequent review by appeal of the findings and orders made pursuant to this section.

(3) The Judicial Council shall adopt rules of court, effective January 1, 1995, to ensure all of the following:

(A) A trial court, after issuance of an order directing a hearing pursuant to this section be held, shall advise all parties of the requirement of filing a petition for extraordinary writ review as set forth in this subdivision

in order to preserve any right to appeal in these issues. This notice shall be made orally to a party if the party is present at the time of the making of the order or by first-class mail by the clerk of the court to the last known address of a party not present at the time of the making of the order.

(B) The prompt transmittal of the records from the trial court to the appellate court.

(C) That adequate time requirements for counsel and court personnel exist to implement the objective of this subdivision.

(D) That the parent or guardian, or their trial counsel or other counsel, is charged with the responsibility of filing a petition for extraordinary writ relief pursuant to this subdivision.

(4) The intent of this subdivision is to do both of the following:

(A) Make every reasonable attempt to achieve a substantive and meritorious review by the appellate court within the time specified in Sections 366.21 and 366.22 for holding a hearing pursuant to this section.

(B) Encourage the appellate court to determine all writ petitions filed pursuant to this subdivision on their merits.

(5) This subdivision shall only apply to cases in which an order to set a hearing pursuant to this section is issued on or after January 1, 1995.

(m) Except for subdivision (j), this section shall also apply to minors adjudged wards pursuant to Section 727.31.

SEC. 2.2. Section 366.26 of the Welfare and Institutions Code is amended to read:

366.26. (a) This section applies to children who are adjudged dependent children of the juvenile court pursuant to subdivision (c) of Section 360. The procedures specified herein are the exclusive procedures for conducting these hearings; Part 2 (commencing with Section 3020) of Division 8 of the Family Code is not applicable to these proceedings. Section 8714.7 of the Family Code is applicable and available to all dependent children meeting the requirements of that section, if the postadoption contact agreement has been entered into voluntarily. For children who are adjudged dependent children of the juvenile court pursuant to subdivision (c) of Section 360, this section and Sections 8604, 8605, 8606, and 8700 of the Family Code and Chapter 5 (commencing with Section 7660) of Part 3 of Division 12 of the Family Code specify the exclusive procedures for permanently terminating parental rights with regard to, or establishing legal guardianship of, the child while the child is a dependent child of the juvenile court.

(b) At the hearing, which shall be held in juvenile court for all children who are dependents of the juvenile court, the court, in order to provide stable, permanent homes for these children, shall review the report as specified in Section 361.5, 366.21, or 366.22, shall indicate that the court

has read and considered it, shall receive other evidence that the parties may present, and then shall make findings and orders in the following order of preference:

(1) Terminate the rights of the parent or parents and order that the child be placed for adoption and, upon the filing of a petition for adoption in the juvenile court, order that a hearing be set. The court shall proceed with the adoption after the appellate rights of the natural parents have been exhausted.

(2) On making a finding under paragraph (3) of subdivision (c), identify adoption as the permanent placement goal and order that efforts be made to locate an appropriate adoptive family for the child within a period not to exceed 180 days.

(3) Appoint a legal guardian for the child and order that letters of guardianship issue.

(4) Order that the child be placed in long-term foster care, subject to the periodic review of the juvenile court under Section 366.3.

In choosing among the above alternatives the court shall proceed pursuant to subdivision (c).

(c) (1) If the court determines, based on the assessment provided as ordered under subdivision (i) of Section 366.21 or subdivision (b) of Section 366.22, and any other relevant evidence, by a clear and convincing standard, that it is likely the child will be adopted, the court shall terminate parental rights and order the child placed for adoption. The fact that the child is not yet placed in a preadoptive home nor with a relative or foster family who is prepared to adopt the child, shall not constitute a basis for the court to conclude that it is not likely the child will be adopted. A finding under subdivision (b) or paragraph (1) of subdivision (e) of Section 361.5 that reunification services shall not be offered, under subdivision (e) of Section 366.21 that the whereabouts of a parent have been unknown for six months or that the parent has failed to visit or contact the child for six months or that the parent has been convicted of a felony indicating parental unfitness, or, under Section 366.21 or 366.22, that the court has continued to remove the child from the custody of the parent or guardian and has terminated reunification services, shall constitute a sufficient basis for termination of parental rights unless the court finds a compelling reason for determining that termination would be detrimental to the child due to one or more of the following circumstances:

(A) The parents or guardians have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship.

(B) A child 12 years of age or older objects to termination of parental rights.

(C) The child is placed in a residential treatment facility, adoption is unlikely or undesirable, and continuation of parental rights will not prevent finding the child a permanent family placement if the parents cannot resume custody when residential care is no longer needed.

(D) The child is living with a relative or foster parent who is unable or unwilling to adopt the child because of exceptional circumstances, that do not include an unwillingness to accept legal or financial responsibility for the child, but who is willing and capable of providing the child with a stable and permanent environment and the removal of the child from the physical custody of his or her relative or foster parent would be detrimental to the emotional well-being of the child. This subparagraph does not apply to any child who is living with a nonrelative and who is either (i) under six years of age or (ii) a member of a sibling group where at least one child is under six years of age and the siblings are, or should be, permanently placed together.

(E) There would be substantial interference with a child's sibling relationship, taking into consideration the nature and extent of the relationship, including, but not limited to, whether the child was raised with a sibling in the same home, whether the child shared significant common experiences or has existing close and strong bonds with a sibling, and whether ongoing contact is in the child's best interest, including the child's long-term emotional interest, as compared to the benefit of legal permanence through adoption.

If the court finds that termination of parental rights would be detrimental to the child pursuant to subparagraph (A), (B), (C), (D), or (E), it shall state its reasons in writing or on the record.

(2) The court shall not terminate parental rights if at each hearing at which the court was required to consider reasonable efforts or services, the court has found that reasonable efforts were not made or that reasonable services were not offered or provided.

(3) If the court finds that termination of parental rights would not be detrimental to the child pursuant to paragraph (1) and that the child has a probability for adoption but is difficult to place for adoption and there is no identified or available prospective adoptive parent, the court may identify adoption as the permanent placement goal and without terminating parental rights, order that efforts be made to locate an appropriate adoptive family for the child within a period not to exceed 180 days. During this 180-day period, the public agency responsible for seeking adoptive parents for each child shall, to the extent possible, ask each child who is 10 years of age or older, to identify any individuals, other than the child's siblings, who are important to the child, in order to identify potential adoptive parents. The public agency may ask any other child to provide that information, as appropriate. During the

180-day period, the public agency shall, to the extent possible, contact other private and public adoption agencies regarding the availability of the child for adoption. During the 180-day period, the public agency shall conduct the search for adoptive parents in the same manner as prescribed for children in Sections 8708 and 8709 of the Family Code. At the expiration of this period, another hearing shall be held and the court shall proceed pursuant to paragraph (1) or (3) of subdivision (b). For purposes of this section, a child may only be found to be difficult to place for adoption if there is no identified or available prospective adoptive parent for the child because of the child's membership in a sibling group, or the presence of a diagnosed medical, physical, or mental handicap, or the child is the age of seven years or more.

(4) (A) If the court finds that adoption of the child or termination of parental rights is not in the best interest of the child, because one of the conditions in subparagraph (A), (B), (C), (D), or (E) of paragraph (1) or in paragraph (2) applies, the court shall either order that the present caretakers or other appropriate persons shall become legal guardians of the child or order that the child remain in long-term foster care. Legal guardianship shall be considered before long-term foster care, if it is in the best interests of the child and if a suitable guardian can be found. A child who is 10 years of age or older, shall be asked to identify any individuals, other than the child's siblings, who are important to the child, in order to identify potential guardians. The agency may ask any other child to provide that information, as appropriate.

(B) If the child is living with a relative or a foster parent who is willing and capable of providing a stable and permanent environment, but not willing to become a legal guardian, the child shall not be removed from the home if the court finds the removal would be seriously detrimental to the emotional well-being of the child because the child has substantial psychological ties to the relative caretaker or foster parents.

(C) The court shall also make an order for visitation with the parents or guardians unless the court finds by a preponderance of the evidence that the visitation would be detrimental to the physical or emotional well-being of the child.

(5) If the court finds that the child should not be placed for adoption, that legal guardianship shall not be established, and that there are no suitable foster parents except exclusive-use homes available to provide the child with a stable and permanent environment, the court may order the care, custody, and control of the child transferred from the county welfare department to a licensed foster family agency. The court shall consider the written recommendation of the county welfare director regarding the suitability of the transfer. The transfer shall be subject to further court orders.

The licensed foster family agency shall place the child in a suitable licensed or exclusive-use home that has been certified by the agency as meeting licensing standards. The licensed foster family agency shall be responsible for supporting the child and providing appropriate services to the child, including those services ordered by the court. Responsibility for the support of the child shall not, in and of itself, create liability on the part of the foster family agency to third persons injured by the child. Those children whose care, custody, and control are transferred to a foster family agency shall not be eligible for foster care maintenance payments or child welfare services, except for emergency response services pursuant to Section 16504.

(d) The proceeding for the appointment of a guardian for a child who is a dependent of the juvenile court shall be in the juvenile court. If the court finds pursuant to this section that legal guardianship is the appropriate permanent plan, it shall appoint the legal guardian and issue letters of guardianship. The assessment prepared pursuant to subdivision (g) of Section 361.5, subdivision (i) of Section 366.21, and subdivision (b) of Section 366.22 shall be read and considered by the court prior to the appointment, and this shall be reflected in the minutes of the court. The person preparing the assessment may be called and examined by any party to the proceeding.

(e) The proceeding for the adoption of a child who is a dependent of the juvenile court shall be in the juvenile court if the court finds pursuant to this section that adoption is the appropriate permanent plan and the petition for adoption is filed in the juvenile court. Upon the filing of a petition for adoption, the juvenile court shall order that an adoption hearing be set. The court shall proceed with the adoption after the appellate rights of the natural parents have been exhausted. The full report required by Section 8715 of the Family Code shall be read and considered by the court prior to the adoption and this shall be reflected in the minutes of the court. The person preparing the report may be called and examined by any party to the proceeding. It is the intent of the Legislature, pursuant to this subdivision, to give potential adoptive parents the option of filing in the juvenile court the petition for the adoption of a child who is a dependent of the juvenile court. Nothing in this section is intended to prevent the filing of a petition for adoption in any other court as permitted by law, instead of in the juvenile court.

(f) At the beginning of any proceeding pursuant to this section, if the child or the parents are not being represented by previously retained or appointed counsel, the court shall proceed as follows:

(1) In accordance with subdivision (c) of Section 317, if a child before the court is without counsel, the court shall appoint counsel unless the

court finds that the child would not benefit from the appointment of counsel. The court shall state on the record its reasons for that finding.

(2) If a parent appears without counsel and is unable to afford counsel, the court shall appoint counsel for the parent, unless this representation is knowingly and intelligently waived. The same counsel shall not be appointed to represent both the child and his or her parent. The public defender or private counsel may be appointed as counsel for the parent.

(3) Private counsel appointed under this section shall receive a reasonable sum for compensation and expenses, the amount of which shall be determined by the court. The amount shall be paid by the real parties in interest, other than the child, in any proportions the court deems just. However, if the court finds that any of the real parties in interest are unable to afford counsel, the amount shall be paid out of the general fund of the county.

(g) The court may continue the proceeding for a period of time not to exceed 30 days as necessary to appoint counsel, and to enable counsel to become acquainted with the case.

(h) (1) At all proceedings under this section, the court shall consider the wishes of the child and shall act in the best interests of the child.

(2) In accordance with Section 349, the child shall be present in court if the child or the child's counsel so requests or the court so orders. If the child is 10 years of age or older and is not present at a hearing held pursuant to this section, the court shall determine whether the minor was properly notified of his or her right to attend the hearing and inquire as to the reason why the child is not present.

(3) (A) The testimony of the child may be taken in chambers and outside the presence of the child's parent or parents, if the child's parent or parents are represented by counsel, the counsel is present, and any of the following circumstances exists:

(i) The court determines that testimony in chambers is necessary to ensure truthful testimony.

(ii) The child is likely to be intimidated by a formal courtroom setting.

(iii) The child is afraid to testify in front of his or her parent or parents.

(B) After testimony in chambers, the parent or parents of the child may elect to have the court reporter read back the testimony or have the testimony summarized by counsel for the parent or parents.

(C) The testimony of a child also may be taken in chambers and outside the presence of the guardian or guardians of a child under the circumstances specified in this subdivision.

(i) (1) Any order of the court permanently terminating parental rights under this section shall be conclusive and binding upon the child, upon the parent or parents and upon all other persons who have been served with citation by publication or otherwise as provided in this chapter.

After making the order, the juvenile court shall have no power to set aside, change, or modify it, except as provided in paragraph (2), but nothing in this section shall be construed to limit the right to appeal the order.

(2) A child who has not been adopted after the passage of at least three years from the date the court terminated parental rights and for whom the court has determined that adoption is no longer the permanent plan may petition the juvenile court to reinstate parental rights pursuant to the procedure prescribed by Section 388. The child may file the petition prior to the expiration of this three-year period if the State Department of Social Services or licensed adoption agency that is responsible for custody and supervision of the child as described in subdivision (j) and the child stipulate that the child is no longer likely to be adopted. A child over 12 years of age shall sign the petition in the absence of a showing of good cause as to why the child could not do so. If it appears that the best interests of the child may be promoted by reinstatement of parental rights, the court shall order that a hearing be held and shall give prior notice, or cause prior notice to be given, to the social worker or probation officer and to the child's attorney of record, or, if there is no attorney of record for the child, to the child, and the child's tribe, if applicable, by means prescribed by subdivision (c) of Section 297. The court shall order the child or the social worker or probation officer to give prior notice of the hearing to the child's former parent or parents whose parental rights were terminated in the manner prescribed by subdivision (f) of Section 294 where the recommendation is adoption. The juvenile court shall grant the petition if it finds by clear and convincing evidence that the child is no longer likely to be adopted and that reinstatement of parental rights is in the child's best interest. If the court reinstates parental rights over a child who is under 12 years of age and for whom the new permanent plan will not be reunification with a parent or legal guardianship, the court shall specify the factual basis for its findings that it is in the best interest of the child to reinstate parental rights. This subdivision is intended to be retroactive and applies to any child who is under the jurisdiction of the juvenile court at the time of the hearing regardless of the date parental rights were terminated.

(j) If the court, by order or judgment, declares the child free from the custody and control of both parents, or one parent if the other does not have custody and control, the court shall at the same time order the child referred to the State Department of Social Services or a licensed adoption agency for adoptive placement by the agency. However, a petition for adoption may not be granted until the appellate rights of the natural parents have been exhausted. The State Department of Social Services or licensed adoption agency shall be responsible for the custody and

supervision of the child and shall be entitled to the exclusive care and control of the child at all times until a petition for adoption is granted. With the consent of the agency, the court may appoint a guardian of the child, who shall serve until the child is adopted.

(k) Notwithstanding any other provision of law, the application of any person who, as a relative caretaker or foster parent, has cared for a dependent child for whom the court has approved a permanent plan for adoption, or who has been freed for adoption, shall be given preference with respect to that child over all other applications for adoptive placement if the agency making the placement determines that the child has substantial emotional ties to the relative caretaker or foster parent and removal from the relative caretaker or foster parent would be seriously detrimental to the child's emotional well-being.

As used in this subdivision, "preference" means that the application shall be processed and, if satisfactory, the family study shall be completed before the processing of the application of any other person for the adoptive placement of the child.

(l) (1) An order by the court that a hearing pursuant to this section be held is not appealable at any time unless all of the following apply:

(A) A petition for extraordinary writ review was filed in a timely manner.

(B) The petition substantively addressed the specific issues to be challenged and supported that challenge by an adequate record.

(C) The petition for extraordinary writ review was summarily denied or otherwise not decided on the merits.

(2) Failure to file a petition for extraordinary writ review within the period specified by rule, to substantively address the specific issues challenged, or to support that challenge by an adequate record shall preclude subsequent review by appeal of the findings and orders made pursuant to this section.

(3) The Judicial Council shall adopt rules of court, effective January 1, 1995, to ensure all of the following:

(A) A trial court, after issuance of an order directing a hearing pursuant to this section be held, shall advise all parties of the requirement of filing a petition for extraordinary writ review as set forth in this subdivision in order to preserve any right to appeal in these issues. This notice shall be made orally to a party if the party is present at the time of the making of the order or by first-class mail by the clerk of the court to the last known address of a party not present at the time of the making of the order.

(B) The prompt transmittal of the records from the trial court to the appellate court.

(C) That adequate time requirements for counsel and court personnel exist to implement the objective of this subdivision.

(D) That the parent or guardian, or their trial counsel or other counsel, is charged with the responsibility of filing a petition for extraordinary writ relief pursuant to this subdivision.

(4) The intent of this subdivision is to do both of the following:

(A) Make every reasonable attempt to achieve a substantive and meritorious review by the appellate court within the time specified in Sections 366.21 and 366.22 for holding a hearing pursuant to this section.

(B) Encourage the appellate court to determine all writ petitions filed pursuant to this subdivision on their merits.

(5) This subdivision shall only apply to cases in which an order to set a hearing pursuant to this section is issued on or after January 1, 1995.

(m) Except for subdivision (j), this section shall also apply to minors adjudged wards pursuant to Section 727.31.

(n) The implementation and operation of the amendments to paragraph (3) of subdivision (c) and subparagraph (A) of paragraph (4) of subdivision (c) enacted at the 2005-06 Regular Session shall be subject to appropriation through the budget process and by phase, as provided in Section 366.35.

SEC. 2.3. Section 366.26 of the Welfare and Institutions Code is amended to read:

366.26. (a) This section applies to children who are adjudged dependent children of the juvenile court pursuant to subdivision (c) of Section 360. The procedures specified herein are the exclusive procedures for conducting these hearings; Part 2 (commencing with Section 3020) of Division 8 of the Family Code is not applicable to these proceedings. Section 8714.7 of the Family Code is applicable and available to all dependent children meeting the requirements of that section, if the postadoption contact agreement has been entered into voluntarily. For children who are adjudged dependent children of the juvenile court pursuant to subdivision (c) of Section 360, this section and Sections 8604, 8605, 8606, and 8700 of the Family Code and Chapter 5 (commencing with Section 7660) of Part 3 of Division 12 of the Family Code specify the exclusive procedures for permanently terminating parental rights with regard to, or establishing legal guardianship of, the child while the child is a dependent child of the juvenile court.

(b) At the hearing, which shall be held in juvenile court for all children who are dependents of the juvenile court, the court, in order to provide stable, permanent homes for these children, shall review the report as specified in Section 361.5, 366.21, or 366.22, shall indicate that the court has read and considered it, shall receive other evidence that the parties

may present, and then shall make findings and orders in the following order of preference:

(1) Terminate the rights of the parent or parents and order that the child be placed for adoption and, upon the filing of a petition for adoption in the juvenile court, order that a hearing be set. The court shall proceed with the adoption after the appellate rights of the natural parents have been exhausted.

(2) On making a finding under paragraph (3) of subdivision (c), identify adoption as the permanent placement goal and order that efforts be made to locate an appropriate adoptive family for the child within a period not to exceed 180 days.

(3) Appoint a legal guardian for the child and order that letters of guardianship issue.

(4) Order that the child be placed in long-term foster care, subject to the periodic review of the juvenile court under Section 366.3.

In choosing among the above alternatives the court shall proceed pursuant to subdivision (c).

(c) (1) If the court determines, based on the assessment provided as ordered under subdivision (i) of Section 366.21 or subdivision (b) of Section 366.22, and any other relevant evidence, by a clear and convincing standard, that it is likely the child will be adopted, the court shall terminate parental rights and order the child placed for adoption. The fact that the child is not yet placed in a preadoptive home nor with a relative or foster family who is prepared to adopt the child, shall not constitute a basis for the court to conclude that it is not likely the child will be adopted. A finding under subdivision (b) or paragraph (1) of subdivision (e) of Section 361.5 that reunification services shall not be offered, under subdivision (e) of Section 366.21 that the whereabouts of a parent have been unknown for six months or that the parent has failed to visit or contact the child for six months or that the parent has been convicted of a felony indicating parental unfitness, or, under Section 366.21 or 366.22, that the court has continued to remove the child from the custody of the parent or guardian and has terminated reunification services, shall constitute a sufficient basis for termination of parental rights unless the court finds a compelling reason for determining that termination would be detrimental to the child due to one or more of the following circumstances:

(A) The parents or guardians have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship.

(B) A child 12 years of age or older objects to termination of parental rights.

(C) The child is placed in a residential treatment facility, adoption is unlikely or undesirable, and continuation of parental rights will not prevent finding the child a permanent family placement if the parents cannot resume custody when residential care is no longer needed.

(D) The child is living with a relative or foster parent who is unable or unwilling to adopt the child because of exceptional circumstances, that do not include an unwillingness to accept legal or financial responsibility for the child, but who is willing and capable of providing the child with a stable and permanent environment and the removal of the child from the physical custody of his or her relative or foster parent would be detrimental to the emotional well-being of the child. This subparagraph does not apply to any child who is living with a nonrelative and who is either (i) under six years of age or (ii) a member of a sibling group where at least one child is under six years of age and the siblings are, or should be, permanently placed together.

(E) There would be substantial interference with a child's sibling relationship, taking into consideration the nature and extent of the relationship, including, but not limited to, whether the child was raised with a sibling in the same home, whether the child shared significant common experiences or has existing close and strong bonds with a sibling, and whether ongoing contact is in the child's best interest, including the child's long-term emotional interest, as compared to the benefit of legal permanence through adoption.

If the court finds that termination of parental rights would be detrimental to the child pursuant to subparagraph (A), (B), (C), (D), or (E), it shall state its reasons in writing or on the record.

(2) The court shall not terminate parental rights if at each hearing at which the court was required to consider reasonable efforts or services, the court has found that reasonable efforts were not made or that reasonable services were not offered or provided.

(3) If the court finds that termination of parental rights would not be detrimental to the child pursuant to paragraph (1) and that the child has a probability for adoption but is difficult to place for adoption and there is no identified or available prospective adoptive parent, the court may identify adoption as the permanent placement goal and without terminating parental rights, order that efforts be made to locate an appropriate adoptive family for the child within a period not to exceed 180 days. During this 180-day period, the public agency responsible for seeking adoptive parents for each child shall, to the extent possible, ask each child who is 10 years of age or older who is placed in a group home for six months or longer from the date the child entered foster care, to identify any individuals, other than the child's siblings, who are important to the child, in order to identify potential adoptive parents. The public

agency may ask any other child to provide that information, as appropriate. During the 180-day period, the public agency shall, to the extent possible, contact other private and public adoption agencies regarding the availability of the child for adoption. During the 180-day period, the public agency shall conduct the search for adoptive parents in the same manner as prescribed for children in Sections 8708 and 8709 of the Family Code. At the expiration of this period, another hearing shall be held and the court shall proceed pursuant to paragraph (1) or (3) of subdivision (b). For purposes of this section, a child may only be found to be difficult to place for adoption if there is no identified or available prospective adoptive parent for the child because of the child's membership in a sibling group, or the presence of a diagnosed medical, physical, or mental handicap, or the child is the age of seven years or more.

(4) (A) If the court finds that adoption of the child or termination of parental rights is not in the best interest of the child, because one of the conditions in subparagraph (A), (B), (C), (D), or (E) of paragraph (1) or in paragraph (2) applies, the court shall either order that the present caretakers or other appropriate persons shall become legal guardians of the child or order that the child remain in long-term foster care. Legal guardianship shall be considered before long-term foster care, if it is in the best interests of the child and if a suitable guardian can be found. A child who is 10 years of age or older who is placed in a group home for six months or longer from the date the child entered foster care, shall be asked to identify any individuals, other than the child's siblings, who are important to the child, in order to identify potential guardians. The agency may ask any other child to provide that information, as appropriate.

(B) If the child is living with a relative or a foster parent who is willing and capable of providing a stable and permanent environment, but not willing to become a legal guardian, the child shall not be removed from the home if the court finds the removal would be seriously detrimental to the emotional well-being of the child because the child has substantial psychological ties to the relative caretaker or foster parents.

(C) The court shall also make an order for visitation with the parents or guardians unless the court finds by a preponderance of the evidence that the visitation would be detrimental to the physical or emotional well-being of the child.

(5) If the court finds that the child should not be placed for adoption, that legal guardianship shall not be established, and that there are no suitable foster parents except exclusive-use homes available to provide the child with a stable and permanent environment, the court may order the care, custody, and control of the child transferred from the county

welfare department to a licensed foster family agency. The court shall consider the written recommendation of the county welfare director regarding the suitability of the transfer. The transfer shall be subject to further court orders.

The licensed foster family agency shall place the child in a suitable licensed or exclusive-use home that has been certified by the agency as meeting licensing standards. The licensed foster family agency shall be responsible for supporting the child and providing appropriate services to the child, including those services ordered by the court. Responsibility for the support of the child shall not, in and of itself, create liability on the part of the foster family agency to third persons injured by the child. Those children whose care, custody, and control are transferred to a foster family agency shall not be eligible for foster care maintenance payments or child welfare services, except for emergency response services pursuant to Section 16504.

(d) The proceeding for the appointment of a guardian for a child who is a dependent of the juvenile court shall be in the juvenile court. If the court finds pursuant to this section that legal guardianship is the appropriate permanent plan, it shall appoint the legal guardian and issue letters of guardianship. The assessment prepared pursuant to subdivision (g) of Section 361.5, subdivision (i) of Section 366.21, and subdivision (b) of Section 366.22 shall be read and considered by the court prior to the appointment, and this shall be reflected in the minutes of the court. The person preparing the assessment may be called and examined by any party to the proceeding.

(e) The proceeding for the adoption of a child who is a dependent of the juvenile court shall be in the juvenile court if the court finds pursuant to this section that adoption is the appropriate permanent plan and the petition for adoption is filed in the juvenile court. Upon the filing of a petition for adoption, the juvenile court shall order that an adoption hearing be set. The court shall proceed with the adoption after the appellate rights of the natural parents have been exhausted. The full report required by Section 8715 of the Family Code shall be read and considered by the court prior to the adoption and this shall be reflected in the minutes of the court. The person preparing the report may be called and examined by any party to the proceeding. It is the intent of the Legislature, pursuant to this subdivision, to give potential adoptive parents the option of filing in the juvenile court the petition for the adoption of a child who is a dependent of the juvenile court. Nothing in this section is intended to prevent the filing of a petition for adoption in any other court as permitted by law, instead of in the juvenile court.

(f) At the beginning of any proceeding pursuant to this section, if the child or the parents are not being represented by previously retained or appointed counsel, the court shall proceed as follows:

(1) In accordance with subdivision (c) of Section 317, if a child before the court is without counsel, the court shall appoint counsel unless the court finds that the child would not benefit from the appointment of counsel. The court shall state on the record its reasons for that finding.

(2) If a parent appears without counsel and is unable to afford counsel, the court shall appoint counsel for the parent, unless this representation is knowingly and intelligently waived. The same counsel shall not be appointed to represent both the child and his or her parent. The public defender or private counsel may be appointed as counsel for the parent.

(3) Private counsel appointed under this section shall receive a reasonable sum for compensation and expenses, the amount of which shall be determined by the court. The amount shall be paid by the real parties in interest, other than the child, in any proportions the court deems just. However, if the court finds that any of the real parties in interest are unable to afford counsel, the amount shall be paid out of the general fund of the county.

(g) The court may continue the proceeding for not to exceed 30 days as necessary to appoint counsel, and to enable counsel to become acquainted with the case.

(h) (1) At all proceedings under this section, the court shall consider the wishes of the child and shall act in the best interests of the child.

(2) In accordance with Section 349, the child shall be present in court if the child or the child's counsel so requests or the court so orders. If the child is 10 years of age or older and is not present at a hearing held pursuant to this section, the court shall determine whether the minor was properly notified of his or her right to attend the hearing and inquire as to the reason why the child is not present.

(3) (A) The testimony of the child may be taken in chambers and outside the presence of the child's parent or parents, if the child's parent or parents are represented by counsel, the counsel is present, and any of the following circumstances exists:

(i) The court determines that testimony in chambers is necessary to ensure truthful testimony.

(ii) The child is likely to be intimidated by a formal courtroom setting.

(iii) The child is afraid to testify in front of his or her parent or parents.

(B) After testimony in chambers, the parent or parents of the child may elect to have the court reporter read back the testimony or have the testimony summarized by counsel for the parent or parents.

(C) The testimony of a child also may be taken in chambers and outside the presence of the guardian or guardians of a child under the circumstances specified in this subdivision.

(i) (1) Any order of the court permanently terminating parental rights under this section shall be conclusive and binding upon the child, upon the parent or parents and upon all other persons who have been served with citation by publication or otherwise as provided in this chapter. After making the order, the juvenile court shall have no power to set aside, change, or modify it, except as provided in paragraph (2), but nothing in this section shall be construed to limit the right to appeal the order.

(2) A child who has not been adopted after the passage of at least three years from the date the court terminated parental rights and for whom the court has determined that adoption is no longer the permanent plan may petition the juvenile court to reinstate parental rights pursuant to the procedure prescribed by Section 388. The child may file the petition prior to the expiration of this three-year period if the State Department of Social Services or licensed adoption agency that is responsible for custody and supervision of the child as described in subdivision (j) and the child stipulate that the child is no longer likely to be adopted. A child over 12 years of age shall sign the petition in the absence of a showing of good cause as to why the child could not do so. If it appears that the best interests of the child may be promoted by reinstatement of parental rights, the court shall order that a hearing be held and shall give prior notice, or cause prior notice to be given, to the social worker or probation officer and to the child's attorney of record, or, if there is no attorney of record for the child, to the child, and the child's tribe, if applicable, by means prescribed by subdivision (c) of Section 297. The court shall order the child or the social worker or probation officer to give prior notice of the hearing to the child's former parent or parents whose parental rights were terminated in the manner prescribed by subdivision (f) of Section 294 where the recommendation is adoption. The juvenile court shall grant the petition if it finds by clear and convincing evidence that the child is no longer likely to be adopted and that reinstatement of parental rights is in the child's best interest. If the court reinstates parental rights over a child who is under 12 years of age and for whom the new permanent plan will not be reunification with a parent or legal guardianship, the court shall specify the factual basis for its findings that it is in the best interest of the child to reinstate parental rights. This subdivision is intended to be retroactive and applies to any child who is under the jurisdiction of the juvenile court at the time of the hearing regardless of the date parental rights were terminated.

(j) If the court, by order or judgment, declares the child free from the custody and control of both parents, or one parent if the other does not have custody and control, the court shall at the same time order the child referred to the State Department of Social Services or a licensed adoption agency for adoptive placement by the agency. However, a petition for adoption may not be granted until the appellate rights of the natural parents have been exhausted. The State Department of Social Services or licensed adoption agency shall be responsible for the custody and supervision of the child and shall be entitled to the exclusive care and control of the child at all times until a petition for adoption is granted, except as specified in subdivision (n). With the consent of the agency, the court may appoint a guardian of the child, who shall serve until the child is adopted.

(k) Notwithstanding any other provision of law, the application of any person who, as a relative caretaker or foster parent, has cared for a dependent child for whom the court has approved a permanent plan for adoption, or who has been freed for adoption, shall be given preference with respect to that child over all other applications for adoptive placement if the agency making the placement determines that the child has substantial emotional ties to the relative caretaker or foster parent and removal from the relative caretaker or foster parent would be seriously detrimental to the child's emotional well-being.

As used in this subdivision, "preference" means that the application shall be processed and, if satisfactory, the family study shall be completed before the processing of the application of any other person for the adoptive placement of the child.

(l) (1) An order by the court that a hearing pursuant to this section be held is not appealable at any time unless all of the following apply:

(A) A petition for extraordinary writ review was filed in a timely manner.

(B) The petition substantively addressed the specific issues to be challenged and supported that challenge by an adequate record.

(C) The petition for extraordinary writ review was summarily denied or otherwise not decided on the merits.

(2) Failure to file a petition for extraordinary writ review within the period specified by rule, to substantively address the specific issues challenged, or to support that challenge by an adequate record shall preclude subsequent review by appeal of the findings and orders made pursuant to this section.

(3) The Judicial Council shall adopt rules of court, effective January 1, 1995, to ensure all of the following:

(A) A trial court, after issuance of an order directing a hearing pursuant to this section be held, shall advise all parties of the requirement of filing

a petition for extraordinary writ review as set forth in this subdivision in order to preserve any right to appeal in these issues. This notice shall be made orally to a party if the party is present at the time of the making of the order or by first-class mail by the clerk of the court to the last known address of a party not present at the time of the making of the order.

(B) The prompt transmittal of the records from the trial court to the appellate court.

(C) That adequate time requirements for counsel and court personnel exist to implement the objective of this subdivision.

(D) That the parent or guardian, or their trial counsel or other counsel, is charged with the responsibility of filing a petition for extraordinary writ relief pursuant to this subdivision.

(4) The intent of this subdivision is to do both of the following:

(A) Make every reasonable attempt to achieve a substantive and meritorious review by the appellate court within the time specified in Sections 366.21 and 366.22 for holding a hearing pursuant to this section.

(B) Encourage the appellate court to determine all writ petitions filed pursuant to this subdivision on their merits.

(5) This subdivision shall only apply to cases in which an order to set a hearing pursuant to this section is issued on or after January 1, 1995.

(m) Except for subdivision (j), this section shall also apply to minors adjudged wards pursuant to Section 727.31.

(n) (1) Notwithstanding Section 8704 of the Family Code or any other provision of law, the court, at a hearing held pursuant to this section or anytime thereafter, may designate a current caretaker as a prospective adoptive parent if the child has lived with the caretaker for at least six months, the caretaker currently expresses a commitment to adopt the child, and the caretaker has taken at least one step to facilitate the adoption process. In determining whether to make that designation, the court may take into consideration whether the caretaker is listed in the preliminary assessment prepared by the county department in accordance with subdivision (i) of Section 366.21 as an appropriate person to be considered as an adoptive parent for the child and the recommendation of the State Department of Social Services or licensed adoption agency.

(2) For purposes of this subdivision, steps to facilitate the adoption process include, but are not limited to, the following:

(A) Applying for an adoption homestudy.

(B) Cooperating with an adoption homestudy.

(C) Being designated by the court or the licensed adoption agency as the adoptive family.

(D) Requesting de facto parent status.

(E) Signing an adoptive placement agreement.

(F) Engaging in discussions regarding a postadoption contact agreement.

(G) Working to overcome any impediments that have been identified by the State Department of Social Services and the licensed adoption agency.

(H) Attending classes required of prospective adoptive parents.

(3) Prior to a change in placement and as soon as possible after a decision is made to remove a child from the home of a designated prospective adoptive parent, the agency shall notify the court, the designated prospective adoptive parent or the current caretaker, if that caretaker would have met the threshold criteria to be designated as a prospective adoptive parent pursuant to paragraph (1) on the date of service of this notice, the child's attorney, and the child, if the child is 10 years of age or older, of the proposal in the manner described in Section 16010.6.

(A) Within five court days or seven calendar days, whichever is longer, of the date of notification, the child, the child's attorney, or the designated prospective adoptive parent may file a petition with the court objecting to the proposal to remove the child, or the court, upon its own motion, may set a hearing regarding the proposal. The court may, for good cause, extend the filing period. A caretaker who would have met the threshold criteria to be designated as a prospective adoptive parent pursuant to paragraph (1) on the date of service of the notice of proposed removal of the child may file, together with the petition under this subparagraph, a petition for an order designating the caretaker as a prospective adoptive parent for purposes of this subdivision.

(B) A hearing ordered pursuant to this paragraph shall be held as soon as possible and not later than five court days after the petition is filed with the court or the court sets a hearing upon its own motion, unless the court for good cause is unable to set the matter for hearing five court days after the petition is filed, in which case the court shall set the matter for hearing as soon as possible. At the hearing, the court shall determine whether the caretaker has met the threshold criteria to be designated as a prospective adoptive parent pursuant to paragraph (1), and whether the proposed removal of the child from the home of the designated prospective adoptive parent is in the child's best interest, and the child may not be removed from the home of the designated prospective adoptive parent unless the court finds that removal is in the child's best interest. If the court determines that the caretaker did not meet the threshold criteria to be designated as a prospective adoptive parent on the date of service of the notice of proposed removal of the child, the petition objecting to the proposed removal filed by the caretaker shall be dismissed. If the caretaker was designated as a prospective adoptive

parent prior to this hearing, the court shall inquire into any progress made by the caretaker towards the adoption of the child since the caretaker was designated as a prospective adoptive parent.

(C) A determination by the court that the caretaker is a designated prospective adoptive parent pursuant to paragraph (1) or subparagraph (B) does not make the caretaker a party to the dependency proceeding nor does it confer on the caretaker any standing to object to any other action of the department or licensed adoption agency, unless the caretaker has been declared a de facto parent by the court prior to the notice of removal served pursuant to paragraph (3).

(D) If a petition objecting to the proposal to remove the child is not filed, and the court, upon its own motion, does not set a hearing, the child may be removed from the home of the designated prospective adoptive parent without a hearing.

(4) Notwithstanding paragraph (3), if the State Department of Social Services or a licensed adoption agency determines that the child must be removed from the home of the caretaker who is or may be a designated prospective adoptive parent immediately, due to a risk of physical or emotional harm, the agency may remove the child from that home and is not required to provide notice prior to the removal. However, as soon as possible and not longer than two court days after the removal, the agency shall notify the court, the caretaker who is or may be a designated prospective adoptive parent, the child's attorney, and the child, if the child is 10 years of age or older, of the removal. Within five court days or seven calendar days, whichever is longer, of the date of notification of the removal, the child, the child's attorney, or the caretaker who is or may be a designated prospective adoptive parent may petition for, or the court on its own motion may set, a noticed hearing pursuant to paragraph (3). The court may, for good cause, extend the filing period.

(5) Except as provided in subdivision (b) of Section 366.28, an order by the court issued after a hearing pursuant to this subdivision shall not be appealable.

(6) Nothing in this section shall preclude a county child protective services agency from fully investigating and responding to alleged abuse or neglect of a child pursuant to Section 11165.5 of the Penal Code.

(7) The Judicial Council shall prepare forms to facilitate the filing of the petitions described in this subdivision, which shall become effective on January 1, 2006.

SEC. 2.4. Section 366.26 of the Welfare and Institutions Code is amended to read:

366.26. (a) This section applies to children who are adjudged dependent children of the juvenile court pursuant to subdivision (c) of Section 360. The procedures specified in this section are the exclusive

procedures for conducting these hearings; Part 2 (commencing with Section 3020) of Division 8 of the Family Code is not applicable to these proceedings. Section 8714.7 of the Family Code is applicable and available to all dependent children meeting the requirements of that section, if the postadoption contact agreement has been entered into voluntarily. For children who are adjudged dependent children of the juvenile court pursuant to subdivision (c) of Section 360, this section and Sections 8604, 8605, 8606, and 8700 of the Family Code and Chapter 5 (commencing with Section 7660) of Part 3 of Division 12 of the Family Code specify the exclusive procedures for permanently terminating parental rights with regard to, or establishing legal guardianship of, the child while the child is a dependent child of the juvenile court.

(b) At the hearing, which shall be held in juvenile court for all children who are dependents of the juvenile court, the court, in order to provide stable, permanent homes for these children, shall review the report as specified in Section 361.5, 366.21, or 366.22, shall indicate that the court has read and considered it, shall receive other evidence that the parties may present, and then shall make findings and orders in the following order of preference:

(1) Terminate the rights of the parent or parents and order that the child be placed for adoption and, upon the filing of a petition for adoption in the juvenile court, order that a hearing be set. The court shall proceed with the adoption after the appellate rights of the natural parents have been exhausted.

(2) On making a finding under paragraph (3) of subdivision (c), identify adoption as the permanent placement goal and order that efforts be made to locate an appropriate adoptive family for the child within a period not to exceed 180 days.

(3) Appoint a legal guardian for the child and order that letters of guardianship issue.

(4) Order that the child be placed in long-term foster care, subject to the periodic review of the juvenile court under Section 366.3.

In choosing among the above alternatives, the court shall proceed pursuant to subdivision (c).

(c) (1) If the court determines, based on the assessment provided as ordered under subdivision (i) of Section 366.21 or subdivision (b) of Section 366.22, and any other relevant evidence, by a clear and convincing standard, that it is likely the child will be adopted, the court shall terminate parental rights and order the child placed for adoption. The fact that the child is not yet placed in a preadoptive home nor with a relative or foster family who is prepared to adopt the child, shall not constitute a basis for the court to conclude that it is not likely the child will be adopted. A finding under subdivision (b) or paragraph (1) of

subdivision (e) of Section 361.5 that reunification services shall not be offered, under subdivision (e) of Section 366.21 that the whereabouts of a parent have been unknown for six months or that the parent has failed to visit or contact the child for six months or that the parent has been convicted of a felony indicating parental unfitness, or, under Section 366.21 or 366.22, that the court has continued to remove the child from the custody of the parent or guardian and has terminated reunification services, shall constitute a sufficient basis for termination of parental rights unless the court finds a compelling reason for determining that termination would be detrimental to the child due to one or more of the following circumstances:

(A) The parents or guardians have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship.

(B) A child 12 years of age or older objects to termination of parental rights.

(C) The child is placed in a residential treatment facility, adoption is unlikely or undesirable, and continuation of parental rights will not prevent finding the child a permanent family placement if the parents cannot resume custody when residential care is no longer needed.

(D) The child is living with a relative or foster parent who is unable or unwilling to adopt the child because of exceptional circumstances, that do not include an unwillingness to accept legal or financial responsibility for the child, but who is willing and capable of providing the child with a stable and permanent environment and the removal of the child from the physical custody of his or her relative or foster parent would be detrimental to the emotional well-being of the child. This subparagraph does not apply to any child who is living with a nonrelative and who is either (i) under six years of age or (ii) a member of a sibling group where at least one child is under six years of age and the siblings are, or should be, permanently placed together.

(E) There would be substantial interference with a child's sibling relationship, taking into consideration the nature and extent of the relationship, including, but not limited to, whether the child was raised with a sibling in the same home, whether the child shared significant common experiences or has existing close and strong bonds with a sibling, and whether ongoing contact is in the child's best interest, including the child's long-term emotional interest, as compared to the benefit of legal permanence through adoption.

If the court finds that termination of parental rights would be detrimental to the child pursuant to subparagraph (A), (B), (C), (D), or (E), it shall state its reasons in writing or on the record.

(2) The court shall not terminate parental rights if at each hearing at which the court was required to consider reasonable efforts or services, the court has found that reasonable efforts were not made or that reasonable services were not offered or provided.

(3) If the court finds that termination of parental rights would not be detrimental to the child pursuant to paragraph (1) and that the child has a probability for adoption but is difficult to place for adoption and there is no identified or available prospective adoptive parent, the court may identify adoption as the permanent placement goal and without terminating parental rights, order that efforts be made to locate an appropriate adoptive family for the child within a period not to exceed 180 days. During this 180-day period, the public agency responsible for seeking adoptive parents for each child shall, to the extent possible, ask each child who is 10 years of age or older, to identify any individuals, other than the child's siblings, who are important to the child, in order to identify potential adoptive parents. The public agency may ask any other child to provide that information, as appropriate. During the 180-day period, the public agency shall, to the extent possible, contact other private and public adoption agencies regarding the availability of the child for adoption. During the 180-day period, the public agency shall conduct the search for adoptive parents in the same manner as prescribed for children in Sections 8708 and 8709 of the Family Code. At the expiration of this period, another hearing shall be held and the court shall proceed pursuant to paragraph (1) or (3) of subdivision (b). For purposes of this section, a child may only be found to be difficult to place for adoption if there is no identified or available prospective adoptive parent for the child because of the child's membership in a sibling group, or the presence of a diagnosed medical, physical, or mental handicap, or the child is the age of seven years or more.

(4) (A) If the court finds that adoption of the child or termination of parental rights is not in the best interest of the child, because one of the conditions in subparagraph (A), (B), (C), (D), or (E) of paragraph (1) or in paragraph (2) applies, the court shall either order that the present caretakers or other appropriate persons shall become legal guardians of the child or order that the child remain in long-term foster care. Legal guardianship shall be considered before long-term foster care, if it is in the best interest of the child and if a suitable guardian can be found. A child who is 10 years of age or older, shall be asked to identify any individuals, other than the child's siblings, who are important to the child, in order to identify potential guardians. The agency may ask any other child to provide that information, as appropriate.

(B) If the child is living with a relative or a foster parent who is willing and capable of providing a stable and permanent environment, but not

willing to become a legal guardian, the child shall not be removed from the home if the court finds the removal would be seriously detrimental to the emotional well-being of the child because the child has substantial psychological ties to the relative caretaker or foster parents.

(C) The court shall also make an order for visitation with the parents or guardians unless the court finds by a preponderance of the evidence that the visitation would be detrimental to the physical or emotional well-being of the child.

(5) If the court finds that the child should not be placed for adoption, that legal guardianship shall not be established, and that there are no suitable foster parents except exclusive-use homes available to provide the child with a stable and permanent environment, the court may order the care, custody, and control of the child transferred from the county welfare department to a licensed foster family agency. The court shall consider the written recommendation of the county welfare director regarding the suitability of the transfer. The transfer shall be subject to further court orders.

The licensed foster family agency shall place the child in a suitable licensed or exclusive-use home that has been certified by the agency as meeting licensing standards. The licensed foster family agency shall be responsible for supporting the child and providing appropriate services to the child, including those services ordered by the court. Responsibility for the support of the child shall not, in and of itself, create liability on the part of the foster family agency to third persons injured by the child. Those children whose care, custody, and control are transferred to a foster family agency shall not be eligible for foster care maintenance payments or child welfare services, except for emergency response services pursuant to Section 16504.

(d) The proceeding for the appointment of a guardian for a child who is a dependent of the juvenile court shall be in the juvenile court. If the court finds pursuant to this section that legal guardianship is the appropriate permanent plan, it shall appoint the legal guardian and issue letters of guardianship. The assessment prepared pursuant to subdivision (g) of Section 361.5, subdivision (i) of Section 366.21, and subdivision (b) of Section 366.22 shall be read and considered by the court prior to the appointment, and this shall be reflected in the minutes of the court. The person preparing the assessment may be called and examined by any party to the proceeding.

(e) The proceeding for the adoption of a child who is a dependent of the juvenile court shall be in the juvenile court if the court finds pursuant to this section that adoption is the appropriate permanent plan and the petition for adoption is filed in the juvenile court. Upon the filing of a petition for adoption, the juvenile court shall order that an adoption

hearing be set. The court shall proceed with the adoption after the appellate rights of the natural parents have been exhausted. The full report required by Section 8715 of the Family Code shall be read and considered by the court prior to the adoption and this shall be reflected in the minutes of the court. The person preparing the report may be called and examined by any party to the proceeding. It is the intent of the Legislature, pursuant to this subdivision, to give potential adoptive parents the option of filing in the juvenile court the petition for the adoption of a child who is a dependent of the juvenile court. Nothing in this section is intended to prevent the filing of a petition for adoption in any other court as permitted by law, instead of in the juvenile court.

(f) At the beginning of any proceeding pursuant to this section, if the child or the parents are not being represented by previously retained or appointed counsel, including, in the case of any child who is not a lawful permanent resident or citizen of the United States, counsel appointed pursuant to subdivision (i) of Section 317, the court shall proceed as follows:

(1) In accordance with subdivision (c) of Section 317, if a child before the court is without counsel, the court shall appoint counsel unless the court finds that the child would not benefit from the appointment of counsel. The court shall state on the record its reasons for that finding.

(2) If a parent appears without counsel and is unable to afford counsel, the court shall appoint counsel for the parent, unless this representation is knowingly and intelligently waived. The same counsel shall not be appointed to represent both the child and his or her parent. The public defender or private counsel may be appointed as counsel for the parent.

(3) Private counsel appointed under this section shall receive a reasonable sum for compensation and expenses, the amount of which shall be determined by the court. The amount shall be paid by the real parties in interest, other than the child, in any proportions the court deems just. However, if the court finds that any of the real parties in interest are unable to afford counsel, the amount shall be paid out of the general fund of the county.

(g) The court may continue the proceeding for a period of time not to exceed 30 days as necessary to appoint counsel, and to enable counsel to become acquainted with the case.

(h) (1) At all proceedings under this section, the court shall consider the wishes of the child and shall act in the best interests of the child.

(2) In accordance with Section 349, the child shall be present in court if the child or the child's counsel so requests or the court so orders. If the child is 10 years of age or older and is not present at a hearing held pursuant to this section, the court shall determine whether the minor was

properly notified of his or her right to attend the hearing and inquire as to the reason why the child is not present.

(3) (A) The testimony of the child may be taken in chambers and outside the presence of the child's parent or parents, if the child's parent or parents are represented by counsel, the counsel is present, and any of the following circumstances exists:

(i) The court determines that testimony in chambers is necessary to ensure truthful testimony.

(ii) The child is likely to be intimidated by a formal courtroom setting.

(iii) The child is afraid to testify in front of his or her parent or parents.

(B) After testimony in chambers, the parent or parents of the child may elect to have the court reporter read back the testimony or have the testimony summarized by counsel for the parent or parents.

(C) The testimony of a child also may be taken in chambers and outside the presence of the guardian or guardians of a child under the circumstances specified in this subdivision.

(i) (1) Any order of the court permanently terminating parental rights under this section shall be conclusive and binding upon the child, upon the parent or parents and upon all other persons who have been served with a citation by publication or otherwise as provided in this chapter. After making the order, the juvenile court shall have no power to set aside, change, or modify it, except as provided in paragraph (2), but nothing in this section shall be construed to limit the right to appeal the order.

(2) A child who has not been adopted after the passage of at least three years from the date the court terminated parental rights and for whom the court has determined that adoption is no longer the permanent plan may petition the juvenile court to reinstate parental rights pursuant to the procedure prescribed by Section 388. The child may file the petition prior to the expiration of this three-year period if the State Department of Social Services or licensed adoption agency that is responsible for custody and supervision of the child as described in subdivision (j) and the child stipulate that the child is no longer likely to be adopted. A child over 12 years of age shall sign the petition in the absence of a showing of good cause as to why the child could not do so. If it appears that the best interests of the child may be promoted by reinstatement of parental rights, the court shall order that a hearing be held and shall give prior notice, or cause prior notice to be given, to the social worker or probation officer and to the child's attorney of record, or, if there is no attorney of record for the child, to the child, and the child's tribe, if applicable, by means prescribed by subdivision (c) of Section 297. The court shall order the child or the social worker or probation officer to give prior notice of the hearing to the child's former

parent or parents whose parental rights were terminated in the manner prescribed by subdivision (f) of Section 294 where the recommendation is adoption. The juvenile court shall grant the petition if it finds by clear and convincing evidence that the child is no longer likely to be adopted and that reinstatement of parental rights is in the child's best interest. If the court reinstates parental rights over a child who is under 12 years of age and for whom the new permanent plan will not be reunification with a parent or legal guardianship, the court shall specify the factual basis for its findings that it is in the best interest of the child to reinstate parental rights. This subdivision is intended to be retroactive and applies to any child who is under the jurisdiction of the juvenile court at the time of the hearing regardless of the date parental rights were terminated.

(j) If the court, by order or judgment, declares the child free from the custody and control of both parents, or one parent if the other does not have custody and control, the court shall at the same time order the child referred to the State Department of Social Services or a licensed adoption agency for adoptive placement by the agency. However, a petition for adoption may not be granted until the appellate rights of the natural parents have been exhausted. The State Department of Social Services or licensed adoption agency shall be responsible for the custody and supervision of the child and shall be entitled to the exclusive care and control of the child at all times until a petition for adoption is granted. With the consent of the agency, the court may appoint a guardian of the child, who shall serve until the child is adopted.

(k) Notwithstanding any other provision of law, the application of any person who, as a relative caretaker or foster parent, has cared for a dependent child for whom the court has approved a permanent plan for adoption, or who has been freed for adoption, shall be given preference with respect to that child over all other applications for adoptive placement if the agency making the placement determines that the child has substantial emotional ties to the relative caretaker or foster parent and removal from the relative caretaker or foster parent would be seriously detrimental to the child's emotional well-being.

As used in this subdivision, "preference" means that the application shall be processed and, if satisfactory, the family study shall be completed before the processing of the application of any other person for the adoptive placement of the child.

(l) (1) An order by the court that a hearing pursuant to this section be held is not appealable at any time unless all of the following apply:

(A) A petition for extraordinary writ review was filed in a timely manner.

(B) The petition substantively addressed the specific issues to be challenged and supported that challenge by an adequate record.

(C) The petition for extraordinary writ review was summarily denied or otherwise not decided on the merits.

(2) Failure to file a petition for extraordinary writ review within the period specified by rule, to substantively address the specific issues challenged, or to support that challenge by an adequate record shall preclude subsequent review by appeal of the findings and orders made pursuant to this section.

(3) The Judicial Council shall adopt rules of court, effective January 1, 1995, to ensure all of the following:

(A) A trial court, after issuance of an order directing a hearing pursuant to this section be held, shall advise all parties of the requirement of filing a petition for extraordinary writ review as set forth in this subdivision in order to preserve any right to appeal in these issues. This notice shall be made orally to a party if the party is present at the time of the making of the order or by first-class mail by the clerk of the court to the last known address of a party not present at the time of the making of the order.

(B) The prompt transmittal of the records from the trial court to the appellate court.

(C) That adequate time requirements for counsel and court personnel exist to implement the objective of this subdivision.

(D) That the parent or guardian, or their trial counsel or other counsel, is charged with the responsibility of filing a petition for extraordinary writ relief pursuant to this subdivision.

(4) The intent of this subdivision is to do both of the following:

(A) Make every reasonable attempt to achieve a substantive and meritorious review by the appellate court within the time specified in Sections 366.21 and 366.22 for holding a hearing pursuant to this section.

(B) Encourage the appellate court to determine all writ petitions filed pursuant to this subdivision on their merits.

(5) This subdivision shall only apply to cases in which an order to set a hearing pursuant to this section is issued on or after January 1, 1995.

(m) Except for subdivision (j), this section shall also apply to minors adjudged wards pursuant to Section 727.31.

(n) The implementation and operation of the amendments to paragraph (3) of subdivision (c) and subparagraph (A) of paragraph (4) of subdivision (c) enacted at the 2005-06 Regular Session shall be subject to appropriation through the budget process and by phase, as provided in Section 366.35.

SEC. 2.5. Section 366.26 of the Welfare and Institutions Code is amended to read:

366.26. (a) This section applies to children who are adjudged dependent children of the juvenile court pursuant to subdivision (c) of

Section 360. The procedures specified in this section are the exclusive procedures for conducting these hearings; Part 2 (commencing with Section 3020) of Division 8 of the Family Code is not applicable to these proceedings. Section 8714.7 of the Family Code is applicable and available to all dependent children meeting the requirements of that section, if the postadoption contact agreement has been entered into voluntarily. For children who are adjudged dependent children of the juvenile court pursuant to subdivision (c) of Section 360, this section and Sections 8604, 8605, 8606, and 8700 of the Family Code and Chapter 5 (commencing with Section 7660) of Part 3 of Division 12 of the Family Code specify the exclusive procedures for permanently terminating parental rights with regard to, or establishing legal guardianship of, the child while the child is a dependent child of the juvenile court.

(b) At the hearing, which shall be held in juvenile court for all children who are dependents of the juvenile court, the court, in order to provide stable, permanent homes for these children, shall review the report as specified in Section 361.5, 366.21, or 366.22, shall indicate that the court has read and considered it, shall receive other evidence that the parties may present, and then shall make findings and orders in the following order of preference:

(1) Terminate the rights of the parent or parents and order that the child be placed for adoption and, upon the filing of a petition for adoption in the juvenile court, order that a hearing be set. The court shall proceed with the adoption after the appellate rights of the natural parents have been exhausted.

(2) On making a finding under paragraph (3) of subdivision (c), identify adoption as the permanent placement goal and order that efforts be made to locate an appropriate adoptive family for the child within a period not to exceed 180 days.

(3) Appoint a legal guardian for the child and order that letters of guardianship issue.

(4) Order that the child be placed in long-term foster care, subject to the periodic review of the juvenile court under Section 366.3.

In choosing among the above alternatives, the court shall proceed pursuant to subdivision (c).

(c) (1) If the court determines, based on the assessment provided as ordered under subdivision (i) of Section 366.21 or subdivision (b) of Section 366.22, and any other relevant evidence, by a clear and convincing standard, that it is likely the child will be adopted, the court shall terminate parental rights and order the child placed for adoption. The fact that the child is not yet placed in a preadoptive home nor with a relative or foster family who is prepared to adopt the child, shall not constitute a basis for the court to conclude that it is not likely the child

will be adopted. A finding under subdivision (b) or paragraph (1) of subdivision (e) of Section 361.5 that reunification services shall not be offered, under subdivision (e) of Section 366.21 that the whereabouts of a parent have been unknown for six months or that the parent has failed to visit or contact the child for six months or that the parent has been convicted of a felony indicating parental unfitness, or, under Section 366.21 or 366.22, that the court has continued to remove the child from the custody of the parent or guardian and has terminated reunification services, shall constitute a sufficient basis for termination of parental rights unless the court finds a compelling reason for determining that termination would be detrimental to the child due to one or more of the following circumstances:

(A) The parents or guardians have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship.

(B) A child 12 years of age or older objects to termination of parental rights.

(C) The child is placed in a residential treatment facility, adoption is unlikely or undesirable, and continuation of parental rights will not prevent finding the child a permanent family placement if the parents cannot resume custody when residential care is no longer needed.

(D) The child is living with a relative or foster parent who is unable or unwilling to adopt the child because of exceptional circumstances, that do not include an unwillingness to accept legal or financial responsibility for the child, but who is willing and capable of providing the child with a stable and permanent environment and the removal of the child from the physical custody of his or her relative or foster parent would be detrimental to the emotional well-being of the child. This subparagraph does not apply to any child who is living with a nonrelative and who is either (i) under six years of age or (ii) a member of a sibling group where at least one child is under six years of age and the siblings are, or should be, permanently placed together.

(E) There would be substantial interference with a child's sibling relationship, taking into consideration the nature and extent of the relationship, including, but not limited to, whether the child was raised with a sibling in the same home, whether the child shared significant common experiences or has existing close and strong bonds with a sibling, and whether ongoing contact is in the child's best interest, including the child's long-term emotional interest, as compared to the benefit of legal permanence through adoption.

If the court finds that termination of parental rights would be detrimental to the child pursuant to subparagraph (A), (B), (C), (D), or (E), it shall state its reasons in writing or on the record.

(2) The court shall not terminate parental rights if at each hearing at which the court was required to consider reasonable efforts or services, the court has found that reasonable efforts were not made or that reasonable services were not offered or provided.

(3) If the court finds that termination of parental rights would not be detrimental to the child pursuant to paragraph (1) and that the child has a probability for adoption but is difficult to place for adoption and there is no identified or available prospective adoptive parent, the court may identify adoption as the permanent placement goal and without terminating parental rights, order that efforts be made to locate an appropriate adoptive family for the child within a period not to exceed 180 days. During this 180-day period, the public agency responsible for seeking adoptive parents for each child shall, to the extent possible, ask each child who is 10 years of age or older who is placed in a group home for six months or longer from the date the child entered foster care, to identify any individuals, other than the child's siblings, who are important to the child, in order to identify potential adoptive parents. The public agency may ask any other child to provide that information, as appropriate. During the 180-day period, the public agency shall, to the extent possible, contact other private and public adoption agencies regarding the availability of the child for adoption. During the 180-day period, the public agency shall conduct the search for adoptive parents in the same manner as prescribed for children in Sections 8708 and 8709 of the Family Code. At the expiration of this period, another hearing shall be held and the court shall proceed pursuant to paragraph (1) or (3) of subdivision (b). For purposes of this section, a child may only be found to be difficult to place for adoption if there is no identified or available prospective adoptive parent for the child because of the child's membership in a sibling group, or the presence of a diagnosed medical, physical, or mental handicap, or the child is the age of seven years or more.

(4) (A) If the court finds that adoption of the child or termination of parental rights is not in the best interest of the child, because one of the conditions in subparagraph (A), (B), (C), (D), or (E) of paragraph (1) or in paragraph (2) applies, the court shall either order that the present caretakers or other appropriate persons shall become legal guardians of the child or order that the child remain in long-term foster care. Legal guardianship shall be considered before long-term foster care, if it is in the best interest of the child and if a suitable guardian can be found. A child who is 10 years of age or older who is placed in a group home for six months or longer from the date the child entered foster care, shall be asked to identify any individuals, other than the child's siblings, who are important to the child, in order to identify potential guardians. The

agency may ask any other child to provide that information, as appropriate.

(B) If the child is living with a relative or a foster parent who is willing and capable of providing a stable and permanent environment, but not willing to become a legal guardian, the child shall not be removed from the home if the court finds the removal would be seriously detrimental to the emotional well-being of the child because the child has substantial psychological ties to the relative caretaker or foster parents.

(C) The court shall also make an order for visitation with the parents or guardians unless the court finds by a preponderance of the evidence that the visitation would be detrimental to the physical or emotional well-being of the child.

(5) If the court finds that the child should not be placed for adoption, that legal guardianship shall not be established, and that there are no suitable foster parents except exclusive-use homes available to provide the child with a stable and permanent environment, the court may order the care, custody, and control of the child transferred from the county welfare department to a licensed foster family agency. The court shall consider the written recommendation of the county welfare director regarding the suitability of the transfer. The transfer shall be subject to further court orders.

The licensed foster family agency shall place the child in a suitable licensed or exclusive-use home that has been certified by the agency as meeting licensing standards. The licensed foster family agency shall be responsible for supporting the child and providing appropriate services to the child, including those services ordered by the court. Responsibility for the support of the child shall not, in and of itself, create liability on the part of the foster family agency to third persons injured by the child. Those children whose care, custody, and control are transferred to a foster family agency shall not be eligible for foster care maintenance payments or child welfare services, except for emergency response services pursuant to Section 16504.

(d) The proceeding for the appointment of a guardian for a child who is a dependent of the juvenile court shall be in the juvenile court. If the court finds pursuant to this section that legal guardianship is the appropriate permanent plan, it shall appoint the legal guardian and issue letters of guardianship. The assessment prepared pursuant to subdivision (g) of Section 361.5, subdivision (i) of Section 366.21, and subdivision (b) of Section 366.22 shall be read and considered by the court prior to the appointment, and this shall be reflected in the minutes of the court. The person preparing the assessment may be called and examined by any party to the proceeding.

(e) The proceeding for the adoption of a child who is a dependent of the juvenile court shall be in the juvenile court if the court finds pursuant to this section that adoption is the appropriate permanent plan and the petition for adoption is filed in the juvenile court. Upon the filing of a petition for adoption, the juvenile court shall order that an adoption hearing be set. The court shall proceed with the adoption after the appellate rights of the natural parents have been exhausted. The full report required by Section 8715 of the Family Code shall be read and considered by the court prior to the adoption and this shall be reflected in the minutes of the court. The person preparing the report may be called and examined by any party to the proceeding. It is the intent of the Legislature, pursuant to this subdivision, to give potential adoptive parents the option of filing in the juvenile court the petition for the adoption of a child who is a dependent of the juvenile court. Nothing in this section is intended to prevent the filing of a petition for adoption in any other court as permitted by law, instead of in the juvenile court.

(f) At the beginning of any proceeding pursuant to this section, if the child or the parents are not being represented by previously retained or appointed counsel, including, in the case of any child who is not a lawful permanent resident or citizen of the United States, counsel appointed pursuant to subdivision (i) of Section 317, the court shall proceed as follows:

(1) In accordance with subdivision (c) of Section 317, if a child before the court is without counsel, the court shall appoint counsel unless the court finds that the child would not benefit from the appointment of counsel. The court shall state on the record its reasons for that finding.

(2) If a parent appears without counsel and is unable to afford counsel, the court shall appoint counsel for the parent, unless this representation is knowingly and intelligently waived. The same counsel shall not be appointed to represent both the child and his or her parent. The public defender or private counsel may be appointed as counsel for the parent.

(3) Private counsel appointed under this section shall receive a reasonable sum for compensation and expenses, the amount of which shall be determined by the court. The amount shall be paid by the real parties in interest, other than the child, in any proportions the court deems just. However, if the court finds that any of the real parties in interest are unable to afford counsel, the amount shall be paid out of the general fund of the county.

(g) The court may continue the proceeding for not to exceed 30 days as necessary to appoint counsel, and to enable counsel to become acquainted with the case.

(h) (1) At all proceedings under this section, the court shall consider the wishes of the child and shall act in the best interests of the child.

(2) In accordance with Section 349, the child shall be present in court if the child or the child's counsel so requests or the court so orders. If the child is 10 years of age or older and is not present at a hearing held pursuant to this section, the court shall determine whether the minor was properly notified of his or her right to attend the hearing and inquire as to the reason why the child is not present.

(3) (A) The testimony of the child may be taken in chambers and outside the presence of the child's parent or parents, if the child's parent or parents are represented by counsel, the counsel is present, and any of the following circumstances exists:

(i) The court determines that testimony in chambers is necessary to ensure truthful testimony.

(ii) The child is likely to be intimidated by a formal courtroom setting.

(iii) The child is afraid to testify in front of his or her parent or parents.

(B) After testimony in chambers, the parent or parents of the child may elect to have the court reporter read back the testimony or have the testimony summarized by counsel for the parent or parents.

(C) The testimony of a child also may be taken in chambers and outside the presence of the guardian or guardians of a child under the circumstances specified in this subdivision.

(i) (1) Any order of the court permanently terminating parental rights under this section shall be conclusive and binding upon the child, upon the parent or parents and upon all other persons who have been served with a citation by publication or otherwise as provided in this chapter. After making the order, the juvenile court shall have no power to set aside, change, or modify it, except as provided in paragraph (2), but nothing in this section shall be construed to limit the right to appeal the order.

(2) A child who has not been adopted after the passage of at least three years from the date the court terminated parental rights and for whom the court has determined that adoption is no longer the permanent plan may petition the juvenile court to reinstate parental rights pursuant to the procedure prescribed by Section 388. The child may file the petition prior to the expiration of this three-year period if the State Department of Social Services or licensed adoption agency that is responsible for custody and supervision of the child as described in subdivision (j) and the child stipulate that the child is no longer likely to be adopted. A child over 12 years of age shall sign the petition in the absence of a showing of good cause as to why the child could not do so. If it appears that the best interests of the child may be promoted by reinstatement of parental rights, the court shall order that a hearing be held and shall give prior notice, or cause prior notice to be given, to the social worker or probation officer and to the child's attorney of record,

or, if there is no attorney of record for the child, to the child, and the child's tribe, if applicable, by means prescribed by subdivision (c) of Section 297. The court shall order the child or the social worker or probation officer to give prior notice of the hearing to the child's former parent or parents whose parental rights were terminated in the manner prescribed by subdivision (f) of Section 294 where the recommendation is adoption. The juvenile court shall grant the petition if it finds by clear and convincing evidence that the child is no longer likely to be adopted and that reinstatement of parental rights is in the child's best interest. If the court reinstates parental rights over a child who is under 12 years of age and for whom the new permanent plan will not be reunification with a parent or legal guardianship, the court shall specify the factual basis for its findings that it is in the best interest of the child to reinstate parental rights. This subdivision is intended to be retroactive and applies to any child who is under the jurisdiction of the juvenile court at the time of the hearing regardless of the date parental rights were terminated.

(j) If the court, by order or judgment, declares the child free from the custody and control of both parents, or one parent if the other does not have custody and control, the court shall at the same time order the child referred to the State Department of Social Services or a licensed adoption agency for adoptive placement by the agency. However, a petition for adoption may not be granted until the appellate rights of the natural parents have been exhausted. The State Department of Social Services or licensed adoption agency shall be responsible for the custody and supervision of the child and shall be entitled to the exclusive care and control of the child at all times until a petition for adoption is granted, except as specified in subdivision (n). With the consent of the agency, the court may appoint a guardian of the child, who shall serve until the child is adopted.

(k) Notwithstanding any other provision of law, the application of any person who, as a relative caretaker or foster parent, has cared for a dependent child for whom the court has approved a permanent plan for adoption, or who has been freed for adoption, shall be given preference with respect to that child over all other applications for adoptive placement if the agency making the placement determines that the child has substantial emotional ties to the relative caretaker or foster parent and removal from the relative caretaker or foster parent would be seriously detrimental to the child's emotional well-being.

As used in this subdivision, "preference" means that the application shall be processed and, if satisfactory, the family study shall be completed before the processing of the application of any other person for the adoptive placement of the child.

(l) (1) An order by the court that a hearing pursuant to this section be held is not appealable at any time unless all of the following apply:

(A) A petition for extraordinary writ review was filed in a timely manner.

(B) The petition substantively addressed the specific issues to be challenged and supported that challenge by an adequate record.

(C) The petition for extraordinary writ review was summarily denied or otherwise not decided on the merits.

(2) Failure to file a petition for extraordinary writ review within the period specified by rule, to substantively address the specific issues challenged, or to support that challenge by an adequate record shall preclude subsequent review by appeal of the findings and orders made pursuant to this section.

(3) The Judicial Council shall adopt rules of court, effective January 1, 1995, to ensure all of the following:

(A) A trial court, after issuance of an order directing a hearing pursuant to this section be held, shall advise all parties of the requirement of filing a petition for extraordinary writ review as set forth in this subdivision in order to preserve any right to appeal in these issues. This notice shall be made orally to a party if the party is present at the time of the making of the order or by first-class mail by the clerk of the court to the last known address of a party not present at the time of the making of the order.

(B) The prompt transmittal of the records from the trial court to the appellate court.

(C) That adequate time requirements for counsel and court personnel exist to implement the objective of this subdivision.

(D) That the parent or guardian, or their trial counsel or other counsel, is charged with the responsibility of filing a petition for extraordinary writ relief pursuant to this subdivision.

(4) The intent of this subdivision is to do both of the following:

(A) Make every reasonable attempt to achieve a substantive and meritorious review by the appellate court within the time specified in Sections 366.21 and 366.22 for holding a hearing pursuant to this section.

(B) Encourage the appellate court to determine all writ petitions filed pursuant to this subdivision on their merits.

(5) This subdivision shall only apply to cases in which an order to set a hearing pursuant to this section is issued on or after January 1, 1995.

(m) Except for subdivision (j), this section shall also apply to minors adjudged wards pursuant to Section 727.31.

(n) (1) Notwithstanding Section 8704 of the Family Code or any other provision of law, the court, at a hearing held pursuant to this section or anytime thereafter, may designate a current caretaker as a prospective

adoptive parent if the child has lived with the caretaker for at least six months, the caretaker currently expresses a commitment to adopt the child, and the caretaker has taken at least one step to facilitate the adoption process. In determining whether to make that designation, the court may take into consideration whether the caretaker is listed in the preliminary assessment prepared by the county department in accordance with subdivision (i) of Section 366.21 as an appropriate person to be considered as an adoptive parent for the child and the recommendation of the State Department of Social Services or licensed adoption agency.

(2) For purposes of this subdivision, steps to facilitate the adoption process include, but are not limited to, the following:

- (A) Applying for an adoption homestudy.
- (B) Cooperating with an adoption homestudy.
- (C) Being designated by the court or the licensed adoption agency as the adoptive family.
- (D) Requesting de facto parent status.
- (E) Signing an adoptive placement agreement.
- (F) Engaging in discussions regarding a postadoption contact agreement.
- (G) Working to overcome any impediments that have been identified by the State Department of Social Services and the licensed adoption agency.
- (H) Attending classes required of prospective adoptive parents.

(3) Prior to a change in placement and as soon as possible after a decision is made to remove a child from the home of a designated prospective adoptive parent, the agency shall notify the court, the designated prospective adoptive parent or the current caretaker, if that caretaker would have met the threshold criteria to be designated as a prospective adoptive parent pursuant to paragraph (1) on the date of service of this notice, the child's attorney, and the child, if the child is 10 years of age or older, of the proposal in the manner described in Section 16010.6.

(A) Within five court days or seven calendar days, whichever is longer, of the date of notification, the child, the child's attorney, or the designated prospective adoptive parent may file a petition with the court objecting to the proposal to remove the child, or the court, upon its own motion, may set a hearing regarding the proposal. The court may, for good cause, extend the filing period. A caretaker who would have met the threshold criteria to be designated as a prospective adoptive parent pursuant to paragraph (1) on the date of service of the notice of proposed removal of the child may file, together with the petition under this subparagraph, a petition for an order designating the caretaker as a prospective adoptive parent for purposes of this subdivision.

(B) A hearing ordered pursuant to this paragraph shall be held as soon as possible and not later than five court days after the petition is filed with the court or the court sets a hearing upon its own motion, unless the court for good cause is unable to set the matter for hearing five court days after the petition is filed, in which case the court shall set the matter for hearing as soon as possible. At the hearing, the court shall determine whether the caretaker has met the threshold criteria to be designated as a prospective adoptive parent pursuant to paragraph (1), and whether the proposed removal of the child from the home of the designated prospective adoptive parent is in the child's best interest, and the child may not be removed from the home of the designated prospective adoptive parent unless the court finds that removal is in the child's best interest. If the court determines that the caretaker did not meet the threshold criteria to be designated as a prospective adoptive parent on the date of service of the notice of proposed removal of the child, the petition objecting to the proposed removal filed by the caretaker shall be dismissed. If the caretaker was designated as a prospective adoptive parent prior to this hearing, the court shall inquire into any progress made by the caretaker towards the adoption of the child since the caretaker was designated as a prospective adoptive parent.

(C) A determination by the court that the caretaker is a designated prospective adoptive parent pursuant to paragraph (1) or subparagraph (B) does not make the caretaker a party to the dependency proceeding nor does it confer on the caretaker any standing to object to any other action of the department or licensed adoption agency, unless the caretaker has been declared a de facto parent by the court prior to the notice of removal served pursuant to paragraph (3).

(D) If a petition objecting to the proposal to remove the child is not filed, and the court, upon its own motion, does not set a hearing, the child may be removed from the home of the designated prospective adoptive parent without a hearing.

(4) Notwithstanding paragraph (3), if the State Department of Social Services or a licensed adoption agency determines that the child must be removed from the home of the caretaker who is or may be a designated prospective adoptive parent immediately, due to a risk of physical or emotional harm, the agency may remove the child from that home and is not required to provide notice prior to the removal. However, as soon as possible and not longer than two court days after the removal, the agency shall notify the court, the caretaker who is or may be a designated prospective adoptive parent, the child's attorney, and the child, if the child is 10 years of age or older, of the removal. Within five court days or seven calendar days, whichever is longer, of the date of notification of the removal, the child, the child's attorney, or the caretaker who is or

may be a designated prospective adoptive parent may petition for, or the court on its own motion may set, a noticed hearing pursuant to paragraph (3). The court may, for good cause, extend the filing period.

(5) Except as provided in subdivision (b) of Section 366.28, an order by the court issued after a hearing pursuant to this subdivision shall not be appealable.

(6) Nothing in this section shall preclude a county child protective services agency from fully investigating and responding to alleged abuse or neglect of a child pursuant to Section 11165.5 of the Penal Code.

(7) The Judicial Council shall prepare forms to facilitate the filing of the petitions described in this subdivision, which shall become effective on January 1, 2006.

SEC. 2.6. Section 366.26 of the Welfare and Institutions Code is amended to read:

366.26. (a) This section applies to children who are adjudged dependent children of the juvenile court pursuant to subdivision (c) of Section 360. The procedures specified herein are the exclusive procedures for conducting these hearings; Part 2 (commencing with Section 3020) of Division 8 of the Family Code is not applicable to these proceedings. Section 8714.7 of the Family Code is applicable and available to all dependent children meeting the requirements of that section, if the postadoption contact agreement has been entered into voluntarily. For children who are adjudged dependent children of the juvenile court pursuant to subdivision (c) of Section 360, this section and Sections 8604, 8605, 8606, and 8700 of the Family Code and Chapter 5 (commencing with Section 7660) of Part 3 of Division 12 of the Family Code specify the exclusive procedures for permanently terminating parental rights with regard to, or establishing legal guardianship of, the child while the child is a dependent child of the juvenile court.

(b) At the hearing, which shall be held in juvenile court for all children who are dependents of the juvenile court, the court, in order to provide stable, permanent homes for these children, shall review the report as specified in Section 361.5, 366.21, or 366.22, shall indicate that the court has read and considered it, shall receive other evidence that the parties may present, and then shall make findings and orders in the following order of preference:

(1) Terminate the rights of the parent or parents and order that the child be placed for adoption and, upon the filing of a petition for adoption in the juvenile court, order that a hearing be set. The court shall proceed with the adoption after the appellate rights of the natural parents have been exhausted.

(2) On making a finding under paragraph (3) of subdivision (c), identify adoption as the permanent placement goal and order that efforts

be made to locate an appropriate adoptive family for the child within a period not to exceed 180 days.

(3) Appoint a legal guardian for the child and order that letters of guardianship issue.

(4) Order that the child be placed in long-term foster care, subject to the periodic review of the juvenile court under Section 366.3.

In choosing among the above alternatives the court shall proceed pursuant to subdivision (c).

(c) (1) If the court determines, based on the assessment provided as ordered under subdivision (i) of Section 366.21 or subdivision (b) of Section 366.22, and any other relevant evidence, by a clear and convincing standard, that it is likely the child will be adopted, the court shall terminate parental rights and order the child placed for adoption. The fact that the child is not yet placed in a preadoptive home nor with a relative or foster family who is prepared to adopt the child, shall not constitute a basis for the court to conclude that it is not likely the child will be adopted. A finding under subdivision (b) or paragraph (1) of subdivision (e) of Section 361.5 that reunification services shall not be offered, under subdivision (e) of Section 366.21 that the whereabouts of a parent have been unknown for six months or that the parent has failed to visit or contact the child for six months or that the parent has been convicted of a felony indicating parental unfitness, or, under Section 366.21 or 366.22, that the court has continued to remove the child from the custody of the parent or guardian and has terminated reunification services, shall constitute a sufficient basis for termination of parental rights unless the court finds a compelling reason for determining that termination would be detrimental to the child due to one or more of the following circumstances:

(A) The parents or guardians have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship.

(B) A child 12 years of age or older objects to termination of parental rights.

(C) The child is placed in a residential treatment facility, adoption is unlikely or undesirable, and continuation of parental rights will not prevent finding the child a permanent family placement if the parents cannot resume custody when residential care is no longer needed.

(D) The child is living with a relative or foster parent who is unable or unwilling to adopt the child because of exceptional circumstances, that do not include an unwillingness to accept legal or financial responsibility for the child, but who is willing and capable of providing the child with a stable and permanent environment and the removal of the child from the physical custody of his or her relative or foster parent

would be detrimental to the emotional well-being of the child. This subparagraph does not apply to any child who is living with a nonrelative and who is either (i) under six years of age or (ii) a member of a sibling group where at least one child is under six years of age and the siblings are, or should be, permanently placed together.

(E) There would be substantial interference with a child's sibling relationship, taking into consideration the nature and extent of the relationship, including, but not limited to, whether the child was raised with a sibling in the same home, whether the child shared significant common experiences or has existing close and strong bonds with a sibling, and whether ongoing contact is in the child's best interest, including the child's long-term emotional interest, as compared to the benefit of legal permanence through adoption.

If the court finds that termination of parental rights would be detrimental to the child pursuant to subparagraph (A), (B), (C), (D), or (E), it shall state its reasons in writing or on the record.

(2) The court shall not terminate parental rights if at each hearing at which the court was required to consider reasonable efforts or services, the court has found that reasonable efforts were not made or that reasonable services were not offered or provided.

(3) If the court finds that termination of parental rights would not be detrimental to the child pursuant to paragraph (1) and that the child has a probability for adoption but is difficult to place for adoption and there is no identified or available prospective adoptive parent, the court may identify adoption as the permanent placement goal and without terminating parental rights, order that efforts be made to locate an appropriate adoptive family for the child within a period not to exceed 180 days. During this 180-day period, the public agency responsible for seeking adoptive parents for each child shall, to the extent possible, ask each child who is 10 years of age or older, to identify any individuals, other than the child's siblings, who are important to the child, in order to identify potential adoptive parents. The public agency may ask any other child to provide that information, as appropriate. During the 180-day period, the public agency shall, to the extent possible, contact other private and public adoption agencies regarding the availability of the child for adoption. During the 180-day period, the public agency shall conduct the search for adoptive parents in the same manner as prescribed for children in Sections 8708 and 8709 of the Family Code. At the expiration of this period, another hearing shall be held and the court shall proceed pursuant to paragraph (1) or (3) of subdivision (b). For purposes of this section, a child may only be found to be difficult to place for adoption if there is no identified or available prospective adoptive parent for the child because of the child's membership in a

sibling group, or the presence of a diagnosed medical, physical, or mental handicap, or the child is the age of seven years or more.

(4) (A) If the court finds that adoption of the child or termination of parental rights is not in the best interest of the child, because one of the conditions in subparagraph (A), (B), (C), (D), or (E) of paragraph (1) or in paragraph (2) applies, the court shall either order that the present caretakers or other appropriate persons shall become legal guardians of the child or order that the child remain in long-term foster care. Legal guardianship shall be considered before long-term foster care, if it is in the best interests of the child and if a suitable guardian can be found. A child who is 10 years of age or older, shall be asked to identify any individuals, other than the child's siblings, who are important to the child, in order to identify potential guardians. The agency may ask any other child to provide that information, as appropriate.

(B) If the child is living with a relative or a foster parent who is willing and capable of providing a stable and permanent environment, but not willing to become a legal guardian, the child shall not be removed from the home if the court finds the removal would be seriously detrimental to the emotional well-being of the child because the child has substantial psychological ties to the relative caretaker or foster parents.

(C) The court shall also make an order for visitation with the parents or guardians unless the court finds by a preponderance of the evidence that the visitation would be detrimental to the physical or emotional well-being of the child.

(5) If the court finds that the child should not be placed for adoption, that legal guardianship shall not be established, and that there are no suitable foster parents except exclusive-use homes available to provide the child with a stable and permanent environment, the court may order the care, custody, and control of the child transferred from the county welfare department to a licensed foster family agency. The court shall consider the written recommendation of the county welfare director regarding the suitability of the transfer. The transfer shall be subject to further court orders.

The licensed foster family agency shall place the child in a suitable licensed or exclusive-use home that has been certified by the agency as meeting licensing standards. The licensed foster family agency shall be responsible for supporting the child and providing appropriate services to the child, including those services ordered by the court. Responsibility for the support of the child shall not, in and of itself, create liability on the part of the foster family agency to third persons injured by the child. Those children whose care, custody, and control are transferred to a foster family agency shall not be eligible for foster care maintenance

payments or child welfare services, except for emergency response services pursuant to Section 16504.

(d) The proceeding for the appointment of a guardian for a child who is a dependent of the juvenile court shall be in the juvenile court. If the court finds pursuant to this section that legal guardianship is the appropriate permanent plan, it shall appoint the legal guardian and issue letters of guardianship. The assessment prepared pursuant to subdivision (g) of Section 361.5, subdivision (i) of Section 366.21, and subdivision (b) of Section 366.22 shall be read and considered by the court prior to the appointment, and this shall be reflected in the minutes of the court. The person preparing the assessment may be called and examined by any party to the proceeding.

(e) The proceeding for the adoption of a child who is a dependent of the juvenile court shall be in the juvenile court if the court finds pursuant to this section that adoption is the appropriate permanent plan and the petition for adoption is filed in the juvenile court. Upon the filing of a petition for adoption, the juvenile court shall order that an adoption hearing be set. The court shall proceed with the adoption after the appellate rights of the natural parents have been exhausted. The full report required by Section 8715 of the Family Code shall be read and considered by the court prior to the adoption and this shall be reflected in the minutes of the court. The person preparing the report may be called and examined by any party to the proceeding. It is the intent of the Legislature, pursuant to this subdivision, to give potential adoptive parents the option of filing in the juvenile court the petition for the adoption of a child who is a dependent of the juvenile court. Nothing in this section is intended to prevent the filing of a petition for adoption in any other court as permitted by law, instead of in the juvenile court.

(f) At the beginning of any proceeding pursuant to this section, if the child or the parents are not being represented by previously retained or appointed counsel, the court shall proceed as follows:

(1) In accordance with subdivision (c) of Section 317, if a child before the court is without counsel, the court shall appoint counsel unless the court finds that the child would not benefit from the appointment of counsel. The court shall state on the record its reasons for that finding.

(2) If a parent appears without counsel and is unable to afford counsel, the court shall appoint counsel for the parent, unless this representation is knowingly and intelligently waived. The same counsel shall not be appointed to represent both the child and his or her parent. The public defender or private counsel may be appointed as counsel for the parent.

(3) Private counsel appointed under this section shall receive a reasonable sum for compensation and expenses, the amount of which shall be determined by the court. The amount shall be paid by the real

parties in interest, other than the child, in any proportions the court deems just. However, if the court finds that any of the real parties in interest are unable to afford counsel, the amount shall be paid out of the general fund of the county.

(g) The court may continue the proceeding for a period of time not to exceed 30 days as necessary to appoint counsel, and to enable counsel to become acquainted with the case.

(h) (1) At all proceedings under this section, the court shall consider the wishes of the child and shall act in the best interests of the child.

(2) In accordance with Section 349, the child shall be present in court if the child or the child's counsel so requests or the court so orders. If the child is 10 years of age or older and is not present at a hearing held pursuant to this section, the court shall determine whether the minor was properly notified of his or her right to attend the hearing and inquire as to the reason why the child is not present.

(3) (A) The testimony of the child may be taken in chambers and outside the presence of the child's parent or parents, if the child's parent or parents are represented by counsel, the counsel is present, and any of the following circumstances exists:

(i) The court determines that testimony in chambers is necessary to ensure truthful testimony.

(ii) The child is likely to be intimidated by a formal courtroom setting.

(iii) The child is afraid to testify in front of his or her parent or parents.

(B) After testimony in chambers, the parent or parents of the child may elect to have the court reporter read back the testimony or have the testimony summarized by counsel for the parent or parents.

(C) The testimony of a child also may be taken in chambers and outside the presence of the guardian or guardians of a child under the circumstances specified in this subdivision.

(i) (1) Any order of the court permanently terminating parental rights under this section shall be conclusive and binding upon the child, upon the parent or parents and upon all other persons who have been served with citation by publication or otherwise as provided in this chapter. After making the order, the juvenile court shall have no power to set aside, change, or modify it, except as provided in paragraph (2), but nothing in this section shall be construed to limit the right to appeal the order.

(2) A child who has not been adopted after the passage of at least three years from the date the court terminated parental rights and for whom the court has determined that adoption is no longer the permanent plan may petition the juvenile court to reinstate parental rights pursuant to the procedure prescribed by Section 388. The child may file the petition prior to the expiration of this three-year period if the State

Department of Social Services or licensed adoption agency that is responsible for custody and supervision of the child as described in subdivision (j) and the child stipulate that the child is no longer likely to be adopted. A child over 12 years of age shall sign the petition in the absence of a showing of good cause as to why the child could not do so. If it appears that the best interests of the child may be promoted by reinstatement of parental rights, the court shall order that a hearing be held and shall give prior notice, or cause prior notice to be given, to the social worker or probation officer and to the child's attorney of record, or, if there is no attorney of record for the child, to the child, and the child's tribe, if applicable, by means prescribed by subdivision (c) of Section 297. The court shall order the child or the social worker or probation officer to give prior notice of the hearing to the child's former parent or parents whose parental rights were terminated in the manner prescribed by subdivision (f) of Section 294 where the recommendation is adoption. The juvenile court shall grant the petition if it finds by clear and convincing evidence that the child is no longer likely to be adopted and that reinstatement of parental rights is in the child's best interest. If the court reinstates parental rights over a child who is under 12 years of age and for whom the new permanent plan will not be reunification with a parent or legal guardianship, the court shall specify the factual basis for its findings that it is in the best interest of the child to reinstate parental rights. This subdivision is intended to be retroactive and applies to any child who is under the jurisdiction of the juvenile court at the time of the hearing regardless of the date parental rights were terminated.

(j) If the court, by order or judgment, declares the child free from the custody and control of both parents, or one parent if the other does not have custody and control, the court shall at the same time order the child referred to the State Department of Social Services or a licensed adoption agency for adoptive placement by the agency. However, a petition for adoption may not be granted until the appellate rights of the natural parents have been exhausted. The State Department of Social Services or licensed adoption agency shall be responsible for the custody and supervision of the child and shall be entitled to the exclusive care and control of the child at all times until a petition for adoption is granted, except as specified in subdivision (n). With the consent of the agency, the court may appoint a guardian of the child, who shall serve until the child is adopted.

(k) Notwithstanding any other provision of law, the application of any person who, as a relative caretaker or foster parent, has cared for a dependent child for whom the court has approved a permanent plan for adoption, or who has been freed for adoption, shall be given preference with respect to that child over all other applications for adoptive

placement if the agency making the placement determines that the child has substantial emotional ties to the relative caretaker or foster parent and removal from the relative caretaker or foster parent would be seriously detrimental to the child's emotional well-being.

As used in this subdivision, "preference" means that the application shall be processed and, if satisfactory, the family study shall be completed before the processing of the application of any other person for the adoptive placement of the child.

(l) (1) An order by the court that a hearing pursuant to this section be held is not appealable at any time unless all of the following apply:

(A) A petition for extraordinary writ review was filed in a timely manner.

(B) The petition substantively addressed the specific issues to be challenged and supported that challenge by an adequate record.

(C) The petition for extraordinary writ review was summarily denied or otherwise not decided on the merits.

(2) Failure to file a petition for extraordinary writ review within the period specified by rule, to substantively address the specific issues challenged, or to support that challenge by an adequate record shall preclude subsequent review by appeal of the findings and orders made pursuant to this section.

(3) The Judicial Council shall adopt rules of court, effective January 1, 1995, to ensure all of the following:

(A) A trial court, after issuance of an order directing a hearing pursuant to this section be held, shall advise all parties of the requirement of filing a petition for extraordinary writ review as set forth in this subdivision in order to preserve any right to appeal in these issues. This notice shall be made orally to a party if the party is present at the time of the making of the order or by first-class mail by the clerk of the court to the last known address of a party not present at the time of the making of the order.

(B) The prompt transmittal of the records from the trial court to the appellate court.

(C) That adequate time requirements for counsel and court personnel exist to implement the objective of this subdivision.

(D) That the parent or guardian, or their trial counsel or other counsel, is charged with the responsibility of filing a petition for extraordinary writ relief pursuant to this subdivision.

(4) The intent of this subdivision is to do both of the following:

(A) Make every reasonable attempt to achieve a substantive and meritorious review by the appellate court within the time specified in Sections 366.21 and 366.22 for holding a hearing pursuant to this section.

(B) Encourage the appellate court to determine all writ petitions filed pursuant to this subdivision on their merits.

(5) This subdivision shall only apply to cases in which an order to set a hearing pursuant to this section is issued on or after January 1, 1995.

(m) Except for subdivision (j), this section shall also apply to minors adjudged wards pursuant to Section 727.31.

(n) (1) Notwithstanding Section 8704 of the Family Code or any other provision of law, the court, at a hearing held pursuant to this section or anytime thereafter, may designate a current caretaker as a prospective adoptive parent if the child has lived with the caretaker for at least six months, the caretaker currently expresses a commitment to adopt the child, and the caretaker has taken at least one step to facilitate the adoption process. In determining whether to make that designation, the court may take into consideration whether the caretaker is listed in the preliminary assessment prepared by the county department in accordance with subdivision (i) of Section 366.21 as an appropriate person to be considered as an adoptive parent for the child and the recommendation of the State Department of Social Services or licensed adoption agency.

(2) For purposes of this subdivision, steps to facilitate the adoption process include, but are not limited to, the following:

(A) Applying for an adoption homestudy.

(B) Cooperating with an adoption homestudy.

(C) Being designated by the court or the licensed adoption agency as the adoptive family.

(D) Requesting de facto parent status.

(E) Signing an adoptive placement agreement.

(F) Engaging in discussions regarding a postadoption contact agreement.

(G) Working to overcome any impediments that have been identified by the State Department of Social Services and the licensed adoption agency.

(H) Attending classes required of prospective adoptive parents.

(3) Prior to a change in placement and as soon as possible after a decision is made to remove a child from the home of a designated prospective adoptive parent, the agency shall notify the court, the designated prospective adoptive parent or the current caretaker, if that caretaker would have met the threshold criteria to be designated as a prospective adoptive parent pursuant to paragraph (1) on the date of service of this notice, the child's attorney, and the child, if the child is 10 years of age or older, of the proposal in the manner described in Section 16010.6.

(A) Within five court days or seven calendar days, whichever is longer, of the date of notification, the child, the child's attorney, or the designated

prospective adoptive parent may file a petition with the court objecting to the proposal to remove the child, or the court, upon its own motion, may set a hearing regarding the proposal. The court may, for good cause, extend the filing period. A caretaker who would have met the threshold criteria to be designated as a prospective adoptive parent pursuant to paragraph (1) on the date of service of the notice of proposed removal of the child may file, together with the petition under this subparagraph, a petition for an order designating the caretaker as a prospective adoptive parent for purposes of this subdivision.

(B) A hearing ordered pursuant to this paragraph shall be held as soon as possible and not later than five court days after the petition is filed with the court or the court sets a hearing upon its own motion, unless the court for good cause is unable to set the matter for hearing five court days after the petition is filed, in which case the court shall set the matter for hearing as soon as possible. At the hearing, the court shall determine whether the caretaker has met the threshold criteria to be designated as a prospective adoptive parent pursuant to paragraph (1), and whether the proposed removal of the child from the home of the designated prospective adoptive parent is in the child's best interest, and the child may not be removed from the home of the designated prospective adoptive parent unless the court finds that removal is in the child's best interest. If the court determines that the caretaker did not meet the threshold criteria to be designated as a prospective adoptive parent on the date of service of the notice of proposed removal of the child, the petition objecting to the proposed removal filed by the caretaker shall be dismissed. If the caretaker was designated as a prospective adoptive parent prior to this hearing, the court shall inquire into any progress made by the caretaker towards the adoption of the child since the caretaker was designated as a prospective adoptive parent.

(C) A determination by the court that the caretaker is a designated prospective adoptive parent pursuant to paragraph (1) or subparagraph (B) does not make the caretaker a party to the dependency proceeding nor does it confer on the caretaker any standing to object to any other action of the department or licensed adoption agency, unless the caretaker has been declared a de facto parent by the court prior to the notice of removal served pursuant to paragraph (3).

(D) If a petition objecting to the proposal to remove the child is not filed, and the court, upon its own motion, does not set a hearing, the child may be removed from the home of the designated prospective adoptive parent without a hearing.

(4) Notwithstanding paragraph (3), if the State Department of Social Services or a licensed adoption agency determines that the child must be removed from the home of the caretaker who is or may be a designated

prospective adoptive parent immediately, due to a risk of physical or emotional harm, the agency may remove the child from that home and is not required to provide notice prior to the removal. However, as soon as possible and not longer than two court days after the removal, the agency shall notify the court, the caretaker who is or may be a designated prospective adoptive parent, the child's attorney, and the child, if the child is 10 years of age or older, of the removal. Within five court days or seven calendar days, whichever is longer, of the date of notification of the removal, the child, the child's attorney, or the caretaker who is or may be a designated prospective adoptive parent may petition for, or the court on its own motion may set, a noticed hearing pursuant to paragraph (3). The court may, for good cause, extend the filing period.

(5) Except as provided in subdivision (b) of Section 366.28, an order by the court issued after a hearing pursuant to this subdivision shall not be appealable.

(6) Nothing in this section shall preclude a county child protective services agency from fully investigating and responding to alleged abuse or neglect of a child pursuant to Section 11165.5 of the Penal Code.

(7) The Judicial Council shall prepare forms to facilitate the filing of the petitions described in this subdivision, which shall become effective on January 1, 2006.

(o) The implementation and operation of the amendments to paragraph (3) of subdivision (c) and subparagraph (A) of paragraph (4) of subdivision (c) enacted at the 2005-06 Regular Session shall be subject to appropriation through the budget process and by phase, as provided in Section 366.35.

SEC. 2.7. Section 366.26 of the Welfare and Institutions Code is amended to read:

366.26. (a) This section applies to children who are adjudged dependent children of the juvenile court pursuant to subdivision (c) of Section 360. The procedures specified in this section are the exclusive procedures for conducting these hearings; Part 2 (commencing with Section 3020) of Division 8 of the Family Code is not applicable to these proceedings. Section 8714.7 of the Family Code is applicable and available to all dependent children meeting the requirements of that section, if the postadoption contact agreement has been entered into voluntarily. For children who are adjudged dependent children of the juvenile court pursuant to subdivision (c) of Section 360, this section and Sections 8604, 8605, 8606, and 8700 of the Family Code and Chapter 5 (commencing with Section 7660) of Part 3 of Division 12 of the Family Code specify the exclusive procedures for permanently terminating parental rights with regard to, or establishing legal guardianship of, the child while the child is a dependent child of the juvenile court.

(b) At the hearing, which shall be held in juvenile court for all children who are dependents of the juvenile court, the court, in order to provide stable, permanent homes for these children, shall review the report as specified in Section 361.5, 366.21, or 366.22, shall indicate that the court has read and considered it, shall receive other evidence that the parties may present, and then shall make findings and orders in the following order of preference:

(1) Terminate the rights of the parent or parents and order that the child be placed for adoption and, upon the filing of a petition for adoption in the juvenile court, order that a hearing be set. The court shall proceed with the adoption after the appellate rights of the natural parents have been exhausted.

(2) On making a finding under paragraph (3) of subdivision (c), identify adoption as the permanent placement goal and order that efforts be made to locate an appropriate adoptive family for the child within a period not to exceed 180 days.

(3) Appoint a legal guardian for the child and order that letters of guardianship issue.

(4) Order that the child be placed in long-term foster care, subject to the periodic review of the juvenile court under Section 366.3.

In choosing among the above alternatives, the court shall proceed pursuant to subdivision (c).

(c) (1) If the court determines, based on the assessment provided as ordered under subdivision (i) of Section 366.21 or subdivision (b) of Section 366.22, and any other relevant evidence, by a clear and convincing standard, that it is likely the child will be adopted, the court shall terminate parental rights and order the child placed for adoption. The fact that the child is not yet placed in a preadoptive home nor with a relative or foster family who is prepared to adopt the child, shall not constitute a basis for the court to conclude that it is not likely the child will be adopted. A finding under subdivision (b) or paragraph (1) of subdivision (e) of Section 361.5 that reunification services shall not be offered, under subdivision (e) of Section 366.21 that the whereabouts of a parent have been unknown for six months or that the parent has failed to visit or contact the child for six months or that the parent has been convicted of a felony indicating parental unfitness, or, under Section 366.21 or 366.22, that the court has continued to remove the child from the custody of the parent or guardian and has terminated reunification services, shall constitute a sufficient basis for termination of parental rights unless the court finds a compelling reason for determining that termination would be detrimental to the child due to one or more of the following circumstances:

(A) The parents or guardians have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship.

(B) A child 12 years of age or older objects to termination of parental rights.

(C) The child is placed in a residential treatment facility, adoption is unlikely or undesirable, and continuation of parental rights will not prevent finding the child a permanent family placement if the parents cannot resume custody when residential care is no longer needed.

(D) The child is living with a relative or foster parent who is unable or unwilling to adopt the child because of exceptional circumstances, that do not include an unwillingness to accept legal or financial responsibility for the child, but who is willing and capable of providing the child with a stable and permanent environment and the removal of the child from the physical custody of his or her relative or foster parent would be detrimental to the emotional well-being of the child. This subparagraph does not apply to any child who is living with a nonrelative and who is either (i) under six years of age or (ii) a member of a sibling group where at least one child is under six years of age and the siblings are, or should be, permanently placed together.

(E) There would be substantial interference with a child's sibling relationship, taking into consideration the nature and extent of the relationship, including, but not limited to, whether the child was raised with a sibling in the same home, whether the child shared significant common experiences or has existing close and strong bonds with a sibling, and whether ongoing contact is in the child's best interest, including the child's long-term emotional interest, as compared to the benefit of legal permanence through adoption.

If the court finds that termination of parental rights would be detrimental to the child pursuant to subparagraph (A), (B), (C), (D), or (E), it shall state its reasons in writing or on the record.

(2) The court shall not terminate parental rights if at each hearing at which the court was required to consider reasonable efforts or services, the court has found that reasonable efforts were not made or that reasonable services were not offered or provided.

(3) If the court finds that termination of parental rights would not be detrimental to the child pursuant to paragraph (1) and that the child has a probability for adoption but is difficult to place for adoption and there is no identified or available prospective adoptive parent, the court may identify adoption as the permanent placement goal and without terminating parental rights, order that efforts be made to locate an appropriate adoptive family for the child within a period not to exceed 180 days. During this 180-day period, the public agency responsible for

seeking adoptive parents for each child shall, to the extent possible, ask each child who is 10 years of age or older, to identify any individuals, other than the child's siblings, who are important to the child, in order to identify potential adoptive parents. The public agency may ask any other child to provide that information, as appropriate. During the 180-day period, the public agency shall, to the extent possible, contact other private and public adoption agencies regarding the availability of the child for adoption. During the 180-day period, the public agency shall conduct the search for adoptive parents in the same manner as prescribed for children in Sections 8708 and 8709 of the Family Code. At the expiration of this period, another hearing shall be held and the court shall proceed pursuant to paragraph (1) or (3) of subdivision (b). For purposes of this section, a child may only be found to be difficult to place for adoption if there is no identified or available prospective adoptive parent for the child because of the child's membership in a sibling group, or the presence of a diagnosed medical, physical, or mental handicap, or the child is the age of seven years or more.

(4) (A) If the court finds that adoption of the child or termination of parental rights is not in the best interest of the child, because one of the conditions in subparagraph (A), (B), (C), (D), or (E) of paragraph (1) or in paragraph (2) applies, the court shall either order that the present caretakers or other appropriate persons shall become legal guardians of the child or order that the child remain in long-term foster care. Legal guardianship shall be considered before long-term foster care, if it is in the best interest of the child and if a suitable guardian can be found. A child who is 10 years of age or older, shall be asked to identify any individuals, other than the child's siblings, who are important to the child, in order to identify potential guardians. The agency may ask any other child to provide that information, as appropriate.

(B) If the child is living with a relative or a foster parent who is willing and capable of providing a stable and permanent environment, but not willing to become a legal guardian, the child shall not be removed from the home if the court finds the removal would be seriously detrimental to the emotional well-being of the child because the child has substantial psychological ties to the relative caretaker or foster parents.

(C) The court shall also make an order for visitation with the parents or guardians unless the court finds by a preponderance of the evidence that the visitation would be detrimental to the physical or emotional well-being of the child.

(5) If the court finds that the child should not be placed for adoption, that legal guardianship shall not be established, and that there are no suitable foster parents except exclusive-use homes available to provide the child with a stable and permanent environment, the court may order

the care, custody, and control of the child transferred from the county welfare department to a licensed foster family agency. The court shall consider the written recommendation of the county welfare director regarding the suitability of the transfer. The transfer shall be subject to further court orders.

The licensed foster family agency shall place the child in a suitable licensed or exclusive-use home that has been certified by the agency as meeting licensing standards. The licensed foster family agency shall be responsible for supporting the child and providing appropriate services to the child, including those services ordered by the court. Responsibility for the support of the child shall not, in and of itself, create liability on the part of the foster family agency to third persons injured by the child. Those children whose care, custody, and control are transferred to a foster family agency shall not be eligible for foster care maintenance payments or child welfare services, except for emergency response services pursuant to Section 16504.

(d) The proceeding for the appointment of a guardian for a child who is a dependent of the juvenile court shall be in the juvenile court. If the court finds pursuant to this section that legal guardianship is the appropriate permanent plan, it shall appoint the legal guardian and issue letters of guardianship. The assessment prepared pursuant to subdivision (g) of Section 361.5, subdivision (i) of Section 366.21, and subdivision (b) of Section 366.22 shall be read and considered by the court prior to the appointment, and this shall be reflected in the minutes of the court. The person preparing the assessment may be called and examined by any party to the proceeding.

(e) The proceeding for the adoption of a child who is a dependent of the juvenile court shall be in the juvenile court if the court finds pursuant to this section that adoption is the appropriate permanent plan and the petition for adoption is filed in the juvenile court. Upon the filing of a petition for adoption, the juvenile court shall order that an adoption hearing be set. The court shall proceed with the adoption after the appellate rights of the natural parents have been exhausted. The full report required by Section 8715 of the Family Code shall be read and considered by the court prior to the adoption and this shall be reflected in the minutes of the court. The person preparing the report may be called and examined by any party to the proceeding. It is the intent of the Legislature, pursuant to this subdivision, to give potential adoptive parents the option of filing in the juvenile court the petition for the adoption of a child who is a dependent of the juvenile court. Nothing in this section is intended to prevent the filing of a petition for adoption in any other court as permitted by law, instead of in the juvenile court.

(f) At the beginning of any proceeding pursuant to this section, if the child or the parents are not being represented by previously retained or appointed counsel, including, in the case of any child who is not a lawful permanent resident or citizen of the United States, counsel appointed pursuant to subdivision (i) of Section 317, the court shall proceed as follows:

(1) In accordance with subdivision (c) of Section 317, if a child before the court is without counsel, the court shall appoint counsel unless the court finds that the child would not benefit from the appointment of counsel. The court shall state on the record its reasons for that finding.

(2) If a parent appears without counsel and is unable to afford counsel, the court shall appoint counsel for the parent, unless this representation is knowingly and intelligently waived. The same counsel shall not be appointed to represent both the child and his or her parent. The public defender or private counsel may be appointed as counsel for the parent.

(3) Private counsel appointed under this section shall receive a reasonable sum for compensation and expenses, the amount of which shall be determined by the court. The amount shall be paid by the real parties in interest, other than the child, in any proportions the court deems just. However, if the court finds that any of the real parties in interest are unable to afford counsel, the amount shall be paid out of the general fund of the county.

(g) The court may continue the proceeding for a period of time not to exceed 30 days as necessary to appoint counsel, and to enable counsel to become acquainted with the case.

(h) (1) At all proceedings under this section, the court shall consider the wishes of the child and shall act in the best interests of the child.

(2) In accordance with Section 349, the child shall be present in court if the child or the child's counsel so requests or the court so orders. If the child is 10 years of age or older and is not present at a hearing held pursuant to this section, the court shall determine whether the minor was properly notified of his or her right to attend the hearing and inquire as to the reason why the child is not present.

(3) (A) The testimony of the child may be taken in chambers and outside the presence of the child's parent or parents, if the child's parent or parents are represented by counsel, the counsel is present, and any of the following circumstances exists:

(i) The court determines that testimony in chambers is necessary to ensure truthful testimony.

(ii) The child is likely to be intimidated by a formal courtroom setting.

(iii) The child is afraid to testify in front of his or her parent or parents.

(B) After testimony in chambers, the parent or parents of the child may elect to have the court reporter read back the testimony or have the testimony summarized by counsel for the parent or parents.

(C) The testimony of a child also may be taken in chambers and outside the presence of the guardian or guardians of a child under the circumstances specified in this subdivision.

(i) (1) Any order of the court permanently terminating parental rights under this section shall be conclusive and binding upon the child, upon the parent or parents and upon all other persons who have been served with a citation by publication or otherwise as provided in this chapter. After making the order, the juvenile court shall have no power to set aside, change, or modify it, except as provided in paragraph (2), but nothing in this section shall be construed to limit the right to appeal the order.

(2) A child who has not been adopted after the passage of at least three years from the date the court terminated parental rights and for whom the court has determined that adoption is no longer the permanent plan may petition the juvenile court to reinstate parental rights pursuant to the procedure prescribed by Section 388. The child may file the petition prior to the expiration of this three-year period if the State Department of Social Services or licensed adoption agency that is responsible for custody and supervision of the child as described in subdivision (j) and the child stipulate that the child is no longer likely to be adopted. A child over 12 years of age shall sign the petition in the absence of a showing of good cause as to why the child could not do so. If it appears that the best interests of the child may be promoted by reinstatement of parental rights, the court shall order that a hearing be held and shall give prior notice, or cause prior notice to be given, to the social worker or probation officer and to the child's attorney of record, or, if there is no attorney of record for the child, to the child, and the child's tribe, if applicable, by means prescribed by subdivision (c) of Section 297. The court shall order the child or the social worker or probation officer to give prior notice of the hearing to the child's former parent or parents whose parental rights were terminated in the manner prescribed by subdivision (f) of Section 294 where the recommendation is adoption. The juvenile court shall grant the petition if it finds by clear and convincing evidence that the child is no longer likely to be adopted and that reinstatement of parental rights is in the child's best interest. If the court reinstates parental rights over a child who is under 12 years of age and for whom the new permanent plan will not be reunification with a parent or legal guardianship, the court shall specify the factual basis for its findings that it is in the best interest of the child to reinstate parental rights. This subdivision is intended to be retroactive and applies

to any child who is under the jurisdiction of the juvenile court at the time of the hearing regardless of the date parental rights were terminated.

(j) If the court, by order or judgment, declares the child free from the custody and control of both parents, or one parent if the other does not have custody and control, the court shall at the same time order the child referred to the State Department of Social Services or a licensed adoption agency for adoptive placement by the agency. However, a petition for adoption may not be granted until the appellate rights of the natural parents have been exhausted. The State Department of Social Services or licensed adoption agency shall be responsible for the custody and supervision of the child and shall be entitled to the exclusive care and control of the child at all times until a petition for adoption is granted, except as specified in subdivision (n). With the consent of the agency, the court may appoint a guardian of the child, who shall serve until the child is adopted.

(k) Notwithstanding any other provision of law, the application of any person who, as a relative caretaker or foster parent, has cared for a dependent child for whom the court has approved a permanent plan for adoption, or who has been freed for adoption, shall be given preference with respect to that child over all other applications for adoptive placement if the agency making the placement determines that the child has substantial emotional ties to the relative caretaker or foster parent and removal from the relative caretaker or foster parent would be seriously detrimental to the child's emotional well-being.

As used in this subdivision, "preference" means that the application shall be processed and, if satisfactory, the family study shall be completed before the processing of the application of any other person for the adoptive placement of the child.

(l) (1) An order by the court that a hearing pursuant to this section be held is not appealable at any time unless all of the following apply:

(A) A petition for extraordinary writ review was filed in a timely manner.

(B) The petition substantively addressed the specific issues to be challenged and supported that challenge by an adequate record.

(C) The petition for extraordinary writ review was summarily denied or otherwise not decided on the merits.

(2) Failure to file a petition for extraordinary writ review within the period specified by rule, to substantively address the specific issues challenged, or to support that challenge by an adequate record shall preclude subsequent review by appeal of the findings and orders made pursuant to this section.

(3) The Judicial Council shall adopt rules of court, effective January 1, 1995, to ensure all of the following:

(A) A trial court, after issuance of an order directing a hearing pursuant to this section be held, shall advise all parties of the requirement of filing a petition for extraordinary writ review as set forth in this subdivision in order to preserve any right to appeal in these issues. This notice shall be made orally to a party if the party is present at the time of the making of the order or by first-class mail by the clerk of the court to the last known address of a party not present at the time of the making of the order.

(B) The prompt transmittal of the records from the trial court to the appellate court.

(C) That adequate time requirements for counsel and court personnel exist to implement the objective of this subdivision.

(D) That the parent or guardian, or their trial counsel or other counsel, is charged with the responsibility of filing a petition for extraordinary writ relief pursuant to this subdivision.

(4) The intent of this subdivision is to do both of the following:

(A) Make every reasonable attempt to achieve a substantive and meritorious review by the appellate court within the time specified in Sections 366.21 and 366.22 for holding a hearing pursuant to this section.

(B) Encourage the appellate court to determine all writ petitions filed pursuant to this subdivision on their merits.

(5) This subdivision shall only apply to cases in which an order to set a hearing pursuant to this section is issued on or after January 1, 1995.

(m) Except for subdivision (j), this section shall also apply to minors adjudged wards pursuant to Section 727.31.

(n) (1) Notwithstanding Section 8704 of the Family Code or any other provision of law, the court, at a hearing held pursuant to this section or anytime thereafter, may designate a current caretaker as a prospective adoptive parent if the child has lived with the caretaker for at least six months, the caretaker currently expresses a commitment to adopt the child, and the caretaker has taken at least one step to facilitate the adoption process. In determining whether to make that designation, the court may take into consideration whether the caretaker is listed in the preliminary assessment prepared by the county department in accordance with subdivision (i) of Section 366.21 as an appropriate person to be considered as an adoptive parent for the child and the recommendation of the State Department of Social Services or licensed adoption agency.

(2) For purposes of this subdivision, steps to facilitate the adoption process include, but are not limited to, the following:

(A) Applying for an adoption homestudy.

(B) Cooperating with an adoption homestudy.

(C) Being designated by the court or the licensed adoption agency as the adoptive family.

- (D) Requesting de facto parent status.
- (E) Signing an adoptive placement agreement.
- (F) Engaging in discussions regarding a postadoption contact agreement.
- (G) Working to overcome any impediments that have been identified by the State Department of Social Services and the licensed adoption agency.

(H) Attending classes required of prospective adoptive parents.

(3) Prior to a change in placement and as soon as possible after a decision is made to remove a child from the home of a designated prospective adoptive parent, the agency shall notify the court, the designated prospective adoptive parent or the current caretaker, if that caretaker would have met the threshold criteria to be designated as a prospective adoptive parent pursuant to paragraph (1) on the date of service of this notice, the child's attorney, and the child, if the child is 10 years of age or older, of the proposal in the manner described in Section 16010.6.

(A) Within five court days or seven calendar days, whichever is longer, of the date of notification, the child, the child's attorney, or the designated prospective adoptive parent may file a petition with the court objecting to the proposal to remove the child, or the court, upon its own motion, may set a hearing regarding the proposal. The court may, for good cause, extend the filing period. A caretaker who would have met the threshold criteria to be designated as a prospective adoptive parent pursuant to paragraph (1) on the date of service of the notice of proposed removal of the child may file, together with the petition under this subparagraph, a petition for an order designating the caretaker as a prospective adoptive parent for purposes of this subdivision.

(B) A hearing ordered pursuant to this paragraph shall be held as soon as possible and not later than five court days after the petition is filed with the court or the court sets a hearing upon its own motion, unless the court for good cause is unable to set the matter for hearing five court days after the petition is filed, in which case the court shall set the matter for hearing as soon as possible. At the hearing, the court shall determine whether the caretaker has met the threshold criteria to be designated as a prospective adoptive parent pursuant to paragraph (1), and whether the proposed removal of the child from the home of the designated prospective adoptive parent is in the child's best interest, and the child may not be removed from the home of the designated prospective adoptive parent unless the court finds that removal is in the child's best interest. If the court determines that the caretaker did not meet the threshold criteria to be designated as a prospective adoptive parent on the date of service of the notice of proposed removal of the child, the

petition objecting to the proposed removal filed by the caretaker shall be dismissed. If the caretaker was designated as a prospective adoptive parent prior to this hearing, the court shall inquire into any progress made by the caretaker towards the adoption of the child since the caretaker was designated as a prospective adoptive parent.

(C) A determination by the court that the caretaker is a designated prospective adoptive parent pursuant to paragraph (1) or subparagraph (B) does not make the caretaker a party to the dependency proceeding nor does it confer on the caretaker any standing to object to any other action of the department or licensed adoption agency, unless the caretaker has been declared a de facto parent by the court prior to the notice of removal served pursuant to paragraph (3).

(D) If a petition objecting to the proposal to remove the child is not filed, and the court, upon its own motion, does not set a hearing, the child may be removed from the home of the designated prospective adoptive parent without a hearing.

(4) Notwithstanding paragraph (3), if the State Department of Social Services or a licensed adoption agency determines that the child must be removed from the home of the caretaker who is or may be a designated prospective adoptive parent immediately, due to a risk of physical or emotional harm, the agency may remove the child from that home and is not required to provide notice prior to the removal. However, as soon as possible and not longer than two court days after the removal, the agency shall notify the court, the caretaker who is or may be a designated prospective adoptive parent, the child's attorney, and the child, if the child is 10 years of age or older, of the removal. Within five court days or seven calendar days, whichever is longer, of the date of notification of the removal, the child, the child's attorney, or the caretaker who is or may be a designated prospective adoptive parent may petition for, or the court on its own motion may set, a noticed hearing pursuant to paragraph (3). The court may, for good cause, extend the filing period.

(5) Except as provided in subdivision (b) of Section 366.28, an order by the court issued after a hearing pursuant to this subdivision shall not be appealable.

(6) Nothing in this section shall preclude a county child protective services agency from fully investigating and responding to alleged abuse or neglect of a child pursuant to Section 11165.5 of the Penal Code.

(7) The Judicial Council shall prepare forms to facilitate the filing of the petitions described in this subdivision, which shall become effective on January 1, 2006.

(o) The implementation and operation of the amendments to paragraph (3) of subdivision (c) and subparagraph (A) of paragraph (4) of subdivision (c) enacted at the 2005-06 Regular Session shall be subject

to appropriation through the budget process and by phase, as provided in Section 366.35.

SEC. 3. (a) Section 2.1 of this bill incorporates amendments to Section 366.26 of the Welfare and Institutions Code proposed by both this bill and AB 1338. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2006, (2) each bill amends Section 366.26 of the Welfare and Institutions Code, (3) AB 1412 and SB 218 are not enacted or as enacted do not amend that section, and (4) this bill is enacted after AB 1338, in which case Sections 2, 2.2, 2.3, 2.4, 2.5, 2.6, and 2.7 of this bill shall not become operative.

(b) Section 2.2 of this bill incorporates amendments to Section 366.26 of the Welfare and Institutions Code proposed by both this bill and AB 1412. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2006, (2) each bill amends Section 366.26 of the Welfare and Institutions Code, (3) AB 1338 and SB 218 are not enacted or as enacted do not amend that section, and (4) this bill is enacted after AB 1412, in which case Sections 2, 2.1, 2.3, 2.4, 2.5, 2.6, and 2.7 of this bill shall not become operative.

(c) Section 2.3 of this bill incorporates amendments to Section 366.26 of the Welfare and Institutions Code proposed by both this bill and SB 218. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2006, (2) each bill amends Section 366.26 of the Welfare and Institutions Code, (3) AB 1338 and AB 1412 are not enacted or as enacted do not amend that section, and (4) this bill is enacted after SB 218, in which case Sections 2, 2.1, 2.2, 2.4, 2.5, 2.6, and 2.7 of this bill shall not become operative.

(d) Section 2.4 of this bill incorporates amendments to Section 366.26 of the Welfare and Institutions Code proposed by this bill, AB 1338, and AB 1412. It shall only become operative if (1) all three bills are enacted and become effective on or before January 1, 2006, (2) all three bills amend Section 366.26 of the Welfare and Institutions Code, (3) SB 218 is not enacted or as enacted does not amend that section and (4) this bill is enacted after AB 1338 and AB 1412, in which case Sections 2, 2.1, 2.2, 2.3, 2.5, 2.6, and 2.7 of this bill shall not become operative.

(e) Section 2.5 of this bill incorporates amendments to Section 366.26 of the Welfare and Institutions Code proposed by this bill, AB 1338, and SB 218. It shall only become operative if (1) all three bills are enacted and become effective on or before January 1, 2006, (2) all three bills amend Section 366.26 of the Welfare and Institutions Code, (3) AB 1412 is not enacted or as enacted does not amend that section and (4) this bill is enacted after AB 1338 and SB 218, in which case Sections 2, 2.1, 2.2, 2.3, 2.4, 2.6, and 2.7 of this bill shall not become operative.

(f) Section 2.6 of this bill incorporates amendments to Section 366.26 of the Welfare and Institutions Code proposed by this bill, AB 1412, and SB 218. It shall only become operative if (1) all three bills are enacted and become effective on or before January 1, 2006, (2) all three bills amend Section 366.26 of the Welfare and Institutions Code, (3) AB 1338 is not enacted or as enacted does not amend that section and (4) this bill is enacted after AB 1412 and SB 218, in which case Sections 2, 2.1, 2.2, 2.3, 2.4, 2.5, and 2.7 of this bill shall not become operative.

(g) Section 2.7 of this bill incorporates amendments to Section 366.26 of the Welfare and Institutions Code proposed by this bill, AB 1338, AB 1412, and SB 218. It shall only become operative if (1) all four bills are enacted and become effective on or before January 1, 2006, (2) all four bills amend Section 366.26 of the Welfare and Institutions Code, and (3) this bill is enacted after AB 1338, AB 1412, and SB 218 in which case Sections 2, 2.1, 2.2, 2.3, 2.4, 2.5, and 2.6 of this bill shall not become operative.

CHAPTER 635

An act to amend Section 851.5 of the Penal Code, relating to criminal procedure.

[Approved by Governor October 7, 2005. Filed with
Secretary of State October 7, 2005.]

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

SECTION 1. Section 851.5 of the Penal Code is amended to read:

851.5. (a) Immediately upon being booked, and, except where physically impossible, no later than three hours after arrest, an arrested person has the right to make at least three completed telephone calls, as described in subdivision (b).

The arrested person shall be entitled to make at least three calls at no expense if the calls are completed to telephone numbers within the local calling area.

(b) At any police facility or place where an arrestee is detained, a sign containing the following information in bold block type shall be posted in a conspicuous place:

That the arrestee has the right to free telephone calls within the local dialing area, or at his or her own expense if outside the local area, to three of the following:

(1) An attorney of his or her choice or, if he or she has no funds, the public defender or other attorney assigned by the court to assist indigents, whose telephone number shall be posted. This telephone call shall not be monitored, eavesdropped upon, or recorded.

(2) A bail bondsman.

(3) A relative or other person.

(c) If, upon questioning during the booking process, the arrested person is identified as a custodial parent with responsibility for a minor child, the arrested person shall be entitled to make two additional calls at no expense if the calls are completed to telephone numbers within the local calling area to a relative or other person for the purpose of arranging for the care of the minor child or children in the parent's absence.

(d) These telephone calls shall be given immediately upon request, or as soon as practicable.

(e) This provision shall not abrogate a law enforcement officer's duty to advise a suspect of his or her right to counsel or of any other right.

(f) Any public officer or employee who willfully deprives an arrested person of any right granted by this section is guilty of a misdemeanor.

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

However, if the Commission on State Mandates determines that this act contains other costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.

CHAPTER 636

An act to amend Section 11403.2 of the Welfare and Institutions Code, relating to public social services.

[Approved by Governor October 7, 2005. Filed with
Secretary of State October 7, 2005.]

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

SECTION 1. Section 11403.2 of the Welfare and Institutions Code is amended to read:

11403.2. (a) The following persons shall be eligible for transitional housing placement program services provided pursuant to Article 4 (commencing with Section 16522) of Chapter 5 of Part 4:

(1) Any minor at least 16 years of age and not more than 18 years of age, except as provided in Section 11403, who is eligible for AFDC-Foster Care benefits under this chapter and who meets the requirements in Section 16522.2.

(2) Any person less than 24 years of age who has emancipated from a county that has elected to participate in a transitional housing placement program for youths who are at least 18 years of age and under 24 years of age, as described in subdivision (r) of Section 11400, provided he or she has not received services under this paragraph for more than a total of 24 months, whether or not consecutive. If the person participating in a transitional housing placement program is not receiving aid under Section 11403.1, he or she, as a condition of participation, shall enter into, and execute the provisions of, a transitional independent living plan that shall be mutually agreed upon, and annually reviewed, by the emancipated foster youth and the county welfare or probation department or independent living program coordinator. The youth participating under this paragraph shall inform the county of any changes to conditions specified in the agreed-upon plan that affect eligibility, including changes in address, living circumstances, and the educational or training program.

(b) Payment on behalf of an eligible person receiving transitional housing services shall be made to the transitional housing placement program pursuant to the conditions and limitations set forth in Section 11403.3.

CHAPTER 637

An act to add Section 1507.25 to the Health and Safety Code, relating to community care facilities.

[Approved by Governor October 7, 2005. Filed with
Secretary of State October 7, 2005.]

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

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

(a) Anaphylaxis is a severe allergic reaction that involves the entire body. It can result in breathing difficulty, loss of consciousness, and even death if not immediately treated. Anaphylaxis is a medical emergency that requires immediate medical treatment. Severe anaphylactic shock can be reversed by use of an epinephrine autoinjector that delivers a single, pre-measured dose of epinephrine.

(b) Severe diabetic hypoglycemia is a life-threatening condition that can quickly lead to loss of consciousness, coma, and death. Severe diabetic hypoglycemia is a medical emergency that requires immediate medical treatment. Severe diabetic hypoglycemia can be reversed by an injection of glucagon.

(c) In the absence of trained medical personnel, relative caregivers or foster parents are often the only individuals in a position to provide emergency medical assistance to a foster child suffering anaphylaxis or severe diabetic hypoglycemia.

(d) It is the intent of the Legislature in enacting this act to authorize properly trained foster parents and relative caregivers to provide emergency medical services to foster children suffering from anaphylaxis or severe diabetic hypoglycemia.

(e) It is the intent of the Legislature to authorize gratuitous medical care by foster parents and their replacement designees as required in the care of a foster child in carrying out a medical order prescribed by a licensed health care practitioner, as long as the foster parents and replacement designees do not in any way assume to practice as a professional, registered, graduate or trained nurse.

SEC. 2. Section 1507.25 is added to the Health and Safety Code, to read:

1507.25. (a) (1) Notwithstanding any other provision of law, a person described in paragraph (2), who is not a licensed health care professional, but who is trained to administer injections by a licensed health care professional practicing within his or her scope of practice, may administer emergency medical assistance and injections for severe diabetic hypoglycemia and anaphylactic shock to a foster child in placement.

(2) The following individuals shall be authorized to administer emergency medical assistance and injections in accordance with this subdivision:

- (A) A relative caregiver.
- (B) A nonrelative extended family member.
- (C) A foster family home parent.
- (D) A small family home parent.
- (E) A certified parent of a foster family agency.

(F) A substitute caregiver of a foster family home or a certified family home.

(G) A direct care staff member of a small family home or a group home.

(3) The licensed health care professional shall periodically review, correct, or update training provided pursuant to this section as he or she deems necessary and appropriate.

(b) (1) Notwithstanding any other provision of law, a person described in paragraph (2), who is not a licensed health care professional, but who is trained to administer injections by a licensed health care professional practicing within his or her scope of practice, may administer subcutaneous injections of other medications, including insulin, as prescribed by the child's physician, to a foster child in placement.

(2) The following individuals shall be authorized to give prescribed injections including insulin in accordance with this subdivision:

(A) A relative caregiver.

(B) A nonrelative extended family member.

(C) A foster family home parent.

(D) A small family home parent.

(E) A certified parent of a foster family agency.

(F) In the absence of a foster parent, a designated substitute caregiver in a foster family home or a certified family home.

(3) The licensed health care professional shall periodically review, correct, or update training provided pursuant to this section as he or she deems necessary and appropriate.

(c) For purposes of this section, administration of an insulin injection shall include all necessary supportive activities related to the preparation and administration of injection, including glucose testing and monitoring.

(d) Notwithstanding Part 5.5 (commencing with Section 17700) of Division 9 of, and particularly subdivision (g) of Section 17710 of, the Welfare and Institutions Code, a child's need to receive injections pursuant to this section shall not be the sole basis for determining that the child has a medical condition requiring specialized in-home health care.

(e) This section does not supersede the requirements of Section 369.5 of the Welfare and Institutions Code, with respect to the administration of psychotropic medication to a dependent child of the court.

CHAPTER 638

An act to add Title 1.2A (commencing with Section 1746) to Part 4 of Division 3 of the Civil Code, relating to violent video games.

[Approved by Governor October 7, 2005. Filed with
Secretary of State October 7, 2005.]

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

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

(a) Exposing minors to depictions of violence in video games, including sexual and heinous violence, makes those minors more likely to experience feelings of aggression, to experience a reduction of activity in the frontal lobes of the brain, and to exhibit violent antisocial or aggressive behavior.

(b) Even minors who do not commit acts of violence suffer psychological harm from prolonged exposure to violent video games.

(c) The state has a compelling interest in preventing violent, aggressive, and antisocial behavior, and in preventing psychological or neurological harm to minors who play violent video games.

SEC. 2. Title 1.2A (commencing with Section 1746) is added to Part 4 of Division 3 of the Civil Code, to read:

TITLE 1.2A. VIOLENT VIDEO GAMES

1746. For purposes of this title, the following definitions shall apply:

(a) “Minor” means any natural person who is under 18 years of age.

(b) “Person” means any natural person, partnership, firm, association, corporation, limited liability company, or other legal entity.

(c) “Video game” means any electronic amusement device that utilizes a computer, microprocessor, or similar electronic circuitry and its own monitor, or is designed to be used with a television set or a computer monitor, that interacts with the user of the device.

(d) (1) “Violent video game” means a video game in which the range of options available to a player includes killing, maiming, dismembering, or sexually assaulting an image of a human being, if those acts are depicted in the game in a manner that does either of the following:

(A) Comes within all of the following descriptions:

(i) A reasonable person, considering the game as a whole, would find appeals to a deviant or morbid interest of minors.

(ii) It is patently offensive to prevailing standards in the community as to what is suitable for minors.

(iii) It causes the game, as a whole, to lack serious literary, artistic, political, or scientific value for minors.

(B) Enables the player to virtually inflict serious injury upon images of human beings or characters with substantially human characteristics

in a manner which is especially heinous, cruel, or depraved in that it involves torture or serious physical abuse to the victim.

(2) For purposes of this subdivision, the following definitions apply:

(A) “Cruel” means that the player intends to virtually inflict a high degree of pain by torture or serious physical abuse of the victim in addition to killing the victim.

(B) “Depraved” means that the player relishes the virtual killing or shows indifference to the suffering of the victim, as evidenced by torture or serious physical abuse of the victim.

(C) “Heinous” means shockingly atrocious. For the killing depicted in a video game to be heinous, it must involve additional acts of torture or serious physical abuse of the victim as set apart from other killings.

(D) “Serious physical abuse” means a significant or considerable amount of injury or damage to the victim’s body which involves a substantial risk of death, unconsciousness, extreme physical pain, substantial disfigurement, or substantial impairment of the function of a bodily member, organ, or mental faculty. Serious physical abuse, unlike torture, does not require that the victim be conscious of the abuse at the time it is inflicted. However, the player must specifically intend the abuse apart from the killing.

(E) “Torture” includes mental as well as physical abuse of the victim. In either case, the virtual victim must be conscious of the abuse at the time it is inflicted; and the player must specifically intend to virtually inflict severe mental or physical pain or suffering upon the victim, apart from killing the victim.

(3) Pertinent factors in determining whether a killing depicted in a video game is especially heinous, cruel, or depraved include infliction of gratuitous violence upon the victim beyond that necessary to commit the killing, needless mutilation of the victim’s body, and helplessness of the victim.

1746.1. (a) A person may not sell or rent a video game that has been labeled as a violent video game to a minor.

(b) Proof that a defendant, or his or her employee or agent, demanded, was shown, and reasonably relied upon evidence that a purchaser or renter of a violent video game was not a minor or that the manufacturer failed to label a violent video game as required pursuant to Section 1746.2 shall be an affirmative defense to any action brought pursuant to this title. That evidence may include, but is not limited to, a driver’s license or an identification card issued to the purchaser or renter by a state or by the Armed Forces of the United States.

(c) This section shall not apply if the violent video game is sold or rented to a minor by the minor’s parent, grandparent, aunt, uncle, or legal guardian.

1746.2. Each violent video game that is imported into or distributed in California for retail sale shall be labeled with a solid white "18" outlined in black. The "18" shall have dimensions of no less than 2 inches by 2 inches. The "18" shall be displayed on the front face of the video game package.

1746.3. Any person who violates any provision of this title shall be liable in an amount of up to one thousand dollars (\$1,000), or a lesser amount as determined by the court. However, this liability shall not apply to any person who violates those provisions if he or she is employed solely in the capacity of a salesclerk or other, similar position and he or she does not have an ownership interest in the business in which the violation occurred and is not employed as a manager in that business.

1746.4. A suspected violation of this title may be reported to a city attorney, county counsel, or district attorney by a parent, legal guardian, or other adult acting on behalf of a minor to whom a violent video game has been sold or rented. A violation of this title may be prosecuted by any city attorney, county counsel, or district attorney.

1746.5. The provisions of this title are severable. If any provision of this title or its application is held to be invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

CHAPTER 639

An act to amend Sections 48853, 48853.5, 48859, 49069.5, 52052, 56034, 56366.1, and 56366.2 of the Education Code, and to amend Sections 319, 361, and 391 of the Welfare and Institutions Code, relating to foster children.

[Approved by Governor October 7, 2005. Filed with
Secretary of State October 7, 2005.]

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

SECTION 1. Section 48853 of the Education Code is amended to read:

48853. (a) A pupil placed in a licensed children's institution or foster family home shall attend programs operated by the local educational agency, unless one of the following applies:

(1) The pupil is entitled to remain in his or her school of origin pursuant to paragraph (1) of subdivision (d) of Section 48853.5.

(2) The pupil has an individualized education program requiring placement in a nonpublic, nonsectarian school or agency, or in another local educational agency.

(3) The parent or guardian, or other person holding the right to make educational decisions for the pupil pursuant to Section 361 or 727 of the Welfare and Institutions Code or Section 56055, determines that it is in the best interests of the pupil to be placed in another educational program.

(b) Before any decision is made to place a pupil in a juvenile court school as defined by Section 48645.1, a community school as described in Sections 1981 and 48660, or other alternative educational setting, the parent or guardian, or person holding the right to make educational decisions for the pupil pursuant to Section 361 or 726 of the Welfare and Institutions Code or Section 56055, shall first consider placement in the regular public school.

(c) If any dispute arises as to the school placement of a pupil subject to this section, the pupil has the right to remain in his or her school of origin, as defined in subdivision (e) of Section 48853.5, pending resolution of the dispute. The dispute shall be resolved in accordance with the existing dispute resolution process available to any pupil served by the local educational agency.

(d) This section does not supersede other laws that govern pupil expulsion.

(e) This section does not supersede any other law governing the educational placement in a juvenile court school, as defined by Section 48645.1, of a pupil detained in a county juvenile hall, or committed to a county juvenile ranch, camp, forestry camp, or regional facility.

(f) Foster children living in emergency shelters, as referenced in the federal McKinney-Vento Homeless Assistance Act (42 U.S.C. Sec. 11301 et seq.), may receive educational services at the emergency shelter as necessary for short periods of time for either of the following reasons:

(1) For health and safety emergencies.

(2) To provide temporary, special, and supplementary services to meet the child's unique needs if a decision regarding whether it is in the child's best interests to attend the school of origin cannot be made promptly, it is not practical to transport the child to the school of origin, and the child would otherwise not receive educational services.

The educational services may be provided at the shelter pending a determination by the person holding the right regarding the educational placement of the child.

(g) All educational and school placement decisions shall be made to ensure that the child is placed in the least restrictive educational programs and has access to academic resources, services, and extracurricular and enrichment activities that are available to all pupils. In all instances,

educational and school placement decisions shall be based on the best interests of the child.

SEC. 2. Section 48853.5 of the Education Code is amended to read:

48853.5. (a) This section applies to any foster child who has been removed from his or her home pursuant to Section 309 of the Welfare and Institutions Code, is the subject of a petition filed under Section 300 or 602 of the Welfare and Institutions Code, or has been removed from his or her home and is the subject of a petition filed under Section 300 or 602 of the Welfare and Institutions Code.

(b) Each local educational agency shall designate a staff person as the educational liaison for foster children. In a school district that operates a foster children services program pursuant to Chapter 11.3 (commencing with Section 42920) of Part 24, the educational liaison shall be affiliated with the local foster children services program. The liaison shall do all of the following:

(1) Ensure and facilitate the proper educational placement, enrollment in school, and checkout from school of foster children.

(2) Assist foster children when transferring from one school to another or from one school district to another in ensuring proper transfer of credits, records, and grades.

(c) This section does not grant authority to the educational liaison that supersedes the authority granted under state and federal law to a parent or guardian retaining educational rights, a responsible adult appointed by the court to represent the child pursuant to Section 361 or 726 of the Welfare and Institutions Code, a surrogate parent, or a foster parent exercising the authority granted under Section 56055. The role of the educational liaison is advisory with respect to placement decisions and determination of school of origin.

(d) (1) At the initial detention or placement, or any subsequent change in placement of a foster child, the local educational agency serving the foster child shall allow the foster child to continue his or her education in the school of origin for the duration of the academic school year.

(2) The liaison, in consultation with and the agreement of the foster child and the person holding the right to make educational decisions for the foster child may, in accordance with the foster child's best interests, recommend that the foster child's right to attend the school of origin be waived and the foster child be enrolled in any public school that pupils living in the attendance area in which the foster child resides are eligible to attend.

(3) Prior to making any recommendation to move a foster child from his or her school of origin, the liaison shall provide the foster child and the person holding the right to make educational decisions for the foster

child with a written explanation stating the basis for the recommendation and how this recommendation serves the foster child's best interest.

(4) (A) If the liaison in consultation with the foster child and the person holding the right to make educational decisions for the foster child agree that the best interests of the foster child would best be served by his or her transfer to a school other than the school of origin, the foster child shall immediately be enrolled in the new school.

(B) The new school shall immediately enroll the foster child even if the foster child has outstanding fees, fines, textbooks, or other items or moneys due to the school last attended or is unable to produce records or clothing normally required for enrollment, such as previous academic records, medical records, proof of residency, other documentation, or school uniforms.

(C) The liaison for the new school shall, within two business days of the foster child's request for enrollment, contact the school last attended by the foster child to obtain all academic and other records. All required records shall be provided to the new school regardless of any outstanding fees, fines, textbooks, or other items or moneys owed to the school last attended. The school liaison for the school last attended shall provide all records to the new school within two business days of receiving the request.

(5) If any dispute arises regarding the request of a foster child to remain in the school of origin, the foster child has the right to remain in the school of origin pending resolution of the dispute. The dispute shall be resolved in accordance with the existing dispute resolution process available to any pupil served by the local educational agency.

(6) The local educational agency and the county placing agency are encouraged to collaborate to ensure maximum utilization of available federal moneys, explore public-private partnerships, and access any other funding sources to promote the well-being of foster children through educational stability.

(e) For purposes of this section, "school of origin" means the school that the foster child attended when permanently housed or the school in which the foster child was last enrolled. If the school the foster child attended when permanently housed is different from the school in which the foster child was last enrolled, or if there is some other school that the foster child attended with which the foster child is connected and which the foster child attended within the immediately preceding 15 months, the liaison, in consultation with and the agreement of the foster child and the person holding the right to make educational decisions for the foster child, shall determine, in the best interests of the foster child, the school that shall be deemed the school of origin.

(f) This section does not supersede other law governing the educational placements in juvenile court schools, as defined by Section 48645.1, by the juvenile court under Section 602 of the Welfare and Institutions Code.

SEC. 3. Section 48859 of the Education Code is amended to read:

48859. For purposes of this chapter, the following terms have the following meanings:

(a) "County placing agency" means the county social services department or county probation department.

(b) "Educational authority" means an entity designated to represent the interests of a child for educational and related services.

(c) "Local educational agency" means a school district, a county office of education, a charter school participating as a member of a special education local plan area, or a special education local plan area.

SEC. 4. Section 49069.5 of the Education Code is amended to read:

49069.5. (a) The Legislature finds and declares that the mobility of pupils in foster care often disrupts their educational experience. The Legislature also finds that efficient transfer procedures and transfer of pupil records is a critical factor in the swift placement of foster children in educational settings.

(b) The proper and timely transfer between schools of pupils in foster care is the responsibility of both the local educational agency and the county placing agency.

(c) As soon as the county placing agency becomes aware of the need to transfer a pupil in foster care out of his or her current school, the county placing agency shall contact the appropriate person at the local educational agency of the pupil. The county placing agency shall notify the local educational agency of the date that the pupil will be leaving the school and request that the pupil be transferred out.

(d) Upon receiving a transfer request from a county placing agency, the local educational agency shall, within two business days, transfer the pupil out of school and deliver the educational information and records of the pupil to the next educational placement.

(e) As part of the transfer process described under subdivisions (c) and (d), the local educational agency shall compile the complete educational record of the pupil including a determination of seat time, full or partial credits earned, current classes and grades, immunization and other records, and, if applicable, a copy of the pupil's plan adopted pursuant to Section 504 of the federal Rehabilitation Act of 1973 (29 U.S.C. Sec. 794 et seq.) or individualized education program adopted pursuant to the federal Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400 et seq.).

(f) The local educational agency shall assign the duties listed in this section to a person competent to handle the transfer procedure and aware of the specific educational recordkeeping needs of homeless, foster, and other transient children who transfer between schools.

(g) The local educational agency shall ensure that if the pupil in foster care is absent from school due to a decision to change the placement of a pupil made by a court or placing agency, the grades and credits of the pupil will be calculated as of the date the pupil left school, and no lowering of grades will occur as a result of the absence of the pupil under these circumstances.

(h) The local educational agency shall ensure that if the pupil in foster care is absent from school due to a verified court appearance or related court ordered activity, no lowering of his or her grades will occur as a result of the absence of the pupil under these circumstances.

(i) For the purposes of this section, "pupil in foster care" means any child who has been removed from his or her home pursuant to Section 309 of the Welfare and Institutions Code, is the subject of a petition filed under Section 300 or 602 of the Welfare and Institutions Code, or has been removed from his or her home and is the subject of a petition filed under Section 300 or 602 of the Welfare and Institutions Code.

SEC. 5. Section 52052 of the Education Code is amended to read:

52052. (a) (1) The Superintendent, with approval of the State Board of Education, shall develop an Academic Performance Index (API), to measure the performance of schools, especially the academic performance of pupils.

(2) A school shall demonstrate comparable improvement in academic achievement as measured by the API by all numerically significant pupil subgroups at the school, including:

- (A) Ethnic subgroups.
- (B) Socioeconomically disadvantaged pupils.
- (C) English language learners.
- (D) Pupils with disabilities.

(3) (A) For purposes of this section, a numerically significant pupil subgroup is one that meets both of the following criteria:

(i) The subgroup consists of at least 50 pupils each of whom has a valid test score.

(ii) The subgroup constitutes at least 15 percent of a school's total population of pupils who have valid test scores.

(B) If a subgroup does not constitute 15 percent of the school's total population of pupils with valid test scores, the subgroup may constitute a numerically significant pupil subgroup if it has at least 100 valid test scores.

(C) For a school with an API score that is based on no fewer than 11 and no more than 99 pupils with valid test scores, numerically significant subgroups shall be defined by the Superintendent, with approval by the State Board of Education.

(4) The API shall consist of a variety of indicators currently reported to the department, including, but not limited to, the results of the achievement test administered pursuant to Section 60640, attendance rates for pupils in elementary schools, middle schools, and secondary schools, and the graduation rates for pupils in secondary schools.

(A) The pupil data collected for the API that comes from the achievement test administered pursuant to Sections 60640 and 60644 and the high school exit examination administered pursuant to Section 60851, when fully implemented, shall be disaggregated by special education status, English language learners, socioeconomic status, gender and ethnic group. Only the test scores of pupils who were counted as part of the enrollment in the annual California Basic Education Data System's data collection for the current fiscal year and who were continuously enrolled during that year may be included in the test result reports in the school's API. Results of the achievement test and other tests specified in subdivision (b) shall constitute at least 60 percent of the value of the index.

(B) Before including high school graduation rates and attendance rates in the index, the Superintendent shall determine the extent to which the data are currently reported to the state and the accuracy of the data.

(b) Pupil scores from the following tests, when available and when found to be valid and reliable for this purpose, shall be incorporated into the API:

(1) The assessment of the applied academic skills matrix test developed pursuant to Section 60604.

(2) The nationally normed test designated pursuant to Section 60642.

(3) The standards-based achievement tests provided for in Section 60642.5.

(4) The high school exit examination.

(c) Based on the API, the Superintendent shall develop, and the State Board of Education shall adopt, expected annual percentage growth targets for all schools based on their API baseline score from the previous year. Schools are expected to meet these growth targets through effective allocation of available resources. For schools below the statewide API performance target adopted by the State Board of Education pursuant to subdivision (d), the minimum annual percentage growth target shall be 5 percent of the difference between a school's actual API score and the statewide API performance target, or one API point, whichever is greater. Schools at or above the statewide API performance target shall

have, as their growth target, maintenance of their API score above the statewide API performance target. However, the State Board of Education may set differential growth targets based on grade level of instruction and may set higher growth targets for the lowest performing schools because they have the greatest room for improvement. To meet its growth target, a school shall demonstrate that the annual growth in its API is equal to or more than its schoolwide annual percentage growth target and that all numerically significant pupil subgroups, as defined in subdivision (a), are making comparable improvement.

(d) Upon adoption of state performance standards by the State Board of Education, the Superintendent shall recommend, and the State Board of Education shall adopt, a statewide API performance target that includes consideration of performance standards and represents the proficiency level required to meet the state performance target. When the API is fully developed, schools must, at a minimum, meet their annual API growth targets to be eligible for the Governor's Performance Award Program as set forth in Section 52057. The State Board of Education may establish additional criteria that schools must meet to be eligible for the Governor's Performance Award Program.

(e) The API shall be used for both of the following:

(1) Measuring the progress of schools selected for participation in the Immediate Intervention/Underperforming Schools Program pursuant to Section 52053.

(2) Ranking all public schools in the state for the purpose of the High Achieving/Improving Schools Program pursuant to Section 52056.

(f) (1) A school with 11 to 99 pupils with valid test scores shall receive an API score with an asterisk that indicates less statistical certainty than API scores based on 100 or more test scores.

(2) A school shall annually receive an API score, unless the Superintendent determines that an API score would be an invalid measure of the school's performance for one or more of the following reasons:

(A) Irregularities in testing procedures occurred.

(B) The data used to calculate the school's API score are not representative of the pupil population at the school.

(C) Significant demographic changes in the pupil population render year-to-year comparisons of pupil performance invalid.

(D) The department discovers or receives information indicating that the integrity of the API score has been compromised.

(E) Insufficient pupil participation in the assessments included in the API.

(3) If a school has less than 100 pupils with valid test scores, the calculation of the API or adequate yearly progress pursuant to the federal No Child Left Behind Act of 2001 (20 U.S.C. Sec. 6301 et seq.) and

federal regulations may be calculated over more than one annual administration of the tests administered pursuant to Sections 60640 and 60644 and the high school exit exam administered pursuant to Section 60851, consistent with regulations adopted by the State Board of Education.

(g) Only schools with 100 or more test scores contributing to the API may be included in the API rankings.

(h) The Superintendent, with the approval of the State Board of Education, shall develop an alternative accountability system for schools under the jurisdiction of a county board of education or a county superintendent of schools, community day schools, nonpublic, nonsectarian schools pursuant to Section 56366, and alternative schools serving high-risk pupils, including continuation high schools and opportunity schools. Schools in the alternative accountability system may receive an API score, but shall not be included in the API rankings.

SEC. 6. Section 56034 of the Education Code is amended to read:

56034. "Nonpublic, nonsectarian school" means a private, nonsectarian school that enrolls individuals with exceptional needs pursuant to an individualized education program and is certified by the department. It does not include an organization or agency that operates as a public agency or offers public service, including, but not limited to, a state or local agency, an affiliate of a state or local agency, including a private, nonprofit corporation established or operated by a state or local agency, or a public university or college. A nonpublic, nonsectarian school also shall meet standards as prescribed by the Superintendent and board.

SEC. 7. Section 56366.1 of the Education Code is amended to read:

56366.1. (a) A nonpublic, nonsectarian school or agency that seeks certification shall file an application with the Superintendent on forms provided by the department and include the following information on the application:

(1) A description of the special education and designated instruction and services provided to individuals with exceptional needs if the application is for nonpublic, nonsectarian school certification.

(2) A description of the designated instruction and services provided to individuals with exceptional needs if the application is for nonpublic, nonsectarian agency certification.

(3) A list of appropriately qualified staff, a description of the credential, license, or registration that qualifies each staff member rendering special education or designated instruction and services to do so, and copies of their credentials, licenses, or certificates of registration with the appropriate state or national organization that has established standards for the service rendered.

(4) An annual operating budget.

(5) Affidavits and assurances necessary to comply with all applicable federal, state, and local laws and regulations which include criminal record summaries required of all nonpublic school or agency personnel having contact with minor children under Section 44237.

(b) (1) The applicant shall provide the special education local plan area in which the applicant is located with the written notification of its intent to seek certification or renewal of its certification. The applicant shall submit on a form, developed by the department, a signed verification by local educational agency representatives that they have been notified of the intent to certify or renew certification. The verification shall include a statement that representatives of the local educational agency for the area in which the applicant is located have had the opportunity to review the application at least 60 calendar days prior to submission of an initial application to the Superintendent, or at least 30 calendar days prior to submission of a renewal application to the Superintendent. The signed verification shall provide assurances that local educational agency representatives have had the opportunity to provide input on all required components of the application.

(2) If the applicant has not received a response from the local educational agency 60 calendar days from the date of the return receipt for initial applications or 30 calendar days from the date of the return receipt for renewal applications, the applicant may file the application with the Superintendent. A copy of the return receipt shall be included with the application as verification of notification efforts to the local educational agency.

(3) The department shall mail renewal application materials to certified nonpublic, nonsectarian schools and agencies at least 120 days prior to the date their current certification expires.

(c) If the applicant operates a facility or program on more than one site, each site shall be certified.

(d) If the applicant is part of a larger program or facility on the same site, the Superintendent shall consider the effect of the total program on the applicant. A copy of the policies and standards for the nonpublic, nonsectarian school or agency and the larger program shall be available to the Superintendent.

(e) Prior to certification, the Superintendent shall conduct an onsite review of the facility and program for which the applicant seeks certification. The Superintendent may be assisted by representatives of the special education local plan area in which the applicant is located and a nonpublic, nonsectarian school or agency representative who does not have a conflict of interest with the applicant. The Superintendent shall conduct an additional onsite review of the facility and program

within three years of the effective date of the certification, unless the Superintendent conditionally certifies the school or agency or unless the Superintendent receives a formal complaint against the school or agency. In the latter two cases, the Superintendent shall conduct an onsite review at least annually.

(f) The Superintendent shall make a determination on an application within 120 days of receipt of the application and shall certify, conditionally certify, or deny certification to the applicant. If the Superintendent fails to take one of these actions within 120 days, the applicant is automatically granted conditional certification for a period terminating on August 31, of the current school year. If certification is denied, the Superintendent shall provide reasons for the denial. The Superintendent may certify the school or agency for a period of not longer than one year.

(g) Certification becomes effective on the date the nonpublic, nonsectarian school or agency meets all the application requirements and is approved by the Superintendent. Certification may be retroactive if the school or agency met all the requirements of this section on the date the retroactive certification is effective. Certification expires on December 31 of the terminating year.

(h) The Superintendent shall annually review the certification of each nonpublic, nonsectarian school and agency. For this purpose, a certified school or agency shall annually update its application between August 1 and October 31, unless the board grants a waiver pursuant to Section 56101. The Superintendent may conduct an onsite review as part of the annual review.

(i) (1) The Superintendent shall conduct an investigation of a nonpublic, nonsectarian school or agency onsite at any time without prior notice if there is substantial reason to believe that there is an immediate danger to the health, safety, or welfare of a child. The Superintendent shall document the concern and submit it to the nonpublic, nonsectarian school or agency at the time of the onsite investigation. The Superintendent shall require a written response to any noncompliance or deficiency found.

(2) With respect to a nonpublic, nonsectarian school, the Superintendent shall conduct an investigation, which may include an unannounced onsite visit, if the Superintendent receives evidence of a significant deficiency in the quality of educational services provided, a violation of Section 56366.9, or noncompliance with the policies expressed by subdivision (b) of Section 1501 of the Health and Safety Code by the nonpublic, nonsectarian school. The Superintendent shall document the complaint and the results of the investigation and shall

provide copies of the documentation to the complainant, the nonpublic, nonsectarian school, and the contracting local educational agency.

(3) Violations or noncompliance documented pursuant to paragraph (1) or (2) shall be reflected in the status of the certification of the school, at the discretion of the Superintendent, pending an approved plan of correction by the nonpublic, nonsectarian school. The department shall retain for a period of 10 years, all violations pertaining to certification of the nonpublic, nonsectarian school or agency.

(j) The Superintendent shall monitor the facilities, the educational environment, and the quality of the educational program, including the teaching staff, the credentials authorizing service, the standards-based core curriculum being employed, and the standard focused instructional materials used, of an existing certified nonpublic, nonsectarian school or agency on a three-year cycle, as follows:

(1) The nonpublic, nonsectarian school or agency shall complete a self-review in year one.

(2) The Superintendent shall conduct an onsite review of the nonpublic, nonsectarian school or agency in year two.

(3) The Superintendent shall conduct a followup visit to the nonpublic, nonsectarian school or agency in year three.

(k) (1) Notwithstanding any other provision of law, the Superintendent may not certify a nonpublic, nonsectarian school or agency that proposes to initiate or expand services to pupils currently educated in the immediate prior fiscal year in a juvenile court program, community school pursuant to Section 56150, or other nonspecial education program, including independent study or adult school, or both, unless the nonpublic, nonsectarian school or agency notifies the county superintendent of schools and the special education local plan area in which the proposed new or expanded nonpublic, nonsectarian school or agency is located of its intent to seek certification.

(2) The notification shall occur no later than the December 1 prior to the new fiscal year in which the proposed or expanding school or agency intends to initiate services. The notice shall include the following:

(A) The specific date upon which the proposed nonpublic, nonsectarian school or agency is to be established.

(B) The location of the proposed program or facility.

(C) The number of pupils proposed for services, the number of pupils currently served in the juvenile court, community school, or other nonspecial education program, the current school services including special education and related services provided for these pupils, and the specific program of special education and related services to be provided under the proposed program.

(D) The reason for the proposed change in services.

(E) The number of staff that will provide special education and designated instruction and services and hold a current valid California credential or license in the service rendered or certificate of registration to provide occupational therapy.

(3) In addition to the requirements in subdivisions (a) to (f), inclusive, the Superintendent shall require and consider the following in determining whether to certify a nonpublic, nonsectarian school or agency as described in this subdivision:

(A) A complete statement of the information required as part of the notice under paragraph (1).

(B) Documentation of the steps taken in preparation for the conversion to a nonpublic, nonsectarian school or agency, including information related to changes in the population to be served and the services to be provided pursuant to each pupil's individualized education program.

(4) Notwithstanding any other provision of law, the certification becomes effective no earlier than July 1 if the school or agency provided the notification required pursuant to paragraph (1).

(l) (1) Commencing July 1, 2006, notwithstanding any other provision of law, the Superintendent may not certify or renew the certification of a nonpublic, nonsectarian school or agency, unless all of the following conditions are met:

(A) The entity operating the nonpublic, nonsectarian school or agency maintains separate financial records for each entity that it operates, with each nonpublic, nonsectarian school or agency identified separately from any licensed children's institution that it operates.

(B) The entity submits an annual budget that identifies the projected costs and revenues for each entity and demonstrates that the rates to be charged are reasonable to support the operation of the entity.

(C) The entity submits an entity-wide annual audit that identifies its costs and revenues, by entity, in accordance with generally accepted accounting and auditing principles. The audit shall clearly document the amount of moneys received and expended on the education program provided by the nonpublic, nonsectarian school.

(D) The relationship between various entities operated by the same entity are documented, defining the responsibilities of the entities. The documentation shall clearly identify the services to be provided as part of each program, for example, the residential or medical program, the mental health program, or the educational program. The entity shall not seek funding from a public agency for a service, either separately or as part of a package of services, if the service is funded by another public agency, either separately or as part of a package of services.

(2) For purposes of this section, the term "licensed children's institution" has the same meaning as it is defined by Section 56155.5.

(m) The school or agency shall be charged a reasonable fee for certification. The Superintendent may adjust the fee annually commensurate with the statewide average percentage inflation adjustment computed for revenue limits of unified school districts with greater than 1,500 units of average daily attendance if the percentage increase is reflected in the district revenue limit for inflation purposes. For purposes of this section, the base fee shall be the following:

(1) 1-5 pupils	\$ 300
(2) 6-10 pupils	500
(3) 11-24 pupils	1,000
(4) 25-75 pupils	1,500
(5) 76 pupils and over	2,000

The school or agency shall pay this fee when it applies for certification and when it updates its application for annual review by the Superintendent. The Superintendent shall use these fees to conduct onsite reviews, which may include field experts. No fee shall be refunded if the application is withdrawn or is denied by the Superintendent.

(n) (1) Notwithstanding any other provision of law, only those nonpublic, nonsectarian schools and agencies that provide special education and designated instruction and services utilizing staff who hold a certificate, permit, or other document equivalent to that which staff in a public school are required to hold in the service rendered are eligible to receive certification. Only those nonpublic, nonsectarian schools or agencies located outside of California that employ staff who hold a current valid credential or license to render special education and related services as required by that state shall be eligible to be certified.

(2) The board shall develop regulations to implement this subdivision.

(o) In addition to meeting the standards adopted by the board, a nonpublic, nonsectarian school or agency shall provide written assurances that it meets all applicable standards relating to fire, health, sanitation, and building safety.

SEC. 8. Section 56366.2 of the Education Code is amended to read:

56366.2. (a) A district, special education local plan area, county office, nonpublic, nonsectarian school, or nonpublic, nonsectarian agency may petition the Superintendent to waive one or more of the requirements under Sections 56365, 56366, 56366.3, and 56366.6. The petition shall state the reasons for the waiver request, and shall include the following:

(1) Sufficient documentation to demonstrate that the waiver is necessary to the content and implementation of a specific pupil's individualized education program and the pupil's current placement.

(2) The period of time that the waiver will be effective during any one school year.

(3) Documentation and assurance that the waiver does not abrogate any right provided individuals with exceptional needs and their parents or guardians under state or federal law, and does not hinder the compliance of a district, special education local plan area, or county office with the Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400 et seq.), Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. Sec. 794), the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12101 et seq.), and federal regulations relating thereto.

(b) No waiver shall be granted for reimbursement of those costs prohibited under Article 4 (commencing with Section 56836.20) of Chapter 7.2 of Part 30 or for the certification requirements pursuant to Section 56366.1 unless approved by the board pursuant to Section 56101.

(c) In submitting the annual report on waivers granted under Section 56101 and this section to the board, the Superintendent shall specify information related to the provision of special education and related services to individuals with exceptional needs through contracts with nonpublic, nonsectarian schools and agencies located in the state, nonpublic, nonsectarian school and agency placements in facilities located out of state, and the specific section waived pursuant to this section.

SEC. 9. Section 319 of the Welfare and Institutions Code is amended to read:

319. (a) At the initial petition hearing, the court shall examine the child's parents, guardians, or other persons having relevant knowledge and hear the relevant evidence as the child, the child's parents or guardians, the petitioner, or their counsel desires to present. The court may examine the child, as provided in Section 350.

(b) The social worker shall report to the court on the reasons why the child has been removed from the parent's physical custody; the need, if any, for continued detention; the available services and the referral methods to those services that could facilitate the return of the child to the custody of the child's parents or guardians; and whether there are any relatives who are able and willing to take temporary physical custody of the child. The court shall order the release of the child from custody unless a prima facie showing has been made that the child comes within Section 300, the court finds that continuance in the parent's or guardian's home is contrary to the child's welfare, and any of the following circumstances exist:

(1) There is a substantial danger to the physical health of the child or the child is suffering severe emotional damage, and there are no reasonable means by which the child's physical or emotional health may

be protected without removing the child from the parent's or guardian's physical custody.

(2) There is substantial evidence that a parent, guardian, or custodian of the child is likely to flee the jurisdiction of the court.

(3) The child has left a placement in which he or she was placed by the juvenile court.

(4) The child indicates an unwillingness to return home, if the child has been physically or sexually abused by a person residing in the home.

(c) If the matter is continued pursuant to Section 322 or for any other reason, the court shall find that the continuance of the child in the parent's or guardian's home is contrary to the child's welfare at the initial petition hearing or order the release of the child from custody.

(d) (1) The court shall also make a determination on the record, referencing the social worker's report or other evidence relied upon, as to whether reasonable efforts were made to prevent or eliminate the need for removal of the child from his or her home, pursuant to subdivision (b) of Section 306, and whether there are available services that would prevent the need for further detention. Services to be considered for purposes of making this determination are case management, counseling, emergency shelter care, emergency in-home caretakers, out-of-home respite care, teaching and demonstrating homemakers, parenting training, transportation, and any other child welfare services authorized by the State Department of Social Services pursuant to Chapter 5 (commencing with Section 16500) of Part 4 of Division 9. The court shall also review whether the social worker has considered whether a referral to public assistance services pursuant to Chapter 2 (commencing with Section 11200) and Chapter 7 (commencing with Section 14000) of Part 3, Chapter 1 (commencing with Section 17000) of Part 5, and Chapter 10 (commencing with Section 18900) of Part 6 of Division 9 would have eliminated the need to take temporary custody of the child or would prevent the need for further detention.

(2) If the child can be returned to the custody of his or her parent or guardian through the provision of those services, the court shall place the child with his or her parent or guardian and order that the services shall be provided. If the child cannot be returned to the physical custody of his or her parent or guardian, the court shall determine if there is a relative who is able and willing to care for the child, and has been assessed pursuant to paragraph (1) of subdivision (d) of Section 309.

(e) Whenever a court orders a child detained, the court shall state the facts on which the decision is based, shall specify why the initial removal was necessary, shall reference the social worker's report or other evidence relied upon to make its determination whether continuance in the home of the parent or legal guardian in contrary to the child's welfare, shall

order temporary placement and care of the child to be vested with the county child welfare department pending the hearing held pursuant to Section 355 or further order of the court, and shall order services to be provided as soon as possible to reunify the child and his or her family if appropriate.

(f) When the child is not released from custody, the court may order that the child shall be placed in the assessed home of a relative, in an emergency shelter or other suitable licensed place, in a place exempt from licensure designated by the juvenile court, or in the assessed home of a nonrelative extended family member as defined in Section 362.7 for a period not to exceed 15 judicial days.

As used in this section, "relative" means an adult who is related to the child by blood, adoption, or affinity within the fifth degree of kinship, including stepparents, stepsiblings, and all relatives whose status is preceded by the words "great," "great-great," or "grand," or the spouse of any of these persons, even if the marriage was terminated by death or dissolution. However, only the following relatives shall be given preferential consideration for placement of the child: an adult who is a grandparent, aunt, uncle, or sibling of the child.

The court shall consider the recommendations of the social worker based on the assessment pursuant to paragraph (1) of subdivision (d) of Section 309 of the relative's home, including the results of a criminal records check and prior child abuse allegations, if any, prior to ordering that the child be placed with a relative. The court shall order the parent to disclose to the social worker the names, residences, and any known identifying information of any maternal or paternal relatives of the child. The social worker shall initiate the assessment pursuant to Section 361.3 of any relative to be considered for continuing placement.

(g) (1) At the initial hearing upon the petition filed in accordance with subdivision (c) of Rule 1406 of the California Rules of Court or anytime thereafter up until the time that the minor is adjudged a dependent child of the court or a finding is made dismissing the petition, the court may temporarily limit the right of the parent or guardian to make educational decisions for the child and temporarily appoint a responsible adult to make educational decisions for the child if all of the following conditions are found:

(A) The parent or guardian is unavailable, unable, or unwilling to exercise educational rights for the child.

(B) The county placing agency has made diligent efforts to locate and secure the participation of the parent or guardian in educational decisionmaking.

(C) The child's educational needs cannot be met without the temporary appointment of a responsible adult.

(2) If the court cannot identify a responsible adult to make educational decisions for the child and the appointment of a surrogate parent as defined in subdivision (a) of Section 56050 of the Education Code is not warranted, the court may, with the input of any interested person, make educational decisions for the child. If the court makes educational decisions for the child, the court shall also issue appropriate orders to ensure that every effort is made to identify a responsible adult to make future educational decisions for the child.

(3) Any temporary appointment of a responsible adult and temporary limitation on the right of the parent or guardian to make educational decisions for the child shall be specifically addressed in the court order. Any order made under this section shall expire at the conclusion of the hearing held pursuant to Section 361 or upon dismissal of the petition. Upon the entering of disposition orders any additional needed limitation on the parent's or guardian's educational rights shall be addressed pursuant to Section 361.

SEC. 10. Section 361 of the Welfare and Institutions Code is amended to read:

361. (a) In all cases in which a minor is adjudged a dependent child of the court on the ground that the minor is a person described by Section 300, the court may limit the control to be exercised over the dependent child by any parent or guardian and shall by its order clearly and specifically set forth all those limitations. Any limitation on the right of the parent or guardian to make educational decisions for the child shall be specifically addressed in the court order. The limitations may not exceed those necessary to protect the child. If the court specifically limits the right of the parent or guardian to make educational decisions for the child, the court shall at the same time appoint a responsible adult to make educational decisions for the child until one of the following occurs:

(1) The minor reaches 18 years of age, unless the child chooses not to make educational decisions for himself or herself, or is deemed by the court to be incompetent.

(2) Another responsible adult is appointed to make educational decisions for the minor pursuant to this section.

(3) The right of the parent or guardian to make educational decisions for the minor is fully restored.

(4) A successor guardian or conservator is appointed.

(5) The child is placed into a planned permanent living arrangement pursuant to paragraph (3) of subdivision (g) of Section 366.21, Section 366.22, or Section 366.26, at which time the foster parent, relative caretaker, or nonrelative extended family member as defined in Section 362.7, has the right to represent the child in educational matters pursuant to Section 56055 of the Education Code.

An individual who would have a conflict of interest in representing the child may not be appointed to make educational decisions. For purposes of this section, "an individual who would have a conflict of interest," means a person having any interests that might restrict or bias his or her ability to make educational decisions, including, but not limited to, those conflicts of interest prohibited by Section 1126 of the Government Code, and the receipt of compensation or attorneys' fees for the provision of services pursuant to this section. A foster parent may not be deemed to have a conflict of interest solely because he or she receives compensation for the provision of services pursuant to this section.

If the court is unable to appoint a responsible adult to make educational decisions for the child and paragraphs (1) to (5), inclusive, do not apply, and the child has either been referred to the local educational agency for special education and related services, or has a valid individualized education program, the court shall refer the child to the local educational agency for appointment of a surrogate parent pursuant to Section 7579.5 of the Government Code.

If the court cannot identify a responsible adult to make educational decisions for the child, the appointment of a surrogate parent as defined in subdivision (a) of Section 56050 of the Education Code is not warranted, and there is no foster parent to exercise the authority granted by Section 56055 of the Education Code, the court may, with the input of any interested person, make educational decisions for the child.

All educational and school placement decisions shall seek to ensure that the child is in the least restrictive educational programs and has access to the academic resources, services, and extracurricular and enrichment activities that are available to all pupils. In all instances, educational and school placement decisions shall be based on the best interests of the child.

(b) Subdivision (a) does not limit the ability of a parent to voluntarily relinquish his or her child to the State Department of Social Services or to a licensed county adoption agency at any time while the child is a dependent child of the juvenile court, if the department or agency is willing to accept the relinquishment.

(c) A dependent child may not be taken from the physical custody of his or her parents or guardian or guardians with whom the child resides at the time the petition was initiated, unless the juvenile court finds clear and convincing evidence of any of the following:

(1) There is or would be a substantial danger to the physical health, safety, protection, or physical or emotional well-being of the minor if the minor were returned home, and there are no reasonable means by which the minor's physical health can be protected without removing

the minor from the minor's parent's or guardian's physical custody. The fact that a minor has been adjudicated a dependent child of the court pursuant to subdivision (e) of Section 300 shall constitute prima facie evidence that the minor cannot be safely left in the physical custody of the parent or guardian with whom the minor resided at the time of injury. The court shall consider, as a reasonable means to protect the minor, the option of removing an offending parent or guardian from the home. The court shall also consider, as a reasonable means to protect the minor, allowing a nonoffending parent or guardian to retain physical custody as long as that parent or guardian presents a plan acceptable to the court demonstrating that he or she will be able to protect the child from future harm.

(2) The parent or guardian of the minor is unwilling to have physical custody of the minor, and the parent or guardian has been notified that if the minor remains out of their physical custody for the period specified in Section 366.26, the minor may be declared permanently free from their custody and control.

(3) The minor is suffering severe emotional damage, as indicated by extreme anxiety, depression, withdrawal, or untoward aggressive behavior toward himself or herself or others, and there are no reasonable means by which the minor's emotional health may be protected without removing the minor from the physical custody of his or her parent or guardian.

(4) The minor or a sibling of the minor has been sexually abused, or is deemed to be at substantial risk of being sexually abused, by a parent, guardian, or member of his or her household, or other person known to his or her parent, and there are no reasonable means by which the minor can be protected from further sexual abuse or a substantial risk of sexual abuse without removing the minor from his or her parent or guardian, or the minor does not wish to return to his or her parent or guardian.

(5) The minor has been left without any provision for his or her support, or a parent who has been incarcerated or institutionalized cannot arrange for the care of the minor, or a relative or other adult custodian with whom the child has been left by the parent is unwilling or unable to provide care or support for the child and the whereabouts of the parent is unknown and reasonable efforts to locate him or her have been unsuccessful.

(d) The court shall make a determination as to whether reasonable efforts were made to prevent or to eliminate the need for removal of the minor from his or her home or, if the minor is removed for one of the reasons stated in paragraph (5) of subdivision (c), whether it was reasonable under the circumstances not to make any of those efforts.

The court shall state the facts on which the decision to remove the minor is based.

(e) The court shall make all of the findings required by subdivision (a) of Section 366 in either of the following circumstances:

(1) The minor has been taken from the custody of his or her parent or guardian and has been living in an out-of-home placement pursuant to Section 319.

(2) The minor has been living in a voluntary out-of-home placement pursuant to Section 16507.4.

SEC. 11. Section 391 of the Welfare and Institutions Code is amended to read:

391. At any hearing to terminate jurisdiction over a dependent child who has reached the age of majority the county welfare department shall do both of the following:

(a) Ensure that the child is present in court, unless the child does not wish to appear in court, or document efforts by the county welfare department to locate the child when the child is not available.

(b) Submit a report verifying that the following information, documents, and services have been provided to the child:

(1) Written information concerning the child's dependency case, including his or her family history and placement history, the whereabouts of any siblings under the jurisdiction of the juvenile court, unless the court determines that sibling contact would jeopardize the safety or welfare of the sibling, directions on how to access the documents the child is entitled to inspect under Section 827, and the date on which the jurisdiction of the juvenile court would be terminated.

(2) The following documents, where applicable: social security card, certified birth certificate, health and education summary as described in subdivision (a) of Section 16010, identification card, as described in Section 13000 of the Vehicle Code, death certificate of parent or parents, and proof of citizenship or residence.

(3) Assistance in completing an application for Medi-Cal or assistance in obtaining other health insurance; referral to transitional housing, if available, or assistance in securing other housing; and assistance in obtaining employment or other financial support.

(4) Assistance in applying for admission to college or to a vocational training program or other educational institution and in obtaining financial aid, where appropriate.

(5) Assistance in maintaining relationships with individuals who are important to a child who has been in out-of-home placement in a group home for six months or longer from the date the child entered foster care, based on the child's best interests.

(c) The court may continue jurisdiction if it finds that the county welfare department has not met the requirements of subdivision (b) and that termination of jurisdiction would be harmful to the best interests of the child. If the court determines that continued jurisdiction is warranted pursuant to this section, the continuation shall only be ordered for that period of time necessary for the county welfare department to meet the requirements of subdivision (b). This section shall not be construed to limit the discretion of the juvenile court to continue jurisdiction for other reasons. The court may terminate jurisdiction if the county welfare department has offered the required services, and the child either has refused the services or, after reasonable efforts by the county welfare department, cannot be located.

(d) The Judicial Council shall develop and implement standards, and develop and adopt appropriate forms, necessary to implement this section.

SEC. 12. 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.

CHAPTER 640

An act to amend Sections 366, 366.1, 366.21, 366.22, 366.26, 366.3, 16001.9, 16500.1, and 16501.1 of, and to add Section 366.35 to, the Welfare and Institutions Code, relating to dependent children.

[Approved by Governor October 7, 2005. Filed with
Secretary of State October 7, 2005.]

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

SECTION 1. The Legislature finds and declares that a child's input in his or her case plan is valuable and necessary to developing a plan that best meets the child's unique needs.

SEC. 2. Section 366 of the Welfare and Institutions Code is amended to read:

366. (a) (1) The status of every dependent child in foster care shall be reviewed periodically as determined by the court but no less frequently than once every six months, as calculated from the date of the original dispositional hearing, until the hearing described in Section 366.26 is completed. The court shall consider the safety of the child and shall determine all of the following:

(A) The continuing necessity for and appropriateness of the placement.

(B) The extent of the agency's compliance with the case plan in making reasonable efforts to return the child to a safe home and to complete any steps necessary to finalize the permanent placement of the child, including efforts to maintain relationships between a child who is 10 years of age or older and who has been in an out-of-home placement for six months or longer, and individuals other than the child's siblings who are important to the child, consistent with the child's best interests.

(C) Whether there should be any limitation on the right of the parent or guardian to make educational decisions for the child. That limitation shall be specifically addressed in the court order and may not exceed those necessary to protect the child. Whenever the court specifically limits the right of the parent or guardian to make educational decisions for the child, the court shall at the same time appoint a responsible adult to make educational decisions for the child pursuant to Section 361.

(D) (i) Whether the child has other siblings under the court's jurisdiction, and, if any siblings exist, all of the following:

(I) The nature of the relationship between the child and his or her siblings.

(II) The appropriateness of developing or maintaining the sibling relationships pursuant to Section 16002.

(III) If the siblings are not placed together in the same home, why the siblings are not placed together and what efforts are being made to place the siblings together, or why those efforts are not appropriate.

(IV) If the siblings are not placed together, the frequency and nature of the visits between siblings.

(V) The impact of the sibling relationships on the child's placement and planning for legal permanence.

(VI) The continuing need to suspend sibling interaction, if applicable, pursuant to subdivision (c) of Section 16002.

(ii) The factors the court may consider in making a determination regarding the nature of the child's sibling relationships may include, but are not limited to, whether the siblings were raised together in the same home, whether the siblings have shared significant common experiences or have existing close and strong bonds, whether either sibling expresses a desire to visit or live with his or her sibling, as applicable, and whether ongoing contact is in the child's best emotional interests.

(E) The extent of progress which has been made toward alleviating or mitigating the causes necessitating placement in foster care.

(2) The court shall project a likely date by which the child may be returned to and safely maintained in the home or placed for adoption, legal guardianship, or in another planned permanent living arrangement.

(b) Subsequent to the hearing, periodic reviews of each child in foster care shall be conducted pursuant to the requirements of Sections 366.3 and 16503.

(c) If the child has been placed out of state, each review described in subdivision (a) and any reviews conducted pursuant to Sections 366.3 and 16503 shall also address whether the out-of-state placement continues to be the most appropriate placement selection and in the best interests of the child.

(d) A child may not be placed in an out-of-state group home, or remain in an out-of-state group home, unless the group home is in compliance with Section 7911.1 of the Family Code.

(e) The implementation and operation of the amendments to subparagraph (B) of paragraph (1) of subdivision (a) enacted at the 2005–06 Regular Session shall be subject to appropriation through the budget process and by phase, as provided in Section 366.35.

SEC. 3. Section 366.1 of the Welfare and Institutions Code is amended to read:

366.1. Each supplemental report required to be filed pursuant to Section 366 shall include, but not be limited to, a factual discussion of each of the following subjects:

(a) Whether the county welfare department social worker has considered child protective services, as defined in Chapter 5 (commencing with Section 16500) of Part 4 of Division 9, as a possible solution to the problems at hand, and has offered those services to qualified parents, if appropriate under the circumstances.

(b) What plan, if any, for the return and maintenance of the child in a safe home is recommended to the court by the county welfare department social worker.

(c) Whether the subject child appears to be a person who is eligible to be considered for further court action to free the child from parental custody and control.

(d) What actions, if any, have been taken by the parent to correct the problems that caused the child to be made a dependent child of the court.

(e) If the parent or guardian is unwilling or unable to participate in making an educational decision for his or her child, or if other circumstances exist that compromise the ability of the parent or guardian to make educational decisions for the child, the county welfare department or social worker shall consider whether the right of the parent or guardian to make educational decisions for the child should be limited. If the supplemental report makes that recommendation, the report shall identify whether there is a responsible adult available to make educational decisions for the child pursuant to Section 361.

(f) (1) Whether the child has any siblings under the court's jurisdiction, and, if any siblings exist, all of the following:

(A) The nature of the relationship between the child and his or her siblings.

(B) The appropriateness of developing or maintaining the sibling relationships pursuant to Section 16002.

(C) If the siblings are not placed together in the same home, why the siblings are not placed together and what efforts are being made to place the siblings together, or why those efforts are not appropriate.

(D) If the siblings are not placed together, the frequency and nature of the visits between siblings.

(E) The impact of the sibling relationships on the child's placement and planning for legal permanence.

(2) The factual discussion shall include a discussion of indicators of the nature of the child's sibling relationships, including, but not limited to, whether the siblings were raised together in the same home, whether the siblings have shared significant common experiences or have existing close and strong bonds, whether either sibling expresses a desire to visit or live with his or her sibling, as applicable, and whether ongoing contact is in the child's best emotional interests.

(g) Whether a child who is 10 years of age or older and who has been in an out-of-home placement for six months or longer has relationships with individuals other than the child's siblings that are important to the child, consistent with the child's best interests, and actions taken to maintain those relationships. The social worker shall ask every child who is 10 years of age or older and who has been in an out-of-home placement for six months or longer to identify any individuals other than the child's siblings who are important to the child, consistent with the child's best interest. The social worker may ask any other child to provide that information, as appropriate.

(h) The implementation and operation of the amendments to subdivision (g) enacted at the 2005–06 Regular Session shall be subject to appropriation through the budget process and by phase, as provided in Section 366.35.

SEC. 4. Section 366.21 of the Welfare and Institutions Code is amended to read:

366.21. (a) Every hearing conducted by the juvenile court reviewing the status of a dependent child shall be placed on the appearance calendar. The court shall advise all persons present at the hearing of the date of the future hearing and of their right to be present and represented by counsel.

(b) Except as provided in Sections 294 and 295, notice of the hearing shall be provided pursuant to Section 293.

(c) At least 10 calendar days prior to the hearing, the social worker shall file a supplemental report with the court regarding the services provided or offered to the parent or legal guardian to enable him or her to assume custody and the efforts made to achieve legal permanence for the child if efforts to reunify fail, including, but not limited to, efforts to maintain relationships between a child who is 10 years of age or older and has been in out-of-home placement for six months or longer and individuals who are important to the child, consistent with the child's best interests; the progress made; and, where relevant, the prognosis for return of the child to the physical custody of his or her parent or legal guardian; and shall make his or her recommendation for disposition. If the child is a member of a sibling group described in paragraph (3) of subdivision (a) of Section 361.5, the report and recommendation may also take into account those factors described in subdivision (e) relating to the child's sibling group. If the recommendation is not to return the child to a parent or legal guardian, the report shall specify why the return of the child would be detrimental to the child. The social worker shall provide the parent or legal guardian, counsel for the child, and any court-appointed child advocate with a copy of the report, including his or her recommendation for disposition, at least 10 calendar days prior to the hearing. In the case of a child removed from the physical custody of his or her parent or legal guardian, the social worker shall, at least 10 calendar days prior to the hearing, provide a summary of his or her recommendation for disposition to any foster parents, relative caregivers, and certified foster parents who have been approved for adoption by the State Department of Social Services when it is acting as an adoption agency in counties that are not served by a county adoption agency or by a licensed county adoption agency, community care facility, or foster family agency having the physical custody of the child.

(d) Prior to any hearing involving a child in the physical custody of a community care facility or a foster family agency that may result in the return of the child to the physical custody of his or her parent or legal guardian, or in adoption or the creation of a legal guardianship, the facility or agency shall file with the court a report containing its recommendation for disposition. Prior to the hearing involving a child in the physical custody of a foster parent, a relative caregiver, or a certified foster parent who has been approved for adoption by the State Department of Social Services when it is acting as an adoption agency or by a licensed adoption agency, the foster parent, relative caregiver, or the certified foster parent who has been approved for adoption by the State Department of Social Services when it is acting as an adoption agency in counties that are not served by a county adoption agency or by a licensed county adoption agency, may file with the court a report

containing his or her recommendation for disposition. The court shall consider the report and recommendation filed pursuant to this subdivision prior to determining any disposition.

(e) At the review hearing held six months after the initial dispositional hearing, the court shall order the return of the child to the physical custody of his or her parent or legal guardian unless the court finds, by a preponderance of the evidence, that the return of the child to his or her parent or legal guardian would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child. The social worker shall have the burden of establishing that detriment. The failure of the parent or legal guardian to participate regularly and make substantive progress in court-ordered treatment programs shall be prima facie evidence that return would be detrimental. In making its determination, the court shall review and consider the social worker's report and recommendations and the report and recommendations of any child advocate appointed pursuant to Section 356.5; and shall consider the efforts or progress, or both, demonstrated by the parent or legal guardian and the extent to which he or she availed himself or herself to services provided.

Whether or not the child is returned to a parent or legal guardian, the court shall specify the factual basis for its conclusion that the return would be detrimental or would not be detrimental. The court also shall make appropriate findings pursuant to subdivision (a) of Section 366; and, where relevant, shall order any additional services reasonably believed to facilitate the return of the child to the custody of his or her parent or legal guardian. The court shall also inform the parent or legal guardian that if the child cannot be returned home by the 12-month permanency hearing, a proceeding pursuant to Section 366.26 may be instituted. This section does not apply in a case where, pursuant to Section 361.5, the court has ordered that reunification services shall not be provided.

If the child was under the age of three years on the date of the initial removal, or is a member of a sibling group described in paragraph (3) of subdivision (a) of Section 361.5, and the court finds by clear and convincing evidence that the parent failed to participate regularly and make substantive progress in a court-ordered treatment plan, the court may schedule a hearing pursuant to Section 366.26 within 120 days. If, however, the court finds there is a substantial probability that the child, who was under the age of three years on the date of initial removal or is a member of a sibling group described in paragraph (3) of subdivision (a) of Section 361.5, may be returned to his or her parent or legal guardian within six months or that reasonable services have not been provided, the court shall continue the case to the 12-month permanency hearing.

For the purpose of placing and maintaining a sibling group together in a permanent home, the court, in making its determination to schedule a hearing pursuant to Section 366.26 for some or all members of a sibling group, as described in paragraph (3) of subdivision (a) of Section 361.5, shall review and consider the social worker's report and recommendations. Factors the report shall address, and the court shall consider, may include, but need not be limited to, whether the sibling group was removed from parental care as a group, the closeness and strength of the sibling bond, the ages of the siblings, the appropriateness of maintaining the sibling group together, the detriment to the child if sibling ties are not maintained, the likelihood of finding a permanent home for the sibling group, whether the sibling group is currently placed together in a preadoptive home or has a concurrent plan goal of legal permanency in the same home, the wishes of each child whose age and physical and emotional condition permits a meaningful response, and the best interest of each child in the sibling group. The court shall specify the factual basis for its finding that it is in the best interest of each child to schedule a hearing pursuant to Section 366.26 in 120 days for some or all of the members of the sibling group.

If the child was removed initially under subdivision (g) of Section 300 and the court finds by clear and convincing evidence that the whereabouts of the parent are still unknown, or the parent has failed to contact and visit the child, the court may schedule a hearing pursuant to Section 366.26 within 120 days. If the court finds by clear and convincing evidence that the parent has been convicted of a felony indicating parental unfitness, the court may schedule a hearing pursuant to Section 366.26 within 120 days.

If the child had been placed under court supervision with a previously noncustodial parent pursuant to Section 361.2, the court shall determine whether supervision is still necessary. The court may terminate supervision and transfer permanent custody to that parent, as provided for by paragraph (1) of subdivision (b) of Section 361.2.

In all other cases, the court shall direct that any reunification services previously ordered shall continue to be offered to the parent or legal guardian pursuant to the time periods set forth in subdivision (a) of Section 361.5, provided that the court may modify the terms and conditions of those services.

If the child is not returned to his or her parent or legal guardian, the court shall determine whether reasonable services that were designed to aid the parent or legal guardian in overcoming the problems that led to the initial removal and the continued custody of the child have been provided or offered to the parent or legal guardian. The court shall order that those services be initiated, continued, or terminated.

(f) The permanency hearing shall be held no later than 12 months after the date the child entered foster care, as that date is determined pursuant to subdivision (a) of Section 361.5. At the permanency hearing, the court shall determine the permanent plan for the child, which shall include a determination of whether the child will be returned to the child's home and, if so, when, within the time limits of subdivision (a) of Section 361.5. The court shall order the return of the child to the physical custody of his or her parent or legal guardian unless the court finds, by a preponderance of the evidence, that the return of the child to his or her parent or legal guardian would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child. The social worker shall have the burden of establishing that detriment. The court shall also determine whether reasonable services that were designed to aid the parent or legal guardian to overcome the problems that led to the initial removal and continued custody of the child have been provided or offered to the parent or legal guardian. For each youth 16 years of age and older, the court shall also determine whether services have been made available to assist him or her in making the transition from foster care to independent living. The failure of the parent or legal guardian to participate regularly and make substantive progress in court-ordered treatment programs shall be prima facie evidence that return would be detrimental. In making its determination, the court shall review and consider the social worker's report and recommendations and the report and recommendations of any child advocate appointed pursuant to Section 356.5, shall consider the efforts or progress, or both, demonstrated by the parent or legal guardian and the extent to which he or she availed himself or herself of services provided, and shall make appropriate findings pursuant to subdivision (a) of Section 366.

Whether or not the child is returned to his or her parent or legal guardian, the court shall specify the factual basis for its decision. If the child is not returned to a parent or legal guardian, the court shall specify the factual basis for its conclusion that the return would be detrimental. The court also shall make a finding pursuant to subdivision (a) of Section 366.

(g) If the time period in which the court-ordered services were provided has met or exceeded the time period set forth in paragraph (1), (2), or (3) of subdivision (a) of Section 361.5, as appropriate, and a child is not returned to the custody of a parent or legal guardian at the permanency hearing held pursuant to subdivision (f), the court shall do one of the following:

(1) Continue the case for up to six months for a permanency review hearing, provided that the hearing shall occur within 18 months of the

date the child was originally taken from the physical custody of his or her parent or legal guardian. The court shall continue the case only if it finds that there is a substantial probability that the child will be returned to the physical custody of his or her parent or legal guardian and safely maintained in the home within the extended period of time or that reasonable services have not been provided to the parent or legal guardian. For the purposes of this section, in order to find a substantial probability that the child will be returned to the physical custody of his or her parent or legal guardian and safely maintained in the home within the extended period of time, the court shall be required to find all of the following:

(A) That the parent or legal guardian has consistently and regularly contacted and visited with the child.

(B) That the parent or legal guardian has made significant progress in resolving problems that led to the child's removal from the home.

(C) The parent or legal guardian has demonstrated the capacity and ability both to complete the objectives of his or her treatment plan and to provide for the child's safety, protection, physical and emotional well-being, and special needs.

For purposes of this subdivision, the court's decision to continue the case based on a finding or substantial probability that the child will be returned to the physical custody of his or her parent or legal guardian is a compelling reason for determining that a hearing held pursuant to Section 366.26 is not in the best interests of the child.

The court shall inform the parent or legal guardian that if the child cannot be returned home by the next permanency review hearing, a proceeding pursuant to Section 366.26 may be instituted. The court may not order that a hearing pursuant to Section 366.26 be held unless there is clear and convincing evidence that reasonable services have been provided or offered to the parent or legal guardian.

(2) Order that a hearing be held within 120 days, pursuant to Section 366.26, but only if the court does not continue the case to the permanency planning review hearing and there is clear and convincing evidence that reasonable services have been provided or offered to the parents or legal guardians.

(3) Order that the child remain in long-term foster care, but only if the court finds by clear and convincing evidence, based upon the evidence already presented to it, including a recommendation by the State Department of Social Services when it is acting as an adoption agency in counties that are not served by a county adoption agency or by a licensed county adoption agency, that there is a compelling reason for determining that a hearing held pursuant to Section 366.26 is not in the best interest of the child because the child is not a proper subject for

adoption and has no one willing to accept legal guardianship. For purposes of this section, a recommendation by the State Department of Social Services when it is acting as an adoption agency in counties that are not served by a county adoption agency or by a licensed county adoption agency that adoption is not in the best interest of the child shall constitute a compelling reason for the court's determination. That recommendation shall be based on the present circumstances of the child and may not preclude a different recommendation at a later date if the child's circumstances change.

If the court orders that a child who is 10 years of age or older remain in long-term foster care, the court shall determine whether the agency has made reasonable efforts to maintain the child's relationships with individuals other than the child's siblings who are important to the child, consistent with the child's best interests, and may make any appropriate order to ensure that those relationships are maintained.

(h) In any case in which the court orders that a hearing pursuant to Section 366.26 shall be held, it shall also order the termination of reunification services to the parent or legal guardian. The court shall continue to permit the parent or legal guardian to visit the child pending the hearing unless it finds that visitation would be detrimental to the child. The court shall make any other appropriate orders to enable the child to maintain relationships with individuals, other than the child's siblings, who are important to the child, consistent with the child's best interests.

(i) Whenever a court orders that a hearing pursuant to Section 366.26 shall be held, it shall direct the agency supervising the child and the licensed county adoption agency, or the State Department of Social Services when it is acting as an adoption agency in counties that are not served by a county adoption agency, to prepare an assessment that shall include:

(1) Current search efforts for an absent parent or parents or legal guardians.

(2) A review of the amount of and nature of any contact between the child and his or her parents or legal guardians and other members of his or her extended family since the time of placement. Although the extended family of each child shall be reviewed on a case-by-case basis, "extended family" for the purpose of this paragraph shall include, but not be limited to, the child's siblings, grandparents, aunts, and uncles.

(3) An evaluation of the child's medical, developmental, scholastic, mental, and emotional status.

(4) A preliminary assessment of the eligibility and commitment of any identified prospective adoptive parent or legal guardian, particularly the caretaker, to include a social history including screening for criminal

records and prior referrals for child abuse or neglect, the capability to meet the child's needs, and the understanding of the legal and financial rights and responsibilities of adoption and guardianship. If a proposed guardian is a relative of the minor, and the relative was assessed for foster care placement of the minor prior to January 1, 1998, the assessment shall also consider, but need not be limited to, all of the factors specified in subdivision (a) of Section 361.3.

(5) The relationship of the child to any identified prospective adoptive parent or legal guardian, the duration and character of the relationship, the motivation for seeking adoption or guardianship, and a statement from the child concerning placement and the adoption or guardianship, unless the child's age or physical, emotional, or other condition precludes his or her meaningful response, and if so, a description of the condition.

(6) A description of efforts to be made to identify a prospective adoptive parent or legal guardian, including, but not limited to, child-specific recruitment and listing on an adoption exchange.

(7) An analysis of the likelihood that the child will be adopted if parental rights are terminated.

(j) If, at any hearing held pursuant to Section 366.26, a guardianship is established for the minor with a relative, and juvenile court dependency is subsequently dismissed, the relative shall be eligible for aid under the Kin-GAP program as provided in Article 4.5 (commencing with Section 11360) of Chapter 2 of Part 3 of Division 9.

(k) As used in this section, "relative" means an adult who is related to the minor by blood, adoption, or affinity within the fifth degree of kinship, including stepparents, stepsiblings, and all relatives whose status is preceded by the words "great," "great-great," or "grand," or the spouse of any of those persons even if the marriage was terminated by death or dissolution.

(l) For purposes of this section, evidence of any of the following circumstances may not, in and of itself, be deemed a failure to provide or offer reasonable services:

(1) The child has been placed with a foster family that is eligible to adopt a child, or has been placed in a preadoptive home.

(2) The case plan includes services to make and finalize a permanent placement for the child if efforts to reunify fail.

(3) Services to make and finalize a permanent placement for the child, if efforts to reunify fail, are provided concurrently with services to reunify the family.

(m) The implementation and operation of the amendments to subdivisions (c) and (g) enacted at the 2005-06 Regular Session shall be subject to appropriation through the budget process and by phase, as provided in Section 366.35.

SEC. 5. Section 366.22 of the Welfare and Institutions Code is amended to read:

366.22. (a) When a case has been continued pursuant to paragraph (1) of subdivision (g) of Section 366.21, the permanency review hearing shall occur within 18 months after the date the child was originally removed from the physical custody of his or her parent or legal guardian. The court shall order the return of the child to the physical custody of his or her parent or legal guardian unless the court finds, by a preponderance of the evidence, that the return of the child to his or her parent or legal guardian would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child. The social worker shall have the burden of establishing that detriment. The failure of the parent or legal guardian to participate regularly and make substantive progress in court-ordered treatment programs shall be prima facie evidence that return would be detrimental. In making its determination, the court shall review and consider the social worker's report and recommendations and the report and recommendations of any child advocate appointed pursuant to Section 356.5; shall consider the efforts or progress, or both, demonstrated by the parent or legal guardian and the extent to which he or she availed himself or herself of services provided; and shall make appropriate findings pursuant to subdivision (a) of Section 366.

Whether or not the child is returned to his or her parent or legal guardian, the court shall specify the factual basis for its decision. If the child is not returned to a parent or legal guardian, the court shall specify the factual basis for its conclusion that return would be detrimental.

If the child is not returned to a parent or legal guardian at the permanency review hearing, the court shall order that a hearing be held pursuant to Section 366.26 in order to determine whether adoption, guardianship, or long-term foster care is the most appropriate plan for the child. However, if the court finds by clear and convincing evidence, based on the evidence already presented to it, including a recommendation by the State Department of Social Services when it is acting as an adoption agency in counties that are not served by a county adoption agency or by a licensed county adoption agency, that there is a compelling reason, as described in paragraph (2) of subdivision (g) of Section 366.21, for determining that a hearing held under Section 366.26 is not in the best interest of the child because the child is not a proper subject for adoption and has no one willing to accept legal guardianship, then the court may, only under these circumstances, order that the child remain in foster care. If the court orders that a child who is 10 years of age or older remain in long-term foster care, the court shall determine whether the agency has made reasonable efforts to maintain the child's

relationships with individuals other than the child's siblings who are important to the child, consistent with the child's best interests, and may make any appropriate order to ensure that those relationships are maintained. The hearing shall be held no later than 120 days from the date of the permanency review hearing. The court shall also order termination of reunification services to the parent or legal guardian. The court shall continue to permit the parent or legal guardian to visit the child unless it finds that visitation would be detrimental to the child. The court shall determine whether reasonable services have been offered or provided to the parent or legal guardian. For purposes of this subdivision, evidence of any of the following circumstances shall not, in and of themselves, be deemed a failure to provide or offer reasonable services:

(1) The child has been placed with a foster family that is eligible to adopt a child, or has been placed in a preadoptive home.

(2) The case plan includes services to make and finalize a permanent placement for the child if efforts to reunify fail.

(3) Services to make and finalize a permanent placement for the child, if efforts to reunify fail, are provided concurrently with services to reunify the family.

(b) Whenever a court orders that a hearing pursuant to Section 366.26 shall be held, it shall direct the agency supervising the child and the licensed county adoption agency, or the State Department of Social Services when it is acting as an adoption agency in counties that are not served by a county adoption agency, to prepare an assessment that shall include:

(1) Current search efforts for an absent parent or parents.

(2) A review of the amount of and nature of any contact between the child and his or her parents and other members of his or her extended family since the time of placement. Although the extended family of each child shall be reviewed on a case-by-case basis, "extended family" for the purposes of this paragraph shall include, but not be limited to, the child's siblings, grandparents, aunts, and uncles.

(3) An evaluation of the child's medical, developmental, scholastic, mental, and emotional status.

(4) A preliminary assessment of the eligibility and commitment of any identified prospective adoptive parent or legal guardian, particularly the caretaker, to include a social history including screening for criminal records and prior referrals for child abuse or neglect, the capability to meet the child's needs, and the understanding of the legal and financial rights and responsibilities of adoption and guardianship. If a proposed legal guardian is a relative of the minor, and the relative was assessed for foster care placement of the minor prior to January 1, 1998, the

assessment shall also consider, but need not be limited to, all of the factors specified in subdivision (a) of Section 361.3.

(5) The relationship of the child to any identified prospective adoptive parent or legal guardian, the duration and character of the relationship, the motivation for seeking adoption or legal guardianship, and a statement from the child concerning placement and the adoption or legal guardianship, unless the child's age or physical, emotional, or other condition precludes his or her meaningful response, and if so, a description of the condition.

(6) An analysis of the likelihood that the child will be adopted if parental rights are terminated.

(c) This section shall become operative January 1, 1999. If at any hearing held pursuant to Section 366.26, a legal guardianship is established for the minor with a relative, and juvenile court dependency is subsequently dismissed, the relative shall be eligible for aid under the Kin-GAP program as provided in Article 4.5 (commencing with Section 11360) of Chapter 2 of Part 3 of Division 9.

(d) As used in this section, "relative" means an adult who is related to the child by blood, adoption, or affinity within the fifth degree of kinship, including stepparents, stepsiblings, and all relatives whose status is preceded by the words "great," "great-great," or "grand," or the spouse of any of those persons even if the marriage was terminated by death or dissolution.

(e) The implementation and operation of the amendments to subdivision (a) enacted at the 2005-2006 Regular Session shall be subject to appropriation through the budget process and by phase, as provided in Section 366.35.

SEC. 6. Section 366.26 of the Welfare and Institutions Code is amended to read:

366.26. (a) This section applies to children who are adjudged dependent children of the juvenile court pursuant to subdivision (c) of Section 360. The procedures specified herein are the exclusive procedures for conducting these hearings; Part 2 (commencing with Section 3020) of Division 8 of the Family Code is not applicable to these proceedings. Section 8714.7 of the Family Code is applicable and available to all dependent children meeting the requirements of that section, if the postadoption contact agreement has been entered into voluntarily. For children who are adjudged dependent children of the juvenile court pursuant to subdivision (c) of Section 360, this section and Sections 8604, 8605, 8606, and 8700 of the Family Code and Chapter 5 (commencing with Section 7660) of Part 3 of Division 12 of the Family Code specify the exclusive procedures for permanently terminating

parental rights with regard to, or establishing legal guardianship of, the child while the child is a dependent child of the juvenile court.

(b) At the hearing, that shall be held in juvenile court for all children who are dependents of the juvenile court, the court, in order to provide stable, permanent homes for these children, shall review the report as specified in Section 361.5, 366.21, or 366.22, shall indicate that the court has read and considered it, shall receive other evidence that the parties may present, and then shall make findings and orders in the following order of preference:

(1) Terminate the rights of the parent or parents and order that the child be placed for adoption and, upon the filing of a petition for adoption in the juvenile court, order that a hearing be set. The court shall proceed with the adoption after the appellate rights of the natural parents have been exhausted.

(2) On making a finding under paragraph (3) of subdivision (c), identify adoption as the permanent placement goal and order that efforts be made to locate an appropriate adoptive family for the child within a period not to exceed 180 days.

(3) Appoint a legal guardian for the child and order that letters of guardianship issue.

(4) Order that the child be placed in long-term foster care, subject to the periodic review of the juvenile court under Section 366.3.

In choosing among the above alternatives the court shall proceed pursuant to subdivision (c).

(c) (1) If the court determines, based on the assessment provided as ordered under subdivision (i) of Section 366.21 or subdivision (b) of Section 366.22, and any other relevant evidence, by a clear and convincing standard, that it is likely the child will be adopted, the court shall terminate parental rights and order the child placed for adoption. The fact that the child is not yet placed in a preadoptive home nor with a relative or foster family who is prepared to adopt the child, shall not constitute a basis for the court to conclude that it is not likely the child will be adopted. A finding under subdivision (b) or paragraph (1) of subdivision (e) of Section 361.5 that reunification services shall not be offered, under subdivision (e) of Section 366.21 that the whereabouts of a parent have been unknown for six months or that the parent has failed to visit or contact the child for six months or that the parent has been convicted of a felony indicating parental unfitness, or, under Section 366.21 or 366.22, that the court has continued to remove the child from the custody of the parent or guardian and has terminated reunification services, shall constitute a sufficient basis for termination of parental rights unless the court finds a compelling reason for determining that

termination would be detrimental to the child due to one or more of the following circumstances:

(A) The parents or guardians have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship.

(B) A child 12 years of age or older objects to termination of parental rights.

(C) The child is placed in a residential treatment facility, adoption is unlikely or undesirable, and continuation of parental rights will not prevent finding the child a permanent family placement if the parents cannot resume custody when residential care is no longer needed.

(D) The child is living with a relative or foster parent who is unable or unwilling to adopt the child because of exceptional circumstances, that do not include an unwillingness to accept legal or financial responsibility for the child, but who is willing and capable of providing the child with a stable and permanent environment and the removal of the child from the physical custody of his or her relative or foster parent would be detrimental to the emotional well-being of the child. This subparagraph does not apply to any child who is living with a nonrelative and who is either (i) under six years of age or (ii) a member of a sibling group where at least one child is under six years of age and the siblings are, or should be, permanently placed together.

(E) There would be substantial interference with a child's sibling relationship, taking into consideration the nature and extent of the relationship, including, but not limited to, whether the child was raised with a sibling in the same home, whether the child shared significant common experiences or has existing close and strong bonds with a sibling, and whether ongoing contact is in the child's best interest, including the child's long-term emotional interest, as compared to the benefit of legal permanence through adoption.

If the court finds that termination of parental rights would be detrimental to the child pursuant to subparagraph (A), (B), (C), (D), or (E), it shall state its reasons in writing or on the record.

(2) The court shall not terminate parental rights if at each and every hearing at which the court was required to consider reasonable efforts or services, the court has found that reasonable efforts were not made or that reasonable services were not offered or provided.

(3) If the court finds that termination of parental rights would not be detrimental to the child pursuant to paragraph (1) and that the child has a probability for adoption but is difficult to place for adoption and there is no identified or available prospective adoptive parent, the court may identify adoption as the permanent placement goal and without terminating parental rights, order that efforts be made to locate an

appropriate adoptive family for the child within a period not to exceed 180 days. During this 180-day period, the public agency responsible for seeking adoptive parents for each child shall, to the extent possible, ask each child who is 10 years of age or older, to identify any individuals, other than the child's siblings, who are important to the child, in order to identify potential adoptive parents. The public agency may ask any other child to provide that information, as appropriate. During the 180-day period, the public agency shall, to the extent possible, contact other private and public adoption agencies regarding the availability of the child for adoption. During the 180-day period, the public agency shall conduct the search for adoptive parents in the same manner as prescribed for children in Sections 8708 and 8709 of the Family Code. At the expiration of this period, another hearing shall be held and the court shall proceed pursuant to paragraph (1) or (3) of subdivision (b). For purposes of this section, a child may only be found to be difficult to place for adoption if there is no identified or available prospective adoptive parent for the child because of the child's membership in a sibling group, or the presence of a diagnosed medical, physical, or mental handicap, or the child is the age of seven years or more.

(4) (A) If the court finds that adoption of the child or termination of parental rights is not in the best interest of the child, because one of the conditions in subparagraph (A), (B), (C), (D), or (E) of paragraph (1) or in paragraph (2) applies, the court shall either order that the present caretakers or other appropriate persons shall become legal guardians of the child or order that the child remain in long-term foster care. Legal guardianship shall be considered before long-term foster care, if it is in the best interests of the child and if a suitable guardian can be found. A child who is 10 years of age or older, shall be asked to identify any individuals, other than the child's siblings, who are important to the child, in order to identify potential guardians. The agency may ask any other child to provide that information, as appropriate.

(B) If the child is living with a relative or a foster parent who is willing and capable of providing a stable and permanent environment, but not willing to become a legal guardian, the child shall not be removed from the home if the court finds the removal would be seriously detrimental to the emotional well-being of the child because the child has substantial psychological ties to the relative caretaker or foster parents.

(C) The court shall also make an order for visitation with the parents or guardians unless the court finds by a preponderance of the evidence that the visitation would be detrimental to the physical or emotional well-being of the child.

(5) If the court finds that the child should not be placed for adoption, that legal guardianship shall not be established, and that there are no

suitable foster parents except exclusive-use homes available to provide the child with a stable and permanent environment, the court may order the care, custody, and control of the child transferred from the county welfare department to a licensed foster family agency. The court shall consider the written recommendation of the county welfare director regarding the suitability of the transfer. The transfer shall be subject to further court orders.

The licensed foster family agency shall place the child in a suitable licensed or exclusive-use home that has been certified by the agency as meeting licensing standards. The licensed foster family agency shall be responsible for supporting the child and providing appropriate services to the child, including those services ordered by the court. Responsibility for the support of the child shall not, in and of itself, create liability on the part of the foster family agency to third persons injured by the child. Those children whose care, custody, and control are transferred to a foster family agency shall not be eligible for foster care maintenance payments or child welfare services, except for emergency response services pursuant to Section 16504.

(d) The proceeding for the appointment of a guardian for a child who is a dependent of the juvenile court shall be in the juvenile court. If the court finds pursuant to this section that legal guardianship is the appropriate permanent plan, it shall appoint the legal guardian and issue letters of guardianship. The assessment prepared pursuant to subdivision (g) of Section 361.5, subdivision (i) of Section 366.21, and subdivision (b) of Section 366.22 shall be read and considered by the court prior to the appointment, and this shall be reflected in the minutes of the court. The person preparing the assessment may be called and examined by any party to the proceeding.

(e) The proceeding for the adoption of a child who is a dependent of the juvenile court shall be in the juvenile court if the court finds pursuant to this section that adoption is the appropriate permanent plan and the petition for adoption is filed in the juvenile court. Upon the filing of a petition for adoption, the juvenile court shall order that an adoption hearing be set. The court shall proceed with the adoption after the appellate rights of the natural parents have been exhausted. The full report required by Section 8715 of the Family Code shall be read and considered by the court prior to the adoption and this shall be reflected in the minutes of the court. The person preparing the report may be called and examined by any party to the proceeding. It is the intent of the Legislature, pursuant to this subdivision, to give potential adoptive parents the option of filing in the juvenile court the petition for the adoption of a child who is a dependent of the juvenile court. Nothing in

this section is intended to prevent the filing of a petition for adoption in any other court as permitted by law, instead of in the juvenile court.

(f) At the beginning of any proceeding pursuant to this section, if the child or the parents are not being represented by previously retained or appointed counsel, the court shall proceed as follows:

(1) In accordance with subdivision (c) of Section 317, if a child before the court is without counsel, the court shall appoint counsel unless the court finds that the child would not benefit from the appointment of counsel. The court shall state on the record its reasons for that finding.

(2) If a parent appears without counsel and is unable to afford counsel, the court shall appoint counsel for the parent, unless this representation is knowingly and intelligently waived. The same counsel shall not be appointed to represent both the child and his or her parent. The public defender or private counsel may be appointed as counsel for the parent.

(3) Private counsel appointed under this section shall receive a reasonable sum for compensation and expenses, the amount of which shall be determined by the court. The amount shall be paid by the real parties in interest, other than the child, in any proportions the court deems just. However, if the court finds that any of the real parties in interest are unable to afford counsel, the amount shall be paid out of the general fund of the county.

(g) The court may continue the proceeding for a period of time not to exceed 30 days as necessary to appoint counsel, and to enable counsel to become acquainted with the case.

(h) (1) At all proceedings under this section, the court shall consider the wishes of the child and shall act in the best interests of the child.

(2) In accordance with Section 349, the child shall be present in court if the child or the child's counsel so requests or the court so orders. If the child is 10 years of age or older and is not present at a hearing held pursuant to this section, the court shall determine whether the minor was properly notified of his or her right to attend the hearing and inquire as to the reason why the child is not present.

(3) (A) The testimony of the child may be taken in chambers and outside the presence of the child's parent or parents, if the child's parent or parents are represented by counsel, the counsel is present, and any of the following circumstances exist:

(i) The court determines that testimony in chambers is necessary to ensure truthful testimony.

(ii) The child is likely to be intimidated by a formal courtroom setting.

(iii) The child is afraid to testify in front of his or her parent or parents.

(B) After testimony in chambers, the parent or parents of the child may elect to have the court reporter read back the testimony or have the testimony summarized by counsel for the parent or parents.

(C) The testimony of a child also may be taken in chambers and outside the presence of the guardian or guardians of a child under the circumstances specified in this subdivision.

(i) Any order of the court permanently terminating parental rights under this section shall be conclusive and binding upon the child, upon the parent or parents and upon all other persons who have been served with citation by publication or otherwise as provided in this chapter. After making the order, the court shall have no power to set aside, change, or modify it, but nothing in this section shall be construed to limit the right to appeal the order.

(j) If the court, by order or judgment, declares the child free from the custody and control of both parents, or one parent if the other does not have custody and control, the court shall at the same time order the child referred to the State Department of Social Services or a licensed adoption agency for adoptive placement by the agency. However, a petition for adoption may not be granted until the appellate rights of the natural parents have been exhausted. The State Department of Social Services or licensed adoption agency shall be responsible for the custody and supervision of the child and shall be entitled to the exclusive care and control of the child at all times until a petition for adoption is granted. With the consent of the agency, the court may appoint a guardian of the child, who shall serve until the child is adopted.

(k) Notwithstanding any other provision of law, the application of any person who, as a relative caretaker or foster parent, has cared for a dependent child for whom the court has approved a permanent plan for adoption, or who has been freed for adoption, shall be given preference with respect to that child over all other applications for adoptive placement if the agency making the placement determines that the child has substantial emotional ties to the relative caretaker or foster parent and removal from the relative caretaker or foster parent would be seriously detrimental to the child's emotional well-being.

As used in this subdivision, "preference" means that the application shall be processed and, if satisfactory, the family study shall be completed before the processing of the application of any other person for the adoptive placement of the child.

(l) (1) An order by the court that a hearing pursuant to this section be held is not appealable at any time unless all of the following applies:

(A) A petition for extraordinary writ review was filed in a timely manner.

(B) The petition substantively addressed the specific issues to be challenged and supported that challenge by an adequate record.

(C) The petition for extraordinary writ review was summarily denied or otherwise not decided on the merits.

(2) Failure to file a petition for extraordinary writ review within the period specified by rule, to substantively address the specific issues challenged, or to support that challenge by an adequate record shall preclude subsequent review by appeal of the findings and orders made pursuant to this section.

(3) The Judicial Council shall adopt rules of court, effective January 1, 1995, to ensure all of the following:

(A) A trial court, after issuance of an order directing a hearing pursuant to this section be held, shall advise all parties of the requirement of filing a petition for extraordinary writ review as set forth in this subdivision in order to preserve any right to appeal in these issues. This notice shall be made orally to a party if the party is present at the time of the making of the order or by first-class mail by the clerk of the court to the last known address of a party not present at the time of the making of the order.

(B) The prompt transmittal of the records from the trial court to the appellate court.

(C) That adequate time requirements for counsel and court personnel exist to implement the objective of this subdivision.

(D) That the parent or guardian, or their trial counsel or other counsel, is charged with the responsibility of filing a petition for extraordinary writ relief pursuant to this subdivision.

(4) The intent of this subdivision is to do both of the following:

(A) Make every reasonable attempt to achieve a substantive and meritorious review by the appellate court within the time specified in Sections 366.21 and 366.22 for holding a hearing pursuant to this section.

(B) Encourage the appellate court to determine all writ petitions filed pursuant to this subdivision on their merits.

(5) This subdivision shall only apply to cases in which an order to set a hearing pursuant to this section is issued on or after January 1, 1995.

(m) Except for subdivision (j), this section shall also apply to minors adjudged wards pursuant to Section 727.31.

(n) The implementation and operation of the amendments to paragraph (3) of subdivision (c) and subparagraph (A) of paragraph (4) of subdivision (c) enacted at the 2005-06 Regular Session shall be subject to appropriation through the budget process and by phase, as provided in Section 366.35.

SEC. 6.1. Section 366.26 of the Welfare and Institutions Code is amended to read:

366.26. (a) This section applies to children who are adjudged dependent children of the juvenile court pursuant to subdivision (c) of Section 360. The procedures specified herein are the exclusive procedures for conducting these hearings; Part 2 (commencing with Section 3020)

of Division 8 of the Family Code is not applicable to these proceedings. Section 8714.7 of the Family Code is applicable and available to all dependent children meeting the requirements of that section, if the postadoption contact agreement has been entered into voluntarily. For children who are adjudged dependent children of the juvenile court pursuant to subdivision (c) of Section 360, this section and Sections 8604, 8605, 8606, and 8700 of the Family Code and Chapter 5 (commencing with Section 7660) of Part 3 of Division 12 of the Family Code specify the exclusive procedures for permanently terminating parental rights with regard to, or establishing legal guardianship of, the child while the child is a dependent child of the juvenile court.

(b) At the hearing, which shall be held in juvenile court for all children who are dependents of the juvenile court, the court, in order to provide stable, permanent homes for these children, shall review the report as specified in Section 361.5, 366.21, or 366.22, shall indicate that the court has read and considered it, shall receive other evidence that the parties may present, and then shall make findings and orders in the following order of preference:

(1) Terminate the rights of the parent or parents and order that the child be placed for adoption and, upon the filing of a petition for adoption in the juvenile court, order that a hearing be set. The court shall proceed with the adoption after the appellate rights of the natural parents have been exhausted.

(2) On making a finding under paragraph (3) of subdivision (c), identify adoption as the permanent placement goal and order that efforts be made to locate an appropriate adoptive family for the child within a period not to exceed 180 days.

(3) Appoint a legal guardian for the child and order that letters of guardianship issue.

(4) Order that the child be placed in long-term foster care, subject to the periodic review of the juvenile court under Section 366.3.

In choosing among the above alternatives the court shall proceed pursuant to subdivision (c).

(c) (1) If the court determines, based on the assessment provided as ordered under subdivision (i) of Section 366.21 or subdivision (b) of Section 366.22, and any other relevant evidence, by a clear and convincing standard, that it is likely the child will be adopted, the court shall terminate parental rights and order the child placed for adoption. The fact that the child is not yet placed in a preadoptive home nor with a relative or foster family who is prepared to adopt the child, shall not constitute a basis for the court to conclude that it is not likely the child will be adopted. A finding under subdivision (b) or paragraph (1) of subdivision (e) of Section 361.5 that reunification services shall not be

offered, under subdivision (e) of Section 366.21 that the whereabouts of a parent have been unknown for six months or that the parent has failed to visit or contact the child for six months or that the parent has been convicted of a felony indicating parental unfitness, or, under Section 366.21 or 366.22, that the court has continued to remove the child from the custody of the parent or guardian and has terminated reunification services, shall constitute a sufficient basis for termination of parental rights unless the court finds a compelling reason for determining that termination would be detrimental to the child due to one or more of the following circumstances:

(A) The parents or guardians have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship.

(B) A child 12 years of age or older objects to termination of parental rights.

(C) The child is placed in a residential treatment facility, adoption is unlikely or undesirable, and continuation of parental rights will not prevent finding the child a permanent family placement if the parents cannot resume custody when residential care is no longer needed.

(D) The child is living with a relative or foster parent who is unable or unwilling to adopt the child because of exceptional circumstances, that do not include an unwillingness to accept legal or financial responsibility for the child, but who is willing and capable of providing the child with a stable and permanent environment and the removal of the child from the physical custody of his or her relative or foster parent would be detrimental to the emotional well-being of the child. This subparagraph does not apply to any child who is living with a nonrelative and who is either (i) under six years of age or (ii) a member of a sibling group where at least one child is under six years of age and the siblings are, or should be, permanently placed together.

(E) There would be substantial interference with a child's sibling relationship, taking into consideration the nature and extent of the relationship, including, but not limited to, whether the child was raised with a sibling in the same home, whether the child shared significant common experiences or has existing close and strong bonds with a sibling, and whether ongoing contact is in the child's best interest, including the child's long-term emotional interest, as compared to the benefit of legal permanence through adoption.

If the court finds that termination of parental rights would be detrimental to the child pursuant to subparagraph (A), (B), (C), (D), or (E), it shall state its reasons in writing or on the record.

(2) The court shall not terminate parental rights if at each hearing at which the court was required to consider reasonable efforts or services,

the court has found that reasonable efforts were not made or that reasonable services were not offered or provided.

(3) If the court finds that termination of parental rights would not be detrimental to the child pursuant to paragraph (1) and that the child has a probability for adoption but is difficult to place for adoption and there is no identified or available prospective adoptive parent, the court may identify adoption as the permanent placement goal and without terminating parental rights, order that efforts be made to locate an appropriate adoptive family for the child within a period not to exceed 180 days. During this 180-day period, the public agency responsible for seeking adoptive parents for each child shall, to the extent possible, ask each child who is 10 years of age or older, to identify any individuals, other than the child's siblings, who are important to the child, in order to identify potential adoptive parents. The public agency may ask any other child to provide that information, as appropriate. During the 180-day period, the public agency shall, to the extent possible, contact other private and public adoption agencies regarding the availability of the child for adoption. During the 180-day period, the public agency shall conduct the search for adoptive parents in the same manner as prescribed for children in Sections 8708 and 8709 of the Family Code. At the expiration of this period, another hearing shall be held and the court shall proceed pursuant to paragraph (1) or (3) of subdivision (b). For purposes of this section, a child may only be found to be difficult to place for adoption if there is no identified or available prospective adoptive parent for the child because of the child's membership in a sibling group, or the presence of a diagnosed medical, physical, or mental handicap, or the child is the age of seven years or more.

(4) (A) If the court finds that adoption of the child or termination of parental rights is not in the best interest of the child, because one of the conditions in subparagraph (A), (B), (C), (D), or (E) of paragraph (1) or in paragraph (2) applies, the court shall either order that the present caretakers or other appropriate persons shall become legal guardians of the child or order that the child remain in long-term foster care. Legal guardianship shall be considered before long-term foster care, if it is in the best interests of the child and if a suitable guardian can be found. A child who is 10 years of age or older, shall be asked to identify any individuals, other than the child's siblings, who are important to the child, in order to identify potential guardians. The agency may ask any other child to provide that information, as appropriate.

(B) If the child is living with a relative or a foster parent who is willing and capable of providing a stable and permanent environment, but not willing to become a legal guardian, the child shall not be removed from the home if the court finds the removal would be seriously detrimental

to the emotional well-being of the child because the child has substantial psychological ties to the relative caretaker or foster parents.

(C) The court shall also make an order for visitation with the parents or guardians unless the court finds by a preponderance of the evidence that the visitation would be detrimental to the physical or emotional well-being of the child.

(5) If the court finds that the child should not be placed for adoption, that legal guardianship shall not be established, and that there are no suitable foster parents except exclusive-use homes available to provide the child with a stable and permanent environment, the court may order the care, custody, and control of the child transferred from the county welfare department to a licensed foster family agency. The court shall consider the written recommendation of the county welfare director regarding the suitability of the transfer. The transfer shall be subject to further court orders.

The licensed foster family agency shall place the child in a suitable licensed or exclusive-use home that has been certified by the agency as meeting licensing standards. The licensed foster family agency shall be responsible for supporting the child and providing appropriate services to the child, including those services ordered by the court. Responsibility for the support of the child shall not, in and of itself, create liability on the part of the foster family agency to third persons injured by the child. Those children whose care, custody, and control are transferred to a foster family agency shall not be eligible for foster care maintenance payments or child welfare services, except for emergency response services pursuant to Section 16504.

(d) The proceeding for the appointment of a guardian for a child who is a dependent of the juvenile court shall be in the juvenile court. If the court finds pursuant to this section that legal guardianship is the appropriate permanent plan, it shall appoint the legal guardian and issue letters of guardianship. The assessment prepared pursuant to subdivision (g) of Section 361.5, subdivision (i) of Section 366.21, and subdivision (b) of Section 366.22 shall be read and considered by the court prior to the appointment, and this shall be reflected in the minutes of the court. The person preparing the assessment may be called and examined by any party to the proceeding.

(e) The proceeding for the adoption of a child who is a dependent of the juvenile court shall be in the juvenile court if the court finds pursuant to this section that adoption is the appropriate permanent plan and the petition for adoption is filed in the juvenile court. Upon the filing of a petition for adoption, the juvenile court shall order that an adoption hearing be set. The court shall proceed with the adoption after the appellate rights of the natural parents have been exhausted. The full

report required by Section 8715 of the Family Code shall be read and considered by the court prior to the adoption and this shall be reflected in the minutes of the court. The person preparing the report may be called and examined by any party to the proceeding. It is the intent of the Legislature, pursuant to this subdivision, to give potential adoptive parents the option of filing in the juvenile court the petition for the adoption of a child who is a dependent of the juvenile court. Nothing in this section is intended to prevent the filing of a petition for adoption in any other court as permitted by law, instead of in the juvenile court.

(f) At the beginning of any proceeding pursuant to this section, if the child or the parents are not being represented by previously retained or appointed counsel, the court shall proceed as follows:

(1) In accordance with subdivision (c) of Section 317, if a child before the court is without counsel, the court shall appoint counsel unless the court finds that the child would not benefit from the appointment of counsel. The court shall state on the record its reasons for that finding.

(2) If a parent appears without counsel and is unable to afford counsel, the court shall appoint counsel for the parent, unless this representation is knowingly and intelligently waived. The same counsel shall not be appointed to represent both the child and his or her parent. The public defender or private counsel may be appointed as counsel for the parent.

(3) Private counsel appointed under this section shall receive a reasonable sum for compensation and expenses, the amount of which shall be determined by the court. The amount shall be paid by the real parties in interest, other than the child, in any proportions the court deems just. However, if the court finds that any of the real parties in interest are unable to afford counsel, the amount shall be paid out of the general fund of the county.

(g) The court may continue the proceeding for a period of time not to exceed 30 days as necessary to appoint counsel, and to enable counsel to become acquainted with the case.

(h) (1) At all proceedings under this section, the court shall consider the wishes of the child and shall act in the best interests of the child.

(2) In accordance with Section 349, the child shall be present in court if the child or the child's counsel so requests or the court so orders. If the child is 10 years of age or older and is not present at a hearing held pursuant to this section, the court shall determine whether the minor was properly notified of his or her right to attend the hearing and inquire as to the reason why the child is not present.

(3) (A) The testimony of the child may be taken in chambers and outside the presence of the child's parent or parents, if the child's parent or parents are represented by counsel, the counsel is present, and any of the following circumstances exists:

(i) The court determines that testimony in chambers is necessary to ensure truthful testimony.

(ii) The child is likely to be intimidated by a formal courtroom setting.

(iii) The child is afraid to testify in front of his or her parent or parents.

(B) After testimony in chambers, the parent or parents of the child may elect to have the court reporter read back the testimony or have the testimony summarized by counsel for the parent or parents.

(C) The testimony of a child also may be taken in chambers and outside the presence of the guardian or guardians of a child under the circumstances specified in this subdivision.

(i) (1) Any order of the court permanently terminating parental rights under this section shall be conclusive and binding upon the child, upon the parent or parents and upon all other persons who have been served with citation by publication or otherwise as provided in this chapter. After making the order, the juvenile court shall have no power to set aside, change, or modify it, except as provided in paragraph (2), but nothing in this section shall be construed to limit the right to appeal the order.

(2) A child who has not been adopted after the passage of at least three years from the date the court terminated parental rights and for whom the court has determined that adoption is no longer the permanent plan may petition the juvenile court to reinstate parental rights pursuant to the procedure prescribed by Section 388. The child may file the petition prior to the expiration of this three-year period if the State Department of Social Services or licensed adoption agency that is responsible for custody and supervision of the child as described in subdivision (j) and the child stipulate that the child is no longer likely to be adopted. A child over 12 years of age shall sign the petition in the absence of a showing of good cause as to why the child could not do so. If it appears that the best interests of the child may be promoted by reinstatement of parental rights, the court shall order that a hearing be held and shall give prior notice, or cause prior notice to be given, to the social worker or probation officer and to the child's attorney of record, or, if there is no attorney of record for the child, to the child, and the child's tribe, if applicable, by means prescribed by subdivision (c) of Section 297. The court shall order the child or the social worker or probation officer to give prior notice of the hearing to the child's former parent or parents whose parental rights were terminated in the manner prescribed by subdivision (f) of Section 294 where the recommendation is adoption. The juvenile court shall grant the petition if it finds by clear and convincing evidence that the child is no longer likely to be adopted and that reinstatement of parental rights is in the child's best interest. If the court reinstates parental rights over a child who is under 12 years of

age and for whom the new permanent plan will not be reunification with a parent or legal guardian, the court shall specify the factual basis for its findings that it is in the best interest of the child to reinstate parental rights. This subdivision is intended to be retroactive and applies to any child who is under the jurisdiction of the juvenile court at the time of the hearing regardless of the date parental rights were terminated.

(j) If the court, by order or judgment, declares the child free from the custody and control of both parents, or one parent if the other does not have custody and control, the court shall at the same time order the child referred to the State Department of Social Services or a licensed adoption agency for adoptive placement by the agency. However, a petition for adoption may not be granted until the appellate rights of the natural parents have been exhausted. The State Department of Social Services or licensed adoption agency shall be responsible for the custody and supervision of the child and shall be entitled to the exclusive care and control of the child at all times until a petition for adoption is granted. With the consent of the agency, the court may appoint a guardian of the child, who shall serve until the child is adopted.

(k) Notwithstanding any other provision of law, the application of any person who, as a relative caretaker or foster parent, has cared for a dependent child for whom the court has approved a permanent plan for adoption, or who has been freed for adoption, shall be given preference with respect to that child over all other applications for adoptive placement if the agency making the placement determines that the child has substantial emotional ties to the relative caretaker or foster parent and removal from the relative caretaker or foster parent would be seriously detrimental to the child's emotional well-being.

As used in this subdivision, "preference" means that the application shall be processed and, if satisfactory, the family study shall be completed before the processing of the application of any other person for the adoptive placement of the child.

(l) (1) An order by the court that a hearing pursuant to this section be held is not appealable at any time unless all of the following apply:

(A) A petition for extraordinary writ review was filed in a timely manner.

(B) The petition substantively addressed the specific issues to be challenged and supported that challenge by an adequate record.

(C) The petition for extraordinary writ review was summarily denied or otherwise not decided on the merits.

(2) Failure to file a petition for extraordinary writ review within the period specified by rule, to substantively address the specific issues challenged, or to support that challenge by an adequate record shall

preclude subsequent review by appeal of the findings and orders made pursuant to this section.

(3) The Judicial Council shall adopt rules of court, effective January 1, 1995, to ensure all of the following:

(A) A trial court, after issuance of an order directing a hearing pursuant to this section be held, shall advise all parties of the requirement of filing a petition for extraordinary writ review as set forth in this subdivision in order to preserve any right to appeal in these issues. This notice shall be made orally to a party if the party is present at the time of the making of the order or by first-class mail by the clerk of the court to the last known address of a party not present at the time of the making of the order.

(B) The prompt transmittal of the records from the trial court to the appellate court.

(C) That adequate time requirements for counsel and court personnel exist to implement the objective of this subdivision.

(D) That the parent or guardian, or their trial counsel or other counsel, is charged with the responsibility of filing a petition for extraordinary writ relief pursuant to this subdivision.

(4) The intent of this subdivision is to do both of the following:

(A) Make every reasonable attempt to achieve a substantive and meritorious review by the appellate court within the time specified in Sections 366.21 and 366.22 for holding a hearing pursuant to this section.

(B) Encourage the appellate court to determine all writ petitions filed pursuant to this subdivision on their merits.

(5) This subdivision shall only apply to cases in which an order to set a hearing pursuant to this section is issued on or after January 1, 1995.

(m) Except for subdivision (j), this section shall also apply to minors adjudged wards pursuant to Section 727.31.

(n) The implementation and operation of the amendments to paragraph (3) of subdivision (c) and subparagraph (A) of paragraph (4) of subdivision (c) enacted at the 2005-06 Regular Session shall be subject to appropriation through the budget process and by phase, as provided in Section 366.35.

SEC. 6.2. Section 366.26 of the Welfare and Institutions Code is amended to read:

366.26. (a) This section applies to children who are adjudged dependent children of the juvenile court pursuant to subdivision (c) of Section 360. The procedures specified in this section are the exclusive procedures for conducting these hearings; Part 2 (commencing with Section 3020) of Division 8 of the Family Code is not applicable to these proceedings. Section 8714.7 of the Family Code is applicable and available to all dependent children meeting the requirements of that

section, if the postadoption contact agreement has been entered into voluntarily. For children who are adjudged dependent children of the juvenile court pursuant to subdivision (c) of Section 360, this section and Sections 8604, 8605, 8606, and 8700 of the Family Code and Chapter 5 (commencing with Section 7660) of Part 3 of Division 12 of the Family Code specify the exclusive procedures for permanently terminating parental rights with regard to, or establishing legal guardianship of, the child while the child is a dependent child of the juvenile court.

(b) At the hearing, which shall be held in juvenile court for all children who are dependents of the juvenile court, the court, in order to provide stable, permanent homes for these children, shall review the report as specified in Section 361.5, 366.21, or 366.22, shall indicate that the court has read and considered it, shall receive other evidence that the parties may present, and then shall make findings and orders in the following order of preference:

(1) Terminate the rights of the parent or parents and order that the child be placed for adoption and, upon the filing of a petition for adoption in the juvenile court, order that a hearing be set. The court shall proceed with the adoption after the appellate rights of the natural parents have been exhausted.

(2) On making a finding under paragraph (3) of subdivision (c), identify adoption as the permanent placement goal and order that efforts be made to locate an appropriate adoptive family for the child within a period not to exceed 180 days.

(3) Appoint a legal guardian for the child and order that letters of guardianship issue.

(4) Order that the child be placed in long-term foster care, subject to the periodic review of the juvenile court under Section 366.3.

In choosing among the above alternatives, the court shall proceed pursuant to subdivision (c).

(c) (1) If the court determines, based on the assessment provided as ordered under subdivision (i) of Section 366.21 or subdivision (b) of Section 366.22, and any other relevant evidence, by a clear and convincing standard, that it is likely the child will be adopted, the court shall terminate parental rights and order the child placed for adoption. The fact that the child is not yet placed in a preadoptive home nor with a relative or foster family who is prepared to adopt the child, shall not constitute a basis for the court to conclude that it is not likely the child will be adopted. A finding under subdivision (b) or paragraph (1) of subdivision (e) of Section 361.5 that reunification services shall not be offered, under subdivision (e) of Section 366.21 that the whereabouts of a parent have been unknown for six months or that the parent has failed to visit or contact the child for six months or that the parent has

been convicted of a felony indicating parental unfitness, or, under Section 366.21 or 366.22, that the court has continued to remove the child from the custody of the parent or guardian and has terminated reunification services, shall constitute a sufficient basis for termination of parental rights unless the court finds a compelling reason for determining that termination would be detrimental to the child due to one or more of the following circumstances:

(A) The parents or guardians have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship.

(B) A child 12 years of age or older objects to termination of parental rights.

(C) The child is placed in a residential treatment facility, adoption is unlikely or undesirable, and continuation of parental rights will not prevent finding the child a permanent family placement if the parents cannot resume custody when residential care is no longer needed.

(D) The child is living with a relative or foster parent who is unable or unwilling to adopt the child because of exceptional circumstances, that do not include an unwillingness to accept legal or financial responsibility for the child, but who is willing and capable of providing the child with a stable and permanent environment and the removal of the child from the physical custody of his or her relative or foster parent would be detrimental to the emotional well-being of the child. This subparagraph does not apply to any child who is living with a nonrelative and who is either (i) under six years of age or (ii) a member of a sibling group where at least one child is under six years of age and the siblings are, or should be, permanently placed together.

(E) There would be substantial interference with a child's sibling relationship, taking into consideration the nature and extent of the relationship, including, but not limited to, whether the child was raised with a sibling in the same home, whether the child shared significant common experiences or has existing close and strong bonds with a sibling, and whether ongoing contact is in the child's best interest, including the child's long-term emotional interest, as compared to the benefit of legal permanence through adoption.

If the court finds that termination of parental rights would be detrimental to the child pursuant to subparagraph (A), (B), (C), (D), or (E), it shall state its reasons in writing or on the record.

(2) The court shall not terminate parental rights if at each and every hearing at which the court was required to consider reasonable efforts or services, the court has found that reasonable efforts were not made or that reasonable services were not offered or provided.

(3) If the court finds that termination of parental rights would not be detrimental to the child pursuant to paragraph (1) and that the child has a probability for adoption but is difficult to place for adoption and there is no identified or available prospective adoptive parent, the court may identify adoption as the permanent placement goal and without terminating parental rights, order that efforts be made to locate an appropriate adoptive family for the child within a period not to exceed 180 days. During this 180-day period, the public agency responsible for seeking adoptive parents for each child shall, to the extent possible, ask each child who is 10 years of age or older, to identify any individuals, other than the child's siblings, who are important to the child, in order to identify potential adoptive parents. The public agency may ask any other child to provide that information, as appropriate. During the 180-day period, the public agency shall, to the extent possible, contact other private and public adoption agencies regarding the availability of the child for adoption. During the 180-day period, the public agency shall conduct the search for adoptive parents in the same manner as prescribed for children in Sections 8708 and 8709 of the Family Code. At the expiration of this period, another hearing shall be held and the court shall proceed pursuant to paragraph (1) or (3) of subdivision (b). For purposes of this section, a child may only be found to be difficult to place for adoption if there is no identified or available prospective adoptive parent for the child because of the child's membership in a sibling group, or the presence of a diagnosed medical, physical, or mental handicap, or the child is the age of seven years or more.

(4) (A) If the court finds that adoption of the child or termination of parental rights is not in the best interest of the child, because one of the conditions in subparagraph (A), (B), (C), (D), or (E) of paragraph (1) or in paragraph (2) applies, the court shall either order that the present caretakers or other appropriate persons shall become legal guardians of the child or order that the child remain in long-term foster care. Legal guardianship shall be considered before long-term foster care, if it is in the best interest of the child and if a suitable guardian can be found. A child who is 10 years of age or older, shall be asked to identify any individuals, other than the child's siblings, who are important to the child, in order to identify potential guardians. The agency may ask any other child to provide that information, as appropriate.

(B) If the child is living with a relative or a foster parent who is willing and capable of providing a stable and permanent environment, but not willing to become a legal guardian, the child shall not be removed from the home if the court finds the removal would be seriously detrimental to the emotional well-being of the child because the child has substantial psychological ties to the relative caretaker or foster parents.

(C) The court shall also make an order for visitation with the parents or guardians unless the court finds by a preponderance of the evidence that the visitation would be detrimental to the physical or emotional well-being of the child.

(5) If the court finds that the child should not be placed for adoption, that legal guardianship shall not be established, and that there are no suitable foster parents except exclusive-use homes available to provide the child with a stable and permanent environment, the court may order the care, custody, and control of the child transferred from the county welfare department to a licensed foster family agency. The court shall consider the written recommendation of the county welfare director regarding the suitability of the transfer. The transfer shall be subject to further court orders.

The licensed foster family agency shall place the child in a suitable licensed or exclusive-use home that has been certified by the agency as meeting licensing standards. The licensed foster family agency shall be responsible for supporting the child and providing appropriate services to the child, including those services ordered by the court. Responsibility for the support of the child shall not, in and of itself, create liability on the part of the foster family agency to third persons injured by the child. Those children whose care, custody, and control are transferred to a foster family agency shall not be eligible for foster care maintenance payments or child welfare services, except for emergency response services pursuant to Section 16504.

(d) The proceeding for the appointment of a guardian for a child who is a dependent of the juvenile court shall be in the juvenile court. If the court finds pursuant to this section that legal guardianship is the appropriate permanent plan, it shall appoint the legal guardian and issue letters of guardianship. The assessment prepared pursuant to subdivision (g) of Section 361.5, subdivision (i) of Section 366.21, and subdivision (b) of Section 366.22 shall be read and considered by the court prior to the appointment, and this shall be reflected in the minutes of the court. The person preparing the assessment may be called and examined by any party to the proceeding.

(e) The proceeding for the adoption of a child who is a dependent of the juvenile court shall be in the juvenile court if the court finds pursuant to this section that adoption is the appropriate permanent plan and the petition for adoption is filed in the juvenile court. Upon the filing of a petition for adoption, the juvenile court shall order that an adoption hearing be set. The court shall proceed with the adoption after the appellate rights of the natural parents have been exhausted. The full report required by Section 8715 of the Family Code shall be read and considered by the court prior to the adoption and this shall be reflected

in the minutes of the court. The person preparing the report may be called and examined by any party to the proceeding. It is the intent of the Legislature, pursuant to this subdivision, to give potential adoptive parents the option of filing in the juvenile court the petition for the adoption of a child who is a dependent of the juvenile court. Nothing in this section is intended to prevent the filing of a petition for adoption in any other court as permitted by law, instead of in the juvenile court.

(f) At the beginning of any proceeding pursuant to this section, if the child or the parents are not being represented by previously retained or appointed counsel, including, in the case of any child who is not a lawful permanent resident or citizen of the United States, counsel appointed pursuant to subdivision (i) of Section 317, the court shall proceed as follows:

(1) In accordance with subdivision (c) of Section 317, if a child before the court is without counsel, the court shall appoint counsel unless the court finds that the child would not benefit from the appointment of counsel. The court shall state on the record its reasons for that finding.

(2) If a parent appears without counsel and is unable to afford counsel, the court shall appoint counsel for the parent, unless this representation is knowingly and intelligently waived. The same counsel shall not be appointed to represent both the child and his or her parent. The public defender or private counsel may be appointed as counsel for the parent.

(3) Private counsel appointed under this section shall receive a reasonable sum for compensation and expenses, the amount of which shall be determined by the court. The amount shall be paid by the real parties in interest, other than the child, in any proportions the court deems just. However, if the court finds that any of the real parties in interest are unable to afford counsel, the amount shall be paid out of the general fund of the county.

(g) The court may continue the proceeding for a period of time not to exceed 30 days as necessary to appoint counsel, and to enable counsel to become acquainted with the case.

(h) (1) At all proceedings under this section, the court shall consider the wishes of the child and shall act in the best interests of the child.

(2) In accordance with Section 349, the child shall be present in court if the child or the child's counsel so requests or the court so orders. If the child is 10 years of age or older and is not present at a hearing held pursuant to this section, the court shall determine whether the minor was properly notified of his or her right to attend the hearing and inquire as to the reason why the child is not present.

(3) (A) The testimony of the child may be taken in chambers and outside the presence of the child's parent or parents, if the child's parent

or parents are represented by counsel, the counsel is present, and any of the following circumstances exist:

(i) The court determines that testimony in chambers is necessary to ensure truthful testimony.

(ii) The child is likely to be intimidated by a formal courtroom setting.

(iii) The child is afraid to testify in front of his or her parent or parents.

(B) After testimony in chambers, the parent or parents of the child may elect to have the court reporter read back the testimony or have the testimony summarized by counsel for the parent or parents.

(C) The testimony of a child also may be taken in chambers and outside the presence of the guardian or guardians of a child under the circumstances specified in this subdivision.

(i) Any order of the court permanently terminating parental rights under this section shall be conclusive and binding upon the child, upon the parent or parents and upon all other persons who have been served with a citation by publication or otherwise as provided in this chapter. After making the order, the court shall have no power to set aside, change, or modify it, but nothing in this section shall be construed to limit the right to appeal the order.

(j) If the court, by order or judgment, declares the child free from the custody and control of both parents, or one parent if the other does not have custody and control, the court shall at the same time order the child referred to the State Department of Social Services or a licensed adoption agency for adoptive placement by the agency. However, a petition for adoption may not be granted until the appellate rights of the natural parents have been exhausted. The State Department of Social Services or licensed adoption agency shall be responsible for the custody and supervision of the child and shall be entitled to the exclusive care and control of the child at all times until a petition for adoption is granted. With the consent of the agency, the court may appoint a guardian of the child, who shall serve until the child is adopted.

(k) Notwithstanding any other provision of law, the application of any person who, as a relative caretaker or foster parent, has cared for a dependent child for whom the court has approved a permanent plan for adoption, or who has been freed for adoption, shall be given preference with respect to that child over all other applications for adoptive placement if the agency making the placement determines that the child has substantial emotional ties to the relative caretaker or foster parent and removal from the relative caretaker or foster parent would be seriously detrimental to the child's emotional well-being.

As used in this subdivision, "preference" means that the application shall be processed and, if satisfactory, the family study shall be completed

before the processing of the application of any other person for the adoptive placement of the child.

(l) (1) An order by the court that a hearing pursuant to this section be held is not appealable at any time unless all of the following applies:

(A) A petition for extraordinary writ review was filed in a timely manner.

(B) The petition substantively addressed the specific issues to be challenged and supported that challenge by an adequate record.

(C) The petition for extraordinary writ review was summarily denied or otherwise not decided on the merits.

(2) Failure to file a petition for extraordinary writ review within the period specified by rule, to substantively address the specific issues challenged, or to support that challenge by an adequate record shall preclude subsequent review by appeal of the findings and orders made pursuant to this section.

(3) The Judicial Council shall adopt rules of court, effective January 1, 1995, to ensure all of the following:

(A) A trial court, after issuance of an order directing a hearing pursuant to this section be held, shall advise all parties of the requirement of filing a petition for extraordinary writ review as set forth in this subdivision in order to preserve any right to appeal in these issues. This notice shall be made orally to a party if the party is present at the time of the making of the order or by first-class mail by the clerk of the court to the last known address of a party not present at the time of the making of the order.

(B) The prompt transmittal of the records from the trial court to the appellate court.

(C) That adequate time requirements for counsel and court personnel exist to implement the objective of this subdivision.

(D) That the parent or guardian, or their trial counsel or other counsel, is charged with the responsibility of filing a petition for extraordinary writ relief pursuant to this subdivision.

(4) The intent of this subdivision is to do both of the following:

(A) Make every reasonable attempt to achieve a substantive and meritorious review by the appellate court within the time specified in Sections 366.21 and 366.22 for holding a hearing pursuant to this section.

(B) Encourage the appellate court to determine all writ petitions filed pursuant to this subdivision on their merits.

(5) This subdivision shall only apply to cases in which an order to set a hearing pursuant to this section is issued on or after January 1, 1995.

(m) Except for subdivision (j), this section shall also apply to minors adjudged wards pursuant to Section 727.31.

(n) The implementation and operation of the amendments to paragraph (3) of subdivision (c) and subparagraph (A) of paragraph (4) of subdivision (c) enacted at the 2005-06 Regular Session shall be subject to appropriation through the budget process and by phase, as provided in Section 366.35.

SEC. 6.3. Section 366.26 of the Welfare and Institutions Code is amended to read:

366.26. (a) This section applies to children who are adjudged dependent children of the juvenile court pursuant to subdivision (c) of Section 360. The procedures specified herein are the exclusive procedures for conducting these hearings; Part 2 (commencing with Section 3020) of Division 8 of the Family Code is not applicable to these proceedings. Section 8714.7 of the Family Code is applicable and available to all dependent children meeting the requirements of that section, if the postadoption contact agreement has been entered into voluntarily. For children who are adjudged dependent children of the juvenile court pursuant to subdivision (c) of Section 360, this section and Sections 8604, 8605, 8606, and 8700 of the Family Code and Chapter 5 (commencing with Section 7660) of Part 3 of Division 12 of the Family Code specify the exclusive procedures for permanently terminating parental rights with regard to, or establishing legal guardianship of, the child while the child is a dependent child of the juvenile court.

(b) At the hearing, that shall be held in juvenile court for all children who are dependents of the juvenile court, the court, in order to provide stable, permanent homes for these children, shall review the report as specified in Section 361.5, 366.21, or 366.22, shall indicate that the court has read and considered it, shall receive other evidence that the parties may present, and then shall make findings and orders in the following order of preference:

(1) Terminate the rights of the parent or parents and order that the child be placed for adoption and, upon the filing of a petition for adoption in the juvenile court, order that a hearing be set. The court shall proceed with the adoption after the appellate rights of the natural parents have been exhausted.

(2) On making a finding under paragraph (3) of subdivision (c), identify adoption as the permanent placement goal and order that efforts be made to locate an appropriate adoptive family for the child within a period not to exceed 180 days.

(3) Appoint a legal guardian for the child and order that letters of guardianship issue.

(4) Order that the child be placed in long-term foster care, subject to the periodic review of the juvenile court under Section 366.3.

In choosing among the above alternatives the court shall proceed pursuant to subdivision (c).

(c) (1) If the court determines, based on the assessment provided as ordered under subdivision (i) of Section 366.21 or subdivision (b) of Section 366.22, and any other relevant evidence, by a clear and convincing standard, that it is likely the child will be adopted, the court shall terminate parental rights and order the child placed for adoption. The fact that the child is not yet placed in a preadoptive home nor with a relative or foster family who is prepared to adopt the child, shall not constitute a basis for the court to conclude that it is not likely the child will be adopted. A finding under subdivision (b) or paragraph (1) of subdivision (e) of Section 361.5 that reunification services shall not be offered, under subdivision (e) of Section 366.21 that the whereabouts of a parent have been unknown for six months or that the parent has failed to visit or contact the child for six months or that the parent has been convicted of a felony indicating parental unfitness, or, under Section 366.21 or 366.22, that the court has continued to remove the child from the custody of the parent or guardian and has terminated reunification services, shall constitute a sufficient basis for termination of parental rights unless the court finds a compelling reason for determining that termination would be detrimental to the child due to one or more of the following circumstances:

(A) The parents or guardians have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship.

(B) A child 12 years of age or older objects to termination of parental rights.

(C) The child is placed in a residential treatment facility, adoption is unlikely or undesirable, and continuation of parental rights will not prevent finding the child a permanent family placement if the parents cannot resume custody when residential care is no longer needed.

(D) The child is living with a relative or foster parent who is unable or unwilling to adopt the child because of exceptional circumstances, that do not include an unwillingness to accept legal or financial responsibility for the child, but who is willing and capable of providing the child with a stable and permanent environment and the removal of the child from the physical custody of his or her relative or foster parent would be detrimental to the emotional well-being of the child. This subparagraph does not apply to any child who is living with a nonrelative and who is either (i) under six years of age or (ii) a member of a sibling group where at least one child is under six years of age and the siblings are, or should be, permanently placed together.

(E) There would be substantial interference with a child's sibling relationship, taking into consideration the nature and extent of the relationship, including, but not limited to, whether the child was raised with a sibling in the same home, whether the child shared significant common experiences or has existing close and strong bonds with a sibling, and whether ongoing contact is in the child's best interest, including the child's long-term emotional interest, as compared to the benefit of legal permanence through adoption.

If the court finds that termination of parental rights would be detrimental to the child pursuant to subparagraph (A), (B), (C), (D), or (E), it shall state its reasons in writing or on the record.

(2) The court shall not terminate parental rights if at each and every hearing at which the court was required to consider reasonable efforts or services, the court has found that reasonable efforts were not made or that reasonable services were not offered or provided.

(3) If the court finds that termination of parental rights would not be detrimental to the child pursuant to paragraph (1) and that the child has a probability for adoption but is difficult to place for adoption and there is no identified or available prospective adoptive parent, the court may identify adoption as the permanent placement goal and without terminating parental rights, order that efforts be made to locate an appropriate adoptive family for the child within a period not to exceed 180 days. During this 180-day period, the public agency responsible for seeking adoptive parents for each child shall, to the extent possible, ask each child who is 10 years of age or older, to identify any individuals, other than the child's siblings, who are important to the child, in order to identify potential adoptive parents. The public agency may ask any other child to provide that information, as appropriate. During the 180-day period, the public agency shall, to the extent possible, contact other private and public adoption agencies regarding the availability of the child for adoption. During the 180-day period, the public agency shall conduct the search for adoptive parents in the same manner as prescribed for children in Sections 8708 and 8709 of the Family Code. At the expiration of this period, another hearing shall be held and the court shall proceed pursuant to paragraph (1) or (3) of subdivision (b). For purposes of this section, a child may only be found to be difficult to place for adoption if there is no identified or available prospective adoptive parent for the child because of the child's membership in a sibling group, or the presence of a diagnosed medical, physical, or mental handicap, or the child is the age of seven years or more.

(4) (A) If the court finds that adoption of the child or termination of parental rights is not in the best interest of the child, because one of the conditions in subparagraph (A), (B), (C), (D), or (E) of paragraph (1) or

in paragraph (2) applies, the court shall either order that the present caretakers or other appropriate persons shall become legal guardians of the child or order that the child remain in long-term foster care. Legal guardianship shall be considered before long-term foster care, if it is in the best interests of the child and if a suitable guardian can be found. A child who is 10 years of age or older, shall be asked to identify any individuals, other than the child's siblings, who are important to the child, in order to identify potential guardians. The agency may ask any other child to provide that information, as appropriate.

(B) If the child is living with a relative or a foster parent who is willing and capable of providing a stable and permanent environment, but not willing to become a legal guardian, the child shall not be removed from the home if the court finds the removal would be seriously detrimental to the emotional well-being of the child because the child has substantial psychological ties to the relative caretaker or foster parents.

(C) The court shall also make an order for visitation with the parents or guardians unless the court finds by a preponderance of the evidence that the visitation would be detrimental to the physical or emotional well-being of the child.

(5) If the court finds that the child should not be placed for adoption, that legal guardianship shall not be established, and that there are no suitable foster parents except exclusive-use homes available to provide the child with a stable and permanent environment, the court may order the care, custody, and control of the child transferred from the county welfare department to a licensed foster family agency. The court shall consider the written recommendation of the county welfare director regarding the suitability of the transfer. The transfer shall be subject to further court orders.

The licensed foster family agency shall place the child in a suitable licensed or exclusive-use home that has been certified by the agency as meeting licensing standards. The licensed foster family agency shall be responsible for supporting the child and providing appropriate services to the child, including those services ordered by the court. Responsibility for the support of the child shall not, in and of itself, create liability on the part of the foster family agency to third persons injured by the child. Those children whose care, custody, and control are transferred to a foster family agency shall not be eligible for foster care maintenance payments or child welfare services, except for emergency response services pursuant to Section 16504.

(d) The proceeding for the appointment of a guardian for a child who is a dependent of the juvenile court shall be in the juvenile court. If the court finds pursuant to this section that legal guardianship is the appropriate permanent plan, it shall appoint the legal guardian and issue

letters of guardianship. The assessment prepared pursuant to subdivision (g) of Section 361.5, subdivision (i) of Section 366.21, and subdivision (b) of Section 366.22 shall be read and considered by the court prior to the appointment, and this shall be reflected in the minutes of the court. The person preparing the assessment may be called and examined by any party to the proceeding.

(e) The proceeding for the adoption of a child who is a dependent of the juvenile court shall be in the juvenile court if the court finds pursuant to this section that adoption is the appropriate permanent plan and the petition for adoption is filed in the juvenile court. Upon the filing of a petition for adoption, the juvenile court shall order that an adoption hearing be set. The court shall proceed with the adoption after the appellate rights of the natural parents have been exhausted. The full report required by Section 8715 of the Family Code shall be read and considered by the court prior to the adoption and this shall be reflected in the minutes of the court. The person preparing the report may be called and examined by any party to the proceeding. It is the intent of the Legislature, pursuant to this subdivision, to give potential adoptive parents the option of filing in the juvenile court the petition for the adoption of a child who is a dependent of the juvenile court. Nothing in this section is intended to prevent the filing of a petition for adoption in any other court as permitted by law, instead of in the juvenile court.

(f) At the beginning of any proceeding pursuant to this section, if the child or the parents are not being represented by previously retained or appointed counsel, the court shall proceed as follows:

(1) In accordance with subdivision (c) of Section 317, if a child before the court is without counsel, the court shall appoint counsel unless the court finds that the child would not benefit from the appointment of counsel. The court shall state on the record its reasons for that finding.

(2) If a parent appears without counsel and is unable to afford counsel, the court shall appoint counsel for the parent, unless this representation is knowingly and intelligently waived. The same counsel shall not be appointed to represent both the child and his or her parent. The public defender or private counsel may be appointed as counsel for the parent.

(3) Private counsel appointed under this section shall receive a reasonable sum for compensation and expenses, the amount of which shall be determined by the court. The amount shall be paid by the real parties in interest, other than the child, in any proportions the court deems just. However, if the court finds that any of the real parties in interest are unable to afford counsel, the amount shall be paid out of the general fund of the county.

(g) The court may continue the proceeding for a period of time not to exceed 30 days as necessary to appoint counsel, and to enable counsel to become acquainted with the case.

(h) (1) At all proceedings under this section, the court shall consider the wishes of the child and shall act in the best interests of the child.

(2) In accordance with Section 349, the child shall be present in court if the child or the child's counsel so requests or the court so orders. If the child is 10 years of age or older and is not present at a hearing held pursuant to this section, the court shall determine whether the minor was properly notified of his or her right to attend the hearing and inquire as to the reason why the child is not present.

(3) (A) The testimony of the child may be taken in chambers and outside the presence of the child's parent or parents, if the child's parent or parents are represented by counsel, the counsel is present, and any of the following circumstances exist:

(i) The court determines that testimony in chambers is necessary to ensure truthful testimony.

(ii) The child is likely to be intimidated by a formal courtroom setting.

(iii) The child is afraid to testify in front of his or her parent or parents.

(B) After testimony in chambers, the parent or parents of the child may elect to have the court reporter read back the testimony or have the testimony summarized by counsel for the parent or parents.

(C) The testimony of a child also may be taken in chambers and outside the presence of the guardian or guardians of a child under the circumstances specified in this subdivision.

(i) Any order of the court permanently terminating parental rights under this section shall be conclusive and binding upon the child, upon the parent or parents and upon all other persons who have been served with citation by publication or otherwise as provided in this chapter. After making the order, the court shall have no power to set aside, change, or modify it, but nothing in this section shall be construed to limit the right to appeal the order.

(j) If the court, by order or judgment, declares the child free from the custody and control of both parents, or one parent if the other does not have custody and control, the court shall at the same time order the child referred to the State Department of Social Services or a licensed adoption agency for adoptive placement by the agency. However, a petition for adoption may not be granted until the appellate rights of the natural parents have been exhausted. The State Department of Social Services or licensed adoption agency shall be responsible for the custody and supervision of the child and shall be entitled to the exclusive care and control of the child at all times until a petition for adoption is granted, except as specified in subdivision (n). With the consent of the agency,

the court may appoint a guardian of the child, who shall serve until the child is adopted.

(k) Notwithstanding any other provision of law, the application of any person who, as a relative caretaker or foster parent, has cared for a dependent child for whom the court has approved a permanent plan for adoption, or who has been freed for adoption, shall be given preference with respect to that child over all other applications for adoptive placement if the agency making the placement determines that the child has substantial emotional ties to the relative caretaker or foster parent and removal from the relative caretaker or foster parent would be seriously detrimental to the child's emotional well-being.

As used in this subdivision, "preference" means that the application shall be processed and, if satisfactory, the family study shall be completed before the processing of the application of any other person for the adoptive placement of the child.

(l) (1) An order by the court that a hearing pursuant to this section be held is not appealable at any time unless all of the following applies:

(A) A petition for extraordinary writ review was filed in a timely manner.

(B) The petition substantively addressed the specific issues to be challenged and supported that challenge by an adequate record.

(C) The petition for extraordinary writ review was summarily denied or otherwise not decided on the merits.

(2) Failure to file a petition for extraordinary writ review within the period specified by rule, to substantively address the specific issues challenged, or to support that challenge by an adequate record shall preclude subsequent review by appeal of the findings and orders made pursuant to this section.

(3) The Judicial Council shall adopt rules of court, effective January 1, 1995, to ensure all of the following:

(A) A trial court, after issuance of an order directing a hearing pursuant to this section be held, shall advise all parties of the requirement of filing a petition for extraordinary writ review as set forth in this subdivision in order to preserve any right to appeal in these issues. This notice shall be made orally to a party if the party is present at the time of the making of the order or by first-class mail by the clerk of the court to the last known address of a party not present at the time of the making of the order.

(B) The prompt transmittal of the records from the trial court to the appellate court.

(C) That adequate time requirements for counsel and court personnel exist to implement the objective of this subdivision.

(D) That the parent or guardian, or their trial counsel or other counsel, is charged with the responsibility of filing a petition for extraordinary writ relief pursuant to this subdivision.

(4) The intent of this subdivision is to do both of the following:

(A) Make every reasonable attempt to achieve a substantive and meritorious review by the appellate court within the time specified in Sections 366.21 and 366.22 for holding a hearing pursuant to this section.

(B) Encourage the appellate court to determine all writ petitions filed pursuant to this subdivision on their merits.

(5) This subdivision shall only apply to cases in which an order to set a hearing pursuant to this section is issued on or after January 1, 1995.

(m) Except for subdivision (j), this section shall also apply to minors adjudged wards pursuant to Section 727.31.

(n) (1) Notwithstanding Section 8704 of the Family Code or any other provision of law, the court, at a hearing held pursuant to this section or anytime thereafter, may designate a current caretaker as a prospective adoptive parent if the child has lived with the caretaker for at least six months, the caretaker currently expresses a commitment to adopt the child, and the caretaker has taken at least one step to facilitate the adoption process. In determining whether to make that designation, the court may take into consideration whether the caretaker is listed in the preliminary assessment prepared by the county department in accordance with subdivision (i) of Section 366.21 as an appropriate person to be considered as an adoptive parent for the child and the recommendation of the State Department of Social Services or licensed adoption agency.

(2) For purposes of this subdivision, steps to facilitate the adoption process include, but are not limited to, the following:

(A) Applying for an adoption homestudy.

(B) Cooperating with an adoption homestudy.

(C) Being designated by the court or the licensed adoption agency as the adoptive family.

(D) Requesting de facto parent status.

(E) Signing an adoptive placement agreement.

(F) Engaging in discussions regarding a postadoption contact agreement.

(G) Working to overcome any impediments that have been identified by the State Department of Social Services and the licensed adoption agency.

(H) Attending classes required of prospective adoptive parents.

(3) Prior to a change in placement and as soon as possible after a decision is made to remove a child from the home of a designated prospective adoptive parent, the agency shall notify the court, the designated prospective adoptive parent or the current caretaker, if that

caretaker would have met the threshold criteria to be designated as a prospective adoptive parent pursuant to paragraph (1) on the date of service of this notice, the child's attorney, and the child, if the child is 10 years of age or older, of the proposal in the manner described in Section 16010.6.

(A) Within five court days or seven calendar days, whichever is longer, of the date of notification, the child, the child's attorney, or the designated prospective adoptive parent may file a petition with the court objecting to the proposal to remove the child, or the court, upon its own motion, may set a hearing regarding the proposal. The court may, for good cause, extend the filing period. A caretaker who would have met the threshold criteria to be designated as a prospective adoptive parent pursuant to paragraph (1) on the date of service of the notice of proposed removal of the child may file, together with the petition under this subparagraph, a petition for an order designating the caretaker as a prospective adoptive parent for purposes of this subdivision.

(B) A hearing ordered pursuant to this paragraph shall be held as soon as possible and not later than five court days after the petition is filed with the court or the court sets a hearing upon its own motion, unless the court for good cause is unable to set the matter for hearing five court days after the petition is filed, in which case the court shall set the matter for hearing as soon as possible. At the hearing, the court shall determine whether the caretaker has met the threshold criteria to be designated as a prospective adoptive parent pursuant to paragraph (1), and whether the proposed removal of the child from the home of the designated prospective adoptive parent is in the child's best interest, and the child may not be removed from the home of the designated prospective adoptive parent unless the court finds that removal is in the child's best interest. If the court determines that the caretaker did not meet the threshold criteria to be designated as a prospective adoptive parent on the date of service of the notice of proposed removal of the child, the petition objecting to the proposed removal filed by the caretaker shall be dismissed. If the caretaker was designated as a prospective adoptive parent prior to this hearing, the court shall inquire into any progress made by the caretaker towards the adoption of the child since the caretaker was designated as a prospective adoptive parent.

(C) A determination by the court that the caretaker is a designated prospective adoptive parent pursuant to paragraph (1) or subparagraph (B) does not make the caretaker a party to the dependency proceeding nor does it confer on the caretaker any standing to object to any other action of the department or licensed adoption agency, unless the caretaker has been declared a de facto parent by the court prior to the notice of removal served pursuant to paragraph (3).

(D) If a petition objecting to the proposal to remove the child is not filed, and the court, upon its own motion, does not set a hearing, the child may be removed from the home of the designated prospective adoptive parent without a hearing.

(4) Notwithstanding paragraph (3), if the State Department of Social Services or a licensed adoption agency determines that the child must be removed from the home of the caretaker who is or may be a designated prospective adoptive parent immediately, due to a risk of physical or emotional harm, the agency may remove the child from that home and is not required to provide notice prior to the removal. However, as soon as possible and not longer than two court days after the removal, the agency shall notify the court, the caretaker who is or may be a designated prospective adoptive parent, the child's attorney, and the child, if the child is 10 years of age or older, of the removal. Within five court days or seven calendar days, whichever is longer, of the date of notification of the removal, the child, the child's attorney, or the caretaker who is or may be a designated prospective adoptive parent may petition for, or the court on its own motion may set, a noticed hearing pursuant to paragraph (3). The court may, for good cause, extend the filing period.

(5) Except as provided in subdivision (b) of Section 366.28, an order by the court issued after a hearing pursuant to this subdivision shall not be appealable.

(6) Nothing in this section shall preclude a county child protective services agency from fully investigating and responding to alleged abuse or neglect of a child pursuant to Section 11165.5 of the Penal Code.

(7) The Judicial Council shall prepare forms to facilitate the filing of the petitions described in this subdivision, which shall become effective on January 1, 2006.

(o) The implementation and operation of the amendments to paragraph (3) of subdivision (c) and subparagraph (A) of paragraph (4) of subdivision (c) enacted at the 2005-06 Regular Session shall be subject to appropriation through the budget process and by phase, as provided in Section 366.35.

SEC. 6.4. Section 366.26 of the Welfare and Institutions Code is amended to read:

366.26. (a) This section applies to children who are adjudged dependent children of the juvenile court pursuant to subdivision (c) of Section 360. The procedures specified in this section are the exclusive procedures for conducting these hearings; Part 2 (commencing with Section 3020) of Division 8 of the Family Code is not applicable to these proceedings. Section 8714.7 of the Family Code is applicable and available to all dependent children meeting the requirements of that section, if the postadoption contact agreement has been entered into

voluntarily. For children who are adjudged dependent children of the juvenile court pursuant to subdivision (c) of Section 360, this section and Sections 8604, 8605, 8606, and 8700 of the Family Code and Chapter 5 (commencing with Section 7660) of Part 3 of Division 12 of the Family Code specify the exclusive procedures for permanently terminating parental rights with regard to, or establishing legal guardianship of, the child while the child is a dependent child of the juvenile court.

(b) At the hearing, which shall be held in juvenile court for all children who are dependents of the juvenile court, the court, in order to provide stable, permanent homes for these children, shall review the report as specified in Section 361.5, 366.21, or 366.22, shall indicate that the court has read and considered it, shall receive other evidence that the parties may present, and then shall make findings and orders in the following order of preference:

(1) Terminate the rights of the parent or parents and order that the child be placed for adoption and, upon the filing of a petition for adoption in the juvenile court, order that a hearing be set. The court shall proceed with the adoption after the appellate rights of the natural parents have been exhausted.

(2) On making a finding under paragraph (3) of subdivision (c), identify adoption as the permanent placement goal and order that efforts be made to locate an appropriate adoptive family for the child within a period not to exceed 180 days.

(3) Appoint a legal guardian for the child and order that letters of guardianship issue.

(4) Order that the child be placed in long-term foster care, subject to the periodic review of the juvenile court under Section 366.3.

In choosing among the above alternatives, the court shall proceed pursuant to subdivision (c).

(c) (1) If the court determines, based on the assessment provided as ordered under subdivision (i) of Section 366.21 or subdivision (b) of Section 366.22, and any other relevant evidence, by a clear and convincing standard, that it is likely the child will be adopted, the court shall terminate parental rights and order the child placed for adoption. The fact that the child is not yet placed in a preadoptive home nor with a relative or foster family who is prepared to adopt the child, shall not constitute a basis for the court to conclude that it is not likely the child will be adopted. A finding under subdivision (b) or paragraph (1) of subdivision (e) of Section 361.5 that reunification services shall not be offered, under subdivision (e) of Section 366.21 that the whereabouts of a parent have been unknown for six months or that the parent has failed to visit or contact the child for six months or that the parent has been convicted of a felony indicating parental unfitness, or, under Section

366.21 or 366.22, that the court has continued to remove the child from the custody of the parent or guardian and has terminated reunification services, shall constitute a sufficient basis for termination of parental rights unless the court finds a compelling reason for determining that termination would be detrimental to the child due to one or more of the following circumstances:

(A) The parents or guardians have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship.

(B) A child 12 years of age or older objects to termination of parental rights.

(C) The child is placed in a residential treatment facility, adoption is unlikely or undesirable, and continuation of parental rights will not prevent finding the child a permanent family placement if the parents cannot resume custody when residential care is no longer needed.

(D) The child is living with a relative or foster parent who is unable or unwilling to adopt the child because of exceptional circumstances, that do not include an unwillingness to accept legal or financial responsibility for the child, but who is willing and capable of providing the child with a stable and permanent environment and the removal of the child from the physical custody of his or her relative or foster parent would be detrimental to the emotional well-being of the child. This subparagraph does not apply to any child who is living with a nonrelative and who is either (i) under six years of age or (ii) a member of a sibling group where at least one child is under six years of age and the siblings are, or should be, permanently placed together.

(E) There would be substantial interference with a child's sibling relationship, taking into consideration the nature and extent of the relationship, including, but not limited to, whether the child was raised with a sibling in the same home, whether the child shared significant common experiences or has existing close and strong bonds with a sibling, and whether ongoing contact is in the child's best interest, including the child's long-term emotional interest, as compared to the benefit of legal permanence through adoption.

If the court finds that termination of parental rights would be detrimental to the child pursuant to subparagraph (A), (B), (C), (D), or (E), it shall state its reasons in writing or on the record.

(2) The court shall not terminate parental rights if at each hearing at which the court was required to consider reasonable efforts or services, the court has found that reasonable efforts were not made or that reasonable services were not offered or provided.

(3) If the court finds that termination of parental rights would not be detrimental to the child pursuant to paragraph (1) and that the child has

a probability for adoption but is difficult to place for adoption and there is no identified or available prospective adoptive parent, the court may identify adoption as the permanent placement goal and without terminating parental rights, order that efforts be made to locate an appropriate adoptive family for the child within a period not to exceed 180 days. During this 180-day period, the public agency responsible for seeking adoptive parents for each child shall, to the extent possible, ask each child who is 10 years of age or older, to identify any individuals, other than the child's siblings, who are important to the child, in order to identify potential adoptive parents. The public agency may ask any other child to provide that information, as appropriate. During the 180-day period, the public agency shall, to the extent possible, contact other private and public adoption agencies regarding the availability of the child for adoption. During the 180-day period, the public agency shall conduct the search for adoptive parents in the same manner as prescribed for children in Sections 8708 and 8709 of the Family Code. At the expiration of this period, another hearing shall be held and the court shall proceed pursuant to paragraph (1) or (3) of subdivision (b). For purposes of this section, a child may only be found to be difficult to place for adoption if there is no identified or available prospective adoptive parent for the child because of the child's membership in a sibling group, or the presence of a diagnosed medical, physical, or mental handicap, or the child is the age of seven years or more.

(4) (A) If the court finds that adoption of the child or termination of parental rights is not in the best interest of the child, because one of the conditions in subparagraph (A), (B), (C), (D), or (E) of paragraph (1) or in paragraph (2) applies, the court shall either order that the present caretakers or other appropriate persons shall become legal guardians of the child or order that the child remain in long-term foster care. Legal guardianship shall be considered before long-term foster care, if it is in the best interest of the child and if a suitable guardian can be found. A child who is 10 years of age or older, shall be asked to identify any individuals, other than the child's siblings, who are important to the child, in order to identify potential guardians. The agency may ask any other child to provide that information, as appropriate.

(B) If the child is living with a relative or a foster parent who is willing and capable of providing a stable and permanent environment, but not willing to become a legal guardian, the child shall not be removed from the home if the court finds the removal would be seriously detrimental to the emotional well-being of the child because the child has substantial psychological ties to the relative caretaker or foster parents.

(C) The court shall also make an order for visitation with the parents or guardians unless the court finds by a preponderance of the evidence

that the visitation would be detrimental to the physical or emotional well-being of the child.

(5) If the court finds that the child should not be placed for adoption, that legal guardianship shall not be established, and that there are no suitable foster parents except exclusive-use homes available to provide the child with a stable and permanent environment, the court may order the care, custody, and control of the child transferred from the county welfare department to a licensed foster family agency. The court shall consider the written recommendation of the county welfare director regarding the suitability of the transfer. The transfer shall be subject to further court orders.

The licensed foster family agency shall place the child in a suitable licensed or exclusive-use home that has been certified by the agency as meeting licensing standards. The licensed foster family agency shall be responsible for supporting the child and providing appropriate services to the child, including those services ordered by the court. Responsibility for the support of the child shall not, in and of itself, create liability on the part of the foster family agency to third persons injured by the child. Those children whose care, custody, and control are transferred to a foster family agency shall not be eligible for foster care maintenance payments or child welfare services, except for emergency response services pursuant to Section 16504.

(d) The proceeding for the appointment of a guardian for a child who is a dependent of the juvenile court shall be in the juvenile court. If the court finds pursuant to this section that legal guardianship is the appropriate permanent plan, it shall appoint the legal guardian and issue letters of guardianship. The assessment prepared pursuant to subdivision (g) of Section 361.5, subdivision (i) of Section 366.21, and subdivision (b) of Section 366.22 shall be read and considered by the court prior to the appointment, and this shall be reflected in the minutes of the court. The person preparing the assessment may be called and examined by any party to the proceeding.

(e) The proceeding for the adoption of a child who is a dependent of the juvenile court shall be in the juvenile court if the court finds pursuant to this section that adoption is the appropriate permanent plan and the petition for adoption is filed in the juvenile court. Upon the filing of a petition for adoption, the juvenile court shall order that an adoption hearing be set. The court shall proceed with the adoption after the appellate rights of the natural parents have been exhausted. The full report required by Section 8715 of the Family Code shall be read and considered by the court prior to the adoption and this shall be reflected in the minutes of the court. The person preparing the report may be called and examined by any party to the proceeding. It is the intent of the

Legislature, pursuant to this subdivision, to give potential adoptive parents the option of filing in the juvenile court the petition for the adoption of a child who is a dependent of the juvenile court. Nothing in this section is intended to prevent the filing of a petition for adoption in any other court as permitted by law, instead of in the juvenile court.

(f) At the beginning of any proceeding pursuant to this section, if the child or the parents are not being represented by previously retained or appointed counsel, including, in the case of any child who is not a lawful permanent resident or citizen of the United States, counsel appointed pursuant to subdivision (i) of Section 317, the court shall proceed as follows:

(1) In accordance with subdivision (c) of Section 317, if a child before the court is without counsel, the court shall appoint counsel unless the court finds that the child would not benefit from the appointment of counsel. The court shall state on the record its reasons for that finding.

(2) If a parent appears without counsel and is unable to afford counsel, the court shall appoint counsel for the parent, unless this representation is knowingly and intelligently waived. The same counsel shall not be appointed to represent both the child and his or her parent. The public defender or private counsel may be appointed as counsel for the parent.

(3) Private counsel appointed under this section shall receive a reasonable sum for compensation and expenses, the amount of which shall be determined by the court. The amount shall be paid by the real parties in interest, other than the child, in any proportions the court deems just. However, if the court finds that any of the real parties in interest are unable to afford counsel, the amount shall be paid out of the general fund of the county.

(g) The court may continue the proceeding for a period of time not to exceed 30 days as necessary to appoint counsel, and to enable counsel to become acquainted with the case.

(h) (1) At all proceedings under this section, the court shall consider the wishes of the child and shall act in the best interests of the child.

(2) In accordance with Section 349, the child shall be present in court if the child or the child's counsel so requests or the court so orders. If the child is 10 years of age or older and is not present at a hearing held pursuant to this section, the court shall determine whether the minor was properly notified of his or her right to attend the hearing and inquire as to the reason why the child is not present.

(3) (A) The testimony of the child may be taken in chambers and outside the presence of the child's parent or parents, if the child's parent or parents are represented by counsel, the counsel is present, and any of the following circumstances exists:

(i) The court determines that testimony in chambers is necessary to ensure truthful testimony.

(ii) The child is likely to be intimidated by a formal courtroom setting.

(iii) The child is afraid to testify in front of his or her parent or parents.

(B) After testimony in chambers, the parent or parents of the child may elect to have the court reporter read back the testimony or have the testimony summarized by counsel for the parent or parents.

(C) The testimony of a child also may be taken in chambers and outside the presence of the guardian or guardians of a child under the circumstances specified in this subdivision.

(i) (1) Any order of the court permanently terminating parental rights under this section shall be conclusive and binding upon the child, upon the parent or parents and upon all other persons who have been served with a citation by publication or otherwise as provided in this chapter. After making the order, the juvenile court shall have no power to set aside, change, or modify it, except as provided in paragraph (2), but nothing in this section shall be construed to limit the right to appeal the order.

(2) A child who has not been adopted after the passage of at least three years from the date the court terminated parental rights and for whom the court has determined that adoption is no longer the permanent plan may petition the juvenile court to reinstate parental rights pursuant to the procedure prescribed by Section 388. The child may file the petition prior to the expiration of this three-year period if the State Department of Social Services or licensed adoption agency that is responsible for custody and supervision of the child as described in subdivision (j) and the child stipulate that the child is no longer likely to be adopted. A child over 12 years of age shall sign the petition in the absence of a showing of good cause as to why the child could not do so. If it appears that the best interests of the child may be promoted by reinstatement of parental rights, the court shall order that a hearing be held and shall give prior notice, or cause prior notice to be given, to the social worker or probation officer and to the child's attorney of record, or, if there is no attorney of record for the child, to the child, and the child's tribe, if applicable, by means prescribed by subdivision (c) of Section 297. The court shall order the child or the social worker or probation officer to give prior notice of the hearing to the child's former parent or parents whose parental rights were terminated in the manner prescribed by subdivision (f) of Section 294 where the recommendation is adoption. The juvenile court shall grant the petition if it finds by clear and convincing evidence that the child is no longer likely to be adopted and that reinstatement of parental rights is in the child's best interest. If the court reinstates parental rights over a child who is under 12 years of

age and for whom the new permanent plan will not be reunification with a parent or legal guardian, the court shall specify the factual basis for its findings that it is in the best interest of the child to reinstate parental rights. This subdivision is intended to be retroactive and applies to any child who is under the jurisdiction of the juvenile court at the time of the hearing regardless of the date parental rights were terminated.

(j) If the court, by order or judgment, declares the child free from the custody and control of both parents, or one parent if the other does not have custody and control, the court shall at the same time order the child referred to the State Department of Social Services or a licensed adoption agency for adoptive placement by the agency. However, a petition for adoption may not be granted until the appellate rights of the natural parents have been exhausted. The State Department of Social Services or licensed adoption agency shall be responsible for the custody and supervision of the child and shall be entitled to the exclusive care and control of the child at all times until a petition for adoption is granted. With the consent of the agency, the court may appoint a guardian of the child, who shall serve until the child is adopted.

(k) Notwithstanding any other provision of law, the application of any person who, as a relative caretaker or foster parent, has cared for a dependent child for whom the court has approved a permanent plan for adoption, or who has been freed for adoption, shall be given preference with respect to that child over all other applications for adoptive placement if the agency making the placement determines that the child has substantial emotional ties to the relative caretaker or foster parent and removal from the relative caretaker or foster parent would be seriously detrimental to the child's emotional well-being.

As used in this subdivision, "preference" means that the application shall be processed and, if satisfactory, the family study shall be completed before the processing of the application of any other person for the adoptive placement of the child.

(l) (1) An order by the court that a hearing pursuant to this section be held is not appealable at any time unless all of the following apply:

(A) A petition for extraordinary writ review was filed in a timely manner.

(B) The petition substantively addressed the specific issues to be challenged and supported that challenge by an adequate record.

(C) The petition for extraordinary writ review was summarily denied or otherwise not decided on the merits.

(2) Failure to file a petition for extraordinary writ review within the period specified by rule, to substantively address the specific issues challenged, or to support that challenge by an adequate record shall

preclude subsequent review by appeal of the findings and orders made pursuant to this section.

(3) The Judicial Council shall adopt rules of court, effective January 1, 1995, to ensure all of the following:

(A) A trial court, after issuance of an order directing a hearing pursuant to this section be held, shall advise all parties of the requirement of filing a petition for extraordinary writ review as set forth in this subdivision in order to preserve any right to appeal in these issues. This notice shall be made orally to a party if the party is present at the time of the making of the order or by first-class mail by the clerk of the court to the last known address of a party not present at the time of the making of the order.

(B) The prompt transmittal of the records from the trial court to the appellate court.

(C) That adequate time requirements for counsel and court personnel exist to implement the objective of this subdivision.

(D) That the parent or guardian, or their trial counsel or other counsel, is charged with the responsibility of filing a petition for extraordinary writ relief pursuant to this subdivision.

(4) The intent of this subdivision is to do both of the following:

(A) Make every reasonable attempt to achieve a substantive and meritorious review by the appellate court within the time specified in Sections 366.21 and 366.22 for holding a hearing pursuant to this section.

(B) Encourage the appellate court to determine all writ petitions filed pursuant to this subdivision on their merits.

(5) This subdivision shall only apply to cases in which an order to set a hearing pursuant to this section is issued on or after January 1, 1995.

(m) Except for subdivision (j), this section shall also apply to minors adjudged wards pursuant to Section 727.31.

(n) The implementation and operation of the amendments to paragraph (3) of subdivision (c) and subparagraph (A) of paragraph (4) of subdivision (c) enacted at the 2005-06 Regular Session shall be subject to appropriation through the budget process and by phase, as provided in Section 366.35.

SEC. 6.5. Section 366.26 of the Welfare and Institutions Code is amended to read:

366.26. (a) This section applies to children who are adjudged dependent children of the juvenile court pursuant to subdivision (c) of Section 360. The procedures specified herein are the exclusive procedures for conducting these hearings; Part 2 (commencing with Section 3020) of Division 8 of the Family Code is not applicable to these proceedings. Section 8714.7 of the Family Code is applicable and available to all dependent children meeting the requirements of that section, if the

postadoption contact agreement has been entered into voluntarily. For children who are adjudged dependent children of the juvenile court pursuant to subdivision (c) of Section 360, this section and Sections 8604, 8605, 8606, and 8700 of the Family Code and Chapter 5 (commencing with Section 7660) of Part 3 of Division 12 of the Family Code specify the exclusive procedures for permanently terminating parental rights with regard to, or establishing legal guardianship of, the child while the child is a dependent child of the juvenile court.

(b) At the hearing, which shall be held in juvenile court for all children who are dependents of the juvenile court, the court, in order to provide stable, permanent homes for these children, shall review the report as specified in Section 361.5, 366.21, or 366.22, shall indicate that the court has read and considered it, shall receive other evidence that the parties may present, and then shall make findings and orders in the following order of preference:

(1) Terminate the rights of the parent or parents and order that the child be placed for adoption and, upon the filing of a petition for adoption in the juvenile court, order that a hearing be set. The court shall proceed with the adoption after the appellate rights of the natural parents have been exhausted.

(2) On making a finding under paragraph (3) of subdivision (c), identify adoption as the permanent placement goal and order that efforts be made to locate an appropriate adoptive family for the child within a period not to exceed 180 days.

(3) Appoint a legal guardian for the child and order that letters of guardianship issue.

(4) Order that the child be placed in long-term foster care, subject to the periodic review of the juvenile court under Section 366.3.

In choosing among the above alternatives the court shall proceed pursuant to subdivision (c).

(c) (1) If the court determines, based on the assessment provided as ordered under subdivision (i) of Section 366.21 or subdivision (b) of Section 366.22, and any other relevant evidence, by a clear and convincing standard, that it is likely the child will be adopted, the court shall terminate parental rights and order the child placed for adoption. The fact that the child is not yet placed in a preadoptive home nor with a relative or foster family who is prepared to adopt the child, shall not constitute a basis for the court to conclude that it is not likely the child will be adopted. A finding under subdivision (b) or paragraph (1) of subdivision (e) of Section 361.5 that reunification services shall not be offered, under subdivision (e) of Section 366.21 that the whereabouts of a parent have been unknown for six months or that the parent has failed to visit or contact the child for six months or that the parent has

been convicted of a felony indicating parental unfitness, or, under Section 366.21 or 366.22, that the court has continued to remove the child from the custody of the parent or guardian and has terminated reunification services, shall constitute a sufficient basis for termination of parental rights unless the court finds a compelling reason for determining that termination would be detrimental to the child due to one or more of the following circumstances:

(A) The parents or guardians have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship.

(B) A child 12 years of age or older objects to termination of parental rights.

(C) The child is placed in a residential treatment facility, adoption is unlikely or undesirable, and continuation of parental rights will not prevent finding the child a permanent family placement if the parents cannot resume custody when residential care is no longer needed.

(D) The child is living with a relative or foster parent who is unable or unwilling to adopt the child because of exceptional circumstances, that do not include an unwillingness to accept legal or financial responsibility for the child, but who is willing and capable of providing the child with a stable and permanent environment and the removal of the child from the physical custody of his or her relative or foster parent would be detrimental to the emotional well-being of the child. This subparagraph does not apply to any child who is living with a nonrelative and who is either (i) under six years of age or (ii) a member of a sibling group where at least one child is under six years of age and the siblings are, or should be, permanently placed together.

(E) There would be substantial interference with a child's sibling relationship, taking into consideration the nature and extent of the relationship, including, but not limited to, whether the child was raised with a sibling in the same home, whether the child shared significant common experiences or has existing close and strong bonds with a sibling, and whether ongoing contact is in the child's best interest, including the child's long-term emotional interest, as compared to the benefit of legal permanence through adoption.

If the court finds that termination of parental rights would be detrimental to the child pursuant to subparagraph (A), (B), (C), (D), or (E), it shall state its reasons in writing or on the record.

(2) The court shall not terminate parental rights if at each hearing at which the court was required to consider reasonable efforts or services, the court has found that reasonable efforts were not made or that reasonable services were not offered or provided.

(3) If the court finds that termination of parental rights would not be detrimental to the child pursuant to paragraph (1) and that the child has a probability for adoption but is difficult to place for adoption and there is no identified or available prospective adoptive parent, the court may identify adoption as the permanent placement goal and without terminating parental rights, order that efforts be made to locate an appropriate adoptive family for the child within a period not to exceed 180 days. During this 180-day period, the public agency responsible for seeking adoptive parents for each child shall, to the extent possible, ask each child who is 10 years of age or older, to identify any individuals, other than the child's siblings, who are important to the child, in order to identify potential adoptive parents. The public agency may ask any other child to provide that information, as appropriate. During the 180-day period, the public agency shall, to the extent possible, contact other private and public adoption agencies regarding the availability of the child for adoption. During the 180-day period, the public agency shall conduct the search for adoptive parents in the same manner as prescribed for children in Sections 8708 and 8709 of the Family Code. At the expiration of this period, another hearing shall be held and the court shall proceed pursuant to paragraph (1) or (3) of subdivision (b). For purposes of this section, a child may only be found to be difficult to place for adoption if there is no identified or available prospective adoptive parent for the child because of the child's membership in a sibling group, or the presence of a diagnosed medical, physical, or mental handicap, or the child is the age of seven years or more.

(4) (A) If the court finds that adoption of the child or termination of parental rights is not in the best interest of the child, because one of the conditions in subparagraph (A), (B), (C), (D), or (E) of paragraph (1) or in paragraph (2) applies, the court shall either order that the present caretakers or other appropriate persons shall become legal guardians of the child or order that the child remain in long-term foster care. Legal guardianship shall be considered before long-term foster care, if it is in the best interests of the child and if a suitable guardian can be found. A child who is 10 years of age or older, shall be asked to identify any individuals, other than the child's siblings, who are important to the child, in order to identify potential guardians. The agency may ask any other child to provide that information, as appropriate.

(B) If the child is living with a relative or a foster parent who is willing and capable of providing a stable and permanent environment, but not willing to become a legal guardian, the child shall not be removed from the home if the court finds the removal would be seriously detrimental to the emotional well-being of the child because the child has substantial psychological ties to the relative caretaker or foster parents.

(C) The court shall also make an order for visitation with the parents or guardians unless the court finds by a preponderance of the evidence that the visitation would be detrimental to the physical or emotional well-being of the child.

(5) If the court finds that the child should not be placed for adoption, that legal guardianship shall not be established, and that there are no suitable foster parents except exclusive-use homes available to provide the child with a stable and permanent environment, the court may order the care, custody, and control of the child transferred from the county welfare department to a licensed foster family agency. The court shall consider the written recommendation of the county welfare director regarding the suitability of the transfer. The transfer shall be subject to further court orders.

The licensed foster family agency shall place the child in a suitable licensed or exclusive-use home that has been certified by the agency as meeting licensing standards. The licensed foster family agency shall be responsible for supporting the child and providing appropriate services to the child, including those services ordered by the court. Responsibility for the support of the child shall not, in and of itself, create liability on the part of the foster family agency to third persons injured by the child. Those children whose care, custody, and control are transferred to a foster family agency shall not be eligible for foster care maintenance payments or child welfare services, except for emergency response services pursuant to Section 16504.

(d) The proceeding for the appointment of a guardian for a child who is a dependent of the juvenile court shall be in the juvenile court. If the court finds pursuant to this section that legal guardianship is the appropriate permanent plan, it shall appoint the legal guardian and issue letters of guardianship. The assessment prepared pursuant to subdivision (g) of Section 361.5, subdivision (i) of Section 366.21, and subdivision (b) of Section 366.22 shall be read and considered by the court prior to the appointment, and this shall be reflected in the minutes of the court. The person preparing the assessment may be called and examined by any party to the proceeding.

(e) The proceeding for the adoption of a child who is a dependent of the juvenile court shall be in the juvenile court if the court finds pursuant to this section that adoption is the appropriate permanent plan and the petition for adoption is filed in the juvenile court. Upon the filing of a petition for adoption, the juvenile court shall order that an adoption hearing be set. The court shall proceed with the adoption after the appellate rights of the natural parents have been exhausted. The full report required by Section 8715 of the Family Code shall be read and considered by the court prior to the adoption and this shall be reflected

in the minutes of the court. The person preparing the report may be called and examined by any party to the proceeding. It is the intent of the Legislature, pursuant to this subdivision, to give potential adoptive parents the option of filing in the juvenile court the petition for the adoption of a child who is a dependent of the juvenile court. Nothing in this section is intended to prevent the filing of a petition for adoption in any other court as permitted by law, instead of in the juvenile court.

(f) At the beginning of any proceeding pursuant to this section, if the child or the parents are not being represented by previously retained or appointed counsel, the court shall proceed as follows:

(1) In accordance with subdivision (c) of Section 317, if a child before the court is without counsel, the court shall appoint counsel unless the court finds that the child would not benefit from the appointment of counsel. The court shall state on the record its reasons for that finding.

(2) If a parent appears without counsel and is unable to afford counsel, the court shall appoint counsel for the parent, unless this representation is knowingly and intelligently waived. The same counsel shall not be appointed to represent both the child and his or her parent. The public defender or private counsel may be appointed as counsel for the parent.

(3) Private counsel appointed under this section shall receive a reasonable sum for compensation and expenses, the amount of which shall be determined by the court. The amount shall be paid by the real parties in interest, other than the child, in any proportions the court deems just. However, if the court finds that any of the real parties in interest are unable to afford counsel, the amount shall be paid out of the general fund of the county.

(g) The court may continue the proceeding for a period of time not to exceed 30 days as necessary to appoint counsel, and to enable counsel to become acquainted with the case.

(h) (1) At all proceedings under this section, the court shall consider the wishes of the child and shall act in the best interests of the child.

(2) In accordance with Section 349, the child shall be present in court if the child or the child's counsel so requests or the court so orders. If the child is 10 years of age or older and is not present at a hearing held pursuant to this section, the court shall determine whether the minor was properly notified of his or her right to attend the hearing and inquire as to the reason why the child is not present.

(3) (A) The testimony of the child may be taken in chambers and outside the presence of the child's parent or parents, if the child's parent or parents are represented by counsel, the counsel is present, and any of the following circumstances exists:

(i) The court determines that testimony in chambers is necessary to ensure truthful testimony.

(ii) The child is likely to be intimidated by a formal courtroom setting.

(iii) The child is afraid to testify in front of his or her parent or parents.

(B) After testimony in chambers, the parent or parents of the child may elect to have the court reporter read back the testimony or have the testimony summarized by counsel for the parent or parents.

(C) The testimony of a child also may be taken in chambers and outside the presence of the guardian or guardians of a child under the circumstances specified in this subdivision.

(i) (1) Any order of the court permanently terminating parental rights under this section shall be conclusive and binding upon the child, upon the parent or parents and upon all other persons who have been served with citation by publication or otherwise as provided in this chapter. After making the order, the juvenile court shall have no power to set aside, change, or modify it, except as provided in paragraph (2), but nothing in this section shall be construed to limit the right to appeal the order.

(2) A child who has not been adopted after the passage of at least three years from the date the court terminated parental rights and for whom the court has determined that adoption is no longer the permanent plan may petition the juvenile court to reinstate parental rights pursuant to the procedure prescribed by Section 388. The child may file the petition prior to the expiration of this three-year period if the State Department of Social Services or licensed adoption agency that is responsible for custody and supervision of the child as described in subdivision (j) and the child stipulate that the child is no longer likely to be adopted. A child over 12 years of age shall sign the petition in the absence of a showing of good cause as to why the child could not do so. If it appears that the best interests of the child may be promoted by reinstatement of parental rights, the court shall order that a hearing be held and shall give prior notice, or cause prior notice to be given, to the social worker or probation officer and to the child's attorney of record, or, if there is no attorney of record for the child, to the child, and the child's tribe, if applicable, by means prescribed by subdivision (c) of Section 297. The court shall order the child or the social worker or probation officer to give prior notice of the hearing to the child's former parent or parents whose parental rights were terminated in the manner prescribed by subdivision (f) of Section 294 where the recommendation is adoption. The juvenile court shall grant the petition if it finds by clear and convincing evidence that the child is no longer likely to be adopted and that reinstatement of parental rights is in the child's best interest. If the court reinstates parental rights over a child who is under 12 years of age and for whom the new permanent plan will not be reunification with a parent or legal guardian, the court shall specify the factual basis for its

findings that it is in the best interest of the child to reinstate parental rights. This subdivision is intended to be retroactive and applies to any child who is under the jurisdiction of the juvenile court at the time of the hearing regardless of the date parental rights were terminated.

(j) If the court, by order or judgment, declares the child free from the custody and control of both parents, or one parent if the other does not have custody and control, the court shall at the same time order the child referred to the State Department of Social Services or a licensed adoption agency for adoptive placement by the agency. However, a petition for adoption may not be granted until the appellate rights of the natural parents have been exhausted. The State Department of Social Services or licensed adoption agency shall be responsible for the custody and supervision of the child and shall be entitled to the exclusive care and control of the child at all times until a petition for adoption is granted, except as specified in subdivision (n). With the consent of the agency, the court may appoint a guardian of the child, who shall serve until the child is adopted.

(k) Notwithstanding any other provision of law, the application of any person who, as a relative caretaker or foster parent, has cared for a dependent child for whom the court has approved a permanent plan for adoption, or who has been freed for adoption, shall be given preference with respect to that child over all other applications for adoptive placement if the agency making the placement determines that the child has substantial emotional ties to the relative caretaker or foster parent and removal from the relative caretaker or foster parent would be seriously detrimental to the child's emotional well-being.

As used in this subdivision, "preference" means that the application shall be processed and, if satisfactory, the family study shall be completed before the processing of the application of any other person for the adoptive placement of the child.

(l) (1) An order by the court that a hearing pursuant to this section be held is not appealable at any time unless all of the following apply:

(A) A petition for extraordinary writ review was filed in a timely manner.

(B) The petition substantively addressed the specific issues to be challenged and supported that challenge by an adequate record.

(C) The petition for extraordinary writ review was summarily denied or otherwise not decided on the merits.

(2) Failure to file a petition for extraordinary writ review within the period specified by rule, to substantively address the specific issues challenged, or to support that challenge by an adequate record shall preclude subsequent review by appeal of the findings and orders made pursuant to this section.

(3) The Judicial Council shall adopt rules of court, effective January 1, 1995, to ensure all of the following:

(A) A trial court, after issuance of an order directing a hearing pursuant to this section be held, shall advise all parties of the requirement of filing a petition for extraordinary writ review as set forth in this subdivision in order to preserve any right to appeal in these issues. This notice shall be made orally to a party if the party is present at the time of the making of the order or by first-class mail by the clerk of the court to the last known address of a party not present at the time of the making of the order.

(B) The prompt transmittal of the records from the trial court to the appellate court.

(C) That adequate time requirements for counsel and court personnel exist to implement the objective of this subdivision.

(D) That the parent or guardian, or their trial counsel or other counsel, is charged with the responsibility of filing a petition for extraordinary writ relief pursuant to this subdivision.

(4) The intent of this subdivision is to do both of the following:

(A) Make every reasonable attempt to achieve a substantive and meritorious review by the appellate court within the time specified in Sections 366.21 and 366.22 for holding a hearing pursuant to this section.

(B) Encourage the appellate court to determine all writ petitions filed pursuant to this subdivision on their merits.

(5) This subdivision shall only apply to cases in which an order to set a hearing pursuant to this section is issued on or after January 1, 1995.

(m) Except for subdivision (j), this section shall also apply to minors adjudged wards pursuant to Section 727.31.

(n) (1) Notwithstanding Section 8704 of the Family Code or any other provision of law, the court, at a hearing held pursuant to this section or anytime thereafter, may designate a current caretaker as a prospective adoptive parent if the child has lived with the caretaker for at least six months, the caretaker currently expresses a commitment to adopt the child, and the caretaker has taken at least one step to facilitate the adoption process. In determining whether to make that designation, the court may take into consideration whether the caretaker is listed in the preliminary assessment prepared by the county department in accordance with subdivision (i) of Section 366.21 as an appropriate person to be considered as an adoptive parent for the child and the recommendation of the State Department of Social Services or licensed adoption agency.

(2) For purposes of this subdivision, steps to facilitate the adoption process include, but are not limited to, the following:

(A) Applying for an adoption homestudy.

(B) Cooperating with an adoption homestudy.

(C) Being designated by the court or the licensed adoption agency as the adoptive family.

(D) Requesting de facto parent status.

(E) Signing an adoptive placement agreement.

(F) Engaging in discussions regarding a postadoption contact agreement.

(G) Working to overcome any impediments that have been identified by the State Department of Social Services and the licensed adoption agency.

(H) Attending classes required of prospective adoptive parents.

(3) Prior to a change in placement and as soon as possible after a decision is made to remove a child from the home of a designated prospective adoptive parent, the agency shall notify the court, the designated prospective adoptive parent or the current caretaker, if that caretaker would have met the threshold criteria to be designated as a prospective adoptive parent pursuant to paragraph (1) on the date of service of this notice, the child's attorney, and the child, if the child is 10 years of age or older, of the proposal in the manner described in Section 16010.6.

(A) Within five court days or seven calendar days, whichever is longer, of the date of notification, the child, the child's attorney, or the designated prospective adoptive parent may file a petition with the court objecting to the proposal to remove the child, or the court, upon its own motion, may set a hearing regarding the proposal. The court may, for good cause, extend the filing period. A caretaker who would have met the threshold criteria to be designated as a prospective adoptive parent pursuant to paragraph (1) on the date of service of the notice of proposed removal of the child may file, together with the petition under this subparagraph, a petition for an order designating the caretaker as a prospective adoptive parent for purposes of this subdivision.

(B) A hearing ordered pursuant to this paragraph shall be held as soon as possible and not later than five court days after the petition is filed with the court or the court sets a hearing upon its own motion, unless the court for good cause is unable to set the matter for hearing five court days after the petition is filed, in which case the court shall set the matter for hearing as soon as possible. At the hearing, the court shall determine whether the caretaker has met the threshold criteria to be designated as a prospective adoptive parent pursuant to paragraph (1), and whether the proposed removal of the child from the home of the designated prospective adoptive parent is in the child's best interest, and the child may not be removed from the home of the designated prospective adoptive parent unless the court finds that removal is in the child's best interest. If the court determines that the caretaker did not meet the

threshold criteria to be designated as a prospective adoptive parent on the date of service of the notice of proposed removal of the child, the petition objecting to the proposed removal filed by the caretaker shall be dismissed. If the caretaker was designated as a prospective adoptive parent prior to this hearing, the court shall inquire into any progress made by the caretaker towards the adoption of the child since the caretaker was designated as a prospective adoptive parent.

(C) A determination by the court that the caretaker is a designated prospective adoptive parent pursuant to paragraph (1) or subparagraph (B) does not make the caretaker a party to the dependency proceeding nor does it confer on the caretaker any standing to object to any other action of the department or licensed adoption agency, unless the caretaker has been declared a de facto parent by the court prior to the notice of removal served pursuant to paragraph (3).

(D) If a petition objecting to the proposal to remove the child is not filed, and the court, upon its own motion, does not set a hearing, the child may be removed from the home of the designated prospective adoptive parent without a hearing.

(4) Notwithstanding paragraph (3), if the State Department of Social Services or a licensed adoption agency determines that the child must be removed from the home of the caretaker who is or may be a designated prospective adoptive parent immediately, due to a risk of physical or emotional harm, the agency may remove the child from that home and is not required to provide notice prior to the removal. However, as soon as possible and not longer than two court days after the removal, the agency shall notify the court, the caretaker who is or may be a designated prospective adoptive parent, the child's attorney, and the child, if the child is 10 years of age or older, of the removal. Within five court days or seven calendar days, whichever is longer, of the date of notification of the removal, the child, the child's attorney, or the caretaker who is or may be a designated prospective adoptive parent may petition for, or the court on its own motion may set, a noticed hearing pursuant to paragraph (3). The court may, for good cause, extend the filing period.

(5) Except as provided in subdivision (b) of Section 366.28, an order by the court issued after a hearing pursuant to this subdivision shall not be appealable.

(6) Nothing in this section shall preclude a county child protective services agency from fully investigating and responding to alleged abuse or neglect of a child pursuant to Section 11165.5 of the Penal Code.

(7) The Judicial Council shall prepare forms to facilitate the filing of the petitions described in this subdivision, which shall become effective on January 1, 2006.

(o) The implementation and operation of the amendments to paragraph (3) of subdivision (c) and subparagraph (A) of paragraph (4) of subdivision (c) enacted at the 2005-06 Regular Session shall be subject to appropriation through the budget process and by phase, as provided in Section 366.35.

SEC. 6.6. Section 366.26 of the Welfare and Institutions Code is amended to read:

366.26. (a) This section applies to children who are adjudged dependent children of the juvenile court pursuant to subdivision (c) of Section 360. The procedures specified in this section are the exclusive procedures for conducting these hearings; Part 2 (commencing with Section 3020) of Division 8 of the Family Code is not applicable to these proceedings. Section 8714.7 of the Family Code is applicable and available to all dependent children meeting the requirements of that section, if the postadoption contact agreement has been entered into voluntarily. For children who are adjudged dependent children of the juvenile court pursuant to subdivision (c) of Section 360, this section and Sections 8604, 8605, 8606, and 8700 of the Family Code and Chapter 5 (commencing with Section 7660) of Part 3 of Division 12 of the Family Code specify the exclusive procedures for permanently terminating parental rights with regard to, or establishing legal guardianship of, the child while the child is a dependent child of the juvenile court.

(b) At the hearing, which shall be held in juvenile court for all children who are dependents of the juvenile court, the court, in order to provide stable, permanent homes for these children, shall review the report as specified in Section 361.5, 366.21, or 366.22, shall indicate that the court has read and considered it, shall receive other evidence that the parties may present, and then shall make findings and orders in the following order of preference:

(1) Terminate the rights of the parent or parents and order that the child be placed for adoption and, upon the filing of a petition for adoption in the juvenile court, order that a hearing be set. The court shall proceed with the adoption after the appellate rights of the natural parents have been exhausted.

(2) On making a finding under paragraph (3) of subdivision (c), identify adoption as the permanent placement goal and order that efforts be made to locate an appropriate adoptive family for the child within a period not to exceed 180 days.

(3) Appoint a legal guardian for the child and order that letters of guardianship issue.

(4) Order that the child be placed in long-term foster care, subject to the periodic review of the juvenile court under Section 366.3.

In choosing among the above alternatives, the court shall proceed pursuant to subdivision (c).

(c) (1) If the court determines, based on the assessment provided as ordered under subdivision (i) of Section 366.21 or subdivision (b) of Section 366.22, and any other relevant evidence, by a clear and convincing standard, that it is likely the child will be adopted, the court shall terminate parental rights and order the child placed for adoption. The fact that the child is not yet placed in a preadoptive home nor with a relative or foster family who is prepared to adopt the child, shall not constitute a basis for the court to conclude that it is not likely the child will be adopted. A finding under subdivision (b) or paragraph (1) of subdivision (e) of Section 361.5 that reunification services shall not be offered, under subdivision (e) of Section 366.21 that the whereabouts of a parent have been unknown for six months or that the parent has failed to visit or contact the child for six months or that the parent has been convicted of a felony indicating parental unfitness, or, under Section 366.21 or 366.22, that the court has continued to remove the child from the custody of the parent or guardian and has terminated reunification services, shall constitute a sufficient basis for termination of parental rights unless the court finds a compelling reason for determining that termination would be detrimental to the child due to one or more of the following circumstances:

(A) The parents or guardians have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship.

(B) A child 12 years of age or older objects to termination of parental rights.

(C) The child is placed in a residential treatment facility, adoption is unlikely or undesirable, and continuation of parental rights will not prevent finding the child a permanent family placement if the parents cannot resume custody when residential care is no longer needed.

(D) The child is living with a relative or foster parent who is unable or unwilling to adopt the child because of exceptional circumstances, that do not include an unwillingness to accept legal or financial responsibility for the child, but who is willing and capable of providing the child with a stable and permanent environment and the removal of the child from the physical custody of his or her relative or foster parent would be detrimental to the emotional well-being of the child. This subparagraph does not apply to any child who is living with a nonrelative and who is either (i) under six years of age or (ii) a member of a sibling group where at least one child is under six years of age and the siblings are, or should be, permanently placed together.

(E) There would be substantial interference with a child's sibling relationship, taking into consideration the nature and extent of the relationship, including, but not limited to, whether the child was raised with a sibling in the same home, whether the child shared significant common experiences or has existing close and strong bonds with a sibling, and whether ongoing contact is in the child's best interest, including the child's long-term emotional interest, as compared to the benefit of legal permanence through adoption.

If the court finds that termination of parental rights would be detrimental to the child pursuant to subparagraph (A), (B), (C), (D), or (E), it shall state its reasons in writing or on the record.

(2) The court shall not terminate parental rights if at each and every hearing at which the court was required to consider reasonable efforts or services, the court has found that reasonable efforts were not made or that reasonable services were not offered or provided.

(3) If the court finds that termination of parental rights would not be detrimental to the child pursuant to paragraph (1) and that the child has a probability for adoption but is difficult to place for adoption and there is no identified or available prospective adoptive parent, the court may identify adoption as the permanent placement goal and without terminating parental rights, order that efforts be made to locate an appropriate adoptive family for the child within a period not to exceed 180 days. During this 180-day period, the public agency responsible for seeking adoptive parents for each child shall, to the extent possible, ask each child who is 10 years of age or older, to identify any individuals, other than the child's siblings, who are important to the child, in order to identify potential adoptive parents. The public agency may ask any other child to provide that information, as appropriate. During the 180-day period, the public agency shall, to the extent possible, contact other private and public adoption agencies regarding the availability of the child for adoption. During the 180-day period, the public agency shall conduct the search for adoptive parents in the same manner as prescribed for children in Sections 8708 and 8709 of the Family Code. At the expiration of this period, another hearing shall be held and the court shall proceed pursuant to paragraph (1) or (3) of subdivision (b). For purposes of this section, a child may only be found to be difficult to place for adoption if there is no identified or available prospective adoptive parent for the child because of the child's membership in a sibling group, or the presence of a diagnosed medical, physical, or mental handicap, or the child is the age of seven years or more.

(4) (A) If the court finds that adoption of the child or termination of parental rights is not in the best interest of the child, because one of the conditions in subparagraph (A), (B), (C), (D), or (E) of paragraph (1) or

in paragraph (2) applies, the court shall either order that the present caretakers or other appropriate persons shall become legal guardians of the child or order that the child remain in long-term foster care. Legal guardianship shall be considered before long-term foster care, if it is in the best interest of the child and if a suitable guardian can be found. A child who is 10 years of age or older, shall be asked to identify any individuals, other than the child's siblings, who are important to the child, in order to identify potential guardians. The agency may ask any other child to provide that information, as appropriate.

(B) If the child is living with a relative or a foster parent who is willing and capable of providing a stable and permanent environment, but not willing to become a legal guardian, the child shall not be removed from the home if the court finds the removal would be seriously detrimental to the emotional well-being of the child because the child has substantial psychological ties to the relative caretaker or foster parents.

(C) The court shall also make an order for visitation with the parents or guardians unless the court finds by a preponderance of the evidence that the visitation would be detrimental to the physical or emotional well-being of the child.

(5) If the court finds that the child should not be placed for adoption, that legal guardianship shall not be established, and that there are no suitable foster parents except exclusive-use homes available to provide the child with a stable and permanent environment, the court may order the care, custody, and control of the child transferred from the county welfare department to a licensed foster family agency. The court shall consider the written recommendation of the county welfare director regarding the suitability of the transfer. The transfer shall be subject to further court orders.

The licensed foster family agency shall place the child in a suitable licensed or exclusive-use home that has been certified by the agency as meeting licensing standards. The licensed foster family agency shall be responsible for supporting the child and providing appropriate services to the child, including those services ordered by the court. Responsibility for the support of the child shall not, in and of itself, create liability on the part of the foster family agency to third persons injured by the child. Those children whose care, custody, and control are transferred to a foster family agency shall not be eligible for foster care maintenance payments or child welfare services, except for emergency response services pursuant to Section 16504.

(d) The proceeding for the appointment of a guardian for a child who is a dependent of the juvenile court shall be in the juvenile court. If the court finds pursuant to this section that legal guardianship is the appropriate permanent plan, it shall appoint the legal guardian and issue

letters of guardianship. The assessment prepared pursuant to subdivision (g) of Section 361.5, subdivision (i) of Section 366.21, and subdivision (b) of Section 366.22 shall be read and considered by the court prior to the appointment, and this shall be reflected in the minutes of the court. The person preparing the assessment may be called and examined by any party to the proceeding.

(e) The proceeding for the adoption of a child who is a dependent of the juvenile court shall be in the juvenile court if the court finds pursuant to this section that adoption is the appropriate permanent plan and the petition for adoption is filed in the juvenile court. Upon the filing of a petition for adoption, the juvenile court shall order that an adoption hearing be set. The court shall proceed with the adoption after the appellate rights of the natural parents have been exhausted. The full report required by Section 8715 of the Family Code shall be read and considered by the court prior to the adoption and this shall be reflected in the minutes of the court. The person preparing the report may be called and examined by any party to the proceeding. It is the intent of the Legislature, pursuant to this subdivision, to give potential adoptive parents the option of filing in the juvenile court the petition for the adoption of a child who is a dependent of the juvenile court. Nothing in this section is intended to prevent the filing of a petition for adoption in any other court as permitted by law, instead of in the juvenile court.

(f) At the beginning of any proceeding pursuant to this section, if the child or the parents are not being represented by previously retained or appointed counsel, including, in the case of any child who is not a lawful permanent resident or citizen of the United States, counsel appointed pursuant to subdivision (i) of Section 317, the court shall proceed as follows:

(1) In accordance with subdivision (c) of Section 317, if a child before the court is without counsel, the court shall appoint counsel unless the court finds that the child would not benefit from the appointment of counsel. The court shall state on the record its reasons for that finding.

(2) If a parent appears without counsel and is unable to afford counsel, the court shall appoint counsel for the parent, unless this representation is knowingly and intelligently waived. The same counsel shall not be appointed to represent both the child and his or her parent. The public defender or private counsel may be appointed as counsel for the parent.

(3) Private counsel appointed under this section shall receive a reasonable sum for compensation and expenses, the amount of which shall be determined by the court. The amount shall be paid by the real parties in interest, other than the child, in any proportions the court deems just. However, if the court finds that any of the real parties in interest

are unable to afford counsel, the amount shall be paid out of the general fund of the county.

(g) The court may continue the proceeding for a period of time not to exceed 30 days as necessary to appoint counsel, and to enable counsel to become acquainted with the case.

(h) (1) At all proceedings under this section, the court shall consider the wishes of the child and shall act in the best interests of the child.

(2) In accordance with Section 349, the child shall be present in court if the child or the child's counsel so requests or the court so orders. If the child is 10 years of age or older and is not present at a hearing held pursuant to this section, the court shall determine whether the minor was properly notified of his or her right to attend the hearing and inquire as to the reason why the child is not present.

(3) (A) The testimony of the child may be taken in chambers and outside the presence of the child's parent or parents, if the child's parent or parents are represented by counsel, the counsel is present, and any of the following circumstances exist:

(i) The court determines that testimony in chambers is necessary to ensure truthful testimony.

(ii) The child is likely to be intimidated by a formal courtroom setting.

(iii) The child is afraid to testify in front of his or her parent or parents.

(B) After testimony in chambers, the parent or parents of the child may elect to have the court reporter read back the testimony or have the testimony summarized by counsel for the parent or parents.

(C) The testimony of a child also may be taken in chambers and outside the presence of the guardian or guardians of a child under the circumstances specified in this subdivision.

(i) Any order of the court permanently terminating parental rights under this section shall be conclusive and binding upon the child, upon the parent or parents and upon all other persons who have been served with a citation by publication or otherwise as provided in this chapter. After making the order, the court shall have no power to set aside, change, or modify it, but nothing in this section shall be construed to limit the right to appeal the order.

(j) If the court, by order or judgment, declares the child free from the custody and control of both parents, or one parent if the other does not have custody and control, the court shall at the same time order the child referred to the State Department of Social Services or a licensed adoption agency for adoptive placement by the agency. However, a petition for adoption may not be granted until the appellate rights of the natural parents have been exhausted. The State Department of Social Services or licensed adoption agency shall be responsible for the custody and supervision of the child and shall be entitled to the exclusive care and

control of the child at all times until a petition for adoption is granted, except as specified in subdivision (n). With the consent of the agency, the court may appoint a guardian of the child, who shall serve until the child is adopted.

(k) Notwithstanding any other provision of law, the application of any person who, as a relative caretaker or foster parent, has cared for a dependent child for whom the court has approved a permanent plan for adoption, or who has been freed for adoption, shall be given preference with respect to that child over all other applications for adoptive placement if the agency making the placement determines that the child has substantial emotional ties to the relative caretaker or foster parent and removal from the relative caretaker or foster parent would be seriously detrimental to the child's emotional well-being.

As used in this subdivision, "preference" means that the application shall be processed and, if satisfactory, the family study shall be completed before the processing of the application of any other person for the adoptive placement of the child.

(l) (1) An order by the court that a hearing pursuant to this section be held is not appealable at any time unless all of the following applies:

(A) A petition for extraordinary writ review was filed in a timely manner.

(B) The petition substantively addressed the specific issues to be challenged and supported that challenge by an adequate record.

(C) The petition for extraordinary writ review was summarily denied or otherwise not decided on the merits.

(2) Failure to file a petition for extraordinary writ review within the period specified by rule, to substantively address the specific issues challenged, or to support that challenge by an adequate record shall preclude subsequent review by appeal of the findings and orders made pursuant to this section.

(3) The Judicial Council shall adopt rules of court, effective January 1, 1995, to ensure all of the following:

(A) A trial court, after issuance of an order directing a hearing pursuant to this section be held, shall advise all parties of the requirement of filing a petition for extraordinary writ review as set forth in this subdivision in order to preserve any right to appeal in these issues. This notice shall be made orally to a party if the party is present at the time of the making of the order or by first-class mail by the clerk of the court to the last known address of a party not present at the time of the making of the order.

(B) The prompt transmittal of the records from the trial court to the appellate court.

(C) That adequate time requirements for counsel and court personnel exist to implement the objective of this subdivision.

(D) That the parent or guardian, or their trial counsel or other counsel, is charged with the responsibility of filing a petition for extraordinary writ relief pursuant to this subdivision.

(4) The intent of this subdivision is to do both of the following:

(A) Make every reasonable attempt to achieve a substantive and meritorious review by the appellate court within the time specified in Sections 366.21 and 366.22 for holding a hearing pursuant to this section.

(B) Encourage the appellate court to determine all writ petitions filed pursuant to this subdivision on their merits.

(5) This subdivision shall only apply to cases in which an order to set a hearing pursuant to this section is issued on or after January 1, 1995.

(m) Except for subdivision (j), this section shall also apply to minors adjudged wards pursuant to Section 727.31.

(n) (1) Notwithstanding Section 8704 of the Family Code or any other provision of law, the court, at a hearing held pursuant to this section or anytime thereafter, may designate a current caretaker as a prospective adoptive parent if the child has lived with the caretaker for at least six months, the caretaker currently expresses a commitment to adopt the child, and the caretaker has taken at least one step to facilitate the adoption process. In determining whether to make that designation, the court may take into consideration whether the caretaker is listed in the preliminary assessment prepared by the county department in accordance with subdivision (i) of Section 366.21 as an appropriate person to be considered as an adoptive parent for the child and the recommendation of the State Department of Social Services or licensed adoption agency.

(2) For purposes of this subdivision, steps to facilitate the adoption process include, but are not limited to, the following:

(A) Applying for an adoption homestudy.

(B) Cooperating with an adoption homestudy.

(C) Being designated by the court or the licensed adoption agency as the adoptive family.

(D) Requesting de facto parent status.

(E) Signing an adoptive placement agreement.

(F) Engaging in discussions regarding a postadoption contact agreement.

(G) Working to overcome any impediments that have been identified by the State Department of Social Services and the licensed adoption agency.

(H) Attending classes required of prospective adoptive parents.

(3) Prior to a change in placement and as soon as possible after a decision is made to remove a child from the home of a designated

prospective adoptive parent, the agency shall notify the court, the designated prospective adoptive parent or the current caretaker, if that caretaker would have met the threshold criteria to be designated as a prospective adoptive parent pursuant to paragraph (1) on the date of service of this notice, the child's attorney, and the child, if the child is 10 years of age or older, of the proposal in the manner described in Section 16010.6.

(A) Within five court days or seven calendar days, whichever is longer, of the date of notification, the child, the child's attorney, or the designated prospective adoptive parent may file a petition with the court objecting to the proposal to remove the child, or the court, upon its own motion, may set a hearing regarding the proposal. The court may, for good cause, extend the filing period. A caretaker who would have met the threshold criteria to be designated as a prospective adoptive parent pursuant to paragraph (1) on the date of service of the notice of proposed removal of the child may file, together with the petition under this subparagraph, a petition for an order designating the caretaker as a prospective adoptive parent for purposes of this subdivision.

(B) A hearing ordered pursuant to this paragraph shall be held as soon as possible and not later than five court days after the petition is filed with the court or the court sets a hearing upon its own motion, unless the court for good cause is unable to set the matter for hearing five court days after the petition is filed, in which case the court shall set the matter for hearing as soon as possible. At the hearing, the court shall determine whether the caretaker has met the threshold criteria to be designated as a prospective adoptive parent pursuant to paragraph (1), and whether the proposed removal of the child from the home of the designated prospective adoptive parent is in the child's best interest, and the child may not be removed from the home of the designated prospective adoptive parent unless the court finds that removal is in the child's best interest. If the court determines that the caretaker did not meet the threshold criteria to be designated as a prospective adoptive parent on the date of service of the notice of proposed removal of the child, the petition objecting to the proposed removal filed by the caretaker shall be dismissed. If the caretaker was designated as a prospective adoptive parent prior to this hearing, the court shall inquire into any progress made by the caretaker towards the adoption of the child since the caretaker was designated as a prospective adoptive parent.

(C) A determination by the court that the caretaker is a designated prospective adoptive parent pursuant to paragraph (1) or subparagraph (B) does not make the caretaker a party to the dependency proceeding nor does it confer on the caretaker any standing to object to any other action of the department or licensed adoption agency, unless the caretaker

has been declared a de facto parent by the court prior to the notice of removal served pursuant to paragraph (3).

(D) If a petition objecting to the proposal to remove the child is not filed, and the court, upon its own motion, does not set a hearing, the child may be removed from the home of the designated prospective adoptive parent without a hearing.

(4) Notwithstanding paragraph (3), if the State Department of Social Services or a licensed adoption agency determines that the child must be removed from the home of the caretaker who is or may be a designated prospective adoptive parent immediately, due to a risk of physical or emotional harm, the agency may remove the child from that home and is not required to provide notice prior to the removal. However, as soon as possible and not longer than two court days after the removal, the agency shall notify the court, the caretaker who is or may be a designated prospective adoptive parent, the child's attorney, and the child, if the child is 10 years of age or older, of the removal. Within five court days or seven calendar days, whichever is longer, of the date of notification of the removal, the child, the child's attorney, or the caretaker who is or may be a designated prospective adoptive parent may petition for, or the court on its own motion may set, a noticed hearing pursuant to paragraph (3). The court may, for good cause, extend the filing period.

(5) Except as provided in subdivision (b) of Section 366.28, an order by the court issued after a hearing pursuant to this subdivision shall not be appealable.

(6) Nothing in this section shall preclude a county child protective services agency from fully investigating and responding to alleged abuse or neglect of a child pursuant to Section 11165.5 of the Penal Code.

(7) The Judicial Council shall prepare forms to facilitate the filing of the petitions described in this subdivision, which shall become effective on January 1, 2006.

(o) The implementation and operation of the amendments to paragraph (3) of subdivision (c) and subparagraph (A) of paragraph (4) of subdivision (c) enacted at the 2005-06 Regular Session shall be subject to appropriation through the budget process and by phase, as provided in Section 366.35.

SEC. 6.7. Section 366.26 of the Welfare and Institutions Code is amended to read:

366.26. (a) This section applies to children who are adjudged dependent children of the juvenile court pursuant to subdivision (c) of Section 360. The procedures specified in this section are the exclusive procedures for conducting these hearings; Part 2 (commencing with Section 3020) of Division 8 of the Family Code is not applicable to these proceedings. Section 8714.7 of the Family Code is applicable and

available to all dependent children meeting the requirements of that section, if the postadoption contact agreement has been entered into voluntarily. For children who are adjudged dependent children of the juvenile court pursuant to subdivision (c) of Section 360, this section and Sections 8604, 8605, 8606, and 8700 of the Family Code and Chapter 5 (commencing with Section 7660) of Part 3 of Division 12 of the Family Code specify the exclusive procedures for permanently terminating parental rights with regard to, or establishing legal guardianship of, the child while the child is a dependent child of the juvenile court.

(b) At the hearing, which shall be held in juvenile court for all children who are dependents of the juvenile court, the court, in order to provide stable, permanent homes for these children, shall review the report as specified in Section 361.5, 366.21, or 366.22, shall indicate that the court has read and considered it, shall receive other evidence that the parties may present, and then shall make findings and orders in the following order of preference:

(1) Terminate the rights of the parent or parents and order that the child be placed for adoption and, upon the filing of a petition for adoption in the juvenile court, order that a hearing be set. The court shall proceed with the adoption after the appellate rights of the natural parents have been exhausted.

(2) On making a finding under paragraph (3) of subdivision (c), identify adoption as the permanent placement goal and order that efforts be made to locate an appropriate adoptive family for the child within a period not to exceed 180 days.

(3) Appoint a legal guardian for the child and order that letters of guardianship issue.

(4) Order that the child be placed in long-term foster care, subject to the periodic review of the juvenile court under Section 366.3.

In choosing among the above alternatives, the court shall proceed pursuant to subdivision (c).

(c) (1) If the court determines, based on the assessment provided as ordered under subdivision (i) of Section 366.21 or subdivision (b) of Section 366.22, and any other relevant evidence, by a clear and convincing standard, that it is likely the child will be adopted, the court shall terminate parental rights and order the child placed for adoption. The fact that the child is not yet placed in a preadoptive home nor with a relative or foster family who is prepared to adopt the child, shall not constitute a basis for the court to conclude that it is not likely the child will be adopted. A finding under subdivision (b) or paragraph (1) of subdivision (e) of Section 361.5 that reunification services shall not be offered, under subdivision (e) of Section 366.21 that the whereabouts of a parent have been unknown for six months or that the parent has

failed to visit or contact the child for six months or that the parent has been convicted of a felony indicating parental unfitness, or, under Section 366.21 or 366.22, that the court has continued to remove the child from the custody of the parent or guardian and has terminated reunification services, shall constitute a sufficient basis for termination of parental rights unless the court finds a compelling reason for determining that termination would be detrimental to the child due to one or more of the following circumstances:

(A) The parents or guardians have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship.

(B) A child 12 years of age or older objects to termination of parental rights.

(C) The child is placed in a residential treatment facility, adoption is unlikely or undesirable, and continuation of parental rights will not prevent finding the child a permanent family placement if the parents cannot resume custody when residential care is no longer needed.

(D) The child is living with a relative or foster parent who is unable or unwilling to adopt the child because of exceptional circumstances, that do not include an unwillingness to accept legal or financial responsibility for the child, but who is willing and capable of providing the child with a stable and permanent environment and the removal of the child from the physical custody of his or her relative or foster parent would be detrimental to the emotional well-being of the child. This subparagraph does not apply to any child who is living with a nonrelative and who is either (i) under six years of age or (ii) a member of a sibling group where at least one child is under six years of age and the siblings are, or should be, permanently placed together.

(E) There would be substantial interference with a child's sibling relationship, taking into consideration the nature and extent of the relationship, including, but not limited to, whether the child was raised with a sibling in the same home, whether the child shared significant common experiences or has existing close and strong bonds with a sibling, and whether ongoing contact is in the child's best interest, including the child's long-term emotional interest, as compared to the benefit of legal permanence through adoption.

If the court finds that termination of parental rights would be detrimental to the child pursuant to subparagraph (A), (B), (C), (D), or (E), it shall state its reasons in writing or on the record.

(2) The court shall not terminate parental rights if at each hearing at which the court was required to consider reasonable efforts or services, the court has found that reasonable efforts were not made or that reasonable services were not offered or provided.

(3) If the court finds that termination of parental rights would not be detrimental to the child pursuant to paragraph (1) and that the child has a probability for adoption but is difficult to place for adoption and there is no identified or available prospective adoptive parent, the court may identify adoption as the permanent placement goal and without terminating parental rights, order that efforts be made to locate an appropriate adoptive family for the child within a period not to exceed 180 days. During this 180-day period, the public agency responsible for seeking adoptive parents for each child shall, to the extent possible, ask each child who is 10 years of age or older, to identify any individuals, other than the child's siblings, who are important to the child, in order to identify potential adoptive parents. The public agency may ask any other child to provide that information, as appropriate. During the 180-day period, the public agency shall, to the extent possible, contact other private and public adoption agencies regarding the availability of the child for adoption. During the 180-day period, the public agency shall conduct the search for adoptive parents in the same manner as prescribed for children in Sections 8708 and 8709 of the Family Code. At the expiration of this period, another hearing shall be held and the court shall proceed pursuant to paragraph (1) or (3) of subdivision (b). For purposes of this section, a child may only be found to be difficult to place for adoption if there is no identified or available prospective adoptive parent for the child because of the child's membership in a sibling group, or the presence of a diagnosed medical, physical, or mental handicap, or the child is the age of seven years or more.

(4) (A) If the court finds that adoption of the child or termination of parental rights is not in the best interest of the child, because one of the conditions in subparagraph (A), (B), (C), (D), or (E) of paragraph (1) or in paragraph (2) applies, the court shall either order that the present caretakers or other appropriate persons shall become legal guardians of the child or order that the child remain in long-term foster care. Legal guardianship shall be considered before long-term foster care, if it is in the best interest of the child and if a suitable guardian can be found. A child who is 10 years of age or older, shall be asked to identify any individuals, other than the child's siblings, who are important to the child, in order to identify potential guardians. The agency may ask any other child to provide that information, as appropriate.

(B) If the child is living with a relative or a foster parent who is willing and capable of providing a stable and permanent environment, but not willing to become a legal guardian, the child shall not be removed from the home if the court finds the removal would be seriously detrimental to the emotional well-being of the child because the child has substantial psychological ties to the relative caretaker or foster parents.

(C) The court shall also make an order for visitation with the parents or guardians unless the court finds by a preponderance of the evidence that the visitation would be detrimental to the physical or emotional well-being of the child.

(5) If the court finds that the child should not be placed for adoption, that legal guardianship shall not be established, and that there are no suitable foster parents except exclusive-use homes available to provide the child with a stable and permanent environment, the court may order the care, custody, and control of the child transferred from the county welfare department to a licensed foster family agency. The court shall consider the written recommendation of the county welfare director regarding the suitability of the transfer. The transfer shall be subject to further court orders.

The licensed foster family agency shall place the child in a suitable licensed or exclusive-use home that has been certified by the agency as meeting licensing standards. The licensed foster family agency shall be responsible for supporting the child and providing appropriate services to the child, including those services ordered by the court. Responsibility for the support of the child shall not, in and of itself, create liability on the part of the foster family agency to third persons injured by the child. Those children whose care, custody, and control are transferred to a foster family agency shall not be eligible for foster care maintenance payments or child welfare services, except for emergency response services pursuant to Section 16504.

(d) The proceeding for the appointment of a guardian for a child who is a dependent of the juvenile court shall be in the juvenile court. If the court finds pursuant to this section that legal guardianship is the appropriate permanent plan, it shall appoint the legal guardian and issue letters of guardianship. The assessment prepared pursuant to subdivision (g) of Section 361.5, subdivision (i) of Section 366.21, and subdivision (b) of Section 366.22 shall be read and considered by the court prior to the appointment, and this shall be reflected in the minutes of the court. The person preparing the assessment may be called and examined by any party to the proceeding.

(e) The proceeding for the adoption of a child who is a dependent of the juvenile court shall be in the juvenile court if the court finds pursuant to this section that adoption is the appropriate permanent plan and the petition for adoption is filed in the juvenile court. Upon the filing of a petition for adoption, the juvenile court shall order that an adoption hearing be set. The court shall proceed with the adoption after the appellate rights of the natural parents have been exhausted. The full report required by Section 8715 of the Family Code shall be read and considered by the court prior to the adoption and this shall be reflected

in the minutes of the court. The person preparing the report may be called and examined by any party to the proceeding. It is the intent of the Legislature, pursuant to this subdivision, to give potential adoptive parents the option of filing in the juvenile court the petition for the adoption of a child who is a dependent of the juvenile court. Nothing in this section is intended to prevent the filing of a petition for adoption in any other court as permitted by law, instead of in the juvenile court.

(f) At the beginning of any proceeding pursuant to this section, if the child or the parents are not being represented by previously retained or appointed counsel, including, in the case of any child who is not a lawful permanent resident or citizen of the United States, counsel appointed pursuant to subdivision (i) of Section 317, the court shall proceed as follows:

(1) In accordance with subdivision (c) of Section 317, if a child before the court is without counsel, the court shall appoint counsel unless the court finds that the child would not benefit from the appointment of counsel. The court shall state on the record its reasons for that finding.

(2) If a parent appears without counsel and is unable to afford counsel, the court shall appoint counsel for the parent, unless this representation is knowingly and intelligently waived. The same counsel shall not be appointed to represent both the child and his or her parent. The public defender or private counsel may be appointed as counsel for the parent.

(3) Private counsel appointed under this section shall receive a reasonable sum for compensation and expenses, the amount of which shall be determined by the court. The amount shall be paid by the real parties in interest, other than the child, in any proportions the court deems just. However, if the court finds that any of the real parties in interest are unable to afford counsel, the amount shall be paid out of the general fund of the county.

(g) The court may continue the proceeding for a period of time not to exceed 30 days as necessary to appoint counsel, and to enable counsel to become acquainted with the case.

(h) (1) At all proceedings under this section, the court shall consider the wishes of the child and shall act in the best interests of the child.

(2) In accordance with Section 349, the child shall be present in court if the child or the child's counsel so requests or the court so orders. If the child is 10 years of age or older and is not present at a hearing held pursuant to this section, the court shall determine whether the minor was properly notified of his or her right to attend the hearing and inquire as to the reason why the child is not present.

(3) (A) The testimony of the child may be taken in chambers and outside the presence of the child's parent or parents, if the child's parent

or parents are represented by counsel, the counsel is present, and any of the following circumstances exists:

(i) The court determines that testimony in chambers is necessary to ensure truthful testimony.

(ii) The child is likely to be intimidated by a formal courtroom setting.

(iii) The child is afraid to testify in front of his or her parent or parents.

(B) After testimony in chambers, the parent or parents of the child may elect to have the court reporter read back the testimony or have the testimony summarized by counsel for the parent or parents.

(C) The testimony of a child also may be taken in chambers and outside the presence of the guardian or guardians of a child under the circumstances specified in this subdivision.

(i) (1) Any order of the court permanently terminating parental rights under this section shall be conclusive and binding upon the child, upon the parent or parents and upon all other persons who have been served with a citation by publication or otherwise as provided in this chapter. After making the order, the juvenile court shall have no power to set aside, change, or modify it, except as provided in paragraph (2), but nothing in this section shall be construed to limit the right to appeal the order.

(2) A child who has not been adopted after the passage of at least three years from the date the court terminated parental rights and for whom the court has determined that adoption is no longer the permanent plan may petition the juvenile court to reinstate parental rights pursuant to the procedure prescribed by Section 388. The child may file the petition prior to the expiration of this three-year period if the State Department of Social Services or licensed adoption agency that is responsible for custody and supervision of the child as described in subdivision (j) and the child stipulate that the child is no longer likely to be adopted. A child over 12 years of age shall sign the petition in the absence of a showing of good cause as to why the child could not do so. If it appears that the best interests of the child may be promoted by reinstatement of parental rights, the court shall order that a hearing be held and shall give prior notice, or cause prior notice to be given, to the social worker or probation officer and to the child's attorney of record, or, if there is no attorney of record for the child, to the child, and the child's tribe, if applicable, by means prescribed by subdivision (c) of Section 297. The court shall order the child or the social worker or probation officer to give prior notice of the hearing to the child's former parent or parents whose parental rights were terminated in the manner prescribed by subdivision (f) of Section 294 where the recommendation is adoption. The juvenile court shall grant the petition if it finds by clear and convincing evidence that the child is no longer likely to be adopted and that reinstatement of parental

rights is in the child's best interest. If the court reinstates parental rights over a child who is under 12 years of age and for whom the new permanent plan will not be reunification with a parent or legal guardian, the court shall specify the factual basis for its findings that it is in the best interest of the child to reinstate parental rights. This subdivision is intended to be retroactive and applies to any child who is under the jurisdiction of the juvenile court at the time of the hearing regardless of the date parental rights were terminated.

(j) If the court, by order or judgment, declares the child free from the custody and control of both parents, or one parent if the other does not have custody and control, the court shall at the same time order the child referred to the State Department of Social Services or a licensed adoption agency for adoptive placement by the agency. However, a petition for adoption may not be granted until the appellate rights of the natural parents have been exhausted. The State Department of Social Services or licensed adoption agency shall be responsible for the custody and supervision of the child and shall be entitled to the exclusive care and control of the child at all times until a petition for adoption is granted, except as specified in subdivision (n). With the consent of the agency, the court may appoint a guardian of the child, who shall serve until the child is adopted.

(k) Notwithstanding any other provision of law, the application of any person who, as a relative caretaker or foster parent, has cared for a dependent child for whom the court has approved a permanent plan for adoption, or who has been freed for adoption, shall be given preference with respect to that child over all other applications for adoptive placement if the agency making the placement determines that the child has substantial emotional ties to the relative caretaker or foster parent and removal from the relative caretaker or foster parent would be seriously detrimental to the child's emotional well-being.

As used in this subdivision, "preference" means that the application shall be processed and, if satisfactory, the family study shall be completed before the processing of the application of any other person for the adoptive placement of the child.

(l) (1) An order by the court that a hearing pursuant to this section be held is not appealable at any time unless all of the following apply:

(A) A petition for extraordinary writ review was filed in a timely manner.

(B) The petition substantively addressed the specific issues to be challenged and supported that challenge by an adequate record.

(C) The petition for extraordinary writ review was summarily denied or otherwise not decided on the merits.

(2) Failure to file a petition for extraordinary writ review within the period specified by rule, to substantively address the specific issues challenged, or to support that challenge by an adequate record shall preclude subsequent review by appeal of the findings and orders made pursuant to this section.

(3) The Judicial Council shall adopt rules of court, effective January 1, 1995, to ensure all of the following:

(A) A trial court, after issuance of an order directing a hearing pursuant to this section be held, shall advise all parties of the requirement of filing a petition for extraordinary writ review as set forth in this subdivision in order to preserve any right to appeal in these issues. This notice shall be made orally to a party if the party is present at the time of the making of the order or by first-class mail by the clerk of the court to the last known address of a party not present at the time of the making of the order.

(B) The prompt transmittal of the records from the trial court to the appellate court.

(C) That adequate time requirements for counsel and court personnel exist to implement the objective of this subdivision.

(D) That the parent or guardian, or their trial counsel or other counsel, is charged with the responsibility of filing a petition for extraordinary writ relief pursuant to this subdivision.

(4) The intent of this subdivision is to do both of the following:

(A) Make every reasonable attempt to achieve a substantive and meritorious review by the appellate court within the time specified in Sections 366.21 and 366.22 for holding a hearing pursuant to this section.

(B) Encourage the appellate court to determine all writ petitions filed pursuant to this subdivision on their merits.

(5) This subdivision shall only apply to cases in which an order to set a hearing pursuant to this section is issued on or after January 1, 1995.

(m) Except for subdivision (j), this section shall also apply to minors adjudged wards pursuant to Section 727.31.

(n) (1) Notwithstanding Section 8704 of the Family Code or any other provision of law, the court, at a hearing held pursuant to this section or anytime thereafter, may designate a current caretaker as a prospective adoptive parent if the child has lived with the caretaker for at least six months, the caretaker currently expresses a commitment to adopt the child, and the caretaker has taken at least one step to facilitate the adoption process. In determining whether to make that designation, the court may take into consideration whether the caretaker is listed in the preliminary assessment prepared by the county department in accordance with subdivision (i) of Section 366.21 as an appropriate person to be

considered as an adoptive parent for the child and the recommendation of the State Department of Social Services or licensed adoption agency.

(2) For purposes of this subdivision, steps to facilitate the adoption process include, but are not limited to, the following:

- (A) Applying for an adoption homestudy.
- (B) Cooperating with an adoption homestudy.
- (C) Being designated by the court or the licensed adoption agency as the adoptive family.
- (D) Requesting de facto parent status.
- (E) Signing an adoptive placement agreement.
- (F) Engaging in discussions regarding a postadoption contact agreement.

(G) Working to overcome any impediments that have been identified by the State Department of Social Services and the licensed adoption agency.

(H) Attending classes required of prospective adoptive parents.

(3) Prior to a change in placement and as soon as possible after a decision is made to remove a child from the home of a designated prospective adoptive parent, the agency shall notify the court, the designated prospective adoptive parent or the current caretaker, if that caretaker would have met the threshold criteria to be designated as a prospective adoptive parent pursuant to paragraph (1) on the date of service of this notice, the child's attorney, and the child, if the child is 10 years of age or older, of the proposal in the manner described in Section 16010.6.

(A) Within five court days or seven calendar days, whichever is longer, of the date of notification, the child, the child's attorney, or the designated prospective adoptive parent may file a petition with the court objecting to the proposal to remove the child, or the court, upon its own motion, may set a hearing regarding the proposal. The court may, for good cause, extend the filing period. A caretaker who would have met the threshold criteria to be designated as a prospective adoptive parent pursuant to paragraph (1) on the date of service of the notice of proposed removal of the child may file, together with the petition under this subparagraph, a petition for an order designating the caretaker as a prospective adoptive parent for purposes of this subdivision.

(B) A hearing ordered pursuant to this paragraph shall be held as soon as possible and not later than five court days after the petition is filed with the court or the court sets a hearing upon its own motion, unless the court for good cause is unable to set the matter for hearing five court days after the petition is filed, in which case the court shall set the matter for hearing as soon as possible. At the hearing, the court shall determine whether the caretaker has met the threshold criteria to be designated as

a prospective adoptive parent pursuant to paragraph (1), and whether the proposed removal of the child from the home of the designated prospective adoptive parent is in the child's best interest, and the child may not be removed from the home of the designated prospective adoptive parent unless the court finds that removal is in the child's best interest. If the court determines that the caretaker did not meet the threshold criteria to be designated as a prospective adoptive parent on the date of service of the notice of proposed removal of the child, the petition objecting to the proposed removal filed by the caretaker shall be dismissed. If the caretaker was designated as a prospective adoptive parent prior to this hearing, the court shall inquire into any progress made by the caretaker towards the adoption of the child since the caretaker was designated as a prospective adoptive parent.

(C) A determination by the court that the caretaker is a designated prospective adoptive parent pursuant to paragraph (1) or subparagraph (B) does not make the caretaker a party to the dependency proceeding nor does it confer on the caretaker any standing to object to any other action of the department or licensed adoption agency, unless the caretaker has been declared a de facto parent by the court prior to the notice of removal served pursuant to paragraph (3).

(D) If a petition objecting to the proposal to remove the child is not filed, and the court, upon its own motion, does not set a hearing, the child may be removed from the home of the designated prospective adoptive parent without a hearing.

(4) Notwithstanding paragraph (3), if the State Department of Social Services or a licensed adoption agency determines that the child must be removed from the home of the caretaker who is or may be a designated prospective adoptive parent immediately, due to a risk of physical or emotional harm, the agency may remove the child from that home and is not required to provide notice prior to the removal. However, as soon as possible and not longer than two court days after the removal, the agency shall notify the court, the caretaker who is or may be a designated prospective adoptive parent, the child's attorney, and the child, if the child is 10 years of age or older, of the removal. Within five court days or seven calendar days, whichever is longer, of the date of notification of the removal, the child, the child's attorney, or the caretaker who is or may be a designated prospective adoptive parent may petition for, or the court on its own motion may set, a noticed hearing pursuant to paragraph (3). The court may, for good cause, extend the filing period.

(5) Except as provided in subdivision (b) of Section 366.28, an order by the court issued after a hearing pursuant to this subdivision shall not be appealable.

(6) Nothing in this section shall preclude a county child protective services agency from fully investigating and responding to alleged abuse or neglect of a child pursuant to Section 11165.5 of the Penal Code.

(7) The Judicial Council shall prepare forms to facilitate the filing of the petitions described in this subdivision, which shall become effective on January 1, 2006.

(o) The implementation and operation of the amendments to paragraph (3) of subdivision (c) and subparagraph (A) of paragraph (4) of subdivision (c) enacted at the 2005-06 Regular Session shall be subject to appropriation through the budget process and by phase, as provided in Section 366.35.

SEC. 7. Section 366.3 of the Welfare and Institutions Code is amended to read:

366.3. (a) If a juvenile court orders a permanent plan of adoption or legal guardianship pursuant to Section 360 or 366.26, the court shall retain jurisdiction over the child until the child is adopted or the legal guardianship is established, except as provided for in Section 366.29. The status of the child shall be reviewed every six months to ensure that the adoption or legal guardianship is completed as expeditiously as possible. When the adoption of the child has been granted, the court shall terminate its jurisdiction over the child. Following establishment of a legal guardianship, the court may continue jurisdiction over the child as a dependent child of the juvenile court or may terminate its dependency jurisdiction and retain jurisdiction over the child as a ward of the legal guardianship, as authorized by Section 366.4. If, however, a relative of the child is appointed the legal guardian of the child and the child has been placed with the relative for at least 12 months, the court shall, except if the relative guardian objects, or upon a finding of exceptional circumstances, terminate its dependency jurisdiction and retain jurisdiction over the child as a ward of the guardianship, as authorized by Section 366.4. Following a termination of parental rights, the parent or parents shall not be a party to, or receive notice of, any subsequent proceedings regarding the child.

(b) If the court has dismissed dependency jurisdiction following the establishment of a legal guardianship, or no dependency jurisdiction attached because of the granting of a legal guardianship pursuant to Section 360, and the legal guardianship is subsequently revoked or otherwise terminated, the county department of social services or welfare department shall notify the juvenile court of this fact. The court may vacate its previous order dismissing dependency jurisdiction over the child.

Notwithstanding Section 1601 of the Probate Code, the proceedings to terminate a legal guardianship that has been granted pursuant to

Section 360 or 366.26 shall be held in the juvenile court, unless the termination is due to the emancipation or adoption of the child. Prior to the hearing on a petition to terminate legal guardianship pursuant to this paragraph, the court shall order the county department of social services or welfare department to prepare a report, for the court's consideration, that shall include an evaluation of whether the child could safely remain in the legal guardian's home, without terminating the legal guardianship, if services were provided to the child or legal guardian. If applicable, the report shall also identify recommended services to maintain the legal guardianship and set forth a plan for providing those services. If the petition to terminate legal guardianship is granted, the juvenile court may resume dependency jurisdiction over the child, and may order the county department of social services or welfare department to develop a new permanent plan, which shall be presented to the court within 60 days of the termination. If no dependency jurisdiction has attached, the social worker shall make any investigation he or she deems necessary to determine whether the child may be within the jurisdiction of the juvenile court, as provided in Section 328.

Unless the parental rights of the child's parent or parents have been terminated, they shall be notified that the legal guardianship has been revoked or terminated and shall be entitled to participate in the new permanency planning hearing. The court shall try to place the child in another permanent placement. At the hearing, the parents may be considered as custodians but the child shall not be returned to the parent or parents unless they prove, by a preponderance of the evidence, that reunification is the best alternative for the child. The court may, if it is in the best interests of the child, order that reunification services again be provided to the parent or parents.

(c) If, following the establishment of a legal guardianship, the county welfare department becomes aware of changed circumstances that indicate adoption may be an appropriate plan for the child, the department shall so notify the court. The court may vacate its previous order dismissing dependency jurisdiction over the child and order that a hearing be held pursuant to Section 366.26 to determine whether adoption or continued legal guardianship is the most appropriate plan for the child. The hearing shall be held no later than 120 days from the date of the order. If the court orders that a hearing shall be held pursuant to Section 366.26, the court shall direct the agency supervising the child and the licensed county adoption agency, or the State Department of Social Services if it is acting as an adoption agency in counties that are not served by a county adoption agency, to prepare an assessment under subdivision (b) of Section 366.22.

(d) If the child is in a placement other than the home of a legal guardian and jurisdiction has not been dismissed, the status of the child shall be reviewed at least every six months. The review of the status of a child for whom the court has ordered parental rights terminated and who has been ordered placed for adoption shall be conducted by the court. The review of the status of a child for whom the court has not ordered parental rights terminated and who has not been ordered placed for adoption may be conducted by the court or an appropriate local agency. The court shall conduct the review under the following circumstances:

- (1) Upon the request of the child's parents or legal guardians.
- (2) Upon the request of the child.
- (3) It has been 12 months since a hearing held pursuant to Section 366.26 or an order that the child remain in long-term foster care pursuant to Section 366.21, 366.22, 366.26, or subdivision (g).

(4) It has been 12 months since a review was conducted by the court. The court shall determine whether or not reasonable efforts to make and finalize a permanent placement for the child have been made.

(e) Except as provided in subdivision (f), at the review held every six months pursuant to subdivision (d), the reviewing body shall inquire about the progress being made to provide a permanent home for the child, shall consider the safety of the child, and shall determine all of the following:

- (1) The continuing necessity for and appropriateness of the placement.
- (2) Identification of individuals other than the child's siblings who are important to a child who is 10 years of age or older and has been in out-of-home placement for six months or longer, and actions necessary to maintain the child's relationship with those individuals, provided that those relationships are in the best interest of the child. The social worker shall ask every child who is 10 years of age or older and who has been in out-of-home placement for six months or longer to identify individuals other than the child's siblings who are important to the child, and may ask any other child to provide that information, as appropriate. The social worker shall make efforts to identify other individuals who are important to the child, consistent with the child's best interests.

(3) The continuing appropriateness and extent of compliance with the permanent plan for the child, including efforts to maintain relationships between a child who is 10 years of age or older and who has been in out-of-home placement for six months or longer and individuals who are important to the child and efforts to identify a prospective adoptive parent or legal guardian, including, but not limited to, child-specific recruitment efforts and listing on an adoption exchange.

(4) The extent of the agency's compliance with the child welfare services case plan in making reasonable efforts to return the child to a safe home and to complete whatever steps are necessary to finalize the permanent placement of the child.

(5) Whether there should be any limitation on the right of the parent or guardian to make educational decisions for the child. That limitation shall be specifically addressed in the court order and may not exceed what is necessary to protect the child. If the court specifically limits the right of the parent or guardian to make educational decisions for the child, the court shall at the same time appoint a responsible adult to make educational decisions for the child pursuant to Section 361.

(6) The adequacy of services provided to the child. The court shall consider the progress in providing the information and documents to the child, as described in Section 391. The court shall also consider the need for, and progress in providing, the assistance and services described in paragraphs (3) and (4) of subdivision (b) of Section 391.

(7) The extent of progress the parents or legal guardians have made toward alleviating or mitigating the causes necessitating placement in foster care.

(8) The likely date by which the child may be returned to and safely maintained in the home, placed for adoption, legal guardianship, or in another planned permanent living arrangement.

(9) Whether the child has any siblings under the court's jurisdiction, and, if any siblings exist, all of the following:

(A) The nature of the relationship between the child and his or her siblings.

(B) The appropriateness of developing or maintaining the sibling relationships pursuant to Section 16002.

(C) If the siblings are not placed together in the same home, why the siblings are not placed together and what efforts are being made to place the siblings together, or why those efforts are not appropriate.

(D) If the siblings are not placed together, the frequency and nature of the visits between siblings.

(E) The impact of the sibling relationships on the child's placement and planning for legal permanence.

The factors the court may consider as indicators of the nature of the child's sibling relationships include, but are not limited to, whether the siblings were raised together in the same home, whether the siblings have shared significant common experiences or have existing close and strong bonds, whether either sibling expresses a desire to visit or live with his or her sibling, as applicable, and whether ongoing contact is in the child's best emotional interests.

(10) For a child who is 16 years of age or older, the services needed to assist the child to make the transition from foster care to independent living.

The reviewing body shall determine whether or not reasonable efforts to make and finalize a permanent placement for the child have been made.

Each licensed foster family agency shall submit reports for each child in its care, custody, and control to the court concerning the continuing appropriateness and extent of compliance with the child's permanent plan, the extent of compliance with the case plan, and the type and adequacy of services provided to the child.

Unless their parental rights have been permanently terminated, the parent or parents of the child are entitled to receive notice of, and participate in, those hearings. It shall be presumed that continued care is in the best interests of the child, unless the parent or parents prove, by a preponderance of the evidence, that further efforts at reunification are the best alternative for the child. In those cases, the court may order that further reunification services to return the child to a safe home environment be provided to the parent or parents for a period not to exceed six months.

(f) At the review conducted by the court and held at least every six months, regarding a child for whom the court has ordered parental rights terminated and who has been ordered placed for adoption, the county welfare department shall prepare and present to the court a report describing the following:

- (1) The child's present placement.
- (2) The child's current physical, mental, emotional, and educational status.

- (3) If the child has not been placed with a prospective adoptive parent or guardian, identification of individuals, other than the child's siblings, who are important to the child and actions necessary to maintain the child's relationship with those individuals, provided that those relationships are in the best interest of the child. The agency shall ask every child who is 10 years of age or older to identify any individuals who are important to him or her, consistent with the child's best interest, and may ask any child who is younger than 10 years of age to provide that information as appropriate. The agency shall make efforts to identify other individuals who are important to the child.

- (4) Whether the child has been placed with a prospective adoptive parent or parents.

- (5) Whether an adoptive placement agreement has been signed and filed.

(6) If the child has not been placed with a prospective adoptive parent or parents, the efforts made to identify an appropriate prospective adoptive parent or legal guardian, including, but not limited to, child-specific recruitment efforts and listing on an adoption exchange.

(7) Whether the final adoption order should include provisions for postadoptive sibling contact pursuant to Section 366.29.

(8) The progress of the search for an adoptive placement if one has not been identified.

(9) Any impediments to the adoption or the adoptive placement.

(10) The anticipated date by which the child will be adopted, or placed in an adoptive home.

(11) The anticipated date by which an adoptive placement agreement will be signed.

(12) Recommendations for court orders that will assist in the placement of the child for adoption or in the finalization of the adoption.

The court shall determine whether or not reasonable efforts to make and finalize a permanent placement for the child have been made.

The court shall make appropriate orders to protect the stability of the child and to facilitate and expedite the permanent placement and adoption of the child.

(g) At the review held pursuant to subdivision (d) for a child in long-term foster care, the court shall consider all permanency planning options for the child including whether the child should be returned to the home of the parent, placed for adoption, or appointed a legal guardian, or, if compelling reasons exist for finding that none of the foregoing options are in the best interest of the child, whether the child should be placed in another planned permanent living arrangement. The court shall order that a hearing be held pursuant to Section 366.26 unless it determines by clear and convincing evidence, that there is a compelling reason for determining that a hearing held pursuant to Section 366.26 is not in the best interest of the child because the child is being returned to the home of the parent, the child is not a proper subject for adoption, or no one is willing to accept legal guardianship. If the licensed county adoption agency, or the department when it is acting as an adoption agency in counties that are not served by a county adoption agency, has determined it is unlikely that the child will be adopted or one of the conditions described in paragraph (1) of subdivision (c) of Section 366.26 applies, that fact shall constitute a compelling reason for purposes of this subdivision. Only upon that determination may the court order that the child remain in foster care, without holding a hearing pursuant to Section 366.26.

(h) If, as authorized by subdivision (g), the court orders a hearing pursuant to Section 366.26, the court shall direct the agency supervising

the child and the licensed county adoption agency, or the State Department of Social Services when it is acting as an adoption agency in counties that are not served by a county adoption agency, to prepare an assessment as provided for in subdivision (i) of Section 366.21 or subdivision (b) of Section 366.22. A hearing held pursuant to Section 366.26 shall be held no later than 120 days from the date of the 12-month review at which it is ordered, and at that hearing the court shall determine whether adoption, legal guardianship, or long-term foster care is the most appropriate plan for the child.

(i) The implementation and operation of the amendments to subdivision (e) enacted at the 2005-06 Regular Session shall be subject to appropriation through the budget process and by phase, as provided in Section 366.35.

SEC. 8. Section 366.35 is added to the Welfare and Institutions Code, to read:

366.35. (a) The implementation and operation of the amendments to subparagraph (B) of paragraph (1) of subdivision (a) of Section 366, subdivision (g) of Section 366.1, subdivisions (c) and (g) of Section 366.21, subdivision (a) of Section 366.22, paragraph (3) of, and subparagraph (A) of paragraph (4) of, subdivision (c) of Section 366.26, paragraphs (2) and (3) of subdivision (e) of Section 366.3, and subdivision (i) of Section 16501.1 enacted at the 2005-06 Regular Session shall be phased in, consistent with the child's best interests, as follows:

(1) The first phase of expansion shall apply to a child who is 10 years of age or older and placed with a nonrelative for six months or longer.

(2) The second phase of expansion shall apply to a child who is 10 years of age or older and placed with a nonrelative or in permanent placement relative care for six months or longer.

(3) The final phase of expansion shall apply to a child who is 10 years of age or older and who has been in out-of-home placement for six months or longer.

(b) All phases of subdivision (a) shall be subject to appropriation through the budget process. Those appropriations shall apply only to the state's share of costs. Counties shall remain responsible for their nonfederal share of costs.

SEC. 9. Section 16001.9 of the Welfare and Institutions Code is amended to read:

16001.9. (a) It is the policy of the state that all children in foster care shall have the following rights:

(1) To live in a safe, healthy, and comfortable home where he or she is treated with respect.

(2) To be free from physical, sexual, emotional, or other abuse, or corporal punishment.

(3) To receive adequate and healthy food, adequate clothing, and, for youth in group homes, an allowance.

(4) To receive medical, dental, vision, and mental health services.

(5) To be free of the administration of medication or chemical substances, unless authorized by a physician.

(6) To contact family members, unless prohibited by court order, and social workers, attorneys, foster youth advocates and supporters, Court Appointed Special Advocates (CASA), and probation officers.

(7) To visit and contact brothers and sisters, unless prohibited by court order.

(8) To contact the Community Care Licensing Division of the State Department of Social Services or the State Foster Care Ombudsperson regarding violations of rights, to speak to representatives of these offices confidentially, and to be free from threats or punishment for making complaints.

(9) To make and receive confidential telephone calls and send and receive unopened mail, unless prohibited by court order.

(10) To attend religious services and activities of his or her choice.

(11) To maintain an emancipation bank account and manage personal income, consistent with the child's age and developmental level, unless prohibited by the case plan.

(12) To not be locked in any room, building, or facility premises, unless placed in a community treatment facility.

(13) To attend school and participate in extracurricular, cultural, and personal enrichment activities, consistent with the child's age and developmental level.

(14) To work and develop job skills at an age-appropriate level, consistent with state law.

(15) To have social contacts with people outside of the foster care system, such as teachers, church members, mentors, and friends.

(16) To attend Independent Living Program classes and activities if he or she meets age requirements.

(17) To attend court hearings and speak to the judge.

(18) To have storage space for private use.

(19) To be involved in the development of his or her own case plan and plan for permanent placement.

(20) To review his or her own case plan and plan for permanent placement if he or she is 12 years of age or older and in a permanent placement, and to receive information about his or her out-of-home placement and case plan, including being told of changes to the plan.

(21) To be free from unreasonable searches of personal belongings.

(22) To confidentiality of all juvenile court records consistent with existing law.

(23) To have fair and equal access to all available services, placement, care, treatment, and benefits, and to not be subjected to discrimination or harassment on the basis of actual or perceived race, ethnic group identification, ancestry, national origin, color, religion, sex, sexual orientation, gender identity, mental or physical disability, or HIV status.

(24) At 16 years of age or older, to have access to existing information regarding the educational options available, including, but not limited to, the coursework necessary for vocational and postsecondary educational programs, and information regarding financial aid for postsecondary education.

(b) Nothing in this section shall be interpreted to require a foster care provider to take any action that would impair the health and safety of children in out-of-home placement.

(c) The State Department of Social Services and each county welfare department are encouraged to work with the Student Aid Commission, the University of California, the California State University, and the California Community Colleges to receive information pursuant to paragraph (23) of subdivision (a).

SEC. 10. Section 16500.1 of the Welfare and Institutions Code is amended to read:

16500.1. (a) It is the intent of the Legislature to use the strengths of families and communities to serve the needs of children who are alleged to be abused or neglected, as described in Section 300, to reduce the necessity for removing these children from their home, to encourage speedy reunification of families when it can be safely accomplished, to locate permanent homes and families for children who cannot return to their biological families, to reduce the number of placements experienced by these children, to ensure that children leaving the foster care system have support within their communities, to improve the quality and homelike nature of out-of-home care, and to foster the educational progress of children in out-of-home care.

(b) In order to achieve the goals specified in subdivision (a), the state shall encourage the development of approaches to child protection that do all of the following:

(1) Allow children to remain in their own schools, in close proximity to their families.

(2) Increase the number and quality of foster families available to serve these children.

(3) Use a team approach to foster care that permits the biological and foster family and the child to be part of that team.

(4) Use team decisionmaking in case planning.

- (5) Provide support to foster children and foster families.
 - (6) Ensure that licensing requirements do not create barriers to recruitment of qualified, high-quality foster homes.
 - (7) Provide training for foster parents and professional staff on working effectively with families and communities.
 - (8) Encourage foster parents to serve as mentors and role models for biological parents.
 - (9) Use community resources, including community-based agencies and volunteer organizations, to assist in developing placements for children and to provide support for children and their families.
 - (10) Ensure an appropriate array of placement resources for children in need of out-of-home care.
 - (11) Ensure that no child leaves foster care without a lifelong connection to a committed adult.
 - (12) Ensure that children are actively involved in the case plan and permanency planning process.
- (c) In carrying out the requirements of subdivision (b), the department shall do all of the following:
- (1) Consider the existing array of program models provided in statute and in practice, including, but not limited to, wraparound services, as defined in Section 18251, children's systems of care, as provided for in Section 5852, the Oregon Family Unity or Santa Clara County Family Conference models, which include family conferences at key points in the casework process, such as when out-of-home placement or return home are considered, and the Annie E. Casey Foundation Family to Family initiative, which uses team decisionmaking in case planning, community-based placement practices requiring that children be placed in foster care in the communities where they resided prior to placement, and involve foster families as team members in family reunification efforts.
 - (2) Ensure that emergency response services, family maintenance services, family reunification services, and permanent placement services are coordinated with the implementation of the models described in paragraph (1).
 - (3) Ensure consistency between child welfare services program regulations and the program models described in paragraph (1).
- (d) The department, in conjunction with stakeholders, including, but not limited to, county child welfare services agencies, foster parent and group home associations, the California Youth Connection, and other child advocacy groups, shall review the existing child welfare services program regulations to ensure that these regulations are consistent with the legislative intent specified in subdivision (a). This review shall also determine how to incorporate the best practice guidelines for assessment

of children and families receiving child welfare and foster care services, as required by Section 16501.2.

(e) The department shall report to the Legislature on the results of the actions taken under this section on or before January 1, 2002.

SEC. 10.5. Section 16500.1 of the Welfare and Institutions Code is amended to read:

16500.1. (a) It is the intent of the Legislature to use the strengths of families and communities to serve the needs of children who are alleged to be abused or neglected, as described in Section 300, to reduce the necessity for removing these children from their home, to encourage speedy reunification of families when it can be safely accomplished, to locate permanent homes and families with relatives, as defined in paragraph (2) of subdivision (c) of Section 361.3, for children who cannot return to their biological families, to reduce the number of placements experienced by these children, to ensure that children leaving the foster care system have support within their communities, to improve the quality and homelike nature of out-of-home care, and to foster the educational progress of children in out-of-home care.

(b) In order to achieve the goals specified in subdivision (a), the state shall encourage the development of approaches to child protection that do all of the following:

(1) Allow children to remain in their own schools, in close proximity to their families.

(2) Ensure that a search for relatives available for placement is initiated before permanent placement decisions are made for children who are unable to be reunited with their families.

(3) Increase the number and quality of foster families available to serve these children.

(4) Use a team approach to foster care that permits the biological and foster family and the child to be part of that team.

(5) Use team decisionmaking in case planning.

(6) Provide support to foster children and foster families.

(7) Ensure that licensing requirements do not create barriers to recruitment of qualified, high-quality foster homes.

(8) Provide training for foster parents and professional staff on working effectively with families and communities.

(9) Encourage foster parents to serve as mentors and role models for biological parents.

(10) Use community resources, including community-based agencies and volunteer organizations, to assist in developing placements for children and to provide support for children and their families.

(11) Ensure an appropriate array of placement resources for children in need of out-of-home care.

(12) Ensure that no child leaves foster care without a lifelong connection to a committed adult.

(13) Ensure that children are actively involved in the case plan and permanency planning process.

(c) In carrying out the requirements of subdivision (b), the department shall do all of the following:

(1) Consider the existing array of program models provided in statute and in practice, including, but not limited to, wraparound services, as defined in Section 18251, children's systems of care, as provided for in Section 5852, the Oregon Family Unity or Santa Clara County Family Conference models, which include family conferences at key points in the casework process, such as when out-of-home placement or return home are considered, and the Annie E. Casey Foundation Family to Family initiative, which uses team decisionmaking in case planning, community-based placement practices requiring that children be placed in foster care in the communities where they resided prior to placement, and involve foster families as team members in family reunification efforts.

(2) Ensure that emergency response services, family maintenance services, family reunification services, and permanent placement services are coordinated with the implementation of the models described in paragraph (1).

(3) Ensure consistency between child welfare services program regulations and the program models described in paragraph (1).

(d) The department, in conjunction with stakeholders, including, but not limited to, county child welfare services agencies, foster parent and group home associations, the California Youth Connection, and other child advocacy groups, shall review the existing child welfare services program regulations to ensure that these regulations are consistent with the legislative intent specified in subdivision (a). This review shall also determine how to incorporate the best practice guidelines for assessment of children and families receiving child welfare and foster care services, as required by Section 16501.2.

(e) The department shall report to the Legislature on the results of the actions taken under this section on or before January 1, 2002.

SEC. 11. Section 16501.1 of the Welfare and Institutions Code is amended to read:

16501.1. (a) (1) The Legislature finds and declares that the foundation and central unifying tool in child welfare services is the case plan.

(2) The Legislature further finds and declares that a case plan ensures that the child receives protection and safe and proper care and case management, and that services are provided to the child and parents or

other caretakers, as appropriate, in order to improve conditions in the parent's home, to facilitate the safe return of the child to a safe home or the permanent placement of the child, and to address the needs of the child while in foster care.

(b) (1) A case plan shall be based upon the principles of this section and shall document that a preplacement assessment of the service needs of the child and family, and preplacement preventive services, have been provided, and that reasonable efforts to prevent out-of-home placement have been made.

(2) In determining the reasonable services to be offered or provided, the child's health and safety shall be the paramount concerns.

(3) Reasonable services shall be offered or provided to make it possible for a child to return to a safe home environment, unless, pursuant to subdivisions (b) and (e) of Section 361.5, the court determines that reunification services shall not be provided.

(4) If reasonable services are not ordered, or are terminated, reasonable efforts shall be made to place the child in a timely manner in accordance with the permanent plan and to complete all steps necessary to finalize the permanent placement of the child.

(c) (1) If out-of-home placement is used to attain case plan goals, the decision regarding choice of placement shall be based upon selection of a safe setting that is the least restrictive or most familylike and the most appropriate setting that is available and in close proximity to the parent's home, proximity to the child's school, consistent with the selection of the environment best suited to meet the child's special needs and best interests, or both. The selection shall consider, in order of priority, placement with relatives, tribal members, and foster family, group care, and residential treatment pursuant to Section 7950 of the Family Code.

(2) In addition to the requirements of paragraph (1), and taking into account other statutory considerations regarding placement, the selection of the most appropriate home that will meet the child's special needs and best interests shall also promote educational stability by taking into consideration proximity to the child's school attendance area.

(d) A written case plan shall be completed within a maximum of 60 days of the initial removal of the child or of the in-person response required under subdivision (f) of Section 16501 if the child has not been removed from his or her home, or by the date of the dispositional hearing pursuant to Section 358, whichever occurs first. The case plan shall be updated, as the service needs of the child and family dictate. At a minimum, the case plan shall be updated in conjunction with each status review hearing conducted pursuant to Section 366.21, and the hearing conducted pursuant to Section 366.26, but no less frequently than once

every six months. Each updated case plan shall include a description of the services that have been provided to the child under the plan and an evaluation of the appropriateness and effectiveness of those services.

(1) It is the intent of the Legislature that extending the maximum time available for preparing a written case plan from 30 to 60 days will afford caseworkers time to actively engage families, and to solicit and integrate into the case plan the input of the child and the child's family, as well as the input of relatives and other interested parties.

(2) The extension of the maximum time available for preparing a written case plan from the 30 to 60 days shall be effective 90 days after the date that the department gives counties written notice that necessary changes have been made to the Child Welfare Services Case Management System to account for the 60-day timeframe for preparing a written case plan.

(e) The child welfare services case plan shall be comprehensive enough to meet the juvenile court dependency proceedings requirements pursuant to Article 6 (commencing with Section 300) of Chapter 2 of Part 1 of Division 2.

(f) The case plan shall be developed as follows:

(1) The case plan shall be based upon an assessment of the circumstances that required child welfare services intervention. The child shall be involved in developing the case plan as age and developmentally appropriate.

(2) The case plan shall identify specific goals and the appropriateness of the planned services in meeting those goals.

(3) The case plan shall identify the original allegations of abuse or neglect, as defined in Article 2.5 (commencing with Section 11164) of Chapter 2 of Title 1 of Part 4 of the Penal Code, or the conditions cited as the basis for declaring the child a dependent of the court pursuant to Section 300, or all of these, and the other precipitating incidents that led to child welfare services intervention.

(4) The case plan shall include a description of the schedule of the social worker contacts with the child and the family or other caretakers. The frequency of these contacts shall be in accordance with regulations adopted by the State Department of Social Services. If the child has been placed in foster care out of state, the county social worker or a social worker on the staff of the social services agency in the state in which the child has been placed shall visit the child in a foster family home or the home of a relative at least every 12 months and submit a report to the court on each visit. For children in out-of-state group home facilities, visits shall be conducted at least monthly, pursuant to Section 16516.5. At least once every six months, at the time of a regularly scheduled social worker contact with the foster child, the child's social worker shall inform

the child of his or her rights as a foster child, as specified in Section 16001.9. The social worker shall provide the information to the child in a manner appropriate to the age or developmental level of the child.

(5) (A) When out-of-home services are used, the frequency of contact between the natural parents or legal guardians and the child shall be specified in the case plan. The frequency of those contacts shall reflect overall case goals, and consider other principles outlined in this section.

(B) Information regarding any court-ordered visitation between the child and the natural parents or legal guardians, and the terms and conditions needed to facilitate the visits while protecting the safety of the child, shall be provided to the child's out-of-home caregiver as soon as possible after the court order is made.

(6) When out-of-home placement is made, the case plan shall include provisions for the development and maintenance of sibling relationships as specified in subdivisions (b), (c), and (d) of Section 16002. If appropriate, when siblings who are dependents of the juvenile court are not placed together, the social worker for each child, if different, shall communicate with each of the other social workers and ensure that the child's siblings are informed of significant life events that occur within their extended family. Unless it has been determined that it is inappropriate in a particular case to keep siblings informed of significant life events that occur within the extended family, the social worker shall determine the appropriate means and setting for disclosure of this information to the child commensurate with the child's age and emotional well-being. These significant life events shall include, but shall not be limited to, the following:

(A) The death of an immediate relative.

(B) The birth of a sibling.

(C) Significant changes regarding a dependent child, unless the child objects to the sharing of the information with his or her siblings, including changes in placement, major medical or mental health diagnoses, treatments, or hospitalizations, arrests, and changes in the permanent plan.

(7) If out-of-home placement is made in a foster family home, group home or other child care institution that is either a substantial distance from the home of the child's parent or out of state, the case plan shall specify the reasons why that placement is in the best interest of the child. When an out-of-state group home placement is recommended or made, the case plan shall, in addition, specify compliance with Section 7911.1 of the Family Code.

(8) (A) If out-of-home services are used, or if parental rights have been terminated and the case plan is placement for adoption, the case plan shall include a recommendation regarding the appropriateness of

unsupervised visitation between the child and any of the child's siblings. This recommendation shall include a statement regarding the child's and the siblings' willingness to participate in unsupervised visitation. If the case plan includes a recommendation for unsupervised sibling visitation, the plan shall also note that information necessary to accomplish this visitation has been provided to the child or to the child's siblings.

(B) Information regarding the schedule and frequency of the visits between the child and siblings, as well as any court-ordered terms and conditions needed to facilitate the visits while protecting the safety of the child, shall be provided to the child's out-of-home caregiver as soon as possible after the court order is made.

(9) If out-of-home services are used and the goal is reunification, the case plan shall describe the services to be provided to assist in reunification and the services to be provided concurrently to achieve legal permanency if efforts to reunify fail. The plan shall also consider the importance of developing and maintaining sibling relationships pursuant to Section 16002, and the desire and willingness of the caregiver to provide legal permanency for the child if reunification is unsuccessful.

(10) If out-of-home services are used, the child has been in care for at least 12 months, and the goal is not adoptive placement, the case plan shall include documentation of the compelling reason or reasons why termination of parental rights is not in the child's best interest. A determination completed or updated within the past 12 months by the department when it is acting as an adoption agency or by a licensed adoption agency that it is unlikely that the child will be adopted, or that one of the conditions described in paragraph (1) of subdivision (c) of Section 366.26 applies, shall be deemed a compelling reason.

(11) (A) Parents and legal guardians shall have an opportunity to review the case plan, and to sign it whenever possible, and then shall receive a copy of the plan. In any voluntary service or placement agreement, the parents or legal guardians shall be required to review and sign the case plan. Whenever possible, parents and legal guardians shall participate in the development of the case plan.

(B) Parents and legal guardians shall be advised that, pursuant to Section 1228.1 of the Evidence Code, neither their signature on the child welfare services case plan nor their acceptance of any services prescribed in the child welfare services case plan shall constitute an admission of guilt or be used as evidence against the parent or legal guardian in a court of law. However, they shall also be advised that the parent's or guardian's failure to cooperate, except for good cause, in the provision of services specified in the child welfare services case plan may be used in any hearing held pursuant to Section 366.21 or 366.22 as evidence.

(12) A child shall be given a meaningful opportunity to participate in the development of the case plan and state his or her preference for foster care placement. A child who is 12 years of age or older and in a permanent placement shall also be given the opportunity to review the case plan, sign the case plan, and receive a copy of the case plan.

(13) The case plan shall be included in the court report and shall be considered by the court at the initial hearing and each review hearing. Modifications to the case plan made during the period between review hearings need not be approved by the court if the casework supervisor for that case determines that the modifications further the goals of the plan. If out-of-home services are used with the goal of family reunification, the case plan shall consider and describe the application of subdivision (b) of Section 11203.

(14) If the case plan has as its goal for the child a permanent plan of adoption or placement in another permanent home, it shall include a statement of the child's wishes regarding their permanent placement plan and an assessment of those stated wishes. The agency shall also include documentation of the steps the agency is taking to find an adoptive family or other permanent living arrangements for the child; to place the child with an adoptive family, an appropriate and willing relative, a legal guardian, or in another planned permanent living arrangement; and to finalize the adoption or legal guardianship. At a minimum, the documentation shall include child-specific recruitment efforts, such as the use of state, regional, and national adoption exchanges, including electronic exchange systems, when the child has been freed for adoption.

(15) When appropriate, for a child who is 16 years of age or older, the case plan shall include a written description of the programs and services that will help the child, consistent with the child's best interests, prepare for the transition from foster care to independent living. The case plan shall be developed with the child and individuals identified as important to the child, and shall include steps the agency is taking to ensure that the child has a connection to a caring adult.

(g) If the court finds, after considering the case plan, that unsupervised sibling visitation is appropriate and has been consented to, the court shall order that the child or the child's siblings, the child's current caregiver, and the child's prospective adoptive parents, if applicable, be provided with information necessary to accomplish this visitation. This section does not require or prohibit the social worker's facilitation, transportation, or supervision of visits between the child and his or her siblings.

(h) The case plan documentation on sibling placements required under this section shall not require modification of existing case plan forms

until the Child Welfare Services Case Management System is implemented on a statewide basis.

(i) When a child who is 10 years of age or older and who has been in out-of-home placement for six months or longer, the case plan shall include an identification of individuals, other than the child's siblings, who are important to the child and actions necessary to maintain the child's relationship with those individuals, provided that those relationships are in the best interest of the child. The social worker shall ask every child who is 10 years of age or older and who has been in out-of-home placement for six months or longer to identify individuals other than the child's siblings who are important to the child, and may ask any other child to provide that information, as appropriate. The social worker shall make efforts to identify other individuals who are important to the child, consistent with the child's best interests.

(j) The child's caregiver shall be provided a copy of a plan outlining the child's needs and services.

(k) The department, in consultation with the County Welfare Directors Association and other advocates, shall develop standards and guidelines for a model relative placement search and assessment process based on the criteria established in Section 361.3. These guidelines shall be incorporated in the training described in Section 16206. These model standards and guidelines shall be developed by March 1, 1999.

(l) The implementation and operation of the amendments to subdivision (i) enacted at the 2005–06 Regular Session shall be subject to appropriation through the budget process and by phase, as provided in Section 366.35.

SEC. 12. (a) Section 6.1 of this bill incorporates amendments to Section 366.26 of the Welfare and Institutions Code proposed by both this bill and AB 519. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2006, (2) each bill amends Section 366.26 of the Welfare and Institutions Code, (3) AB 1338 and SB 218 are not enacted or as enacted do not amend that section, and (4) this bill is enacted after AB 519, in which case Sections 6, 6.2, 6.3, 6.4, 6.5, 6.6, and 6.7 of this bill shall not become operative.

(b) Section 6.2 of this bill incorporates amendments to Section 366.26 of the Welfare and Institutions Code proposed by both this bill and AB 1338. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2006, (2) each bill amends Section 366.26 of the Welfare and Institutions Code, (3) AB 519 and SB 218 are not enacted or as enacted do not amend that section, and (4) this bill is enacted after AB 1338 in which case Sections 6, 6.1, 6.3, 6.4, 6.5, 6.6, and 6.7 of this bill shall not become operative.

(c) Section 6.3 of this bill incorporates amendments to Section 366.26 of the Welfare and Institutions Code proposed by both this bill and SB 218. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2006, (2) each bill amends Section 366.26 of the Welfare and Institutions Code, (3) AB 519 and AB 1338 are not enacted or as enacted do not amend that section, and (4) this bill is enacted after SB 218, in which case Sections 6, 6.1, 6.2, 6.4, 6.5, 6.6, and 6.7 of this bill shall not become operative.

(d) Section 6.4 of this bill incorporates amendments to Section 366.26 of the Welfare and Institutions Code proposed by this bill, AB 519, and AB 1338. It shall only become operative if (1) all three bills are enacted and become effective on or before January 1, 2006, (2) all three bills amend Section 366.26 of the Welfare and Institutions Code, (3) SB 218 is not enacted or as enacted does not amend that section and (4) this bill is enacted after AB 519 and AB 1338, in which case Sections 6, 6.1, 6.2, 6.3, 6.5, 6.6, and 6.7 of this bill shall not become operative.

(e) Section 6.5 of this bill incorporates amendments to Section 366.26 of the Welfare and Institutions Code proposed by this bill, AB 519, and SB 218. It shall only become operative if (1) all three bills are enacted and become effective on or before January 1, 2006, (2) all three bills amend Section 366.26 of the Welfare and Institutions Code, (3) AB 1338 is not enacted or as enacted does not amend that section and (4) this bill is enacted after AB 519 and SB 218, in which case Sections 6, 6.1, 6.2, 6.3, 6.4, 6.6, and 6.7 of this bill shall not become operative.

(f) Section 6.6 of this bill incorporates amendments to Section 366.26 of the Welfare and Institutions Code proposed by this bill, AB 1338, and SB 218. It shall only become operative if (1) all three bills are enacted and become effective on or before January 1, 2006, (2) all three bills amend Section 366.26 of the Welfare and Institutions Code, (3) AB 519 is not enacted or as enacted does not amend that section and (4) this bill is enacted after AB 1338 and SB 218, in which case Sections 6, 6.1, 6.2, 6.3, 6.4, 6.5, and 6.7 of this bill shall not become operative.

(g) Section 6.7 of this bill incorporates amendments to Section 366.26 of the Welfare and Institutions Code proposed by this bill, AB 519, AB 1338, and SB 218. It shall only become operative if (1) all four bills are enacted and become effective on or before January 1, 2006, (2) all four bills amend Section 366.26 of the Welfare and Institutions Code, and (3) this bill is enacted after AB 519, AB 1338, and SB 218 in which case Sections 6, 6.1, 6.2, 6.3, 6.4, 6.5, and 6.6 of this bill shall not become operative.

SEC. 13. Section 10.5 of this bill incorporates amendments to Section 16500.1 of the Welfare and Institutions Code proposed by both this bill and AB 880. It shall only become operative if (1) both bills are enacted

and become effective on or before January 1, 2006, (2) each bill amends Section 16500.1 of the Welfare and Institutions Code, and (3) this bill is enacted after AB 880, in which case Section 10 of this bill shall not become operative.

SEC. 14. 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.

CHAPTER 641

An act to amend Section 11403 of, to add Section 11401.6 to, and to add Chapter 6.2 (commencing with Section 13750) to Part 3 of Division 9 of, the Welfare and Institutions Code, relating to foster children.

[Approved by Governor October 7, 2005. Filed with
Secretary of State October 7, 2005.]

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

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

(a) (1) Children and youth in foster care are more likely to have more significant emotional and behavioral health problems, developmental disabilities or delays, or chronic health conditions than other children.

(2) Assisting eligible children in securing federal social security benefits, or Supplemental Security Income/State Supplementary Payment (SSI/SSP) benefits, is a cost-effective method to improve the lives of many children and youth in state custody and to improve their chances of returning to a safe and stable home.

(3) Disabled children face special barriers when transitioning from state care and custody.

(4) Federal financial benefits can be an important source of support for these children. These benefits also can serve as a buffer as children transition from state care and custody.

(5) Many children in foster care go without social security or SSI/SSP benefits for which they are eligible because no one is available to assist them with the application process. Only a small percentage of the children in California that receive SSI/SSP benefits also receive child welfare services, and many more children in the state's care are likely eligible for social security or SSI/SSP benefits.

(6) For those children who leave state custody at 18 years of age, social security benefits serve as an important resource in making the transition out of the state's custody.

(b) It is also the intent of the Legislature to enact legislation to do all of the following:

(1) Provide for the education of judges and lawyers who have contact with foster youth, regarding the importance of education to these youth, including the law that permits a foster child to remain in placement until his or her 19th birthday in order to complete high school.

(2) Require appropriate state and local entities to provide information to the Legislature regarding the number of foster youth who do not graduate from high school, and the impediments to high school graduation that face foster youth after emancipation.

(3) Provide for procedures for informing foster youth of their education rights and available resources, so that they will be better able to advocate for their own needs.

SEC. 2. Section 11401.6 is added to the Welfare and Institutions Code, to read:

11401.6. At the time of determining eligibility for AFDC-FC payments, the county shall also determine whether the child is currently in receipt of benefits pursuant to Title II or Title XVI of the Social Security Act. If so, the county shall apply to become the child's representative payee, as appropriate, during the time the child is placed in foster care.

SEC. 3. Section 11403 of the Welfare and Institutions Code is amended to read:

11403. A child who is in foster care and receiving aid pursuant to this chapter and who is attending high school or the equivalent level of vocational or technical training on a full-time basis, or who is in the process of pursuing a high school equivalency certificate, prior to his or her 18th birthday, may continue to receive aid following his or her 18th birthday so long as the child continues to reside in foster care placement, remains otherwise eligible for AFDC-FC payments, and continues to attend high school or the equivalent level of vocational or technical training on a full-time basis, or continues to pursue a high school equivalency certificate, and the child may reasonably be expected to complete the educational or training program or to receive a high school equivalency certificate, before his or her 19th birthday. Aid shall be provided to an individual pursuant to this section provided both the individual and the agency responsible for the foster care placement have signed a mutual agreement, if the individual is capable of making an informed agreement, which documents the continued need for out-of-home placement.

SEC. 4. Chapter 6.2 (commencing with Section 13750) is added to Part 3 of Division 9 of the Welfare and Institutions Code, to read:

CHAPTER 6.2. FOSTER CARE SOCIAL SECURITY AND SUPPLEMENTAL
SECURITY INCOME ASSISTANCE PROGRAM

13750. This chapter shall be known, and may be cited, as the Foster Care Social Security and Supplemental Security Income Assistance Program.

13752. The State Department of Social Services shall convene a workgroup comprised of the County Welfare Directors Association, county welfare directors, child advocacy organizations, current and former foster youth and other relevant stakeholders, as determined by the department, to develop best practice guidelines for county welfare departments to assist children residing in the state's or a county's custody who are eligible for benefits under Title II of the federal Social Security Act, pursuant to Section 402 et seq. of Title 42 of the United States Code (social security benefits) and Title XVI of the Social Security Act, pursuant to Section 1381 of Title 42 of the United States Code (supplemental security income benefits) in receiving all federal benefits for which they are eligible. The guidelines shall be established by December 31, 2006, and shall include, but not be limited to, establishing procedures for all of the following:

(a) Determining the time and manner for conducting disability screenings for children in the custody of the county who may be eligible for social security or Supplemental Security Income/State Supplementary Payment (SSI/SSP) benefits.

(b) Assisting in the application process for social security and SSI/SSP benefits for each child who, pursuant to the disability screening, is likely to be determined eligible for benefits.

(c) Requesting reconsideration and appealing adverse decisions where appropriate.

(d) Informing parents and caretakers, at the time the child leaves foster care, of potential eligibility for social security or SSI/SSP benefits for any child not receiving benefits but who may be eligible upon application for those benefits.

(e) Maximizing the amount of federal benefits received for the current maintenance of children in the county's custody.

(f) Informing foster youth of their rights and responsibilities for the continued receipt of SSI benefits, the sources of assistance that may be available for resolving problems youth may have with the receipt of SSI benefits, and the process for transferring accumulated SSI benefits.

13753. When a foster youth who is receiving SSI payments is approaching his or her 18th birthday, the county shall do all of the following:

(a) Provide information to the youth regarding the federal requirement that the youth establish continuing disability as an adult, if necessary, in order for SSI benefits to continue beyond his or her 18th birthday.

(b) Provide information to the youth regarding the process for becoming his or her own payee, or designating an appropriate representative payee if benefits continue beyond his or her 18th birthday, and regarding any SSI benefits that have accumulated on his or her behalf.

(c) Assist the youth, as appropriate, in fulfilling the requirements of subdivisions (a) and (b).

13754. The county shall apply to be appointed representative payee on behalf of a child beneficiary in its custody when no other appropriate party is available to serve. In its capacity as representative payee, the county shall do all of the following:

(a) Establish a no-cost, interest-bearing maintenance account for each child in the department's custody for whom the department serves as representative payee. Interest earned shall be credited to the account. The county shall keep an itemized current account, in the manner required by federal law, of all income and expense items for each child's maintenance account.

(b) Establish procedures for disbursing money from the accounts, including disbursing the net balance to the beneficiary upon release from care. The county shall use social security and SSI/SSP benefits only for the following purposes:

(1) For the use and benefit of the child.

(2) For purposes determined by the county to be in the child's best interest.

(c) Establish and maintain a dedicated account in a financial institution for past-due monthly benefits that exceed six times the maximum monthly benefit payable, in accordance with federal law. The representative payee may deposit into the account established under this section any other funds representing past due benefits to the eligible individual, provided that the amount of the past due benefits is equal to or exceeds the maximum monthly benefit payable. Funds from the dedicated account shall not be used for basic maintenance costs. The use of funds from the dedicated account must be for the benefit of the child and are limited to expenditures for the following purposes:

(1) Medical treatment.

(2) Education or job skills training.

(3) Personal needs assistance.

- (4) Special equipment.
- (5) Housing modification.
- (6) Therapy or rehabilitation.
- (7) Other items or services, deemed appropriate by the Social Security Administration.

13756. The workgroup convened pursuant to Section 13752 shall also make recommendations, by December 31, 2006, regarding the feasibility and cost-effectiveness of reserving an amount, not to exceed the federal SSI resource limit, of foster children's social security and SSI/SSP benefits in lieu of reimbursing the county and the state for care and maintenance. In making its recommendations, the workgroup shall consider that the reserved benefits are for the purpose of assisting the child in his or her transition to self-sufficient living upon leaving foster care in a manner consistent with federal law.

SEC. 5. No appropriation pursuant to Section 15200 of the Welfare and Institutions Code shall be made for purposes of implementing this act.

SEC. 6. 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.

CHAPTER 642

An act to amend Section 12960 of the Government Code, relating to employment.

[Approved by Governor October 7, 2005. Filed with
Secretary of State October 7, 2005.]

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

SECTION 1. Section 12960 of the Government Code is amended to read:

12960. (a) The provisions of this article govern the procedure for the prevention and elimination of practices made unlawful pursuant to Article 1 (commencing with Section 12940) of Chapter 6.

(b) Any person claiming to be aggrieved by an alleged unlawful practice may file with the department a verified complaint, in writing, that shall state the name and address of the person, employer, labor organization, or employment agency alleged to have committed the

unlawful practice complained of, and that shall set forth the particulars thereof and contain other information as may be required by the department. The director or his or her authorized representative may in like manner, on his or her own motion, make, sign, and file a complaint.

(c) Any employer whose employees, or some of them, refuse or threaten to refuse to cooperate with the provisions of this part may file with the department a verified complaint asking for assistance by conciliation or other remedial action.

(d) No complaint may be filed after the expiration of one year from the date upon which the alleged unlawful practice or refusal to cooperate occurred, except that this period may be extended as follows:

(1) For a period of time not to exceed 90 days following the expiration of that year, if a person allegedly aggrieved by an unlawful practice first obtained knowledge of the facts of the alleged unlawful practice after the expiration of one year from the date of their occurrence.

(2) For a period of time not to exceed one year following a rebutted presumption of the identity of the person's employer under Section 12928, in order to allow a person allegedly aggrieved by an unlawful practice to make a substitute identification of the actual employer.

(3) For a period of time, not to exceed one year from the date the person aggrieved by an alleged violation of Section 51.7 of the Civil Code becomes aware of the identity of a person liable for the alleged violation, but in no case exceeding three years from the date of the alleged violation if during that period the aggrieved person is unaware of the identity of any person liable for the alleged violation.

(4) For a period of time not to exceed one year from the date that a person allegedly aggrieved by an unlawful practice attains the age of majority.

CHAPTER 643

An act relating to health care coverage, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 7, 2005. Filed with
Secretary of State October 7, 2005.]

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

SECTION 1. (a) In the Budget Act of 2001 and each subsequent Budget Act thereafter, the Legislature has appropriated money for the provision under the Medi-Cal program of nonemergency benefits for

the prevention and treatment of dental and periodontal disease for beneficiaries during pregnancy to prevent premature deliveries and low-birth weights.

(b) These preventive and treatment dental services for pregnant women result in net savings to the Medi-Cal program by avoiding the far more costly medical and other interventions needed to treat and care for premature and low-birth weight disabled newborns immediately at birth and throughout life.

(c) It is the intent of the Legislature to reaffirm its commitment to the provision of the benefits described in subdivision (a) for which money has consistently been appropriated.

(d) Therefore, the State Department of Health Services shall immediately implement the provision of services described in subdivision (a) by clearly informing Denti-Cal and other Medi-Cal providers through a provider bulletin or bulletins that the services described in subdivision (a) are included Medi-Cal benefits for pregnant beneficiaries.

(e) (1) On or before January 1, 2008, the department shall adopt regulations in accordance with the rulemaking requirements of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code to implement the provision of services described in subdivision (a).

(2) Notwithstanding the rulemaking requirements of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, the implementation by provider bulletin required under subdivision (d) shall not be delayed pending the adoption of administrative regulations.

SEC. 2. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order for Medi-Cal beneficiaries to receive needed prevention and treatment benefits for dental and periodontal disease during pregnancy, so as to prevent premature deliveries and low birth weight, it is necessary for this act to take effect immediately.

CHAPTER 644

An act to amend Sections 19790, 19791, 19792, 19792.5, 19793, 19794, 19795, 19796, 19797, and 19798 of, to amend the heading of Chapter 12 (commencing with Section 19790) of Part 2 of Division 5 of Title 2 of, and to add Section 19798.5 to, the Government Code, relating to state civil service.

[Approved by Governor October 7, 2005. Filed with
Secretary of State October 7, 2005.]

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

SECTION 1. The heading of Chapter 12 (commencing with Section 19790) of Part 2 of Division 5 of Title 2 of the Government Code is amended to read:

CHAPTER 12. STATE CIVIL SERVICE EQUAL EMPLOYMENT
OPPORTUNITY PROGRAM

SEC. 2. Section 19790 of the Government Code is amended to read:
19790. Each state agency is responsible for establishing an effective equal employment opportunity program. The State Personnel Board shall be responsible for taking all steps necessary to provide statewide advocacy, coordination, enforcement, and monitoring of these programs.

SEC. 3. Section 19791 of the Government Code is amended to read:
19791. As used in this chapter, the following definitions apply:

(a) "Equal employment opportunity" mean ensuring nondiscrimination and providing equal access to state jobs, work assignments, training, and other employment-related opportunities for all qualified job applicants and employees.

(b) "Underutilization" means having a statistically significant, smaller percentage of persons of a group in an occupation or at a level in a state agency than would reasonably be expected by their percentage representation in the relevant labor force. An identified underutilization is not necessarily indicative of a denial of equal employment opportunity, but warrants an analysis of the cause of the underutilization.

SEC. 4. Section 19792 of the Government Code is amended to read:
19792. The State Personnel Board shall do all of the following:

(a) Provide statewide leadership, designed to achieve equal employment opportunity in the state civil service.

(b) Develop, implement, and maintain equal employment opportunity guidelines.

(c) Provide technical assistance to state agencies in the development and implementation of their equal employment opportunity programs.

(d) Review and evaluate departmental equal employment opportunity programs to ensure that they comply with state and federal statutes and regulations.

(e) Establish programs to ensure equal employment opportunity for all state job applicants and employees through broad, inclusive recruitment efforts and other measures as allowed by law.

(f) Provide statewide training to departmental equal employment opportunity officers who will conduct training on equal employment opportunity.

(g) Review, examine the validity of, and update qualifications standards, selection devices, including oral appraisal panels and career advancement programs.

(h) Maintain a statistical information system designed to yield the data and the analysis necessary for the evaluation of equal employment opportunity within the state civil service. The statistical information shall include specific data to determine the underutilization of groups based on race, ethnicity, gender, and disability. The statistical information shall be made available during normal working hours to all interested persons. Data generated on a regular basis shall include, but not be limited to, all of the following:

(1) Current state civil service workforce composition by race, ethnicity, gender, age, department, salary level, occupation, and attrition rates by occupation.

(2) Current local and regional workforce and population data for groups based on race, ethnicity, gender, and age.

(i) The data analysis referred to in subdivision (h) above shall include, but not be limited to, all of the following:

(1) Data relating to the utilization of groups based on race, ethnicity, and gender compared to their availability in the relevant labor force.

(2) Turnover data by department and occupation.

(3) Data relating to salary administration, including average salaries for groups based on race, ethnicity, gender, and disability and comparisons of salaries within state service and comparable state employment.

(4) Data on employee age, and salary level compared among groups based on race, ethnicity, gender, and disability.

(5) Data on the number of individuals of each race, ethnicity, gender, and disability who are recruited for, participate in, and pass state civil service examinations. This data shall be analyzed pursuant to the provisions of Sections 19704 and 19705.

(6) Data on the job classifications, geographic locations, separations, salaries, and other conditions of employment that provide additional information about the composition of the state civil service workforce.

SEC. 5. Section 19792.5 of the Government Code is amended to read:

19792.5. (a) In order to permit the public to track upward mobility and the impact of equal opportunities on persons, categorized by race, ethnicity, gender, and disability in state civil service, the State Personnel Board shall annually track, by incremental levels of ten thousand dollars

(\$10,000), the salaries of persons, categorized by race, ethnicity, gender, and disability in state civil service. For purposes of this subdivision, “upward mobility” means the advancement of persons, categorized by race, ethnicity, gender, and disability to better paying and higher level positions.

(b) The board shall report salary data collected pursuant to subdivision (a) to the Governor and the Legislature in its Annual Census of State Employees and Equal Employment Opportunity Report, as required in Section 19793, and shall include in this report information regarding the progress of individuals by race, ethnicity, and gender in attaining high-level positions in state employment. The salary data shall be reported in annual increments of ten thousand dollars (\$10,000) by job category, race, ethnicity, gender, and disability in a format easily understandable by the public.

SEC. 6. Section 19793 of the Government Code is amended to read: 19793. By November 15 of each year, the State Personnel Board shall submit to the Governor, the Legislature, and the Department of Finance a census report that shall include demographic information on employees in the state civil service, based upon the analysis of the data collected pursuant to Section 19792. The report shall specifically include, but not be limited to, identified underutilizations and, where warranted by analysis of the underutilizations, steps taken to ensure equal employment opportunity in the state civil service. The report shall also include information to the Legislature on laws that discriminate or have the effect of discriminating on the basis of race, ethnicity, gender, and disability. The Legislature shall evaluate the equal employment opportunity efforts of state agencies during its evaluation of the Budget Bill.

SEC. 7. Section 19794 of the Government Code is amended to read: 19794. In cooperation with the State Personnel Board, the appointing power of each state agency shall have the major responsibility for monitoring the effectiveness of the equal employment opportunity programs of the state agency. To that end, the appointing power shall do all of the following:

(a) Issue a policy statement committing to equal employment opportunity.

(b) Issue procedures for filing, processing, and resolving discrimination complaints within the state agency, consistent with state laws and rules, and for filing appeals from agency decisions on these complaints.

(c) Issue procedures for providing equal upward mobility and promotional opportunities to state employees.

(d) Cooperate with the board by providing access, in accordance with subdivisions (o) and (p) of Section 1798.24 of the Civil Code, to all files, documents, and data necessary for the board to carry out its mandates under this chapter.

SEC. 8. Section 19795 of the Government Code is amended to read:

19795. (a) The appointing power of each state agency and the director of each state department shall appoint, at the managerial level, an equal employment opportunity officer, who shall report directly to, and be under the supervision of, the director of the department, to develop, implement, coordinate, and monitor the agency's equal employment opportunity program. In a state agency with less than 500 employees, the equal employment opportunity officer may be the personnel officer. The agency equal employment opportunity officer shall, among other duties, analyze and report on appointments of employees, bring issues of concern regarding equal employment opportunity to the appointing power and recommend appropriate action, submit an evaluation of the effectiveness of the total equal employment opportunity program to the State Personnel Board annually, monitor the composition of oral panels in departmental examinations, and perform other duties necessary for the effective implementation of the agency equal employment opportunity plans.

(b) (1) Each state agency shall establish a separate committee of employees who are individuals with a disability, or who have an interest in disability issues, to advise the head of the agency on issues of concern to employees with disabilities, and matters relating to the formulation and implementation of the plan to overcome and correct any underrepresentation determined pursuant to Section 19234.

(2) Departments shall invite all employees to serve on the committee and shall take appropriate steps to ensure the final committee is comprised of members who have disabilities or who have an interest in disability issues. Each department shall ensure that at least two-thirds of the members of the committee are individuals with disabilities or retain documentation that demonstrates that the number of employees invited to participate, and willing and able to serve, was insufficient to meet this requirement.

SEC. 9. Section 19796 of the Government Code is amended to read:

19796. Bureau or division chiefs within a state agency shall be accountable to the appointing power for the effectiveness and results of the equal employment opportunity program within their division or bureau.

All managers and supervisors shall provide program support and take any positive action necessary to ensure and advance equal employment opportunity at their respective levels.

SEC. 10. Section 19797 of the Government Code is amended to read: 19797. Each state agency shall develop, update annually, and implement an equal employment opportunity plan which shall, at a minimum, identify the areas of significant underutilization of specific groups based on race, ethnicity, and gender, within each department by job category and level, contain an equal employment opportunity analysis of all job categories and levels within the hiring jurisdiction, and include an explanation and specific actions for removing any non-job-related employment barriers.

SEC. 11. Section 19798 of the Government Code is amended to read: 19798. In establishing order and subdivisions of layoff and reemployment, the board, when it finds past discriminatory hiring practices, may authorize modification of the order of layoff, in accordance with board rule, only if failure to do so by a department would result in ineligibility for a federal program with a loss of federal funds or if required by federal law or the United States Constitution.

SEC. 12. Section 19798.5 is added to the Government Code, to read: 19798.5. State departments, agencies, and the State Personnel Board shall continue to carry out their respective duties required by Sections 19230 to 19237, inclusive, with respect to establishing, monitoring, and reporting on an affirmative action plan, including goals and timetables, for ensuring individuals with disabilities access to state employment. These activities shall be coordinated with and integrated into the planning, reporting, and monitoring activities required by this chapter.

CHAPTER 645

An act to add Section 51210.8 to the Education Code, relating to curriculum.

[Approved by Governor October 7, 2005. Filed with
Secretary of State October 7, 2005.]

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

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

(a) Physical inactivity and a poor diet account for at least 300,000 deaths in the United States each year.

(b) According to a 2004 study by the Centers for Disease Control and Prevention, deaths caused by physical inactivity and a poor diet increased

by 33 percent over the past decade and may soon become the leading preventable cause of death.

(c) The National Center for Health Statistics reports that the percentage of young people who are overweight has doubled since 1980.

(d) Of children 5 to 10 years of age who are overweight, 61 percent have one or more cardiovascular disease factors and 27 percent have two or more.

(e) Over 25 percent of California's 5th, 7th, and 9th grade pupils are overweight, and close to 75 percent are physically unfit.

(f) According to the American School Food Service Association's study of the impact of hunger and malnutrition on pupil achievement, published in the School Board Food Service Research Review, among fourth grade pupils, those having the lowest amount of protein in their diets had the lowest achievement scores.

(g) Iron deficiency anemia leads to shortened attention span, irritability, fatigue, and difficulty with concentration. Consequently, children who are anemic tend to do poorly on vocabulary, reading, and other tests, as explained in the Relationship Between Nutrition and Learning: A School Employee's Guide to Information and Action, published by the National Education Association.

(h) A study by the Center on Hunger, Poverty and Nutrition Policy found that even moderate undernutrition, consisting of inadequate or suboptimal nutrient intake, can have lasting effects and can compromise cognitive development and school performance.

(i) The National Association for Sport and Physical Education cites nearly 200 studies on the effect of physical activity on learning, which show that physically fit children perform better academically.

(j) In 1997, the Institute of Medicine advised that pupils should receive the health-related education and services necessary for them to derive maximum benefit from their education and to enable them to become healthy, productive adults. Thus, the objectives of the Healthy People 2010 initiative of the United States Department of Health and Human Services include increasing the proportion of schools that provide health education to prevent several health problems, including education with respect to unhealthy dietary patterns and inadequate physical activity.

(k) There is a need for both a sequential physical education that involves moderate to vigorous physical activity and teaches knowledge, motor skills, and positive attitudes and activities that all pupils can enjoy and pursue throughout their lives that are taught by well-prepared and well-supported staff, as well as health education content standards that incorporate nutrition and physical activity concepts, laying the foundation for lifelong healthy habits.

SEC. 2. Section 51210.8 is added to the Education Code, to read:

51210.8. (a) On or before March 1, 2008, based on recommendations of the Superintendent, the State Board of Education shall adopt content standards in the curriculum area of health education.

(b) The content standards shall provide a framework for instruction that a school may offer in the curriculum area of health education. This section does not require a school to follow the content standards.

(c) The content standards described in subdivision (a) shall only be developed if sufficient funds from any source are made available for that purpose, including state, federal, or private sources.

CHAPTER 646

An act to amend Sections 13352 and 14602.6 of the Vehicle Code, relating to vehicles.

[Approved by Governor October 7, 2005. Filed with
Secretary of State October 7, 2005.]

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

SECTION 1. Section 13352 of the Vehicle Code, as added by Section 1.5 of Chapter 595 of the Statutes of 2004, is amended to read:

13352. (a) The department shall immediately suspend or revoke the privilege of a person to operate a motor vehicle upon the receipt of an abstract of the record of any court showing that the person has been convicted of a violation of Section 23152 or 23153 or subdivision (a) of Section 23109, or upon the receipt of a report of a judge of the juvenile court, a juvenile traffic hearing officer, or a referee of a juvenile court showing that the person has been found to have committed a violation of Section 23152 or 23153 or subdivision (a) of Section 23109. If any offense specified in this section occurs in a vehicle defined in Section 15210, the suspension or revocation specified below shall apply to the noncommercial driving privilege. The commercial driving privilege shall be disqualified as specified in Sections 15300 to 15302, inclusive. For the purposes of this section, suspension or revocation shall be as follows:

(1) Except as required under Section 13352.4, upon a conviction or finding of a violation of Section 23152 punishable under Section 23536, the privilege shall be suspended for a period of six months. The privilege may not be reinstated until the person gives proof of financial responsibility and gives proof satisfactory to the department of successful completion of a driving-under-the-influence program licensed pursuant to Section 11836 of the Health and Safety Code described in subdivision

(b) of Section 23538. If the court, as authorized under paragraph (3) of subdivision (b) of Section 23646, elects to order a person to enroll, participate and complete either program described in paragraph (4) of subdivision (b) of Section 23542, the department shall require that program in lieu of the program described in subdivision (b) of Section 23538. For the purposes of this paragraph, enrollment, participation, and completion of an approved program shall be subsequent to the date of the current violation. Credit may not be given to any program activities completed prior to the date of the current violation.

(2) Upon a conviction or finding of a violation of Section 23153 punishable under Section 23554, the privilege shall be suspended for a period of one year. The privilege may not be reinstated until the person gives proof of financial responsibility and gives proof satisfactory to the department of successful completion of a driving-under-the-influence program licensed pursuant to Section 11836 of the Health and Safety Code as described in subdivision (b) Section 23556. If the court, as authorized under paragraph (3) of subdivision (b) of Section 23646, elects to order a person to enroll, participate, and complete either program described in paragraph (4) of subdivision (b) of Section 23542, the department shall require that program in lieu of the program described in Section 23556. For the purposes of this paragraph, enrollment, participation, and completion of an approved program shall be subsequent to the date of the current violation. Credit may not be given to any program activities completed prior to the date of the current violation.

(3) Except as provided in Section 13352.5, upon a conviction or finding of a violation of Section 23152 punishable under Section 23540, the privilege shall be suspended for two years. The privilege may not be reinstated until the person gives proof of financial responsibility and gives proof satisfactory to the department of successful completion of a driving-under-the-influence program licensed pursuant to Section 11836 of the Health and Safety Code as described in subdivision (b) of Section 23542. For the purposes of this paragraph, enrollment, participation, and completion of an approved program shall be subsequent to the date of the current violation. Credit shall not be given to any program activities completed prior to the date of the current violation. The department shall advise the person that after completion of 12 months of the suspension period, which may include credit for any suspension period served under subdivision (c) of Section 13353.3, the person may apply to the department for a restricted driver's license, subject to the following conditions:

(A) The person has satisfactorily provided, subsequent to the violation date of the current underlying conviction, either of the following:

(i) Proof of enrollment in an 18-month driving-under-the-influence program licensed pursuant to Section 11836 of the Health and Safety Code.

(ii) Proof of enrollment in a 30-month driving-under-the-influence program licensed pursuant to Section 11836 of the Health and Safety Code, if available in the county of the person's residence or employment.

(B) The person agrees, as a condition of the restriction, to continue satisfactory participation in the program described in subparagraph (A).

(C) The person submits the "Verification of Installation" form described in paragraph (2) of subdivision (e) of Section 13386.

(D) The person agrees to maintain the ignition interlock device as required under subdivision (g) of Section 23575.

(E) The person provides proof of financial responsibility, as defined in Section 16430.

(F) The person pays all administrative fees or reissue fees and any restriction fee required by the department.

(G) The restriction shall remain in effect for the period required in subdivision (f) of Section 23575.

(4) Except as provided in this paragraph, upon a conviction or finding of a violation of Section 23153 punishable under Section 23560, the privilege shall be revoked for a period of three years. The privilege may not be reinstated until the person gives proof of financial responsibility, and the person gives proof satisfactory to the department of successful completion of a driving-under-the-influence program licensed pursuant to Section 11836 of the Health and Safety Code, as described in subdivision (b) of Section 23562. For the purposes of this paragraph, enrollment, participation, and completion of an approved program shall be subsequent to the date of the current violation. Credit shall not be given to any program activities completed prior to the date of the current violation. The department shall advise the person that after the completion of 12 months of the revocation period, which may include credit for any suspension period served under subdivision (c) of Section 13353.3, the person may apply to the department for a restricted driver's license, subject to the following conditions:

(A) The person has satisfactorily completed, subsequent to the violation date of the current underlying conviction, either of the following:

(i) The initial 12 months of an 18-month driving-under-the-influence program licensed pursuant to Section 11836 of the Health and Safety Code.

(ii) The initial 12 months of a 30-month driving-under-the-influence program licensed pursuant to Section 11836 of the Health and Safety Code, if available in the county of the person's residence or employment,

and the person agrees, as a condition of the restriction, to continue satisfactory participation in that 30-month program.

(B) The person submits the "Verification of Installation" form described in paragraph (2) of subdivision (e) of Section 13386.

(C) The person agrees to maintain the ignition interlock device as required under subdivision (g) of Section 23575.

(D) The person provides proof of financial responsibility, as defined in Section 16430.

(E) The person pays all applicable reinstatement or reissue fees and any restriction fee required by the department.

(F) The restriction shall remain in effect for the period required in subdivision (f) of Section 23575.

(5) Except as provided in this paragraph, upon a conviction or finding of a violation of Section 23152 punishable under Section 23546, the privilege shall be revoked for a period of three years. The privilege may not be reinstated until the person files proof of financial responsibility and gives proof satisfactory to the department of successful completion of one of the following programs: an 18-month driving-under-the-influence program licensed pursuant to Section 11836 of the Health and Safety Code, as described in subdivision (b) or (c) of Section 23548, or, if available in the county of the person's residence or employment, a 30-month driving-under-the-influence program licensed pursuant to Section 11836 of the Health and Safety Code, or a program specified in Section 8001 of the Penal Code. For the purposes of this paragraph, enrollment, participation, and completion of an approved program shall be subsequent to the date of the current violation. Credit shall not be given to any program activities completed prior to the date of the current violation. The department shall advise the person that after completion of 12 months of the revocation period, which may include credit for any suspension period served under subdivision (c) of Section 13353.3, the person may apply to the department for a restricted driver's license, subject to the following conditions:

(A) The person has satisfactorily completed, subsequent to the violation date of the current underlying conviction, either of the following:

(i) The initial 12 months of an 18-month driving-under-the-influence program licensed pursuant to Section 11836 of the Health and Safety Code.

(ii) The initial 12 months of a 30-month driving-under-the-influence program licensed pursuant to Section 11836 of the Health and Safety Code, if available in the county of the person's residence or employment, and the person agrees, as a condition of the restriction, to continue

satisfactory participation in the 30-month driving-under-the-influence program.

(B) The person submits the “Verification of Installation” form described in paragraph (2) of subdivision (e) of Section 13386.

(C) The person agrees to maintain the ignition interlock device as required under subdivision (g) of Section 23575.

(D) The person provides proof of financial responsibility, as defined in Section 16430.

(E) An individual convicted of a violation of Section 23152 punishable under Section 23546 may also, at any time after sentencing, petition the court for referral to an 18-month driving-under-the-influence program licensed pursuant to Section 11836 of the Health and Safety Code, or, if available in the county of the person’s residence or employment, a 30-month driving-under-the-influence program licensed pursuant to Section 11836 of the Health and Safety Code. Unless good cause is shown, the court shall order the referral.

(F) The person pays all applicable reinstatement or reissue fees and any restriction fee required by the department.

(G) The restriction shall remain in effect for the period required in subdivision (f) of Section 23575.

(6) Except as provided in this paragraph, upon a conviction or finding of a violation of Section 23153 punishable under Section 23550.5 or 23566, the privilege shall be revoked for a period of five years. The privilege may not be reinstated until the person gives proof of financial responsibility and proof satisfactory to the department of successful completion of one of the following programs: an 18-month driving-under-the-influence program licensed pursuant to Section 11836 of the Health and Safety Code, as described in subdivision (b) of Section 23568 or, if available in the county of the person’s residence or employment, a 30-month driving-under-the-influence program licensed pursuant to Section 11836 of the Health and Safety Code, or a program specified in Section 8001 of the Penal Code. For the purposes of this paragraph, enrollment, participation, and completion of an approved program shall be subsequent to the date of the current violation. Credit shall not be given to any program activities completed prior to the date of the current violation. The department shall advise the person that after the completion of 12 months of the revocation period, which may include credit for any suspension period served under subdivision (c) of Section 13353.3, the person may apply to the department for a restricted driver’s license, subject to the following conditions:

(A) The person has satisfactorily completed, subsequent to the violation date of the current underlying conviction, either of the following:

(i) The initial 12 months of a 30-month driving-under-the-influence program licensed pursuant to Section 11836 of the Health and Safety Code, if available in the county of the person's residence or employment, and the person agrees, as a condition of the restriction, to continue satisfactory participation in the 30-month driving-under-the-influence program.

(ii) The initial 12 months of an 18-month driving-under-the-influence program licensed pursuant to Section 11836 of the Health and Safety Code, if a 30-month program is unavailable in the person's county of residence or employment.

(B) The person submits the "Verification of Installation" form described in paragraph (2) of subdivision (e) of Section 13386.

(C) The person agrees to maintain the ignition interlock device as required under subdivision (g) of Section 23575.

(D) The person provides proof of financial responsibility, as defined in Section 16430.

(E) Any individual convicted of a violation of Section 23153 punishable under Section 23566 may also, at any time after sentencing, petition the court for referral to an 18-month driving-under-the-influence program or, if available in the county of the person's residence or employment, a 30-month driving-under-the-influence program licensed pursuant to Section 11836 of the Health and Safety Code. Unless good cause is shown, the court shall order the referral.

(F) The person pays all applicable reinstatement or reissue fees and any restriction fee required by the department.

(G) The restriction shall remain in effect for the period required in subdivision (f) of Section 23575.

(7) Except as provided in this paragraph, upon a conviction or finding of a violation of Section 23152 punishable under Section 23550 or 23550.5, or Section 23153 punishable under Section 23550.5 the privilege shall be revoked for a period of four years. The privilege may not be reinstated until the person gives proof of financial responsibility and proof satisfactory to the department of successful completion of one of the following programs: an 18-month driving-under-the-influence program licensed pursuant to Section 11836 of the Health and Safety Code, or, if available in the county of the person's residence or employment, a 30-month driving-under-the-influence program licensed pursuant to Section 11836 of the Health and Safety Code, or a program specified in Section 8001 of the Penal Code. For the purposes of this paragraph, enrollment, participation, and completion of an approved program shall be subsequent to the date of the current violation. Credit shall not be given to any program activities completed prior to the date of the current violation. The department shall advise the person that after

the completion of 12 months of the revocation period, which may include credit for any suspension period served under subdivision (c) of Section 13353.3, the person may apply to the department for a restricted driver's license, subject to the following conditions:

(A) The person has satisfactorily completed, subsequent to the violation date of the current underlying conviction, either of the following:

(i) The initial 12 months of an 18-month driving-under-the-influence program licensed pursuant to Section 11836 of the Health and Safety Code.

(ii) The initial 12 months of a 30-month driving-under-the-influence program licensed pursuant to Section 11836 of the Health and Safety Code, if available in the county of the person's residence or employment, and the person agrees, as a condition of the restriction, to continue satisfactory participation in the 30-month driving-under-the-influence program.

(B) The person submits the "Verification of Installation" form described in paragraph (2) of subdivision (e) of Section 13386.

(C) The person agrees to maintain the ignition interlock device as required under subdivision (g) of Section 23575.

(D) The person provides proof of financial responsibility, as defined in Section 16430.

(E) An individual convicted of a violation of Section 23152 punishable under Section 23550 may also, at any time after sentencing, petition the court for referral to an 18-month driving-under-the-influence program or, if available in the county of the person's residence or employment, a 30-month driving-under-the-influence program licensed pursuant to Section 11836 of the Health and Safety Code. Unless good cause is shown, the court shall order the referral.

(F) The person pays all applicable reinstatement or reissue fees and any restriction fee required by the department.

(G) The restriction shall remain in effect for the period required in subdivision (f) of Section 23575.

(8) Upon a conviction or finding of a violation of subdivision (a) of Section 23109 that is punishable under subdivision (e) of that section, the privilege shall be suspended for a period of 90 days to six months, if ordered by the court. The privilege may not be reinstated until the person gives proof of financial responsibility, as defined in Section 16430.

(9) Upon a conviction or finding of a violation of subdivision (a) of Section 23109 that is punishable under subdivision (f) of that section, the privilege shall be suspended for a period of six months, if ordered

by the court. The privilege may not be reinstated until the person gives proof of financial responsibility, as defined in Section 16430.

(b) For the purpose of paragraphs (2) to (9), inclusive, of subdivision (a), the finding of the juvenile court judge, the juvenile hearing officer, or the referee of a juvenile court of a commission of a violation of Section 23152 or 23153 or subdivision (a) of Section 23109, as specified in subdivision (a) of this section, is a conviction.

(c) A judge of a juvenile court, juvenile hearing officer, or referee of a juvenile court shall immediately report the findings specified in subdivision (a) to the department.

(d) A conviction of an offense in any state, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or Canada that, if committed in this state, would be a violation of Section 23152, is a conviction of Section 23152 for the purposes of this section, and a conviction of an offense that, if committed in this state, would be a violation of Section 23153, is a conviction of Section 23153 for the purposes of this section. The department shall suspend or revoke the privilege to operate a motor vehicle pursuant to this section upon receiving notice of that conviction.

(e) For the purposes of the restriction conditions specified in paragraphs (3) to (7), inclusive, of subdivision (a), the department shall terminate the restriction imposed pursuant to this section and shall suspend or revoke the person's driving privilege upon receipt of notification from the driving-under-the-influence program that the person has failed to comply with the program requirements. The person's driving privilege shall remain suspended or revoked for the remaining period of the original suspension or revocation imposed under this section and until all reinstatement requirements described in this section are met.

(f) For the purposes of this section, completion of a program is the following:

(1) Satisfactory completion of all program requirements approved pursuant to program licensure, as evidenced by a certificate of completion issued, under penalty of perjury, by the licensed program.

(2) Certification, under penalty of perjury, by the director of a program specified in Section 8001 of the Penal Code, that the person has completed a program specified in Section 8001 of the Penal Code.

(g) The holder of a commercial driver's license who was operating a commercial motor vehicle, as defined in Section 15210, at the time of a violation that resulted in a suspension or revocation of the person's noncommercial driving privilege under this section is not eligible for the restricted driver's license authorized under paragraphs (3) to (7), inclusive, of subdivision (a).

SEC. 2. Section 14602.6 of the Vehicle Code is amended to read:

14602.6. (a) (1) Whenever a peace officer determines that a person was driving a vehicle while his or her driving privilege was suspended or revoked, driving a vehicle while his or her driving privilege is restricted pursuant to Section 13352 or 23575 and the vehicle is not equipped with a functioning, certified interlock device, or driving a vehicle without ever having been issued a driver's license, the peace officer may either immediately arrest that person and cause the removal and seizure of that vehicle or, if the vehicle is involved in a traffic collision, cause the removal and seizure of the vehicle without the necessity of arresting the person in accordance with Chapter 10 (commencing with Section 22650) of Division 11. A vehicle so impounded shall be impounded for 30 days.

(2) The impounding agency, within two working days of impoundment, shall send a notice by certified mail, return receipt requested, to the legal owner of the vehicle, at the address obtained from the department, informing the owner that the vehicle has been impounded. Failure to notify the legal owner within two working days shall prohibit the impounding agency from charging for more than 15 days' impoundment when the legal owner redeems the impounded vehicle. The impounding agency shall maintain a published telephone number that provides information 24 hours a day regarding the impoundment of vehicles and the rights of a registered owner to request a hearing.

(b) The registered and legal owner of a vehicle that is removed and seized under subdivision (a) or their agents shall be provided the opportunity for a storage hearing to determine the validity of, or consider any mitigating circumstances attendant to, the storage, in accordance with Section 22852.

(c) Any period in which a vehicle is subjected to storage under this section shall be included as part of the period of impoundment ordered by the court under subdivision (a) of Section 14602.5.

(d) (1) An impounding agency shall release a vehicle to the registered owner or his or her agent prior to the end of 30 days' impoundment under any of the following circumstances:

(A) When the vehicle is a stolen vehicle.

(B) When the vehicle is subject to bailment and is driven by an unlicensed employee of a business establishment, including a parking service or repair garage.

(C) When the license of the driver was suspended or revoked for an offense other than those included in Article 2 (commencing with Section 13200) of Chapter 2 of Division 6 or Article 3 (commencing with Section 13350) of Chapter 2 of Division 6.

(D) When the vehicle was seized under this section for an offense that does not authorize the seizure of the vehicle.

(E) When the driver reinstates his or her driver's license or acquires a driver's license and proper insurance.

(2) No vehicle shall be released pursuant to this subdivision without presentation of the registered owner's or agent's currently valid driver's license to operate the vehicle and proof of current vehicle registration, or upon order of a court.

(e) The registered owner or his or her agent is responsible for all towing and storage charges related to the impoundment, and any administrative charges authorized under Section 22850.5.

(f) A vehicle removed and seized under subdivision (a) shall be released to the legal owner of the vehicle or the legal owner's agent prior to the end of 30 days' impoundment if all of the following conditions are met:

(1) The legal owner is a motor vehicle dealer, bank, credit union, acceptance corporation, or other licensed financial institution legally operating in this state or is another person, not the registered owner, holding a security interest in the vehicle.

(2) The legal owner or the legal owner's agent pays all towing and storage fees related to the seizure of the vehicle. No lien sale processing fees shall be charged to the legal owner who redeems the vehicle prior to the 15th day of impoundment. Neither the impounding authority nor any person having possession of the vehicle shall collect from the legal owner of the type specified in paragraph (1), or the legal owner's agent any administrative charges imposed pursuant to Section 22850.5 unless the legal owner voluntarily requested a poststorage hearing.

(3) The legal owner or the legal owner's agent presents either lawful foreclosure documents or an affidavit of repossession for the vehicle, and a security agreement or title showing proof of legal ownership for the vehicle. Any documents presented may be originals, photocopies, or facsimile copies, or may be transmitted electronically. The impounding agency shall not require any documents to be notarized. The impounding agency may require the agent of the legal owner to produce a photocopy or facsimile copy of its repossession agency license or registration issued pursuant to Chapter 11 (commencing with Section 7500) of Division 3 of the Business and Professions Code, or to demonstrate, to the satisfaction of the impounding agency, that the agent is exempt from licensure pursuant to Section 7500.2 or 7500.3 of the Business and Professions Code.

No administrative costs authorized under subdivision (a) of Section 22850.5 shall be charged to the legal owner of the type specified in paragraph (1), who redeems the vehicle unless the legal owner voluntarily requests a poststorage hearing. No city, county, city or county, or state agency shall require a legal owner or a legal owner's agent to request a

poststorage hearing as a requirement for release of the vehicle to the legal owner or the legal owner's agent. The impounding agency shall not require any documents other than those specified in this paragraph. The impounding agency shall not require any documents to be notarized.

As used in this paragraph, "foreclosure documents" means an "assignment" as that term is defined in subdivision (o) of Section 7500.1 of the Business and Professions Code.

(g) (1) A legal owner or the legal owner's agent that obtains release of the vehicle pursuant to subdivision (f) may not release the vehicle to the registered owner of the vehicle or any agents of the registered owner, unless the registered owner is a rental car agency, until after the termination of the 30-day impoundment period.

(2) The legal owner or the legal owner's agent may not relinquish the vehicle to the registered owner until the registered owner or that owner's agent presents his or her valid driver's license or valid temporary driver's license to the legal owner or the legal owner's agent. The legal owner or the legal owner's agent shall make every reasonable effort to ensure that the license presented is valid.

(3) Prior to relinquishing the vehicle, the legal owner may require the registered owner to pay all towing and storage charges related to the impoundment and any administrative charges authorized under Section 22850.5 that were incurred by the legal owner in connection with obtaining custody of the vehicle.

(h) (1) A vehicle removed and seized under subdivision (a) shall be released to a rental car agency prior to the end of 30 days' impoundment if the agency is either the legal owner or registered owner of the vehicle and the agency pays all towing and storage fees related to the seizure of the vehicle.

(2) The owner of a rental vehicle that was seized under this section may continue to rent the vehicle upon recovery of the vehicle. However, the rental car agency may not rent another vehicle to the driver of the vehicle that was seized until 30 days after the date that the vehicle was seized.

(3) The rental car agency may require the person to whom the vehicle was rented to pay all towing and storage charges related to the impoundment and any administrative charges authorized under Section 22850.5 that were incurred by the rental car agency in connection with obtaining custody of the vehicle.

(i) Notwithstanding any other provision of this section, the registered owner and not the legal owner shall remain responsible for any towing and storage charges related to the impoundment, any administrative charges authorized under Section 22850.5, and any parking fines, penalties, and administrative fees incurred by the registered owner.

(j) The impounding agency is not liable to the registered owner for the improper release of the vehicle to the legal owner or the legal owner's agent provided the release complies with the provisions of this section.

SEC. 3. Section 14602.6 of the Vehicle Code is amended to read:

14602.6. (a) (1) Whenever a peace officer determines that a person was driving a vehicle while his or her driving privilege was suspended or revoked, or driving a vehicle while his or her driving privilege is restricted pursuant to Section 13352 or 23575 and the vehicle is not equipped with a functioning, certified interlock device, the peace officer may either immediately arrest that person and cause the removal and seizure of that vehicle or, if the vehicle is involved in a traffic collision, cause the removal and seizure of the vehicle, without the necessity of arresting the person in accordance with Chapter 10 (commencing with Section 22650) of Division 11. A vehicle so impounded shall be impounded for 30 days.

(2) The impounding agency, within two working days of impoundment, shall send a notice by certified mail, return receipt requested, to the legal owner of the vehicle, at the address obtained from the department, informing the owner that the vehicle has been impounded. Failure to notify the legal owner within two working days shall prohibit the impounding agency from charging for more than 15 days' impoundment when the legal owner redeems the impounded vehicle. The impounding agency shall maintain a published telephone number that provides information 24 hours a day regarding the impoundment of vehicles and the rights of a registered owner to request a hearing.

(b) The registered and legal owner of a vehicle that is removed and seized under subdivision (a) or their agents shall be provided the opportunity for a storage hearing to determine the validity of, or consider any mitigating circumstances attendant to, the storage, in accordance with Section 22852.

(c) Any period in which a vehicle is subjected to storage under this section shall be included as part of the period of impoundment ordered by the court under subdivision (a) of Section 14602.5.

(d) (1) An impounding agency shall release a vehicle to the registered owner or his or her agent prior to the end of 30 days' impoundment under any of the following circumstances:

(A) When the vehicle is a stolen vehicle.

(B) When the vehicle is subject to bailment and is driven by an unlicensed employee of a business establishment, including a parking service or repair garage.

(C) When the license of the driver was suspended or revoked for an offense other than those included in Article 2 (commencing with Section

13200) of Chapter 2 of Division 6 or Article 3 (commencing with Section 13350) of Chapter 2 of Division 6.

(D) When the vehicle was seized under this section for an offense that does not authorize the seizure of the vehicle.

(E) When the driver reinstates his or her driver's license or acquires a driver's license and proper insurance.

(2) A vehicle shall not be released pursuant to this subdivision without presentation of the registered owner's or agent's currently valid driver's license to operate the vehicle and proof of current vehicle registration, or upon order of a court.

(e) The registered owner or his or her agent is responsible for all towing and storage charges related to the impoundment, and any administrative charges authorized under Section 22850.5.

(f) A vehicle removed and seized under subdivision (a) shall be released to the legal owner of the vehicle or the legal owner's agent prior to the end of 30 days' impoundment if all of the following conditions are met:

(1) The legal owner is a motor vehicle dealer, bank, credit union, acceptance corporation, or other licensed financial institution legally operating in this state or is another person, not the registered owner, holding a security interest in the vehicle.

(2) The legal owner or the legal owner's agent pays all towing and storage fees related to the seizure of the vehicle. No lien sale processing fees shall be charged to the legal owner who redeems the vehicle prior to the 15th day of impoundment. Neither the impounding authority nor any person having possession of the vehicle shall collect from the legal owner of the type specified in paragraph (1), or the legal owner's agent any administrative charges imposed pursuant to Section 22850.5 unless the legal owner voluntarily requested a poststorage hearing.

(3) The legal owner or the legal owner's agent presents either lawful foreclosure documents or an affidavit of repossession for the vehicle, and a security agreement or title showing proof of legal ownership for the vehicle. Any documents presented may be originals, photocopies, or facsimile copies, or may be transmitted electronically. The impounding agency shall not require any documents to be notarized. The impounding agency may require the agent of the legal owner to produce a photocopy or facsimile copy of its repossession agency license or registration issued pursuant to Chapter 11 (commencing with Section 7500) of Division 3 of the Business and Professions Code, or to demonstrate, to the satisfaction of the impounding agency, that the agent is exempt from licensure pursuant to Section 7500.2 or 7500.3 of the Business and Professions Code.

Administrative costs authorized under subdivision (a) of Section 22850.5 shall not be charged to the legal owner of the type specified in paragraph (1), who redeems the vehicle unless the legal owner voluntarily requests a poststorage hearing. No city, county, city or county, or state agency shall require a legal owner or a legal owner's agent to request a poststorage hearing as a requirement for release of the vehicle to the legal owner or the legal owner's agent. The impounding agency shall not require any documents other than those specified in this paragraph. The impounding agency shall not require any documents to be notarized.

As used in this paragraph, "foreclosure documents" means an "assignment" as that term is defined in subdivision (o) of Section 7500.1 of the Business and Professions Code.

(g) (1) A legal owner or the legal owner's agent that obtains release of the vehicle pursuant to subdivision (f) may not release the vehicle to the registered owner of the vehicle or any agents of the registered owner, unless the registered owner is a rental car agency, until after the termination of the 30-day impoundment period.

(2) The legal owner or the legal owner's agent may not relinquish the vehicle to the registered owner until the registered owner or that owner's agent presents his or her valid driver's license or valid temporary driver's license to the legal owner or the legal owner's agent. The legal owner or the legal owner's agent shall make every reasonable effort to ensure that the license presented is valid.

(3) Prior to relinquishing the vehicle, the legal owner may require the registered owner to pay all towing and storage charges related to the impoundment and any administrative charges authorized under Section 22850.5 that were incurred by the legal owner in connection with obtaining custody of the vehicle.

(h) (1) A vehicle removed and seized under subdivision (a) shall be released to a rental car agency prior to the end of 30 days' impoundment if the agency is either the legal owner or registered owner of the vehicle and the agency pays all towing and storage fees related to the seizure of the vehicle.

(2) The owner of a rental vehicle that was seized under this section may continue to rent the vehicle upon recovery of the vehicle. However, the rental car agency may not rent another vehicle to the driver of the vehicle that was seized until 30 days after the date that the vehicle was seized.

(3) The rental car agency may require the person to whom the vehicle was rented to pay all towing and storage charges related to the impoundment and any administrative charges authorized under Section 22850.5 that were incurred by the rental car agency in connection with obtaining custody of the vehicle.

(i) Notwithstanding any other provision of this section, the registered owner and not the legal owner shall remain responsible for any towing and storage charges related to the impoundment, any administrative charges authorized under Section 22850.5, and any parking fines, penalties, and administrative fees incurred by the registered owner.

(j) The impounding agency is not liable to the registered owner for the improper release of the vehicle to the legal owner or the legal owner's agent provided the release complies with this section.

SEC. 4. Section 3 of this bill incorporates amendments to Section 14602.6 of the Vehicle Code proposed by both this bill and AB 1132. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2006, (2) each bill amends Section 14602.6 of the Vehicle Code, and (3) this bill is enacted after AB 1132, in which case Section 2 of this bill shall not become operative.

CHAPTER 647

An act to add Section 67385.7 to the Education Code, relating to public postsecondary education.

[Approved by Governor October 7, 2005. Filed with
Secretary of State October 7, 2005.]

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

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

(a) Women on American college campuses who are from 18 to 24 years of age are at greater risk for becoming victims of sexual assault, domestic violence, and stalking than women in the general population or women in a comparable age group. Research over the past 20 years has consistently estimated the rate of sexual assault among women who are in the age group traditionally considered to be college-aged as one in four.

(b) Studies have consistently shown that sexual assault primarily affects women and youth, and that most perpetrators are friends, acquaintances, or someone else who is known by the victim:

(1) In 1994, the Ms. Report on Recognizing, Fighting and Surviving Date and Acquaintance Rape demonstrated that one in four college women had been the victim of a completed or attempted rape, and that, in 84 percent of the attacks, the victim knew the perpetrator.

(2) The National Violence Against Women Survey of 1998 demonstrated that 83 percent of rape victims were less than 25 years old when they were assaulted.

(3) In 2000, the Sexual Victimization of College Women survey estimated that a college with 10,000 students could expect more than 350 rapes per year to occur on that campus.

(4) Additionally, half of all stalking victims are between the ages of 18 and 29, and women between the ages of 16 and 24 experience the highest rate of domestic violence victimization.

(c) While sexual assault primarily affects young women, they are not the only targets. Men, individuals with disabilities, members of cultural and religious minority groups, and lesbian/gay/transgendered individuals also experience sexual assault.

(d) Sexual assault is a critical issue for all college and university campuses. Even though many campuses officially report zero sexual assault, it is known to be an historically underreported crime. Thus, crime reports alone cannot provide the basis for determining the extent of the problem on any given campus.

(e) Given the prevalence of the perpetration of sexual violence against college women, it is essential that institutions of higher education establish comprehensive victim services programs and preventive education programs.

(f) Institutions of higher education can best serve members of their communities by ensuring access to appropriate services and creating an environment that is intolerant of sexual assault.

SEC. 2. Section 67385.7 is added to the Education Code, to read:

67385.7. (a) (1) The governing board of each community college district and the Trustees of the California State University shall, and the Regents of the University of California are requested to, in collaboration with campus-based and community-based victim advocacy organizations, provide, as part of established campus orientations, educational and preventive information about sexual violence to students at all campuses of their respective segments. For a campus with an existing on-campus orientation program, this information shall be provided, in addition to the sexual harassment information required to be provided pursuant to subdivision (e) of Section 66281.5, during the regular orientation for incoming students.

(2) Each campus of the California Community Colleges and the California State University shall, and each campus of the University of California is requested to, post sexual violence prevention and education information on its campus Internet Web site.

(b) The educational and preventive information provided pursuant to this section shall include, but not necessarily be limited to, all of the following:

- (1) Common facts and myths about the causes of sexual violence.
- (2) Dating violence, rape, sexual assault, domestic violence, and stalking crimes, including information on how to file internal administrative complaints with the institution of higher education and how to file criminal charges with local law enforcement officials.
- (3) The availability of, and contact information for, campus and community resources for students who are victims of sexual violence.
- (4) Methods of encouraging peer support for victims and the imposition of sanctions on offenders.
- (5) Information regarding campus, criminal, and civil consequences of committing acts of sexual violence.

(c) Campuses of the California Community Colleges and the California State University shall, and campuses of the University of California are requested to, develop policies to encourage students to report any campus crimes involving sexual violence to the appropriate campus authorities.

(d) Campuses are urged to adopt policies to eliminate barriers for victims who come forward to report sexual assaults, and to advise students regarding these policies. These policies may include, but are not necessarily limited to, exempting the victim from campus sanctions for being in violation of any campus policies, including alcohol or substance abuse policies or other policies of the campus, at the time of the incident.

(e) The Board of Governors of the California Community Colleges and the Trustees of the California State University shall, and the Regents of the University of California are requested to, develop and adopt regulations setting forth procedures for the implementation of this section by campuses in their respective segments.

SEC. 3. 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.

CHAPTER 648

An act to amend Section 4945 of the Business and Professions Code, relating to acupuncture.

[Approved by Governor October 7, 2005. Filed with
Secretary of State October 7, 2005.]

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

SECTION 1. Section 4945 of the Business and Professions Code is amended to read:

4945. (a) The board shall establish standards for continuing education for acupuncturists.

(b) The board shall require each acupuncturist to complete 50 hours of continuing education every two years as a condition for renewal of his or her license. No more than five hours of continuing education in each two-year period may be spent on issues unrelated to clinical matters or the actual provision of health care to patients. A provider of continuing education shall apply to the board for approval to offer continuing education courses for credit toward this requirement on a form developed by the board, shall pay a fee covering the cost of approval and for the monitoring of the provider by the board and shall set forth the following information on the application:

- (1) Course content.
- (2) Test criteria.
- (3) Hours of continuing education credit requested for the course.
- (4) Experience and training of instructors.
- (5) Other information as required by the board.
- (6) That interpreters or bilingual instruction will be made available, when necessary.

(c) Licensees residing out of state or out of the country shall comply with the continuing education requirements.

(d) Providers of continuing education shall be monitored by the board as determined by the board.

(e) If the board determines that any acupuncturist has not obtained the required number of hours of continuing education, it may renew the acupuncturist's license and require that the deficient hours of continuing education be made up during the following renewal period in addition to the current continuing education required for that period. If any acupuncturist fails to make up the deficient hours and complete the current requirement of hours of continuing education during the subsequent renewal period, then his or her license to practice acupuncture shall not be renewed until all the required hours are completed and documented to the board.

CHAPTER 649

An act to amend Sections 2075, 3642, 4926, 4935, 4937, and 4939 of the Business and Professions Code, relating to medicine.

[Approved by Governor October 7, 2005. Filed with
Secretary of State October 7, 2005.]

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

SECTION 1. It is the intent of the Legislature that the provisions of this act changing the word “oriental” to “Asian” shall not affect any previous interpretations or judicial decisions insofar as they analyze or use the term “oriental.”

SEC. 2. Section 2075 of the Business and Professions Code is amended to read:

2075. The performance of acupuncture by a certified acupuncturist or other licensee legally authorized to practice acupuncture within his or her scope of practice or a person licensed or certified in another state to perform acupuncture or other forms of traditional Asian medicine, alone or in conjunction with other forms of traditional Asian medicine, when carried on in a program affiliated with and under the jurisdiction of an approved medical school or approved acupuncture school, for the primary purpose of scientific investigation of acupuncture, shall not be in violation of this chapter, but those procedures shall be carried on only under the supervision of a licensed physician and surgeon.

Any medical school or approved acupuncture school conducting research into acupuncture under this section shall report to the Legislature annually on the fifth legislative day of the regular session of the Legislature concerning the results of that research, the suitability of acupuncture as a therapeutic technique, and performance standards for persons who perform acupuncture.

SEC. 3. Section 3642 of the Business and Professions Code is amended to read:

3642. A naturopathic doctor may not perform any of the following functions:

(a) Prescribe, dispense, or administer a controlled substance or device identified in Sections 801 to 971, inclusive, of Title 21 of the United States Code, except as authorized by this chapter.

(b) Administer therapeutic ionizing radiation or radioactive substances.

(c) Practice or claim to practice any other system or method of treatment beyond that authorized by this chapter, for which licensure is required, unless otherwise licensed to do so.

- (d) Administer general or spinal anesthesia.
- (e) Perform an abortion.
- (f) Perform any surgical procedure.
- (g) Perform acupuncture or traditional Chinese and Asian medicine, including Chinese herbal medicine, unless licensed as an acupuncturist as defined in subdivision (c) of Section 4927.

SEC. 4. Section 4926 of the Business and Professions Code is amended to read:

4926. In its concern with the need to eliminate the fundamental causes of illness, not simply to remove symptoms, and with the need to treat the whole person, the Legislature intends to establish in this article, a framework for the practice of the art and science of Asian medicine through acupuncture.

The purpose of this article is to encourage the more effective utilization of the skills of acupuncturists by California citizens desiring a holistic approach to health and to remove the existing legal constraints which are an unnecessary hindrance to the more effective provision of health care services. Also, as it effects the public health, safety, and welfare, there is a necessity that individuals practicing acupuncture be subject to regulation and control as a primary health care profession.

SEC. 5. Section 4935 of the Business and Professions Code is amended to read:

4935. (a) (1) It is a misdemeanor, punishable by a fine of not less than one hundred dollars (\$100) and not more than two thousand five hundred dollars (\$2,500), or by imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment, for any person who does not hold a current and valid license to practice acupuncture under this chapter or to hold himself or herself out as practicing or engaging in the practice of acupuncture.

(2) It is a misdemeanor, punishable by a fine of not less than one hundred dollars (\$100) and not more than two thousand five hundred dollars (\$2,500), or by imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment, for any person to fraudulently buy, sell, or obtain a license to practice acupuncture, or to violate the provisions of this chapter.

(b) Notwithstanding any other provision of law, any person, other than a physician and surgeon, a dentist, or a podiatrist, who is not licensed under this article but is licensed under Division 2 (commencing with Section 500), who practices acupuncture involving the application of a needle to the human body, performs any acupuncture technique or method involving the application of a needle to the human body, or directs, manages, or supervises another person in performing acupuncture

involving the application of a needle to the human body is guilty of a misdemeanor.

(c) A person holds himself or herself out as engaging in the practice of acupuncture by the use of any title or description of services incorporating the words “acupuncture,” “acupuncturist,” “certified acupuncturist,” “licensed acupuncturist,” “Asian medicine,” “oriental medicine,” or any combination of those words, phrases, or abbreviations of those words or phrases, or by representing that he or she is trained, experienced, or an expert in the field of acupuncture, Asian medicine, or Chinese medicine.

(d) Subdivision (a) shall not prohibit a person from administering acupuncture treatment as part of his or her educational training if he or she:

(1) Is engaged in a course or tutorial program in acupuncture, as provided in this chapter; or

(2) Is a graduate of a school of acupuncture approved by the board and participating in a postgraduate review course that does not exceed one year in duration at a school approved by the board.

SEC. 5.5. Section 4935 of the Business and Professions Code is amended to read:

4935. (a) (1) It is a misdemeanor, punishable by a fine of not less than one hundred dollars (\$100) and not more than two thousand five hundred dollars (\$2,500), or by imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment, for any person who does not hold a current and valid license to practice acupuncture under this chapter or to hold himself or herself out as practicing or engaging in the practice of acupuncture.

(2) It is a misdemeanor, punishable by a fine of not less than one hundred dollars (\$100) and not more than two thousand five hundred dollars (\$2,500), or by imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment, for any person to fraudulently buy, sell, or obtain a license to practice acupuncture, or to violate the provisions of this chapter.

(b) Notwithstanding any other provision of law, any person, other than a physician and surgeon, a dentist, or a podiatrist, who is not licensed under this article but is licensed under Division 2 (commencing with Section 500), who practices acupuncture involving the application of a needle to the human body, performs any acupuncture technique or method involving the application of a needle to the human body, or directs, manages, or supervises another person in performing acupuncture involving the application of a needle to the human body is guilty of a misdemeanor.

(c) A person holds himself or herself out as engaging in the practice of acupuncture by the use of any title or description of services incorporating the words “acupuncture,” “acupuncturist,” “certified acupuncturist,” “licensed acupuncturist,” “Asian medicine,” “oriental medicine,” or any combination of those words, phrases, or abbreviations of those words or phrases, or by representing that he or she is trained, experienced, or an expert in the field of acupuncture, Asian medicine, or Chinese medicine.

(d) Subdivision (a) shall not prohibit a person from administering acupuncture treatment as part of his or her educational training if he or she meets one of the following requirements:

(1) Is engaged in a course or tutorial program in acupuncture, as provided in this chapter.

(2) Is a graduate of a school of acupuncture approved by the board and participating in either of the following:

(A) A postgraduate review course that does not exceed one year in duration at a school approved by the board.

(B) A postgraduate internship pursuant to subdivision (f) of Section 4938.

SEC. 6. Section 4937 of the Business and Professions Code is amended to read:

4937. An acupuncturist’s license authorizes the holder thereof:

(a) To engage in the practice of acupuncture.

(b) To perform or prescribe the use of Asian massage, acupressure, breathing techniques, exercise, heat, cold, magnets, nutrition, diet, herbs, plant, animal, and mineral products, and dietary supplements to promote, maintain, and restore health. Nothing in this section prohibits any person who does not possess an acupuncturist’s license or another license as a healing arts practitioner from performing, or prescribing the use of any modality listed in this subdivision.

(c) For purposes of this section, a “magnet” means a mineral or metal that produces a magnetic field without the application of an electric current.

(d) For purposes of this section, “plant, animal, and mineral products” means naturally occurring substances of plant, animal, or mineral origin, except that it does not include synthetic compounds, controlled substances or dangerous drugs as defined in Sections 4021 and 4022, or a controlled substance listed in Chapter 2 (commencing with Section 11053) of Division 10 of the Health and Safety Code.

(e) For purposes of this section, “dietary supplement” has the same meaning as defined in subsection (ff) of Section 321 of Title 21 of the United States Code, except that dietary supplement does not include controlled substances or dangerous drugs as defined in Section 4021 or

4022, or a controlled substance listed in Chapter 2 (commencing with Section 11053) of Division 10 of the Health and Safety Code.

SEC. 6.5. Section 4937 of the Business and Professions Code is amended to read:

4937. An acupuncturist's license authorizes the holder thereof:

- (a) To diagnose within his or her scope of practice.
- (b) To engage in the practice of acupuncture.
- (c) To perform or prescribe the use of Asian massage, acupressure, breathing techniques, exercise, heat, cold, magnets, nutrition, diet, herbs, plant, animal, and mineral products, and dietary supplements to promote, maintain, and restore health. Nothing in this section prohibits any person who does not possess an acupuncturist's license or another license as a healing arts practitioner from performing, or prescribing the use of any modality listed in this subdivision.

- (d) For purposes of this section, a "magnet" means a mineral or metal that produces a magnetic field without the application of an electric current.

- (e) For purposes of this section, "plant, animal, and mineral products" means naturally occurring substances of plant, animal, or mineral origin, except that it does not include synthetic compounds, controlled substances or dangerous drugs as defined in Sections 4021 and 4022, or a controlled substance listed in Chapter 2 (commencing with Section 11053) of Division 10 of the Health and Safety Code.

- (f) For purposes of this section, "dietary supplement" has the same meaning as defined in subsection (ff) of Section 321 of Title 21 of the United States Code, except that dietary supplement does not include controlled substances or dangerous drugs as defined in Section 4021 or 4022, or a controlled substance listed in Chapter 2 (commencing with Section 11053) of Division 10 of the Health and Safety Code.

SEC. 7. Section 4939 of the Business and Professions Code is amended to read:

4939. (a) On or before January 1, 2004, the board shall establish standards for the approval of schools and colleges offering education and training in the practice of an acupuncturist, including standards for the faculty in those schools and colleges and tutorial programs, completion of which will satisfy the requirements of Section 4938.

- (b) Standards for the approval of training programs shall include a minimum of 3,000 hours of study in curriculum pertaining to the practice of an acupuncturist. This subdivision shall apply to all students entering programs on or after January 1, 2005.

- (c) Within three years of initial approval by the board, each program so approved by the board shall receive full institutional approval under Article 3.5 (commencing with Section 94760) of Chapter 7 of Part 59

of the Education Code in the field of traditional Asian medicine, or in the case of institutions located outside of this state, approval by the appropriate governmental educational authority using standards equivalent to those of Article 3.5 (commencing with Section 94760) of Chapter 7 of Part 59 of the Education Code, or the board's approval of the program shall automatically lapse.

SEC. 8. Section 5.5 of this bill incorporates amendments to Section 4935 of the Business and Professions Code proposed by this bill and AB 1116. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2006, (2) each bill amends Section 4935 of the Business and Professions Code, and (3) this bill is enacted after AB 1116, in which case Section 5 of this bill shall not become operative.

SEC. 9. Section 6.5 of this bill incorporates amendments to Section 4937 of the Business and Professions Code proposed by this bill and AB 1113. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2006, (2) each bill amends Section 4937 of the Business and Professions Code, and (3) this bill is enacted after AB 1113, in which case Section 6 of this bill shall not become operative.

CHAPTER 650

An act to amend Section 8279.7 of the Education Code, relating to child care, and making an appropriation therefor.

[Approved by Governor October 7, 2005. Filed with
Secretary of State October 7, 2005.]

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

SECTION 1. Section 8279.7 of the Education Code is amended to read:

8279.7. (a) The Legislature recognizes the importance of providing quality child care services. It is, therefore, the intent of the Legislature to assist counties in improving the retention of qualified child care employees who work directly with children who receive state-subsidized child care services.

(b) It is further the intent of the Legislature, in amending this section during the 2005–06 Regular Session, to address the unique challenges of the County of Los Angeles, in which an estimated 60,000 low-income children receive subsidized child care in nonstate funded child care

settings and an additional 50,000 eligible children are waiting for subsidized services.

(c) (1) Except as provided in paragraph (2), the funds appropriated for the purposes of this section by paragraph (11) of Schedule (b) of Item 6110-196-0001 of Section 2.00 of the Budget Act of 2000 (Ch. 52, Stats. 2000), and that are described in subdivision (i) of Provision 7 of that item, and any other funds appropriated for purposes of this section, shall be allocated to local child care and development planning councils based on the percentage of state-subsidized, center-based child care funds received in that county, and shall be used to address the retention of qualified child care employees in state-subsidized child care centers.

(2) Of the funds identified in paragraph (1), funds qualified pursuant to subparagraphs (A) to (C), inclusive, may also be used to address the retention of qualified persons working in licensed child care programs that serve a majority of children who receive subsidized child care services pursuant to this chapter, including, but not limited to, family day care homes as defined in Section 1596.78 of the Health and Safety Code. To qualify for use pursuant to this paragraph, the funds shall meet all of the following requirements:

(A) The funds are allocated for use in the County of Los Angeles.

(B) The funds are appropriated either in paragraph (11) of Schedule (b) of Item 6110-196-0001 of Section 2.00 of the Budget Act of 2000 (Ch. 52, Stats. 2000) and are described in subdivision (i) of Provision 7 of that item, in paragraph (1) of Schedule (1.5) of Item 6110-196-0001 of Section 2.00 of the Budget Act of 2004 (Ch. 208, Stats. 2004) and are described in subdivision (i) of Provision 7 of that item, and in paragraph (1) of Schedule (1.5) of Item 6110-196-0001 of Section 2.00 of the Budget Act of 2005 (Ch. 38, Stats. 2005).

(C) The funds are unexpended after addressing the retention of qualified child care employees in state-subsidized child care centers and family child care home education networks.

(d) The department shall develop guidelines for use by local child care and development planning councils in developing county plans for the expenditure of funds allocated pursuant to this section. These guidelines shall be consistent with the department's assessment of the current needs of the subsidized child care workforce, and shall be subject to the approval of the Secretary for Education and the Department of Finance. Any county plan developed pursuant to these guidelines shall be approved by the department prior to the allocation of funds to the local child care and development planning council.

(e) Funds provided to a county for the purposes of this section shall be used in accordance with the plan approved pursuant to subdivision (d). A county with an approved plan may retain up to 1 percent of the

county's total allocation made pursuant to this section for reimbursement of administrative expenses associated with the planning process.

(f) The Superintendent of Public Instruction shall provide an annual report, no later than April 10 of each year, to the Legislature, the Secretary for Education, the Department of Finance, and the Governor that includes, but is not limited to, a summary of the distribution of the funds by county and a description of the use of the funds.

SEC. 2. Due to the unique circumstances concerning the County of Los Angeles, the Legislature finds and declares that a general statute cannot be made applicable within the meaning of Section 16 of Article IV of the Constitution. Therefore, this act is necessarily applicable only to the County of Los Angeles.

CHAPTER 651

An act to amend Sections 49548 and 49550 of the Education Code, relating to pupil nutrition.

[Approved by Governor October 7, 2005. Filed with
Secretary of State October 7, 2005.]

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

SECTION 1. Section 49548 of the Education Code is amended to read:

49548. (a) The State Board of Education, in order to effect compliance with legislative findings expressed in Section 49547, shall restrict the criteria for the issuance of waivers from the requirements of Section 49550 to feed children during a summer school session. A waiver shall be granted for a period not to exceed one year if either of the following conditions exists:

(1) (A) A summer school session serving pupils enrolled in elementary school, as defined in clause (iii), shall be granted a waiver if a Summer Food Service Program for Children site is available within one-half mile of the schoolsite and either of the following conditions exists:

(i) The hours of operation of the Summer Food Service Program for Children site commence no later than one-half hour after the completion of the summer school session day.

(ii) The hours of operation of the Summer Food Service Program for Children site conclude no earlier than one hour after the completion of the summer school session day.

(iii) For purposes of this subdivision, “elementary school” means a public school that maintains kindergarten or any of grades 1 to 8, inclusive.

(B) A summer school session serving pupils enrolled in middle school, junior high school, or high school shall be granted a waiver if a Summer Food Service Program for Children site is available within one mile of the schoolsite and either of the following conditions exists:

(i) The hours of operation of the Summer Food Service Program for Children site commence no later than one-half hour after the completion of the summer school session day.

(ii) The hours of operation of the Summer Food Service Program for Children site conclude no earlier than one hour after the completion of the summer school session day.

(2) (A) Serving meals during the summer school session would result in a financial loss to the school district, documented in a financial analysis performed by the school district, in an amount equal to one-third of net cash resources, as defined in Section 210.2 of Part 7 of Title 7 of the Code of Federal Regulations, which, for the purposes of this article, shall exclude funds that are encumbered. If there are no net cash resources, an amount equal to the operating costs of one month as averaged over the summer school sessions.

(B) The financial analysis required by subparagraph (A) shall include a projection of future meal program participation based on either of the following:

(i) Commencement of a meal service period after the commencement of the summer school session day and conclusion of a meal service period before the completion of the summer school session day.

(ii) Operation of a schoolsite as an open Summer Seamless Option or a Summer Food Service Program for Children site, and providing adequate notification thereof, including flyers and banners, in order to fulfill community needs under the Summer Food Service Program for Children (7 C.F.R. 225.14(d)(3)).

(3) The entire summer school day is two hours or less in duration.

(b) The state board and the Superintendent shall provide leadership to encourage and support schools and public agencies to participate in the Summer Food Service Program for Children, consistent with the intent of Section 49504.

(c) An application for a waiver shall be submitted no later than 30 days prior to the last regular meeting of the state board before the commencement of the summer school session for which the waiver is sought.

SEC. 2. Section 49550 of the Education Code is amended to read:

49550. (a) Notwithstanding any other provision of law, each school district or county superintendent of schools maintaining any kindergarten or any of grades 1 to 12, inclusive, shall provide for each needy pupil one nutritionally adequate free or reduced-price meal during each schoolday, except for family day care homes that shall be reimbursed for 75 percent of the meals served.

(b) In order to comply with subdivision (a), a school district or county office of education may use funds made available through any federal or state program the purpose of which includes the provision of meals to a pupil, including the federal School Breakfast Program, the federal National School Lunch Program, the federal Summer Food Service Program, the federal Seamless Summer Option, or the state meal program, or may do so at the expense of the school district or county office of education.

SEC. 3. 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.

CHAPTER 652

An act to amend Section 597u of, and to repeal Section 597w of, the Penal Code, relating to animals.

[Approved by Governor October 7, 2005. Filed with
Secretary of State October 7, 2005.]

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

SECTION 1. Section 597u of the Penal Code is amended to read:

597u. (a) No person, peace officer, officer of a humane society, or officer of a pound or animal regulation department of a public agency shall kill any animal by using any of the following methods:

- (1) Carbon monoxide gas.
- (2) Intracardiac injection of a euthanasia agent on a conscious animal, unless the animal is heavily sedated or anesthetized in a humane manner, or comatose, or unless, in light of all the relevant circumstances, the procedure is justifiable.

(b) With respect to the killing of any dog or cat, no person, peace officer, officer of a humane society, or officer of a pound or animal

regulation department of a public agency shall use any of the methods specified in subdivision (a) or any of the following methods:

- (1) High-altitude decompression chamber.
- (2) Nitrogen gas

SEC. 2. Section 597w of the Penal Code is repealed.

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 653

An act to amend Sections 33590, 56001, 56028, 56028.5, 56043, 56138, 56171, 56172, 56173, 56175, 56176, 56177, 56205, 56301, 56304, 56320, 56321, 56325, 56329, 56341, 56341.1, 56341.5, 56344, 56345.1, 56363, 56380, 56381, 56385, 56500.2, 56500.3, 56500.4, 56502, 56506, 56507, 56515, 56838, and 56841 of, to amend, repeal, and add Section 56505 of, to add Sections 56020.5, 56033.5, 56040.5, 56302.1, 56321.1, 56380.1, 56501.5, 56509, and 56844 to, to add Article 3.9 (commencing with Section 56058) to Chapter 1 of Part 30 of, to repeal Sections 56435 and 56449 of, and to repeal and add Sections 56337, 56345, 56346, 56837, and 56842 of, the Education Code, and to amend Section 7579.5 of, and to add Section 7579.6 to, the Government Code, relating to special education, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 7, 2005. Filed with
Secretary of State October 7, 2005.]

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

SECTION 1. Section 33590 of the Education Code is amended to read:

33590. (a) There is in the state government the Advisory Commission on Special Education consisting of the following 17 members:

(1) A Member of the Assembly appointed by the Speaker of the Assembly.

(2) A Member of the Senate appointed by the Senate Committee on Rules.

(3) Three public members appointed by the Speaker of the Assembly, two of whom shall be individuals with a disability or parents of pupils in either a public or private school who have received or are currently receiving special education services due to a disabling condition.

(4) Three public members appointed by the Senate Committee on Rules, two of whom shall be individuals with a disability or parents of pupils in either a public or private school who have received or are currently receiving special education services due to a disabling condition.

(5) Four public members appointed by the Governor, two of whom shall be parents of pupils in either a public or private school who have received or are currently receiving special education services due to a disabling condition.

(6) Five public members appointed by the State Board of Education, upon the recommendation of the Superintendent or the members of the State Board of Education, three of whom shall be parents of pupils in either a public or private school who have received or are currently receiving special education services due to a disabling condition, and one of whom shall be a representative of the charter school community.

(b) (1) Each member shall be selected to ensure that the commission is representative of the state population and composed of individuals involved in, or concerned with, the education of children with disabilities, including parents of children with disabilities, ages birth to 26 years, inclusive; individuals with disabilities; teachers; representatives of higher education that prepare special education and related services personnel; state and local education officials, including, but not limited to, officials who carry out activities under Part B (commencing with Section 11431, et seq.) of Subchapter VI of Title 42 of the United States Code; administrators of programs for children with disabilities; representatives of other state agencies involved in the financing or delivery of related services to children with disabilities; representatives of private schools and public charter schools; at least one representative of a vocational community or business organization concerned with the provision of transition services to children with disabilities; and a representative from the State Department of Social Services responsible for foster care; and representatives from the state juvenile and adult corrections agencies.

(2) Each member shall be knowledgeable about the wide variety of disabling conditions that require special programs in order to achieve the goal of providing an appropriate education to all eligible pupils.

(3) A majority of the members of the commission shall be individuals with disabilities, or parents of children with disabilities who are ages birth to 26 years, inclusive.

(c) The commission shall select one of its members to be chairperson of the commission. In addition to other duties, the chairperson shall notify the appointing bodies when a vacancy occurs on the commission and of the type of representative listed in subdivision (b) who is required to be appointed to fill the vacancy.

(d) The term of each public member is four years.

(e) A public member may not serve more than two terms.

SEC. 2. Section 56001 of the Education Code is amended to read:

56001. It is the intent of the Legislature that special education programs provide all of the following:

(a) Each individual with exceptional needs is assured an education appropriate to his or her needs in publicly supported programs through completion of his or her prescribed course of study or until the time that he or she has met proficiency standards prescribed.

(b) Early educational opportunities shall be available to all children between the ages of three and five years who require special education and services.

(c) Early educational opportunities shall be made available to children younger than three years of age pursuant to Chapter 4.4 (commencing with Section 56425), appropriate sections of this part, and the California Early Intervention Services Act (Title 14 (commencing with Section 95000) of the Government Code).

(d) Any child younger than three years of age, potentially eligible for special education, shall be afforded the protections provided pursuant to the California Early Intervention Services Act (Title 14 (commencing with Section 95000) of the Government Code) and Section 1439 of Title 20 of the United States Code and implementing regulations.

(e) Each individual with exceptional needs shall have his or her educational goals, objectives, and special education and related services specified in a written individualized education program.

(f) Education programs are provided under an approved local plan for special education that sets forth the elements of the programs in accordance with this part. This plan for special education shall be developed cooperatively with input from the community advisory committee and appropriate representation from special and regular teachers and administrators selected by the groups they represent to ensure effective participation and communication.

(g) Individuals with exceptional needs are offered special assistance programs that promote maximum interaction with the general school population in a manner that is appropriate to the needs of both, taking

into consideration, for hard-of-hearing or deaf children, the individual's needs for a sufficient number of age and language mode peers and for special education teachers who are proficient in the individual's primary language mode.

(h) Pupils are transferred out of special education programs when special education services are no longer needed.

(i) The unnecessary use of labels is avoided in providing special education and related services for individuals with exceptional needs.

(j) Procedures and materials for assessment and placement of individuals with exceptional needs shall be selected and administered so as not to be racially, culturally, or sexually discriminatory. No single assessment instrument shall be the sole criterion for determining the placement of a pupil. The procedures and materials for assessment and placement shall be in the individual's mode of communication. Procedures and materials for use with pupils of limited-English proficiency, as defined in subdivision (m) of Section 52163 and in paragraph (18) of Section 1401 of Title 20 of the United States Code, shall be in the individual's native language, as defined in paragraph (20) of Section 1401 of Title 20 of the United States Code. All assessment materials and procedures shall be selected and administered pursuant to Section 56320.

(k) Educational programs are coordinated with other public and private agencies, including preschools, child development programs, nonpublic nonsectarian schools, regional occupational centers and programs, and postsecondary and adult programs for individuals with exceptional needs.

(l) Psychological and health services for individuals with exceptional needs shall be available to each schoolsite.

(m) Continuous evaluation of the effectiveness of these special education programs by the local educational agencies shall be made to ensure the highest quality educational offerings.

(n) Appropriate qualified staff are employed, consistent with credentialing requirements, to fulfill the responsibilities of the local plan and positive efforts are made to employ qualified disabled individuals.

(o) Regular and special education personnel are adequately prepared to provide educational instruction and services to individuals with exceptional needs.

SEC. 2.5. Section 56020.5 is added to the Education Code, to read:
56020.5. "Assistive technology device," as provided in paragraph (1) of Section 1401 of Title 20 of the United States Code, means any item, piece of equipment, or product system, whether acquired commercially without the need for modification, modified, or customized, that is used to increase, maintain, or improve functional capabilities of

an individual with exceptional needs. The term does not include a medical device that is surgically implanted, or the replacement of that device.

SEC. 3. Section 56028 of the Education Code is amended to read:

56028. (a) "Parent," includes any of the following:

(1) A person having legal custody of a child.
(2) Any adult pupil for whom no guardian or conservator has been appointed.

(3) A person acting in the place of a natural or adoptive parent, including a grandparent, stepparent, or other relative with whom the child lives. "Parent" also includes a parent surrogate.

(4) A foster parent if the authority of a parent to make educational decisions on the child's behalf has been specifically limited by court order in accordance with subsection (b) of Section 300.20 of Title 34 of the Code of Federal Regulations.

(b) "Parent" does not include the state or any political subdivision of government.

SEC. 4. Section 56028.5 of the Education Code is amended to read:

56028.5. "Public agency" means a school district, county office of education, special education local plan area, charter school, or any other public agency under the auspices of the state or any political subdivisions of the state providing special education or related services to individuals with exceptional needs. For purposes of this part, "public agency," means all of the public agencies listed in Section 300.22 of Title 34 of the Code of Federal Regulations.

SEC. 4.5. Section 56033.5 is added to the Education Code, to read:

56033.5. "Supplementary aids and services," as provided in paragraph (33) of Section 1401 of Title 20 of the United States Code, means aids, services, and other supports that are provided in regular education classes or other education-related settings to enable individuals with exceptional needs to be educated with nondisabled children to the maximum extent appropriate in accordance with paragraph (5) of subsection (a) of Section 1412 of Title 20 of the United States Code.

SEC. 5. Section 56040.5 is added to the Education Code, to read:

56040.5. (a) State and local educational agency personnel are prohibited, pursuant to paragraph (25) of subsection (a) of Section 1412 of Title 20 of the United States Code, from requiring an individual with exceptional needs to obtain a prescription for a medication that is a substance covered by the Controlled Substances Act (21 U.S.C. Sec. 801 et seq.) as a condition of attending school, receiving an assessment under subsection (a) or (c) of Section 1414 of Title 20 of the United States Code, or receiving services under this part.

(b) Subdivision (a) does not create a federal prohibition against teachers and other school personnel consulting or sharing

classroom-based observations with parents or guardians regarding a pupil's academic and functional performance, his or her behavior in the class or school, or the need for assessment for special education and related services under paragraph (3) of subsection (a) of Section 1412 of Title 20 of the United States Code.

SEC. 5.5. 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) Once a child has been referred for an initial assessment to determine whether the child is an individual with exceptional needs and to determine the educational needs of the child, these determinations shall be made, and an individualized education program team meeting shall occur, within 60 days of receiving parental consent for the assessment, pursuant to subdivision (a) of Section 56302.1, except as specified in subdivision (b) of that section and pursuant to Section 56344.

(d) The individualized education program team shall review the pupil's individualized education program periodically, but not less frequently than annually, pursuant to subdivision (d) of Section 56341.1.

(e) 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. In the case of an individual with exceptional needs who is 16 years of age or younger, if appropriate, the meeting notice shall indicate that a purpose of the meeting will be the consideration of the postsecondary goals and transition services for the individual with exceptional needs, and the meeting notice described in this subdivision shall indicate that the individual with exceptional needs is invited to attend, pursuant to subdivision (e) of Section 56341.5.

(f) (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 60 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.

(g) (1) Beginning not later than the first individualized education program to be in effect when the pupil is 16 years of age, and updated annually thereafter, the individualized education program shall include appropriate measurable postsecondary goals and transition services needed to assist the pupil in reaching those goals, pursuant to paragraph (8) of subdivision (a) of Section 56345.

(2) The individualized education program for pupils in grades 7 to 12, inclusive, shall include 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, pursuant to paragraph (1) of subdivision (b) of Section 56345.

(3) Beginning not later than one year before the pupil reaches the age of 18 years, the individualized education program shall contain a statement that the pupil has been informed of the pupil's rights under this part, if any, that will transfer to the pupil upon reaching the age of 18, pursuant to subdivision (g) of Section 56345.

(h) 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 Section 56345.1 and subclause (VIII) of clause (i) of subparagraph (A) of paragraph (1) of subsection (d) of Section 1414 of Title 20 of the United States Code.

(i) 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.

(j) 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. The local educational agency shall maintain procedures to ensure that the individualized education program team reviews the pupil's individualized education program periodically, but not less frequently than annually, to determine whether the annual goals for the pupil are being achieved, and revises the individualized education program as appropriate to

address, among other matters, the provisions specified in subdivision (d) of Section 56341.1, pursuant to subdivision (a) of Section 56380.

(k) A reassessment of a pupil shall occur not more frequently than once a year, unless the parent and the local educational agency agree otherwise in writing, and shall occur at least once every three years, unless the parent and the local educational agency agree, in writing, that a reassessment is unnecessary, pursuant to Section 56381, and in accordance with paragraph (2) of subsection (a) of Section 1414 of Title 20 of the United States Code.

(l) 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.

(m) If an individual with exceptional needs transfers from district to district within the state, the following are applicable pursuant to Section 56325:

(1) If the child has an individualized education program and transfers into a district from a district not operating programs under the same local plan in which he or she was last enrolled in a special education program within the same academic year, the local educational agency shall provide the pupil with a free appropriate public education, including services comparable to those described in the previously approved individualized education program, in consultation with the parents, for a period not to exceed 30 days, by which time the local educational agency shall adopt the previously approved individualized education program or shall develop, adopt, and implement a new individualized education program that is consistent with federal and state law, pursuant to paragraph (1) of subdivision (a) of Section 56325.

(2) If the child has an individualized education program and transfers into a district from a district operating programs under the same special education local plan area of the district in which he or she was last enrolled in a special education program within the same academic year, the new district shall continue, without delay, to provide services comparable to those described in the existing approved individualized education program, unless the parent and the local educational agency agree to develop, adopt, and implement a new individualized education program that is consistent with state and federal law, pursuant to paragraph (2) of subdivision (a) of Section 56325.

(3) If the child has an individualized education program and transfers from an educational agency located outside the state to a district within

the state within the same academic year, the local educational agency shall provide the pupil with a free appropriate public education, including services comparable to those described in the previously approved individualized education program, in consultation with the parents, until the local educational agency conducts an assessment as specified in paragraph (3) of subdivision (a) of Section 56325.

(4) In order to facilitate the transition for an individual with exceptional needs described in paragraphs (1) to (3), inclusive, the new school in which the pupil enrolls shall take reasonable steps to promptly obtain the pupil's records, as specified, pursuant to subdivision (b) of Section 56325.

(n) 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.

(o) 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, to the new educational agency within five working days, pursuant to subdivision (a) of Section 3024 of Title 5 of the California Code of Regulations.

(p) 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.

(q) 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.

(r) 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, except that this timeline shall not

apply to a parent if the parent was prevented from requesting the due process hearing, pursuant to subdivision (l) of Section 56505.

(s) 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.

(t) 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.

(u) 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.

(v) 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.

(w) 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.

(x) 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.

(y) 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.

(z) A complaint filed with the department shall allege a violation of the Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400 et seq.) or a provision of this part that occurred not more than one year prior to the date that the complaint is received by the department, pursuant to Section 56500.2 and subsection (c) of Section 300.662 of Title 34 of the Code of Federal Regulations.

SEC. 6. Article 3.9 (commencing with Section 56058) is added to Chapter 1 of Part 30 of the Education Code, to read:

Article 3.9. Qualifications for Special Education Teachers

56058. Special education teachers providing instruction and educational services under this part shall meet the same “highly qualified” requirements, as defined in paragraph (10) of Section 1401 of Title 20 of the United States Code, and qualifications described in paragraph (14) of subsection (a) of Section 1412 of Title 20 of the United States Code.

56059. This part does not create a right of action on behalf of an individual with exceptional needs or class of pupils for failure of a state or local educational agency employee to be highly qualified.

SEC. 7. Section 56138 of the Education Code is amended to read:

56138. The Superintendent shall develop, and the state board shall adopt, performance goals and indicators for individuals with exceptional needs that are consistent with, to the maximum extent appropriate, the standards for all pupils in the public education system, in accordance with the provisions of paragraph (15) of subsection (a) of Section 1412 of Title 20 of the United States Code.

SEC. 8. Section 56171 of the Education Code is amended to read:

56171. Local educational agencies shall locate, identify, and assess all private school children with disabilities, including religiously affiliated schoolage children, who have disabilities and are in need of special education and related services residing in the jurisdiction of the local educational agencies in accordance with Section 56301. The activities undertaken to carry out this responsibility for private school children with disabilities shall be comparable to activities undertaken in accordance with the provisions of clause (ii) of subparagraph (A) of paragraph (10) of subsection (a) of Section 1412 of Title 20 of the United States Code.

SEC. 9. Section 56172 of the Education Code is amended to read:

56172. (a) The local educational agency shall make provision for the participation of private school children with disabilities in special education programs under this part by providing them with special

education and related services in accordance with the provisions of this article and subparagraph (A) of paragraph (10) of subsection (a) of Section 1412 of Title 20 of the United States Code.

(b) The local educational agency or, where appropriate, the department, shall ensure timely and meaningful consultation with private school representatives and representatives of parents of parentally placed private school children with disabilities during the design and development of special education and related services for the children in accordance with clause (iii) of subparagraph (A) of paragraph (10) of subsection (a) of Section 1412 of Title 20 of the United States Code.

(c) When timely and meaningful consultation as required in subdivision (b) has occurred, the local educational agency shall obtain a written affirmation signed by the representatives of participating private schools, and if the representatives do not provide the affirmation within a reasonable period of time, the local educational agency shall forward the documentation of the consultation process to the department in accordance with clause (iv) of subparagraph (A) of paragraph (10) of subsection (a) of Section 1412 of Title 20 of the United States Code.

(d) A private school official shall have the right, pursuant to clause (v) of subparagraph (A) of paragraph (10) of subsection (a) of Section 1412 of Title 20 of the United States Code, to submit a complaint to the department that the local educational agency did not engage in consultation that was meaningful and timely or did not give due consideration to the views of the private school official.

(e) The provision of equitable services for children enrolled in private schools by their parents shall be provided by employees of a public agency, as defined in Section 56028.5, or through contract by the public agency with an individual, association, agency, organization, or other entity.

(f) Special education and related services, including materials and equipment, provided to a pupil with a disability who has been parentally placed in a private school shall be secular, neutral, and nonideological, as required by clause (vi) of subparagraph (A) of paragraph (10) of subsection (a) of Section 1412 of Title 20 of the United States Code.

SEC. 10. Section 56173 of the Education Code is amended to read:

56173. To meet the requirements of Section 56172, each local educational agency shall provide special education and related services to pupils with disabilities enrolled by a parent in private elementary and secondary schools, described in Section 56171, by expending an amount of federal state grant funds allocated to the state under Part B of the federal Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400 et seq.) equal to a proportionate amount of federal funds made available under the Part B grant program for local assistance, in accordance with

clause (i) of subparagraph (A) of paragraph (10) of subsection (a) of Section 1412 of Title 20 of the United States Code and Section 300.453 of Title 34 of the Code of Federal Regulations.

The control of public funds used to provide special education and related services under subparagraph (A) of paragraph (10) of subsection (a) of Section 1412 of Title 20 of the United States Code, and title to materials, equipment, and property purchased with those funds, shall be in a public agency for the uses and purposes provided in the federal Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400 et seq.). A public agency shall administer the funds and property.

SEC. 11. Section 56175 of the Education Code is amended to read:

56175. If a parent or guardian of an individual with exceptional needs, who previously received special education and related services under the authority of the local educational agency, enrolls the child in a private elementary or secondary school without the consent of or referral by the local educational agency, a court or a due process hearing officer may require the local educational agency to reimburse the parent or guardian for the cost of that enrollment if the court or due process hearing officer finds that the local educational agency had not made a free appropriate public education available to the child in a timely manner prior to that enrollment in the private elementary or secondary school and that the private placement is appropriate, in accordance with clause (ii) of subparagraph (C) of paragraph (10) of subsection (a) of Section 1412 of Title 20 of the United States Code and subsection (c) of Section 300.403 of Title 34 of the Code of Federal Regulations.

SEC. 12. Section 56176 of the Education Code is amended to read:

56176. The cost of the reimbursement described in Section 56175 may be reduced or denied pursuant to clause (iii) of subparagraph (C) of paragraph (10) of subsection (a) of Section 1412 of Title 20 of the United States Code in the event of any of the following:

(a) At the most recent individualized education program meeting that a parent or guardian attended prior to removal of the child from the public school, the parent or guardian did not inform the individualized education program team that they were rejecting the placement proposed by the local educational agency to provide a free appropriate public education to the child, including stating his or her concerns and the intent to enroll the child in a private school at public expense.

(b) The parent or guardian did not give written notice to the local educational agency of the information described in subdivision (a) at least 10 business days, including any holidays that occur on a business day, prior to the removal of the child from the public school.

(c) Prior to the parent's or guardian's removal of the child from the public school, the local educational agency informed the parent, through

the notice requirements described in paragraph (3) of subsection (b) of Section 1415 of Title 20 of the United States Code, of its intent to assess the child, including a statement of the purpose of the assessment that was appropriate and reasonable, but the parent or guardian did not make the child available for the assessment.

(d) Upon a judicial finding of unreasonableness with respect to actions taken by a parent or guardian.

SEC. 13. Section 56177 of the Education Code is amended to read:

56177. (a) Notwithstanding the notice requirement in subclause (I) of clause (iii) of subparagraph (C) of paragraph (10) of subsection (a) of Section 1412 of Title 20 of the United States Code, the cost of reimbursement shall not be reduced or denied, in accordance with clause (iv) of subparagraph (C) of paragraph (10) of subsection (a) of Section 1412 of Title 20 of the United States Code, for failure to provide the notice in the event of any of the following:

(1) The school prevented the parent or guardian from providing the notice.

(2) The parents had not received notice, pursuant to Section 1415 of Title 20 of the United States Code, of the notice requirement in subclause (I) of clause (iii) of subparagraph (C) of paragraph (10) of subsection (a) of Section 1412 of Title 20 of the United States Code.

(3) Compliance with the federal provision cited in paragraph (2) would likely result in physical harm to the child.

(b) In the discretion of a court or a hearing officer, the cost of reimbursement may not be reduced or denied for failure to provide the notice in either of the following circumstances:

(1) The parent or guardian is illiterate or cannot write in English.

(2) Providing the notice described in subclause (I) of clause (iii) of subparagraph (C) of paragraph (10) of subsection (a) of Section 1412 of Title 20 of the United States Code would likely result in serious emotional harm to the child.

SEC. 14. Section 56205 of the Education Code is amended to read:

56205. (a) Each special education local plan area submitting a local plan to the Superintendent under this part shall assure, in conformity with subsection (a) of Section 1412 of, and paragraph (1) of subsection (a) of Section 1413 of Title 20 of the United States Code, that it has in effect policies, procedures, and programs that are consistent with state laws, regulations, and policies governing the following:

(1) Free appropriate public education.

(2) Full educational opportunity.

(3) Child find and referral.

(4) Individualized education programs, including development, implementation, review, and revision.

- (5) Least restrictive environment.
- (6) Procedural safeguards.
- (7) Annual and triennial assessments.
- (8) Confidentiality.
- (9) Transition from Subchapter III (commencing with Section 1431) of Title 20 of the United States Code to the preschool program.
- (10) Children in private schools.
- (11) Compliance assurances, including general compliance with the federal Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400 et seq.), Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. Sec. 794), the federal Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12101 et seq.), federal regulations relating thereto, and this part.
- (12) (A) A description of the governance and administration of the plan, including identification of the governing body of a multidistrict plan or the individual responsible for administration in a single district plan, and of the elected officials to whom the governing body or individual is responsible.
- (B) A description of the regionalized operations and services listed in Section 56836.23 and the direct instructional support provided by program specialists in accordance with Section 56368 to be provided through the plan.
- (C) Verification that a community advisory committee has been established pursuant to Section 56190.
- (D) Multidistrict plans, submitted pursuant to subdivision (b) or (c) of Section 56195.1, shall do the following:
 - (i) Specify the responsibilities of each participating county office and district governing board in the policymaking process, the responsibilities of the superintendents of each participating district and county in the implementation of the plan, and the responsibilities of district and county administrators of special education in coordinating the administration of the local plan.
 - (ii) Identify the respective roles of the administrative unit and the administrator of the special education local plan area and the individual local educational agencies within the special education local plan area in relation to the following:
 - (I) The hiring, supervision, evaluation, and discipline of the administrator of the special education local plan area and staff employed by the administrative unit in support of the local plan.
 - (II) The allocation from the state of federal and state funds to the special education local plan area administrative unit or to local educational agencies within the special education local plan area.
 - (III) The operation of special education programs.

(IV) Monitoring the appropriate use of federal, state, and local funds allocated for special education programs.

(V) The preparation of program and fiscal reports required of the special education local plan area by the state.

(iii) Include copies of joint powers agreements or contractual agreements, as appropriate, for districts and counties that elect to enter into those agreements pursuant to subdivision (b) or (c) of Section 56195.1.

(E) The description of the governance and administration of the plan, and the policymaking process, shall be consistent with subdivision (f) of Section 56001, subdivision (a) of Section 56195.3, and Section 56195.9, and shall reflect a schedule of regular consultations regarding policy and budget development with representatives of special education and regular education teachers and administrators selected by the groups they represent and parent members of the community advisory committee established pursuant to Article 7 (commencing with Section 56190) of Chapter 2.

(13) Personnel qualifications to ensure that personnel, including special education teachers and personnel and paraprofessionals providing related services, necessary to implement this part are appropriately and adequately prepared and trained in accordance with paragraph (14) of subsection (a) of Section 1412, and paragraph (3) of subsection (a) of Section 1413, of Title 20 of the United States Code.

(14) Performance goals and indicators.

(15) Participation in state and districtwide assessments, including assessments described under Section 1111 of the federal Elementary and Secondary Education Act of 1965 (20 U.S.C. Sec. 6301 et seq.) and alternate assessments in accordance with paragraph (16) of subsection (a) of Section 1412 of Title 20 of the United States Code, and reports relating to assessments.

(16) Supplementation of state, local, and other federal funds, including nonsupplantation of funds.

(17) Maintenance of financial effort.

(18) Opportunities for public participation prior to adoption of policies and procedures.

(19) Suspension and expulsion rates.

(20) Access to instructional materials by blind individuals with exceptional needs and others with print disabilities in accordance with paragraph (23) of subsection (a) of Section 1412 of Title 20 of the United States Code.

(21) Overidentification and disproportionate representation by race and ethnicity of children as individuals with exceptional needs, including children with disabilities with a particular impairment described in

Section 1401 of Title 20 of the United States Code and in accordance with paragraph (24) of subsection (a) of Section 1412 of Title 20 of the United States Code.

(22) Prohibition of mandatory medication use pursuant to Section 56040.5 and in accordance with paragraph (25) of subsection (a) of Section 1412 of Title 20 of the United States Code.

(b) Each local plan submitted to the Superintendent under this part shall also contain all the following:

(1) An annual budget plan that shall be adopted at a public hearing held by the special education local plan area. Notice of this hearing shall be posted in each school in the local plan area at least 15 days prior to the hearing. The annual budget plan may be revised during any fiscal year according to the policymaking process established pursuant to subparagraphs (D) and (E) of paragraph (12) of subdivision (a) and consistent with subdivision (f) of Section 56001 and Section 56195.9. The annual budget plan shall identify expected expenditures for all items required by this part which shall include, but not be limited to, the following:

(A) Funds received in accordance with Chapter 7.2 (commencing with Section 56836).

(B) Administrative costs of the plan.

(C) Special education services to pupils with severe disabilities and low incidence disabilities.

(D) Special education services to pupils with nonsevere disabilities.

(E) Supplemental aids and services to meet the individual needs of pupils placed in regular education classrooms and environments.

(F) Regionalized operations and services, and direct instructional support by program specialists in accordance with Article 6 (commencing with Section 56836.23) of Chapter 7.2.

(G) The use of property taxes allocated to the special education local plan area pursuant to Section 2572.

(2) An annual service plan shall be adopted at a public hearing held by the special education local plan area. Notice of this hearing shall be posted in each district in the special education local plan area at least 15 days prior to the hearing. The annual service plan may be revised during any fiscal year according to the policymaking process established pursuant to subparagraphs (D) and (E) of paragraph (12) of subdivision (a) and consistent with subdivision (f) of Section 56001 and with Section 56195.9. The annual service plan shall include a description of services to be provided by each district and county office, including the nature of the services and the physical location at which the services will be provided, including alternative schools, charter schools, opportunity schools and classes, community day schools operated by districts,

community schools operated by county offices, and juvenile court schools, regardless of whether the district or county office is participating in the local plan. This description shall demonstrate that all individuals with exceptional needs shall have access to services and instruction appropriate to meet their needs as specified in their individualized education programs.

(3) A description of programs for early childhood special education from birth through five years of age.

(4) A description of the method by which members of the public, including parents or guardians of individuals with exceptional needs who are receiving services under the plan, may address questions or concerns to the governing body or individual identified in subparagraph (A) of paragraph (12) of subdivision (a).

(5) A description of a dispute resolution process, including mediation and final and binding arbitration to resolve disputes over the distribution of funding, the responsibility for service provision, and the other governance activities specified within the plan.

(6) Verification that the plan has been reviewed by the community advisory committee and that the committee had at least 30 days to conduct this review prior to submission of the plan to the Superintendent.

(7) A description of the process being utilized to meet the requirements of Section 56303.

(c) A description of the process being utilized to oversee and evaluate placements in nonpublic, nonsectarian schools and the method of ensuring that all requirements of each pupil's individualized education program are being met. The description shall include a method for evaluating whether the pupil is making appropriate educational progress.

(d) The local plan, budget plan, and annual service plan shall be written in language that is understandable to the general public.

SEC. 15. Section 56301 of the Education Code is amended to read: 56301. (a) All children with disabilities residing in the state, including children with disabilities who are homeless children or are wards of the state and children with disabilities attending private, including religious, elementary and secondary 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 and a practical method is developed and implemented to determine which children with disabilities are currently receiving needed special education and related services as required by paragraph (3) of subsection (a), and clause (ii) of subparagraph (A) of paragraph (10) of subsection (a), of Section 1412 of Title 20 of the United States Code. A child is not required to be classified by his or her disability so long as each child who has a disability listed in paragraph (3) of Section 1401 of Title 20 of the United

States Code and who, by reason of that disability, needs special education and related services as an individual with exceptional needs defined in Section 56026.

(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) (1) The child find process shall ensure the equitable participation in special education and related services of parentally placed private schoolchildren with disabilities and an accurate count of those children. Child find activities conducted by local educational agencies, or where applicable, the department, shall be similar to those activities undertaken for pupils in public schools.

(2) In accordance with subclause (IV) of clause (ii) of subparagraph (A) of paragraph (10) of subsection (a) of Section 1412 of Title 20 of the United States Code, the cost of the child find activities in private, including religious, elementary and secondary schools, may not be considered in determining whether a local educational agency has met its obligations under the proportionate funding provisions for children enrolled in private, including religious, elementary and secondary schools.

(3) The child find process described in paragraph (1) shall be completed in a time period comparable to that for other pupils attending public schools in the local educational agency.

(d) (1) 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.

(2) In accordance with subparagraph (A) of paragraph (1) of subsection (d) of Section 1415 of Title 20 of the United States Code, parents shall be given a copy of their rights and procedural safeguards only one time a year, except that a copy also shall be given to the parents upon initial referral or parental request for assessment, upon the first occurrence of the filing for a due process hearing under Section 56502, and upon request by a parent.

(3) A local educational agency may place a current copy of the procedural safeguards notice on its Internet Web site, if such Web site exists, pursuant to subparagraph (B) of paragraph (1) of subsection (d) of Section 1415 of Title 20 of the United States Code.

(4) The contents of the procedural safeguards notice shall contain the requirements listed in paragraph (2) of subsection (d) of Section 1415 of Title 20 of the United States Code.

(e) 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. 16. Section 56302.1 is added to the Education Code, to read:

56302.1. (a) Once a child has been referred for an initial assessment to determine whether the child is an individual with exceptional needs as defined in Section 56026 and to determine the educational needs of the child, these determinations shall be made, and an individualized education program meeting shall occur, within 60 days of receiving parental consent for the assessment in accordance with subparagraph (C) of paragraph (1) of subsection (a) of Section 1414 of Title 20 of the United States Code.

(b) The 60-day time period does not apply to a local educational agency if either of the following occurs:

(1) A child enrolls in a school served by the local educational agency after the relevant time period has commenced but prior to a determination by his or her previous local educational agency of whether the child is an individual with exceptional needs. The exemption of this paragraph applies only if the subsequent local educational agency is making sufficient progress to ensure a prompt completion of the assessment, and the parent and subsequent local educational agency agree to a specific date by which the assessment shall be completed.

(2) The parent of a child repeatedly fails or refuses to produce the child for the assessment.

SEC. 17. Section 56304 of the Education Code is amended to read:

56304. (a) The parents or guardians of a pupil who has been referred for initial assessment, or of a pupil identified as an individual with exceptional needs, shall be afforded an opportunity to participate in meetings with respect to the identification, assessment, and educational placement, pursuant to Section 56342.5 and subdivisions (b) and (c) of Section 56341.5, of the pupil and with respect to the provision of a free appropriate public education, as provided in Section 300.501 of Title 34 of the Code of Federal Regulations.

(b) In accordance with subsection (f) of Section 1414 of Title 20 of the United States Code, when conducting individualized education

program meetings and placement meetings pursuant to this part, and when carrying out administrative matters under Chapter 5 (commencing with Section 56500), including scheduling exchange of witness lists and status conferences, the parent of an individual with exceptional needs and a local educational agency may agree to use alternative means of meeting participation, such as video conferences and conference calls.

SEC. 18. 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. Pursuant to subparagraph (B) of paragraph (6) of subsection (a) of Section 1412 of Title 20 of the United States Code, the materials and procedures shall be provided in the pupil's native language or mode of communication, unless it is clearly not feasible to do so.

(b) Tests and other assessment materials meet all the following requirements:

(1) Are provided and administered in the language and form most likely to yield accurate information on what the pupil knows and can do academically, developmentally, and functionally, unless it is not feasible to so provide or administer as required by clause (ii) of subparagraph (A) of paragraph (3) of subsection (b) of Section 1414 of Title 20 of the United States Code.

(2) Are used for purposes for which the assessments or measures are valid and reliable.

(3) Are administered by trained and knowledgeable personnel and are administered in accordance with any instructions provided by the producer of the assessments, 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 subparagraph (B) of paragraph (2) of subsection (b) of Section 1414 of Title 20 of the United States Code, no single measure or assessment is used as the sole criterion for determining whether a pupil is an individual with exceptional needs or 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 shall be 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 federal 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 (c) of Section 1414 of Title 20 of the United States Code. The group may conduct its review without a meeting.

(i) Each local educational agency shall ensure that assessments of individuals with exceptional needs who transfer from one district to another district in the same academic year are coordinated with the individual's prior and subsequent schools, as necessary and as expeditiously as possible, in accordance with subparagraph (D) of paragraph (3) of subsection (b) of Section 1414 of Title 20 of the United States Code, to ensure prompt completion of full assessment.

SEC. 19. 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 federal Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400 et seq.), 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) The local educational agency proposing to conduct an initial assessment to determine if the child qualifies as an individual with exceptional needs shall obtain informed consent from the parent of the child before conducting the assessment, in accordance with subparagraph (D) of paragraph (1) of subsection (a) of Section 1414 of Title 20 of the United States Code. If the parent of the child does not provide consent for an initial assessment, or the parent fails to respond to a request to provide the consent, the local educational agency may pursue the initial assessment utilizing the procedures described in Section 1415 of Title 20 of the United States Code and in accordance with paragraph (3) of subdivision (a) of Section 56501 and 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. The assessment may begin immediately upon receipt of the consent.

(d) The local educational agency shall not be required to obtain informed consent from the parent of a child for an initial assessment to determine whether the child is an individual with exceptional needs under any of the following circumstances listed in subclause (II) of clause (iii) of subparagraph (D) of paragraph (1) of subsection (a) of Section 1414 of Title 20 of the United States Code:

(1) Despite reasonable efforts to do so, the local educational agency cannot discover the whereabouts of the parent of the child.

(2) The rights of the parent of the child have been terminated in accordance with state law.

(3) The rights of the parent to make educational decisions have been subrogated by a judge in accordance with state law and consent for an initial assessment has been given by an individual appointed by the judge to represent the child.

(e) 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 subclause (I) of clause (i) of subparagraph (D) of paragraph (1) of subsection (a) of Section 1414 of Title 20 of the United States Code.

(f) 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.

(g) Pursuant to subparagraph (E) of paragraph (1) of subsection (a) of Section 1414 of Title 20 of the United States Code, the screening of a pupil by a teacher or specialist to determine appropriate instructional strategies for curriculum implementation shall not be considered to be an assessment for eligibility for special education and related services.

SEC. 20. Section 56321.1 is added to the Education Code, to read:

56321.1. If the child is a ward of the state and is not residing with his or her parent, the agency shall, pursuant to clause (iii) of subparagraph (D) of paragraph (1) of subsection (a) of Section 1414 of Title 20 of the United States Code, make reasonable efforts to obtain the informed consent from the parent, as defined in Section 56028, of the child for an initial assessment to determine whether the child is an individual with exceptional needs.

SEC. 21. Section 56325 of the Education Code is amended to read:

56325. (a) (1) As required by subclause (I) of clause (i) of subparagraph (C) of paragraph (2) of subsection (d) of Section 1414 of Title 20 of the United States Code, the following shall apply to special education programs for individuals with exceptional needs who transfer

from district to district within the state. In the case of an individual with exceptional needs who has an individualized education program and transfers into a district from a district not operating programs under the same local plan in which he or she was last enrolled in a special education program within the same academic year, the local educational agency shall provide the pupil with a free appropriate public education, including services comparable to those described in the previously approved individualized education program, in consultation with the parents, for a period not to exceed 30 days, by which time the local educational agency shall adopt the previously approved individualized education program or shall develop, adopt, and implement a new individualized education program that is consistent with federal and state law.

(2) In the case of an individual with exceptional needs who has an individualized education program and transfers into a district from a district operating programs under the same special education local plan area of the district in which he or she was last enrolled in a special education program within the same academic year, the new district shall continue, without delay, to provide services comparable to those described in the existing approved individualized education program, unless the parent and the local educational agency agree to develop, adopt, and implement a new individualized education program that is consistent with federal and state law.

(3) As required by subclause (II) of clause (i) of subparagraph (C) of paragraph (2) of subsection (d) of Section 1414 of Title 20 of the United States Code, the following shall apply to special education programs for individuals with exceptional needs who transfer from an educational agency located outside the State of California to a district within California. In the case of an individual with exceptional needs who transfers from district to district within the same academic year, the local educational agency shall provide the pupil with a free appropriate public education, including services comparable to those described in the previously approved individualized education program, in consultation with the parents, until the local educational agency conducts an assessment pursuant to paragraph (1) of subsection (a) of Section 1414 of Title 20 of the United States Code, if determined to be necessary by the local educational agency, and develops a new individualized education program, if appropriate, that is consistent with federal and state law.

(b) (1) To facilitate the transition for an individual with exceptional needs described in subdivision (a), the new school in which the individual with exceptional needs enrolls shall take reasonable steps to promptly obtain the pupil's records, including the individualized education program and supporting documents and any other records relating to the provision

of special education and related services to the pupil, from the previous school in which the pupil was enrolled, pursuant to paragraph (2) of subsection (a) of Section 99.31 of Title 34 of the Code of Federal Regulations.

(2) The previous school in which the individual with exceptional needs was enrolled shall take reasonable steps to promptly respond to the request from the new school.

(c) If whenever a pupil described in subdivision (a) was placed and residing in a residential nonpublic, nonsectarian school, prior to transferring to a district in another special education local plan area, and this placement is not eligible for funding pursuant to Section 56836.16, the special education local plan area that contains the district that made the residential nonpublic, nonsectarian school placement is responsible for the funding of the placement, including related services, for the remainder of the school year. An extended year session is included in the school year in which the session ends. This subdivision also applies to special education and related services required under Section 7573 of the Government Code for an individual with exceptional needs who was placed in a residential placement by an expanded individualized education program team, pursuant to Section 7572.5 of the Government Code, if the parent of the individual moves during the course of the year to a district in another special education local plan area.

SEC. 22. Section 56329 of the Education Code is amended to read: 56329. As part of the assessment plan given to parents or guardians pursuant to Section 56321, the parent or guardian of the pupil shall be provided with a written notice that shall include all of the following information:

(a) (1) Upon completion of the administration of tests and other assessment materials, an individualized education program team meeting, including the parent or guardian and his or her representatives, shall be scheduled, pursuant to Section 56341, to determine whether the pupil is an individual with exceptional needs as defined in Section 56026, and to discuss the assessment, the educational recommendations, and the reasons for these recommendations.

(2) In making a determination of eligibility under paragraph (1), a pupil shall not, pursuant to paragraph (5) of subsection (b) of Section 1414 of Title 20 of the United States Code, be determined to be an individual with exceptional needs if the determinant factor for the determination is any of the following:

(A) Lack of appropriate instruction in reading, including the essential components of reading instruction as defined in paragraph (3) of Section 6368 of Title 20 of the United States Code.

(B) Lack of instruction in mathematics.

(C) Limited-English proficiency.

(3) A copy of the assessment report and the documentation of determination of eligibility shall be given to the parent or guardian.

(b) A parent or guardian has the right to obtain, at public expense, an independent educational assessment of the pupil from qualified specialists, as defined by regulations of the board, if the parent or guardian disagrees with an assessment obtained by the public education agency, in accordance with Section 300.502 of Title 34 of the Code of Federal Regulations. If a public education agency observed the pupil in conducting its assessment, or if its assessment procedures make it permissible to have in-class observation of a pupil, an equivalent opportunity shall apply to an independent educational assessment of the pupil in the pupil's current educational placement and setting, and observation of an educational placement and setting, if any, proposed by the public education agency, regardless of whether the independent educational assessment is initiated before or after the filing of a due process hearing proceeding.

(c) The public education agency may initiate a due process hearing pursuant to Chapter 5 (commencing with Section 56500) to show that its assessment is appropriate. If the final decision resulting from the due process hearing is that the assessment is appropriate, the parent or guardian maintains the right for an independent educational assessment, but not at public expense.

If the parent or guardian obtains an independent educational assessment at private expense, the results of the assessment shall be considered by the public education agency with respect to the provision of free appropriate public education to the child, and may be presented as evidence at a due process hearing pursuant to Chapter 5 (commencing with Section 56500) regarding the child. If a public education agency observed the pupil in conducting its assessment, or if its assessment procedures make it permissible to have in-class observation of a pupil, an equivalent opportunity shall apply to an independent educational assessment of the pupil in the pupil's current educational placement and setting, and observation of an educational placement and setting, if any, proposed by the public education agency, regardless of whether the independent educational assessment is initiated before or after the filing of a due process hearing proceeding.

(d) If a parent or guardian proposes a publicly financed placement of the pupil in a nonpublic school, the public education agency shall have an opportunity to observe the proposed placement and the pupil in the proposed placement, if the pupil has already been unilaterally placed in the nonpublic school by the parent or guardian. Any observation conducted pursuant to this subdivision shall only be of the pupil who is

the subject of the observation and may not include the observation or assessment of any other pupil in the proposed placement. The observation or assessment by a public education agency of a pupil other than the pupil who is the subject of the observation pursuant to this subdivision may be conducted, if at all, only with the consent of the parent or guardian pursuant to this article. The results of any observation or assessment of any other pupil in violation of this subdivision shall be inadmissible in any due process or judicial proceeding regarding the free appropriate public education of that other pupil.

SEC. 23. Section 56337 of the Education Code is repealed.

SEC. 24. Section 56337 is added to the Education Code, to read:

56337. (a) A specific learning disability, as defined in paragraph (30) of Section 1401 of Title 20 of the United States Code, means a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, which may manifest itself in the imperfect ability to listen, think, speak, read, write, spell, or perform mathematical calculations. The term "specific learning disability" includes conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia. That term does not include a learning problem that is primarily the result of visual, hearing, or motor disabilities, of mental retardation, of emotional disturbance, or of environmental, cultural, or economic disadvantage.

(b) Notwithstanding any other provision of law and pursuant to paragraph (6) of subsection (b) of Section 1414 of Title 20 of the United States Code, in determining whether a pupil has a specific learning disability as defined in subdivision (a), a local educational agency is not required to take into consideration whether a pupil has a severe discrepancy between achievement and intellectual ability in oral expression, listening comprehension, written expression, basic reading skill, reading comprehension, mathematical calculation, or mathematical reasoning.

(c) In determining whether a pupil has a specific learning disability, a local educational agency may use a process that determines if the pupil responds to scientific, research-based intervention as a part of the assessment procedures described in paragraphs (2) and (3) of subsection (b) of Section 1414 of Title 20 of the United States Code.

SEC. 25. Section 56341 of the Education Code is amended to read:

56341. (a) Each meeting to develop, review, or revise the individualized education program of an individual with exceptional needs shall be conducted by an individualized education program team.

(b) The individualized education program team shall include all of the following:

(1) One or both of the pupil's parents, a representative selected by a parent, or both, in accordance with the federal Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400 et seq.).

(2) Not less than one regular education teacher of the pupil, if the pupil is, or may be, participating in the regular education environment. If more than one regular education teacher is providing instructional services to the individual with exceptional needs, one regular education teacher may be designated by the local educational agency to represent the others.

The regular education teacher of an individual with exceptional needs shall, to the extent appropriate, participate in the development, review, and revision of the pupil's individualized education program, including assisting in the determination of appropriate positive behavioral interventions and supports, and other strategies for the pupil, and the determination of supplementary aids and services, program modifications, and supports for school personnel that will be provided for the pupil, consistent with subclause (IV) of clause (i) of subparagraph (A) of paragraph (1) of subsection (d) of Section 1414 of Title 20 of the United States Code.

(3) Not less than one special education teacher of the pupil, or if appropriate, not less than one special education provider of the pupil.

(4) A representative of the local educational agency who meets all of the following:

(A) Is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of individuals with exceptional needs.

(B) Is knowledgeable about the general curriculum.

(C) Is knowledgeable about the availability of resources of the local educational agency.

(5) An individual who can interpret the instructional implications of the assessment results. The individual may be a member of the team described in paragraphs (2) to (6), inclusive.

(6) At the discretion of the parent, guardian, or the local educational agency, other individuals who have knowledge or special expertise regarding the pupil, including related services personnel, as appropriate. The determination of whether the individual has knowledge or special expertise regarding the pupil shall be made by the party who invites the individual to be a member of the individualized education program team.

(7) Whenever appropriate, the individual with exceptional needs.

(c) In accordance with Sections 300.540 and 300.542 of Title 34 of the Code of Federal Regulations, for a pupil suspected of having a specific learning disability, at least one member of the individualized education program team shall be qualified to conduct individual

diagnostic examinations of children, such as a school psychologist, speech-language pathologist, or remedial reading teacher. In accordance with Section 300.542 of Title 34 of the Code of Federal Regulations, at least one team member other than the pupil's regular teacher shall observe the pupil's academic performance in the regular classroom setting. In the case of a child who is less than schoolage or out of school, a team member shall observe the child in an environment appropriate for a child of that age.

(d) (1) In the case of transition services, the local educational agency shall invite an individual with exceptional needs to attend his or her individualized education program meeting if a purpose of the meeting will be the consideration of the needed transition services for the individual.

(2) If the individual with exceptional needs does not attend the individualized education program meeting, the local educational agency shall take steps to ensure that the individual's preferences and interests are considered.

(3) The local educational agency also shall invite to the individualized education program team meetings a representative that is likely to be responsible for providing or paying for transition services. If an agency invited to send a representative to a meeting does not do so, the local educational agency shall take other steps to obtain participation of the other agency in the planning of any transition services.

(e) A local educational agency may designate another local educational agency member of the individualized education program team to serve also as the representative required pursuant to paragraph (4) of subdivision (b) if the requirements of subparagraphs (A), (B), and (C) of paragraph (4) of subdivision (b) are met.

(f) A member of the individualized education program team shall not be required to attend an individualized education program meeting, in whole or in part, if the parent of the individual with exceptional needs and the local educational agency agree that the attendance of the member is not necessary because the member's area of the curriculum or related services is not being modified or discussed in the meeting.

(g) A member of the individualized education program team may be excused from attending an individualized education program meeting, in whole or in part, when the meeting involves a modification to or discussion of the member's area of the curriculum or related services, if both of the following occur:

(1) The parent and the local educational agency consent to the excusal after conferring with the member.

(2) The member submits in writing to the parent and the individualized education program team, input into the development of the individualized education program prior to the meeting.

(h) A parent's agreement under subdivision (f) and consent under subdivision (g) shall be in writing.

(i) In the case of a child who was previously served under Chapter 4.4 (commencing with Section 56425), Early Education for Individuals with Exceptional Needs, or the California Early Intervention Services Act under Title 14 (commencing with Section 95000) of the Government Code, an invitation to the initial individualized education program team meeting shall, at the request of the parent, be sent to the infants and toddlers with disabilities coordinator or other representatives of the early education or early intervention system to assist with the smooth transition of services.

SEC. 26. Section 56341.1 of the Education Code is amended to read:

56341.1. (a) When developing each pupil's individualized education program, the individualized education program team shall consider the following:

(1) The strengths of the pupil.

(2) The concerns of the parents or guardians for enhancing the education of the pupil.

(3) The results of the initial assessment or most recent assessment of the pupil.

(4) The academic, developmental, and functional needs of the child.

(b) The individualized education program team shall do the following:

(1) In the case of a pupil whose behavior impedes his or her learning or that of others, consider the use of positive behavioral interventions and supports, and other strategies, to address that behavior.

(2) In the case of a pupil with limited-English proficiency, consider the language needs of the pupil as those needs relate to the pupil's individualized education program.

(3) In the case of a pupil who is blind or visually impaired, provide for instruction in braille, and the use of braille, unless the individualized education program team determines, after an assessment of the pupil's reading and writing skills, needs, and appropriate reading and writing media, including an assessment of the pupil's future needs for instruction in braille or the use of braille, that instruction in braille or the use of braille is not appropriate for the pupil.

(4) Consider the communication needs of the pupil, and in the case of a pupil who is deaf or hard of hearing, consider the pupil's language and communication needs, opportunities for direct communications with peers and professional personnel in the pupil's language and communication mode, academic level, and full range of needs, including

opportunities for direct instruction in the pupil's language and communication mode.

(5) Consider whether the pupil requires assistive technology devices and services as defined in paragraphs (1) and (2) of Section 1401 of Title 20 of the United States Code.

(c) If, in considering the special factors described in subdivisions (a) and (b), the individualized education program team determines that a pupil needs a particular device or service, including an intervention, accommodation, or other program modification, in order for the pupil to receive a free appropriate public education, the individualized education program team shall include a statement to that effect in the pupil's individualized education program.

(d) The individualized education program team shall review the pupil's individualized education program periodically, but not less frequently than annually, to determine whether the annual goals for the pupil are being achieved, and revise the individualized education program, as appropriate, to address among other matters the following:

(1) Any lack of expected progress toward the annual goals and in the general curriculum, where appropriate.

(2) The results of any reassessment conducted pursuant to Section 56381.

(3) Information about the pupil provided to, or by, the parents or guardians, as described in subdivision (b) of Section 56381.

(4) The pupil's anticipated needs.

(5) Any other relevant matter.

(e) A regular education teacher of the pupil, who is a member of the individualized education program team, shall participate in the review and revision of the individualized education program of the pupil consistent with subparagraph (C) of paragraph (1) of subsection (d) of Section 1414 of Title 20 of the United States Code.

(f) The parent or guardian shall have the right to present information to the individualized education program team in person or through a representative and the right to participate in meetings, relating to eligibility for special education and related services, recommendations, and program planning.

(g) (1) Notwithstanding Section 632 of the Penal Code, the parent or guardian, or local educational agency shall have the right to record electronically the proceedings of individualized education program team meetings on an audiotape recorder. The parent or guardian, or local educational agency shall notify the members of the individualized education program team of their intent to record a meeting at least 24 hours prior to the meeting. If the local educational agency initiates the notice of intent to audiotape record a meeting and the parent or guardian

objects or refuses to attend the meeting because it will be tape recorded, the meeting shall not be recorded on an audiotape recorder.

(2) The Legislature hereby finds as follows:

(A) Under federal law, audiotape recordings made by a local educational agency are subject to the federal Family Educational Rights and Privacy Act (20 U.S.C. Sec. 1232g), and are subject to the confidentiality requirements of the regulations under Sections 300.560 to 300.575, inclusive, of Part 34 of the Code of Federal Regulations.

(B) Parents or guardians have the right, pursuant to Sections 99.10 to 99.22, inclusive, of Title 34 of the Code of Federal Regulations, to do all of the following:

(i) Inspect and review the tape recordings.

(ii) Request that the tape recordings be amended if the parent or guardian believes that they contain information that is inaccurate, misleading, or in violation of the rights of privacy or other rights of the individual with exceptional needs.

(iii) Challenge, in a hearing, information that the parent or guardian believes is inaccurate, misleading, or in violation of the individual's rights of privacy or other rights.

(h) It is the intent of the Legislature that the individualized education program team meetings be nonadversarial and convened solely for the purpose of making educational decisions for the good of the individual with exceptional needs.

SEC. 27. Section 56341.5 of the Education Code is amended to read:

56341.5. (a) Each local educational agency 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) As part of the participation of an individual with exceptional needs in the development of an individualized education program, as required

by federal law, the individual with exceptional needs shall be allowed to provide confidential input to any representative of his or her individualized education program team.

(e) For an individual with exceptional needs, beginning no later than the effective date of the individualized education program in effect when the individual reaches the age of 16 years, or younger if determined appropriate by the individualized education program team, the meeting notice shall also indicate that a purpose of the meeting will be the consideration of the postsecondary goals and transition services for the individual, pursuant to Section 56345.1 and subclause (VIII) of clause (i) of subparagraph (A) of paragraph (1) of subsection (d) of Section 1414 of Title 20 of the United States Code, and the meeting notice shall indicate that the individual with exceptional needs is invited to attend. If the pupil does not attend the individualized education program meeting, the local educational agency 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.

(f) 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.

(g) If no parent or guardian can attend the meeting, the local educational agency shall use other methods to ensure parent or guardian participation, including individual or conference telephone calls.

(h) A meeting may be conducted without a parent or guardian in attendance if the local educational agency is unable to convince the parent or guardian that he or she should attend. In this event, the local educational agency 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.

(i) The local educational agency shall take any action 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.

(j) The local educational agency shall give the parent or guardian a copy of the individualized education program, at no cost to the parent or guardian.

SEC. 27.5. 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 60 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 60-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. 28. Section 56345 of the Education Code is repealed.

SEC. 29. Section 56345 is added to the Education Code, to read:

56345. (a) The individualized education program is a written statement for each individual with exceptional needs that is developed, reviewed, and revised in accordance with this section, as required by subsection (d) of Section 1414 of Title 20 of the United States Code, and that includes the following:

(1) A statement of the individual's present levels of academic achievement and functional performance, including the following:

(A) The manner in which the disability of the individual affects his or her involvement and progress in the general education curriculum.

(B) For preschool children, as appropriate, the manner in which the disability affects his or her participation in appropriate activities.

(C) For individuals with exceptional needs who take alternate assessments aligned to alternate achievement standards, a description of benchmarks or short-term objectives.

(2) A statement of measurable annual goals, including academic and functional goals, designed to do the following:

(A) Meet the individual's needs that result from the individual's disability to enable the pupil to be involved in and make progress in the general curriculum.

(B) Meet each of the pupil's other educational needs that result from the individual's disability.

(3) A description of the manner in which the progress of the pupil toward meeting the annual goals described in paragraph (2) will be measured and when periodic reports on the progress the pupil is making toward meeting the annual goals, such as through the use of quarterly or other periodic reports, concurrent with the issuance of report cards, will be provided.

(4) A statement of the special education and related services and supplementary aids and services, based on peer-reviewed research to the extent practicable, 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 to the pupil to do the following:

(A) To advance appropriately toward attaining the annual goals.

(B) To be involved in and make progress in the general education curriculum in accordance with paragraph (1) and to participate in extracurricular and other nonacademic activities.

(C) To be educated and participate with other individuals with exceptional needs and nondisabled pupils in the activities described in this subdivision.

(5) An explanation of the extent, if any, to which the pupil will not participate with nondisabled pupils in the regular class and in the activities described in subparagraph (C) of paragraph (4).

(6) (A) A statement of any individual appropriate accommodations that are necessary to measure the academic achievement and functional performance of the pupil on state and districtwide assessments consistent with subparagraph (A) of paragraph (16) of subsection (a) of Section 1412 of Title 20 of the United States Code.

(B) If the individualized education program team determines that the pupil shall take an alternate assessment on a particular state or districtwide assessment of pupil achievement, a statement of the following:

(i) The reason why the pupil cannot participate in the regular assessment.

(ii) The reason why the particular alternate assessment selected is appropriate for the pupil.

(7) The projected date for the beginning of the services and modifications described in paragraph (4), and the anticipated frequency, location, and duration of those services and modifications.

(8) Beginning not later than the first individualized education program to be in effect when the pupil is 16 years of age, and updated annually thereafter, the following shall be included:

(A) Appropriate measurable postsecondary goals based upon age-appropriate transition assessments related to training, education, employment, and where appropriate, independent living skills.

(B) The transition services, as defined in Section 56345.1, including courses of study, needed to assist the pupil in reaching those goals.

(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) Pursuant to Section 300.309 of Title 34 of the Code of Federal Regulations, extended school year services shall be included in the individualized education program and provided to the pupil if the pupil's individualized education program team determines, on an individual basis, that the services are necessary for the provision of a free appropriate public education to the pupil.

(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 the services that constitute 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 "Deaf Students Education Services Policy Guidance" (57 Fed. Reg. 49274 (October 1992)), 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 federal Vocational Rehabilitation Act of 1973 (29 U.S.C. Sec. 794 et seq.) and the federal Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12101 et seq.).

(e) State moneys appropriated to 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.

(g) Beginning not later than one year before the pupil reaches the age 18, a statement that the pupil has been informed of the pupil's rights under this part, if any, that will transfer to the pupil upon reaching the age of 18 pursuant to Section 56041.5.

(h) The individualized education program team is not required to include information under one component of a pupil's individualized education program that is already contained under another component of the individualized education program.

(i) This section does not require that additional information, beyond that expressly required by Section 1414 of Title 20 of the United States Code and this part, be included in the individualized education program of a pupil.

SEC. 30. Section 56345.1 of the Education Code is amended to read:

56345.1. (a) The term "transition services," as defined in paragraph (34) of Section 1401 of Title 20 of the United States Code and as used in subparagraph (B) of paragraph (8) of subdivision (a) of Section 56345, means a coordinated set of activities for an individual with exceptional needs that does all of 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, if appropriate, acquisition of daily living skills and functional vocational evaluation.

(b) 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 paragraph (6) of subsection (d) of Section 1414 of Title 20 of the United States Code and paragraph (8) of subdivision (a) of Section 56345, 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. 31. Section 56346 of the Education Code is repealed.

SEC. 32. Section 56346 is added to the Education Code, to read:

56346. (a) A local educational agency that is responsible for making a free appropriate public education and related services to the child with a disability under this part shall seek to obtain informed consent from the parent of the child before providing special education and related services to the child pursuant to subclause (II) of clause (i) of subparagraph (D) of paragraph (1) of subsection (a) of Section 1414 of Title 20 of the United States Code.

(b) If the parent of the child refuses to consent to the initiation of services pursuant to subdivision (a), the local educational agency shall not provide special education and related services to the child by utilizing the procedures in Section 1415 of Title 20 of the United States Code or the procedures in subdivision (e) of Section 56506.

(c) If the parent of the child refuses to consent to the receipt of special education and related services, or the parent fails to respond to a request to provide the consent, both of the following are applicable:

(1) The local educational agency shall not be considered to be in violation of the requirement to make available a free appropriate public education to the child for the failure to provide the child with the special education and related services for which the local educational agency requests consent.

(2) The local educational agency shall not be required to convene an individualized education program meeting or develop an individualized education program under this part for the child for the special education and related services for which the local educational agency requests consent.

(d) If the parent or guardian of a child who is an individual with exceptional needs refuses all services in the individualized education program after having consented to those services in the past, the local educational agency shall file a request for due process pursuant to Chapter 5 (commencing with Section 56500).

(e) If the parent of the child consents in writing to the receipt of special education and related services for the child but 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 child.

(f) If the local educational agency determines that the proposed special education program component to which the parent does not consent is necessary to provide a free appropriate public education to the child, a due process hearing shall be initiated in accordance with subsection (f) of Section 1415 of Title 20 of the United States Code. 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 resolution

session, mediation conference, or due process hearing is pending, the child shall remain in his or her current placement, unless the parent and the local educational agency agree otherwise.

SEC. 33. Section 56363 of the Education Code is amended to read:

56363. (a) As used in this part, the term “designated instruction and services” means “related services” as that term is defined in paragraph (26) of Section 1401 of Title 20 of the United States Code and Section 300.24 of Title 34 of the Code of Federal Regulations. The term “related services” means transportation, and such developmental, corrective, and other supportive services (including speech-language pathology and audiology services, interpreting services, psychological services, physical and occupational therapy, recreation, including therapeutic recreation, social work services, school nurse services designed to enable an individual with exceptional needs to receive a free appropriate public education as described in the individualized education program of the child, counseling services, including rehabilitation counseling, orientation and mobility services, and medical services, except that such medical services shall be for diagnostic and evaluation purposes only) as may be required to assist an individual with exceptional needs to benefit from special education, and includes the early identification and assessment of disabling conditions in children.

(b) These services may include, but are not limited to, the following:

(1) Language and speech development and remediation. The language and speech development and remediation services may be provided by a speech-language pathology assistant as defined in subdivision (f) of Section 2530.2 of the Business and Professions Code.

(2) Audiological services.

(3) Orientation and mobility services.

(4) Instruction in the home or hospital.

(5) Adapted physical education.

(6) Physical and occupational therapy.

(7) Vision services.

(8) Specialized driver training instruction.

(9) Counseling and guidance services, including rehabilitation counseling.

(10) Psychological services other than assessment and development of the individualized education program.

(11) Parent counseling and training.

(12) Health and nursing services, including school nurse services designed to enable an individual with exceptional needs to receive a free appropriate public education as described in the individualized education program.

(13) Social worker services.

- (14) Specially designed vocational education and career development.
- (15) Recreation services.
- (16) Specialized services for low-incidence disabilities, such as readers, transcribers, and vision and hearing services.
- (17) Interpreting services.

(c) The terms “designated instruction and services” and “related services” do not include a medical device that is surgically implanted, or the replacement of that device.

SEC. 34. Section 56380 of the Education Code is amended to read:

56380. (a) Pursuant to subparagraphs (A) and (B) of paragraph (4) of subsection (d) of Section 1414 of Title 20 of the United States Code, the local educational agency shall maintain procedures to ensure that the individualized education program team does both of the following:

(1) Reviews the pupil’s individualized education program periodically, but not less frequently than annually, to determine whether the annual goals for the pupil are being achieved.

(2) Revises the individualized education program as appropriate to address, among other matters, the provisions specified in subdivision (d) of Section 56341.1.

(b) The annual review of an individualized education program shall be conducted in accordance with the notice and scheduling requirements for the initial assessment.

(c) This section does not preclude other meetings of the individualized education program team from occurring as provided in Section 56343.

SEC. 35. Section 56380.1 is added to the Education Code, to read:

56380.1. (a) In making changes to a pupil’s individualized education program after the annual individualized education program meeting for a school year, the parent of the individual with exceptional needs and the local educational agency may agree, pursuant to subparagraph (D) of paragraph (3) of subsection (d) of Section 1414 of the United States Code, not to convene an individualized education program meeting for the purposes of making those changes, and instead may develop a written document, signed by the parent and by a representative of the local educational agency, to amend or modify the pupil’s existing individualized education program.

(b) Changes to the individualized education program may be made, in accordance with subparagraph (F) of paragraph (3) of subsection (d) of Section 1414 of the United States Code, either by the entire individualized education program team, as provided in subdivision (a), or by amending the individualized education program rather than by redrafting the entire individualized education program. Upon request, a parent shall be provided with a revised copy of the individualized education program with the amendments incorporated.

SEC. 36. Section 56381 of the Education Code is amended to read:

56381. (a) (1) A reassessment of the pupil, based upon procedures specified in Section 56302.1 and in Article 2 (commencing with Section 56320), and in accordance with subsections (a), (b), and (c) of Section 1414 of Title 20 of the United States Code, shall be conducted if the local educational agency determines that the educational or related services needs, including improved academic achievement and functional performance, of the pupil warrant a reassessment, or if the pupil's parents or teacher requests a reassessment.

(2) A reassessment shall occur not more frequently than once a year, unless the parent and the local educational agency agree otherwise, and shall occur at least once every three years, unless the parent and the local educational agency agree, in writing, that a reassessment is unnecessary.

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, and to determine the educational needs of the pupil, 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, and to determine the educational needs of the pupil. 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 in accordance with Section 1414 of Title 20 of the United States Code.

(i) (1) The assessment described in subdivision (h) shall not be required before the termination of a pupil's eligibility under this part due to graduation from secondary school with a regular diploma, or due to exceeding the age eligibility for a free appropriate public education under Section 56026.

(2) For a pupil whose eligibility under this part terminates under circumstances described in paragraph (1), a local educational agency shall provide the pupil with a summary of the pupil's academic achievement and functional performance, which shall include recommendations on the manner in which to assist the pupil in meeting

his or her postsecondary educational goals as required in clause (ii) of subparagraph (B) of paragraph (5) of subsection (c) of Section 1414 of Title 20 of the United States Code.

(j) To the extent possible, the local educational agency shall encourage the consolidation of reassessment meetings for the individual with exceptional needs and other individualized education program team meetings for the individual.

SEC. 37. Section 56385 of the Education Code is amended to read:

56385. (a) As provided in paragraph (16) of subsection (a) of Section 1412 of Title 20 of the United States Code, individuals with exceptional needs shall be included in general statewide and districtwide assessment programs, including assessments described under Section 1111 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. Sec. 6301 et seq.), with appropriate accommodations and alternate assessments where necessary and as indicated in their respective individualized education programs.

(b) The Superintendent, or in the case of a districtwide assessment, the local educational agency, shall develop and implement guidelines for the participation of individuals with exceptional needs in alternate assessments for those pupils who cannot participate in regular assessments described in subdivision (a) with accommodations as indicated by their respective individualized education programs. The guidelines shall provide for alternate assessments that meet the following requirements:

(1) Are aligned with the state's challenging academic content standards and challenging pupil academic achievement standards.

(2) If the state has adopted alternate academic achievement standards permitted under the regulations promulgated to carry out paragraph (1) of subsection (b) of Section 1111 of the Elementary and Secondary Education Act of 1965, measure the achievement of individuals with exceptional needs against those standards.

(c) The department, or in the case of a districtwide assessment, the local educational agency, shall make available to the public reports regarding the assessment of pupils that have been identified as individuals with exceptional needs with the same frequency and in the same detail as it reports on the assessment of pupils that have not been so identified, in accordance with subparagraph (D) of paragraph (16) of subsection (a) of Section 1412 of Title 20 of the United States Code.

(d) The Superintendent, or, in the case of a districtwide assessment, the local educational agency, shall, to the extent feasible, pursuant to subparagraph (E) of paragraph (16) of subsection (a) of Section 1412 of Title 20 of the United States Code, use universal design principles in developing and administering any assessments under this section.

SEC. 37.5. Section 56435 of the Education Code is repealed.

SEC. 38. Section 56449 of the Education Code is repealed.

SEC. 38.5. Section 56500.2 of the Education Code is amended to read:

56500.2. (a) A complaint filed with the department regarding any alleged violations of the Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400 et seq.) or a provision of this part shall be investigated in an expeditious and effective manner pursuant to Chapter 5.1 (commencing with Section 4600) of Title 5 of the California Code of Regulations and Sections 300.660 to 300.662, inclusive, of Title 34 of the Code of Federal Regulations.

(b) Pursuant to subsection (c) of Section 300.662 of Title 34 of the Code of Federal Regulations, a complaint filed under subdivision (a) shall allege a violation that occurred not more than one year prior to the date that the complaint is received by the department.

SEC. 39. 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 education 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) In accordance with subparagraph (F) of paragraph (2) of subsection (e) of Section 1415 of Title 20 of the United States Code, if a resolution is reached that resolves the due process issue through the mediation process, the parties shall execute a legally binding written agreement that sets forth the resolution and that does the following:

(1) States that all discussions that occurred during the mediation process shall be confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding.

(2) Is signed by both the parent and the representative of the public education agency who has the authority to bind the agency.

(3) Is enforceable in any state court of competent jurisdiction or in a federal district court of the United States.

(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 education 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. 40. Section 56500.4 of the Education Code is amended to read:

56500.4. Pursuant to paragraphs (3) and (4) of subsection (b) and paragraph (1) of subsection (c) 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, prior written notice shall be given by the public education 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, and when the public education agency proposes to initiate or change, or refuses to initiate or change, the identification, assessment, or educational placement of the child, or the provision of a free appropriate public education to the child.

SEC. 41. Section 56501.5 is added to the Education Code, to read:

56501.5. (a) Notwithstanding any other provision of law, prior to a party invoking his or her right to an impartial due process hearing under this chapter, the local educational agency shall convene a resolution session, which is a meeting between the parents and the relevant member or members of the individualized education program team who have specific knowledge of the facts identified in the due process hearing request, in accordance with subparagraph (B) of paragraph (1) of subsection (f) of Section 1415 of Title 20 of the United States Code.

(1) The meeting shall be convened within 15 days of receiving notice of the parents' due process hearing request.

(2) The meeting shall include a representative of the local educational agency who has decisionmaking authority on behalf of the agency.

(3) The meeting shall not include an attorney of the local educational agency, unless the parent is accompanied by an attorney.

(4) At the meeting, the parents of the child may discuss their due process hearing issue, and the facts that form the basis of the due process hearing request, and the local educational agency shall be provided the opportunity to resolve the matter.

(b) The resolution session described in subdivision (a) is not required if the parents and the local educational agency agree in writing to waive the meeting, or agree to use mediation as provided for in this chapter.

(c) If the local educational agency has not resolved the due process hearing issue to the satisfaction of the parents within 30 days of the receipt of the due process hearing request notice, the due process hearing may occur, and all of the applicable timelines for a due process hearing under this chapter shall commence.

(d) In the case that a resolution is reached to resolve the due process hearing issue at a meeting described in subdivision (a), the parties shall execute a legally binding agreement that is both of the following:

(1) Signed by both the parent and a representative of the local educational agency who has the authority to bind the agency.

(2) Enforceable in any state court of competent jurisdiction or in a federal district court of the United States.

(e) If the parties execute an agreement pursuant to subdivision (d), a party may void the agreement within three business days of the agreement's execution.

SEC. 42. 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) (1) The party, or the attorney representing 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. The due process hearing request notice shall remain confidential. In accordance with subparagraph (A) of paragraph (7) of subsection (b) of Section 1415 of Title 20 of the United States Code, the request shall include the following:

(A) The name of the child, the address of the residence of the child, or available contact information in the case of a homeless child, and the name of the school the child is attending.

(B) In the case of a homeless child or youth within the meaning of paragraph (2) of Section 725 of the federal McKinney-Vento Homeless Assistance Act (42 U.S.C. Sec. 11434a(2)), available contact information for the child and the name of the school the child is attending.

(C) A description of the nature of the problem of the child relating to the proposed initiation or change, including facts relating to the problem.

(D) A proposed resolution of the problem to the extent known and available to the party at the time.

(2) A party may not have a due process hearing until the party, or the attorney representing the party, files a request that meets the requirements listed in this subdivision.

(d) (1) The due process hearing request notice required by subparagraph (A) of paragraph (7) of subsection (b) of Section 1415 of

Title 20 of the United States Code shall be deemed to be sufficient unless the party receiving the notice notifies the due process hearing officer and the other party in writing that the receiving party believes the due process hearing request notice has not met the notice requirements. The party providing a hearing officer notification shall provide the notification within 15 days of receiving the due process hearing request notice. Within five days of receipt of the notification, the hearing officer shall make a determination on the face of the notice of whether the notification meets the requirements of subparagraph (A) of paragraph (7) of subsection (b) of Section 1415 of Title 20 of the United States Code, and shall immediately notify the parties in writing of the determination.

(2) The response to the due process hearing request notice shall be made within 10 days of receiving the request notice in accordance with subparagraph (B) of paragraph (2) of subsection (c) of Section 1415 of Title 20 of the United States Code.

(e) A party may amend a due process hearing request notice only if the other party consents in writing to the amendment and is given the opportunity to resolve the hearing issue through a meeting held pursuant to subparagraph (B) of paragraph (1) of subsection (f) of Section 1415 of Title 20 of the United States Code, or the due process hearing officer grants permission, except that the hearing officer may only grant permission at any time not later than five days before a due process hearing occurs. The applicable timeline for a due process hearing under this chapter shall recommence at the time the party files an amended notice, including the timeline under subparagraph (B) of paragraph (1) of subsection (f) of Section 1415 of Title 20 of the United States Code.

(f) 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.

(g) 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.

(h) 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.

(i) In accordance with subparagraph (B) of paragraph (3) of subsection (f) of Section 1415 of Title 20 of the United States Code, the party requesting the due process hearing shall not be allowed to raise issues at the due process hearing that were not raised in the notice filed under this section, unless the other party agrees otherwise.

SEC. 43. 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) (1) The hearing shall be conducted by a person who shall, at a minimum possess knowledge of, and the ability to understand, the provisions of this part and related state statutes and implementing regulations, the federal Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400 et seq.), federal regulations pertaining to the act, and legal interpretations of this part and the federal law by federal and state courts, 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.

(2) The hearing officer shall possess the knowledge and ability to conduct hearings in accordance with appropriate, standard legal practice.

(3) The hearing officer shall possess the knowledge and ability to render and write decisions in accordance with appropriate, standard legal practice.

(4) A due process hearing may not be conducted by any individual listed in clause (i) of subparagraph (A) of paragraph (3) of subsection (f) of Section 1415 of Title 20 of the United States Code. 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 education 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 parent or guardian of the pupil 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) (1) In accordance with subparagraph (E) of paragraph (3) of subsection (f) of Section 1415 of Title 20 of the United States Code, the decision of a due process hearing officer shall be made on substantive grounds based on a determination of whether the child received a free appropriate public education.

(2) In matters alleging a procedural violation, a due process hearing officer may find that a child did not receive a free appropriate public education only if the procedural violation did any of the following:

(A) Impeded the child's right to a free appropriate public education.

(B) Significantly impeded the parents' opportunity to participate in the decisionmaking process regarding the provision of a free appropriate public education to the parents' child.

(C) Caused a deprivation of educational benefits.

(3) The hearing conducted pursuant to this section shall be completed and a written, reasoned decision, including the reasons for any nonpublic, nonsectarian school placement, the provision of nonpublic, nonsectarian agency services, or the reimbursement for the placement or services, taking into account the requirements of subdivision (a) of Section 56365, shall be 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.

(4) This subdivision does not preclude a due process hearing officer from ordering a local educational agency to comply with procedural requirements under this chapter.

(g) Subdivision (f) does not alter the burden of proof required in a due process hearing, or prevent a hearing officer from ordering a compensatory remedy for an individual with exceptional needs.

(h) The hearing conducted pursuant to this section shall be the final administrative determination and binding on all parties.

(i) 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.

(j) 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.

(k) 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), the child involved in the hearing shall remain in his or her present educational placement, unless the public education agency and the parent or guardian of the child agree otherwise. 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.

(l) 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. A party initiating a request for a due process hearing on and after the effective date of the act that amends this subdivision in the 2005-06 Regular Session, may file the request within the two-year statute of limitations provision in subparagraph (B) of paragraph (6) of subsection (b) of Section 1415 of the United States Code. A party may file a request within the three-year statute of limitations provision of this subdivision until October 9, 2006, but shall,

in accordance with Section 56501.5, participate in a mediation conference which shall be conducted pursuant to this chapter in an effort to resolve the due process hearing issue. In accordance with subparagraph (D) of paragraph (3) of subsection (f) of Section 1415 of Title 20 of the United States Code, the time periods described in this subdivision shall not apply to a parent if the parent was prevented from requesting the due process hearing due to either of the following:

(1) Specific misrepresentations by the local educational agency that it had solved the problem forming the basis of the due process hearing request.

(2) The local educational agency's withholding of information from the parent that was required under this part to be provided to the parent.

(m) 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.

(n) This section shall remain in effect only until October 9, 2006, and as of that date is repealed.

SEC. 43.5. Section 56505 is added to the Education Code, 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) (1) The hearing shall be conducted by a person who shall, at a minimum, possess knowledge of, and the ability to understand, the provisions of this part and related state statutes and implementing regulations, the federal Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400 et seq.), federal regulations pertaining to the act, and legal interpretations of this part and the federal law by federal and state courts, 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.

(2) The hearing officer shall possess the knowledge and ability to conduct hearings in accordance with appropriate, standard legal practice.

(3) The hearing officer shall possess the knowledge and ability to render and write decisions in accordance with appropriate, standard legal practice.

(4) A due process hearing may not be conducted by any individual listed in clause (i) of subparagraph (A) of paragraph (3) of subsection (f) of Section 1415 of Title 20 of the United States Code. 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 education 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 parent or guardian of the pupil 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) (1) In accordance with subparagraph (E) of paragraph (3) of subsection (f) of Section 1415 of Title 20 of the United States Code, the decision of a due process hearing officer shall be made on substantive grounds based on a determination of whether the child received a free appropriate public education.

(2) In matters alleging a procedural violation, a due process hearing officer may find that a child did not receive a free appropriate public education only if the procedural violation did any of the following:

(A) Impeded the child's right to a free appropriate public education.

(B) Significantly impeded the parents' opportunity to participate in the decisionmaking process regarding the provision of a free appropriate public education to the parents' child.

(C) Caused a deprivation of educational benefits.

(3) The hearing conducted pursuant to this section shall be completed and a written, reasoned decision, including the reasons for any nonpublic, nonsectarian school placement, the provision of nonpublic, nonsectarian agency services, or the reimbursement for the placement or services, taking into account the requirements of subdivision (a) of Section 56365, shall be 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.

(4) This subdivision does not preclude a due process hearing officer from ordering a local educational agency to comply with procedural requirements under this chapter.

(g) Subdivision (f) does not alter the burden of proof required in a due process hearing, or prevent a hearing officer from ordering a compensatory remedy for an individual with exceptional needs.

(h) The hearing conducted pursuant to this section shall be the final administrative determination and binding on all parties.

(i) 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.

(j) 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.

(k) 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), the child involved in the hearing shall remain in his or her present educational placement, unless the public education agency and the parent or guardian of the child agree otherwise. 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.

(l) Any request for a due process hearing arising under subdivision (a) of Section 56501 shall be filed within two years from the date the party initiating the request knew or had reason to know of the facts underlying the basis for the request. In accordance with subparagraph (D) of paragraph (3) of subsection (f) of Section 1415 of Title 20 of the United States Code, the time period specified in this subdivision does not apply to a parent if the parent was prevented from requesting the due process hearing due to either of the following:

(1) Specific misrepresentations by the local educational agency that it had solved the problem forming the basis of the due process hearing request.

(2) The local educational agency's withholding of information from the parent that was required under this part to be provided to the parent.

(m) 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.

(n) A party who filed for a due process hearing prior to the effective date of this section is not bound by the two-year statute of limitations time period in subdivision (l) if the party filed a request within the three-year statute of limitations provision pursuant to subdivision (l) as it read prior to October 9, 2006.

(o) This section shall become operative October 9, 2006.

SEC. 44. 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 56346 shall be obtained before the pupil is placed in a special education program.

(g) A parent of an individual with exceptional needs may elect to receive notices required under this chapter by an electronic mail communication, if the local educational agency makes that option available, in accordance with subsection (n) of Section 1415 of Title 20 of the United States Code.

SEC. 45. Section 56507 of the Education Code is amended to read:

56507. (a) If either party to a due process hearing intends to be represented by an attorney in the state hearing, notice of that intent shall be given to the other party at least 10 days prior to the hearing. The failure to provide that notice shall constitute good cause for a continuance.

(b) (1) An award of reasonable attorneys' fees to the prevailing parent, guardian, or pupil, as the case may be, may only be made either with the agreement of the parties following the conclusion of the administrative hearing process or by a court of competent jurisdiction pursuant to paragraph (3) of subsection (i) of Section 1415 of Title 20 of the United States Code.

(2) In accordance with paragraph (3) of subsection (i) of Section 1415 of Title 20 of the United States Code, the court, in its discretion, may award reasonable attorneys' fees as part of the costs to a prevailing party who is a state educational agency or local educational agency in the following circumstances:

(A) Against the attorney of a parent who files a due process hearing request or subsequent cause of action that is frivolous, unreasonable, or without foundation, or against the attorney of a parent who continued to litigate after the litigation clearly became frivolous, unreasonable, or without foundation.

(B) Against the attorney of a parent, or against the parent, if the parent's due process hearing request or subsequent cause of action was presented for any improper purpose, such as to harass, to cause unnecessary delay, or to needlessly increase the cost of litigation.

(c) Public education agencies shall not use federal funds distributed under Part B of the federal Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400 et seq.), or other federal special education funds, for the agency's own legal counsel or other advocacy costs, that may include, but are not limited to, a private attorney or employee of an attorney, legal paraprofessional, or other paid advocate, related to a due process hearing or the appeal of a hearing decision to the courts. Nor shall the funds be used to reimburse parents who prevail and are awarded

attorneys' fees, pursuant to subdivision (b), as part of the judgment. Nothing in this subdivision shall preclude public education agencies from using these funds for attorney services related to the establishment of policy and programs, or responsibilities, under Part B of the Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400 et seq.) and the program administration of these programs. This subdivision does not apply to attorneys and others hired under contract to conduct administrative hearings pursuant to subdivision (a) of Section 56505.

(d) The hearing decision shall indicate the extent to which each party has prevailed on each issue heard and decided, including issues involving other public agencies named as parties to the hearing.

SEC. 46. Section 56509 is added to the Education Code, to read:

56509. This chapter, in accordance with subsection (o) of Section 1415 of Title 20 of the United States Code, does not preclude a parent from filing a separate due process hearing request on an issue separate from a due process hearing request already filed.

SEC. 47. Section 56515 of the Education Code is amended to read:

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.

(c) In accordance with subsection (b) of Section 300.571 of Title 34 of the Code of Federal Regulations, an agency or institution subject to Section 99.1 of Title 34 of the Code of Federal Regulations shall not release information from the education records of an individual with exceptional needs to participating agencies without the consent of the

parent or guardian, unless authorized to do so under Section 99.1 of Title 34 of the Code of Federal Regulations.

SEC. 48. Section 56837 of the Education Code is repealed.

SEC. 49. Section 56837 is added to the Education Code, to read:

56837. For each fiscal year for which federal funds under Part B of the federal Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400 set seq.) are allocated to the state pursuant to subsection (d) of Section 1411 of Title 20 of the United States Code, the federal funding for local entitlements shall be allocated through the annual Budget Act in the following manner:

(a) The state shall first award each local educational agency, including public charter schools that operate as local educational agencies, the amount the local educational agency would have received under Section 1411 for the 1999 fiscal year.

(b) After calculating the allocations under subdivision (a), the state shall do both of the following:

(1) Allocate 85 percent of any remaining funds to the local educational agencies described in subdivision (a) on the basis of the relative numbers of pupils enrolled in public and private elementary schools and secondary schools within each local educational agency's territorial jurisdiction.

(2) Allocate 15 percent of the remaining funds to those local educational agencies described in subdivision (a) in accordance with the relative numbers of children living in poverty within each local educational agency's jurisdiction, as determined by the Superintendent.

SEC. 50. Section 56838 of the Education Code is amended to read:

56838. In each fiscal year for which federal funds are received by the state pursuant to Section 1419 of Title 20 of the United States Code for individuals with exceptional needs between the ages of 3 and 5, inclusive, the portion of funds available for local entitlements that are not reserved for state activities pursuant to subsection (d) of Section 1419 of Title 20 of the United States Code shall be allocated through the annual Budget Act in the following manner:

(a) The state shall first award to each local educational agency, including public charter schools that operate as local educational agencies, the amount the local educational agency would have received under Section 1419 of Title 20 of the United States Code for the 1997 federal fiscal year.

(b) After calculating the allocations under subdivision (a), the state shall do both of the following:

(1) Allocate 85 percent of any remaining funds to those local educational agencies described in subdivision (a) on the basis of the relative numbers of pupils enrolled in public and private elementary

schools and secondary schools within each local educational agency's territorial jurisdiction.

(2) Allocate 15 percent of those remaining funds to the local educational agencies in accordance with the relative number of children within each local educational agency living in poverty, as determined by the Superintendent.

SEC. 51. Section 56841 of the Education Code is amended to read:

56841. (a) Federal funds available through Part B of the federal Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400 et seq.) and appropriated through the annual Budget Act shall only be used as follows:

(1) For the excess costs of providing special education and related services to individuals with exceptional needs.

(2) To supplement state, local, and other federal funds and not to supplant those funds.

(b) Except as provided in subdivisions (c) and (d), the funds shall not be used to reduce the level of expenditures for the education of individuals with exceptional needs made by the local educational agency from local funds below the level of those expenditures for the preceding fiscal year.

(c) Notwithstanding subdivision (b), a local educational agency may reduce the level of expenditures from local funds where the reduction is attributable to the following:

(1) The voluntary departure, by retirement or otherwise, or departure for just cause, of special education personnel.

(2) A decrease in the enrollment of individuals with exceptional needs.

(3) The termination of the obligation of the local educational agency, consistent with this part, to provide a program of special education to an individual or individuals with exceptional needs that is an exceptionally costly program, as determined by the Superintendent, because any of the following is applicable:

(A) The child has left the jurisdiction of the local educational agency.

(B) The child has reached the age at which the obligation of the local educational agency to provide a free appropriate public education to the child has terminated.

(C) The child no longer needs the program of special education.

(4) The termination of costly expenditures for long-term purchases, such as the acquisition of equipment or the construction of facilities.

(d) Notwithstanding the provisions of paragraph (2) of subdivision (a) and subdivision (b), for any fiscal year in which the allocation received by a local educational agency under subsection (f) of Section 1411 of Title 20 of the United States Code exceeds the amount the local educational agency received for the previous fiscal year, the local

educational agency may reduce the level of expenditures otherwise required by clause (iii) of subparagraph (A) of paragraph (2) of subsection (a) of Section 1413 of Title 20 of the United States Code by not more than 50 percent of the amount of the excess. If a local educational agency exercises the authority under this subdivision, the local educational agency shall use an amount of local funds equal to the reduction in expenditures under this subdivision to carry out activities authorized under the federal Elementary and Secondary Education Act of 1965 (20 U.S.C. Sec. 6301 et seq.).

(e) Notwithstanding subdivision (d), if the Superintendent determines that a local educational agency is unable to establish and maintain programs of free appropriate public education that meet the requirements of subsection (a) of Section 1413 of Title 20 of the United States Code, or if the Superintendent has taken action against the local educational agency under Section 1416 of Title 20 of the United States Code, the Superintendent shall prohibit the local educational agency from reducing the level of expenditures under subdivision (d) for that fiscal year.

(f) The amount of funds expended by a local educational agency under subsection (f) of Section 1413 of the United States Code for early intervention services shall count toward the maximum amount of expenditures the local educational agency may reduce under subdivision (d) of this section.

(g) Notwithstanding subparagraph (A) of paragraph (2) of subsection (a) of Section 1413 of Title 20 of the United States Code or any other provision of the federal Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400 et seq.), a local educational agency may use federal special education funds for any fiscal year to carry out a schoolwide program under Section 1114 of the federal Elementary and Secondary Education Act of 1965 (20 U.S.C. Sec. 6301 et seq.), except that the amount so used in any such program shall not exceed the number of individuals with exceptional needs participating in the schoolwide program, multiplied by the amount received by the local educational agency under this article for that fiscal year, and divided by the number of individuals with exceptional needs in the jurisdiction of that local educational agency.

(h) Notwithstanding subdivisions (a) to (g), inclusive, a local educational agency may also use federal special education funds for other purposes specified in subsection (a) of Section 1413 of Title 20 of the United States Code.

SEC. 52. Section 56842 of the Education Code is repealed.

SEC. 53. Section 56842 is added to the Education Code, to read:

56842. (a) A local educational agency may not use more than 15 percent of the amount the agency receives under Part B of the federal

Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400 et seq.) for any fiscal year, less any amount reduced by the local educational agency pursuant to subparagraph (C) of paragraph (2) of subsection (a) of Section 1413 of Title 20 of the United States Code, if any, in combination with other amounts, which may include amounts other than education funds, to develop and implement, coordinated, early intervening services, which may include interagency financing structures, for pupils in kindergarten and in grades 1 to 12, inclusive, with a particular emphasis on pupils in kindergarten and in grades 1 to 3, inclusive, who have not been identified as needing special education or related services but who need additional academic and behavioral support to succeed in a general education environment.

(b) The implementation of the coordinated, early intervening services under this section, including activities, reporting, and coordination with the federal Elementary and Secondary Education Act of 1965 (20 U.S.C. Sec. 6301 et seq.), shall be carried out by a local educational agency as specified in subsection (f) of Section 1413 of Title 20 of the United States Code.

(c) This section does not limit or create a right to a free appropriate public education under this part.

SEC. 54. Section 56844 is added to the Education Code, to read:

56844. In complying with paragraph (17), regarding the prohibition against supplantation of federal funds, and paragraph (18), regarding maintenance of state financial support for special education and related services, of subsection (a) of Section 1412 of Title 20 of the United States Code, the state may not use funds paid to it under Part B of the federal Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400 et seq.) to satisfy state-mandated funding obligations to local educational agencies, including funding based on pupil attendance or enrollment, or on inflation.

SEC. 55. Section 7579.5 of the Government Code is amended to read:

7579.5. (a) In accordance with subparagraph (B) of paragraph (2) of subsection (b) of Section 1415 of Title 20 of the United States Code, a local educational agency shall make reasonable efforts to ensure the appointment of a surrogate parent not more than 30 days after there is a determination by the local educational agency that a child needs a surrogate parent. A local educational agency shall appoint a surrogate parent for a child in accordance with Section 300.515 of Title 34 of the Code of Federal Regulations under one or more of the following circumstances:

(1) (A) The child is adjudicated a dependent or ward of the court pursuant to Section 300, 601, or 602 of the Welfare and Institutions Code

upon referral of the child to the local educational agency for special education and related services, or if the child already has a valid individualized education program, (B) the court has specifically limited the right of the parent or guardian to make educational decisions for the child, and (C) the child has no responsible adult to represent him or her pursuant to Section 361 or 726 of the Welfare and Institutions Code or Section 56055 of the Education Code.

(2) No parent for the child can be identified.

(3) The local educational agency, after reasonable efforts, cannot discover the location of a parent.

(b) When appointing a surrogate parent, the local educational agency shall, as a first preference, select a relative caretaker, foster parent, or court-appointed special advocate, if any of these individuals exists and is willing and able to serve. If none of these individuals is willing or able to act as a surrogate parent, the local educational agency shall select the surrogate parent of its choice. If the child is moved from the home of the relative caretaker or foster parent who has been appointed as a surrogate parent, the local educational agency shall appoint another surrogate parent if a new appointment is necessary to ensure adequate representation of the child.

(c) For the purposes of this section, the surrogate parent shall serve as the child's parent and shall have the rights relative to the child's education that a parent has under Title 20 (commencing with Section 1400) of the United States Code and pursuant to Part 300 of Title 34 (commencing with Section 300.1) of the Code of Federal Regulations. The surrogate parent may represent the child in matters relating to special education and related services, including the identification, assessment, instructional planning and development, educational placement, reviewing and revising the individualized education program, and in all other matters relating to the provision of a free appropriate public education of the child. Notwithstanding any other provision of law, this representation shall include the provision of written consent to the individualized education program including nonemergency medical services, mental health treatment services, and occupational or physical therapy services pursuant to this chapter.

(d) The surrogate parent is required to meet with the child at least one time. He or she may also meet with the child on additional occasions, attend the child's individualized education program meetings, review the child's educational records, consult with persons involved in the child's education, and sign any consent relating to individualized education program purposes.

(e) As far as practical, a surrogate parent should be culturally sensitive to his or her assigned child.

(f) The surrogate parent shall comply with federal and state law pertaining to the confidentiality of student records and information and shall use discretion in the necessary sharing of the information with appropriate persons for the purpose of furthering the interests of the child.

(g) The surrogate parent may resign from his or her appointment only after he or she gives notice to the local educational agency.

(h) The local educational agency shall terminate the appointment of a surrogate parent if (1) the person is not properly performing the duties of a surrogate parent or (2) the person has an interest that conflicts with interests of the child entrusted to his or her care.

(i) Individuals who would have a conflict of interest in representing the child, as specified under federal regulations, may not be appointed as a surrogate parent. "An individual who would have a conflict of interest," for purposes of this section, means a person having any interests that might restrict or bias his or her ability to advocate for all of the services required to ensure that the child has a free appropriate public education.

(j) Except for individuals who have a conflict of interest in representing the child, and notwithstanding any other law or regulation, individuals who may serve as surrogate parents include, but are not limited to, foster care providers, retired teachers, social workers, and probation officers who are not employees of the State Department of Education, the local educational agency, or any other agency that is involved in the education or care of the child.

(1) A public agency authorized to appoint a surrogate parent under this section may select a person who is an employee of a nonpublic agency that only provides noneducational care for the child and who meets the other standards of this section.

(2) A person who otherwise qualifies to be a surrogate parent under this section is not an employee of the local educational agency solely because he or she is paid by the local educational agency to serve as a surrogate parent.

(k) The surrogate parent may represent the child until (1) the child is no longer in need of special education, (2) the minor reaches 18 years of age, unless the child chooses not to make educational decisions for himself or herself, or is deemed by a court to be incompetent, (3) another responsible adult is appointed to make educational decisions for the minor, or (4) the right of the parent or guardian to make educational decisions for the minor is fully restored.

(l) The surrogate parent and the local educational agency appointing the surrogate parent shall be held harmless by the State of California

when acting in their official capacity except for acts or omissions that are found to have been wanton, reckless, or malicious.

(m) The State Department of Education shall develop a model surrogate parent training module and manual that shall be made available to local educational agencies.

(n) Nothing in this section may be interpreted to prevent a parent or guardian of an individual with exceptional needs from designating another adult individual to represent the interests of the child for educational and related services.

(o) If funding for implementation of this section is provided, it may only be provided from Item 6110-161-0890 of Section 2.00 of the annual Budget Act.

SEC. 56. Section 7579.6 is added to the Government Code, to read:

7579.6. (a) In accordance with subparagraph (A) of paragraph (2) of subsection (b) of Section 1415 of Title 20 of the United States Code, in the case of a child who is a ward of the state, the surrogate parent described in Section 7579.5 may alternatively be appointed by the judge overseeing the child's care provided that the surrogate meets the requirements of Section 7579.5.

(b) In the case of an unaccompanied homeless youth as defined in paragraph (6) of Section 725 of the federal McKinney-Vento Homeless Assistance Act (42 U.S.C. Sec. 11434a(6)), the local educational agency shall appoint a surrogate in accordance with Section 7579.5.

SEC. 57. The Legislature finds and declares that this act, while protecting the rights of individuals with exceptional needs to receive a free appropriate public education in the least restrictive environment, does not set a higher standard of educating individuals with exceptional needs than that established by federal law under the Individuals with Disabilities Education Improvement Act of 2004 (P.L. 108-446).

SEC. 58. 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. 59. 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 pupils with disabilities receive services, to ensure that state law is in conformity with the federal Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400 et seq.), and to ensure that California continues to receive federal funding to pay for services

provided to pupils with disabilities at the earliest possible time, it is necessary that this act take effect immediately.

CHAPTER 654

An act to amend Sections 70901.1, 71040, 72104, 72401, 72675, 72682, 76067, 76140, 76141, 76142, 76240, 76300, 76360, 76375, 78020, 78021, 78032, 78103, 78271, 84751, 85235, 85236, 85237, 85237.5, 85238, 85239, 85240, 85243, 85244, 85265.5, 85280, 85281, 85282, 85284, 85288, 85301, 85302, 87061, and 87781 of, to amend and renumber Section 72425 of, and to repeal Section 78275.5 of, the Education Code, relating to public postsecondary education, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 7, 2005. Filed with
Secretary of State October 7, 2005.]

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

SECTION 1. Section 70901.1 of the Education Code is amended to read:

70901.1. The Board of Governors of the California Community Colleges shall adopt regulations that permit the governing board of a community college district to allow applications for admission, student residency determination forms, and other documents to be submitted electronically. The regulations shall require that applicants and students be informed of the relative security of the information they submit electronically.

SEC. 2. Section 71040 of the Education Code is amended to read:

71040. The board of governors may allow actual and necessary travel expenses to community college students, faculty, staff, or other community college officials or employees who serve on study teams, task forces, or similar groups formed by the board of governors or by the chancellor's office and who, in these capacities, attend meetings of any association, organization, or agency that has as its principal purpose the study of matters pertinent to education or to a particular field or fields of education relevant to community colleges.

SEC. 3. Section 72104 of the Education Code is amended to read:

72104. No member of the governing board of a community college district shall, during the term for which he or she was elected, be eligible to serve on the governing board of a high school district whose boundaries are coterminous with those of the community college district.

SEC. 4. Section 72401 of the Education Code is amended to read:

72401. (a) Notwithstanding any other provisions of law, any person may be permitted by the governing board of any community college district to serve as a nonteaching volunteer aide under the immediate supervision and direction of the academic personnel of the district to perform noninstructional work that serves to assist the academic personnel in the performance of teaching and administrative responsibilities. A nonteaching volunteer aide shall not be an employee of the district, and shall serve without compensation of any type or other benefits accorded to employees of the district, except as provided in Section 3364.5 of the Labor Code.

(b) No district may abolish any of its classified positions and utilize volunteer aides, as authorized herein, in lieu of classified employees who are laid off as a result of the abolition of a position. A district shall not refuse to employ a person in a vacant classified position and use volunteer aides in lieu thereof.

(c) Volunteer aides may be used to enhance a district's educational program, but not to displace classified employees, nor to allow districts to utilize volunteers in lieu of normal employee requirements.

SEC. 5. Section 72425 of the Education Code is amended and renumbered to read:

72024. (a) (1) In any community college district that is not located in a city and county, and in which the full-time equivalent students (FTES) for the prior college year exceeded 60,000, the governing board may prescribe, as compensation for the services of each member of the board who actually attends all meetings held by the board, a sum not to exceed one thousand five hundred dollars (\$1,500) in any month.

(2) In any community college district in which the FTES for the prior college year was 60,000 or less, but more than 25,000, each member of the governing board of the district who actually attends all meetings held by the board may receive as compensation for his or her services a sum not to exceed seven hundred fifty dollars (\$750) in any month.

(3) In any community college district in which the FTES for the prior college year was 25,000 or less, but more than 10,000, each member of the governing board of the district who actually attends all meetings held may receive as compensation for his or her services a sum not to exceed four hundred dollars (\$400) in any month.

(4) In any community college district in which the FTES for the prior college year was 10,000 or less, but more than 1,000, each member of the governing board of the district who actually attends all meetings held by the board may receive as compensation for his or her services a sum not to exceed two hundred forty dollars (\$240) in any month.

(5) In any community college district in which the FTES for the prior college year was 1,000 or less, but more than 150, each member of the governing board of the district who actually attends all meetings held by the board may receive as compensation for his or her services a sum not to exceed one hundred twenty dollars (\$120) in any month.

(b) Any member of a governing board who does not attend all meetings held by the board in any month may receive, as compensation for his or her services, an amount not greater than a pro rata share of the number of meetings actually attended based upon the maximum compensation authorized by this subdivision.

(c) The compensation of members of the governing board of a community college district newly organized or reorganized shall be governed by subdivision (a). For this purpose, the total FTES in all of the community colleges of the district in the college year in which the organization or reorganization became effective shall be deemed to be the FTES in the district for the prior college year.

(d) A member may be paid for any meeting when absent if the board, by resolution duly adopted and included in its minutes, finds that, at the time of the meeting, he or she is performing services outside the meeting for the community college district, he or she was ill or on jury duty, or the absence was due to a hardship deemed acceptable by the board. The compensation shall be a charge against the funds of the district.

(e) On an annual basis, the governing board may increase the compensation of individual board members beyond the limits delineated in this section, in an amount not to exceed 5 percent based on the present monthly rate of compensation. Any increase made pursuant to this section shall be effective upon approval by the governing board. The action may be rejected by a majority of the voters in that district voting in a referendum established for that purpose, as prescribed by Chapter 3 (commencing with Section 17200) of Division 17 of the Elections Code.

SEC. 6. Section 72675 of the Education Code is amended to read:

72675. (a) The board of directors of an auxiliary organization shall approve all expenditures and fund appropriations. Appropriations of funds for use outside of the normal business operations of the auxiliary organization shall be approved in accordance with district policy and regulations by an officer designated by the district governing board.

(b) The district governing board, in accordance with regulations of the Board of Governors of the California Community Colleges, shall do all of the following:

(1) Institute a standard systemwide accounting and reporting system for businesslike management of the operation of these auxiliary organizations.

(2) Implement financial standards that will ensure the fiscal viability of these various auxiliary organizations. The standards shall include proper provision for professional management, adequate working capital, adequate reserve funds for current operations and capital replacements, and adequate provisions for new business requirements.

(3) Institute procedures to ensure that transactions of the auxiliary organizations are within the educational mission of the district.

(4) Develop policies for the appropriation of funds derived from indirect cost payments not required to implement paragraph (2). Uses of these funds shall be regularly reported to the district governing board.

SEC. 7. Section 72682 of the Education Code is amended to read:

72682. An auxiliary organization that was in existence on August 31, 1980, shall continue to operate under Article 6 (commencing with Section 72670) of Chapter 6 of Part 45, as it read immediately prior to August 30, 1980, until the time, if any, that the organization is recognized pursuant to this article.

SEC. 8. Section 76067 of the Education Code is amended to read:

76067. Any student political organization that is affiliated with the official youth division of any political party that is on the ballot of the State of California may hold meetings on a community college campus, and may distribute bulletins and circulars concerning its meetings, provided that there is no endorsement of that organization by the school authorities and no interference with the regular educational program of the district.

SEC. 9. Section 76140 of the Education Code is amended to read:

76140. (a) A community college district may admit and shall charge a tuition fee to nonresident students. The district may exempt from all or parts of the fee any person described in paragraph (1), (2), or (3):

(1) All nonresidents who enroll for six or fewer units. Exemptions made pursuant to this paragraph shall not be made on an individual basis.

(2) Any nonresident who is both a citizen and resident of a foreign country, if the nonresident has demonstrated a financial need for the exemption. Not more than 10 percent of the nonresident foreign students attending any community college district may be so exempted. Exemptions made pursuant to this paragraph may be made on an individual basis.

(3) (A) A student who, as of August 29, 2005, was enrolled, or admitted with an intention to enroll, in the fall term of the 2005–06 academic year in a regionally accredited institution of higher education in Alabama, Louisiana, or Mississippi, and who could not continue his or her attendance at that institution as a direct consequence of damage sustained by that institution as a result of Hurricane Katrina.

(B) The chancellor shall develop guidelines for the implementation of this paragraph. These guidelines shall include standards for appropriate documentation of student eligibility to the extent feasible.

(C) This paragraph shall apply only to the 2005–06 academic year.

(b) A district may contract with a state, a county contiguous to California, the federal government, or a foreign country, or an agency thereof, for payment of all or a part of a nonresident student's tuition fee.

(c) Nonresident students shall not be reported as full-time equivalent students (FTES) for state apportionment purposes, except as provided by subdivision (k) or another statute, in which case a nonresident tuition fee may not be charged.

(d) The nonresident tuition fee shall be set by the governing board of each community college district not later than February 1 of each year for the succeeding fiscal year. The governing board of each community college district shall provide nonresident students with notice of nonresident tuition fee changes during the spring term before the fall term in which the change will take effect. Nonresident tuition fee increases shall be gradual, moderate, and predictable. The fee may be paid in installments, as determined by the governing board of the district.

(e) The fee established by the governing board pursuant to subdivision (d) shall represent for nonresident students enrolled in 30 semester units or 45 quarter units of credit per fiscal year (1) the amount that was expended by the district for the expense of education as defined by the California Community College Budget and Accounting Manual in the preceding fiscal year increased by the projected percent increase in the United States Consumer Price Index as determined by the Department of Finance for the current fiscal year and succeeding fiscal year and divided by the FTES (including nonresident students) attending in the district in the preceding fiscal year, (2) the expense of education in the preceding fiscal year of all districts increased by the projected percent increase in the United States Consumer Price Index as determined by the Department of Finance for the fiscal year and succeeding fiscal year and divided by the FTES (including nonresident students) attending all districts during the preceding fiscal year, (3) an amount not to exceed the fee established by the governing board of any contiguous district, or (4) an amount not to exceed the amount that was expended by the district for the expense of education, but in no case less than the statewide average as set forth in paragraph (2). However, if for the district's preceding fiscal year FTES of all students attending in the district in noncredit courses is equal to, or greater than, 10 percent of the district's total FTES attending in the district, the district, in calculating the amount in paragraph (1), may substitute, instead, the data for expense of

education in grades 13 and 14 and FTES in grades 13 and 14 attending in the district.

(f) The governing board of each community college district also shall adopt a tuition fee per unit of credit for nonresident students enrolled in more or less than 15 units of credit per term by dividing the fee determined in subdivision (e) by 30 for colleges operating on the semester system and 45 for colleges operating on the quarter system and rounding to the nearest whole dollar. The same rate shall be uniformly charged nonresident students attending any terms or sessions maintained by the community college. The rate charged shall be the rate established for the fiscal year in which the term or session ends.

(g) In adopting a tuition fee for nonresident students, the governing board of each community college district shall consider nonresident tuition fees of public community colleges in other states.

(h) Any loss in district revenue generated by the nonresident tuition fee shall not be offset by additional state funding.

(i) Any district that has fewer than 1,500 FTES and whose boundary is within 10 miles of another state that has a reciprocity agreement with California governing student attendance and fees may exempt students from that state from the mandatory fee requirement described in subdivision (a) for nonresident students.

(j) Any district that has more than 1,500, but less than 3,001, FTES and whose boundary is within 10 miles of another state that has a reciprocity agreement with California governing student attendance and fees may, in any one fiscal year, exempt up to 100 FTES from that state from the mandatory fee requirement described in subdivision (a) for nonresident students.

(k) The attendance of nonresident students who are exempted pursuant to subdivision (i) or (j), or pursuant to paragraph (3) of subdivision (a), from the mandatory fee requirement described in subdivision (a) for nonresident students may be reported as resident FTES for state apportionment purposes. Any nonresident student reported as resident FTES for state apportionment purposes pursuant to subdivision (i) or (j) shall pay a fee of forty-two dollars (\$42) per course unit. That fee is to be included in the FTES adjustments described in Section 76330 for purposes of computing apportionments.

SEC. 10. Section 76141 of the Education Code is amended to read:

76141. (a) In addition to the nonresident tuition fee established pursuant to Section 76140, a community college district may charge to nonresident students who are both citizens and residents of a foreign country an amount not to exceed the amount that was expended by the district for capital outlay in the preceding fiscal year divided by the total full-time equivalent students of the district in the preceding fiscal year.

(b) Any fee charged pursuant to this section shall not exceed 50 percent of the nonresident tuition fee established pursuant to Section 76140.

(c) (1) Any student who can demonstrate economic hardship, or who is a victim of persecution or discrimination in the country in which the student is a citizen and resident, is exempt from this fee.

(2) For purposes of this section, the governing board of each community college district that chooses to impose the fee authorized by this section shall adopt a definition of economic hardship that encompasses the financial circumstances of a person who is a recipient of benefits under the Temporary Assistance for Needy Families program described in Parts A and F of Title IV of the Social Security Act (42 U.S.C. Secs. 601 et seq.), the Supplemental Income/State Supplementary Program, or a general assistance program.

(d) Revenue from any fee charged pursuant to this section shall be expended only for purposes of capital outlay, maintenance, and equipment.

SEC. 11. Section 76142 of the Education Code is amended to read:

76142. (a) A community college district may charge nonresident applicants who are both citizens and residents of a foreign country a processing fee not to exceed the lesser of: (1) the actual cost of processing an application and other documentation required by the federal government, or (2) one hundred dollars (\$100), which may be deducted from the tuition fee at the time of enrollment.

(b) No processing fee shall be charged to an applicant who would be eligible for an exemption from nonresident tuition pursuant to Section 76140 or who can demonstrate economic hardship. For purposes of this section, the governing board of each community college district that chooses to impose the fee authorized by this section shall adopt a definition of economic hardship that includes the financial circumstances of a person who is a victim of persecution or discrimination in the foreign country in which the applicant is a citizen and resident, or who is a recipient of benefits under the Temporary Assistance for Needy Families program described in Parts A and F of Title IV of the Social Security Act (42 U.S.C. Secs. 601 et seq.), the Supplemental Income/State Supplementary Program, or a general assistance program.

SEC. 12. Section 76240 of the Education Code is amended to read:

76240. (a) (1) Community college districts shall adopt a policy identifying those categories of directory information, as defined under Section 1232g of Title 20 of the United States Code as it exists on January 1, 2006, that may be released. The names and addresses of students may be provided to a private school or college operating under Sections 8080 to 8093, inclusive, Sections 33190 and 33191, or Sections 94000 to

94409, inclusive, or its authorized representative. However, no private school or college shall use this information for other than purposes directly related to the academic or professional goals of the institution.

(2) Any violation of this subdivision is a misdemeanor, punishable by a fine not to exceed two thousand five hundred dollars (\$2,500), and, in addition, the privilege of the school or college to receive this information shall be suspended for a period of two years from the time of discovery of the misuse of the information.

(b) Any community college district may limit or deny the release of specific categories of directory information based upon a determination of the best interests of students.

(c) Directory information may be released according to local policy as to any former student or any student currently attending the community college. However, public notice shall be given at least annually of the categories of information that the district plans to release and of the recipients. No directory information shall be released regarding any student or former student when the student or former student has notified the institution that the information shall not be released.

SEC. 13. Section 76300 of the Education Code is amended to read:

76300. (a) The governing board of each community college district shall charge each student a fee pursuant to this section.

(b) (1) The fee prescribed by this section shall be twenty-six dollars (\$26) per unit per semester, effective with the fall term of the 2004–05 academic year.

(2) The board of governors shall proportionately adjust the amount of the fee for term lengths based upon a quarter system, and also shall proportionately adjust the amount of the fee for summer sessions, intersessions, and other short-term courses. In making these adjustments, the board of governors may round the per unit fee and the per term or per session fee to the nearest dollar.

(c) For the purposes of computing apportionments to community college districts pursuant to Section 84750, the board of governors shall subtract, from the total revenue owed to each district, 98 percent of the revenues received by districts from charging a fee pursuant to this section.

(d) The board of governors shall reduce apportionments by up to 10 percent to any district that does not collect the fees prescribed by this section.

(e) The fee requirement does not apply to any of the following:

(1) Students enrolled in the noncredit courses designated by Section 84757.

(2) California State University or University of California students enrolled in remedial classes provided by a community college district on a campus of the University of California or a campus of the California

State University, for whom the district claims an attendance apportionment pursuant to an agreement between the district and the California State University or the University of California.

(3) Students enrolled in credit contract education courses pursuant to Section 78021, if the entire cost of the course, including administrative costs, is paid by the public or private agency, corporation, or association with which the district is contracting and if these students are not included in the calculation of the full-time equivalent students (FTES) of that district.

(f) The governing board of a community college district may exempt special part-time students admitted pursuant to Section 76001 from the fee requirement.

(g) (1) The fee requirements of this section shall be waived for any student who, at the time of enrollment, is a recipient of benefits under the Temporary Assistance to Needy Families program, the Supplemental Security Income/State Supplementary Program, or a general assistance program or has demonstrated financial need in accordance with the methodology set forth in federal law or regulation for determining the expected family contribution of students seeking financial aid.

(2) The governing board of a community college district also shall waive the fee requirements of this section for any student who demonstrates eligibility according to income standards established by regulations of the board of governors.

(3) Paragraphs (1) and (2) may be applied to a student enrolled in the 2005–06 academic year if the student is exempted from nonresident tuition under paragraph (3) of subdivision (a) of Section 76140.

(h) The fee requirements of this section shall be waived for any student who, at the time of enrollment, is a dependent, or surviving spouse who has not remarried, of any member of the California National Guard who, in the line of duty and while in the active service of the state, was killed, died of a disability resulting from an event that occurred while in the active service of the state, or is permanently disabled as a result of an event that occurred while in the active service of the state. “Active service of the state,” for the purposes of this subdivision, refers to a member of the California National Guard activated pursuant to Section 146 of the Military and Veterans Code.

(i) The fee requirements of this section shall be waived for any student who is the surviving spouse or the child, natural or adopted, of a deceased person who met all of the requirements of Section 68120.

(j) The fee requirements of this section shall be waived for any student in an undergraduate program, including a student who has previously graduated from another undergraduate or graduate program, who is the dependent of any individual killed in the September 11, 2001, terrorist

attacks on the World Trade Center and the Pentagon or the crash of United Airlines Flight 93 in southwestern Pennsylvania, if that dependent meets the financial need requirements set forth in Section 69432.7 for the Cal Grant A Program and either of the following applies:

(1) The dependent was a resident of California on September 11, 2001.

(2) The individual killed in the attacks was a resident of California on September 11, 2001.

(k) A determination of whether a person is a resident of California on September 11, 2001, for purposes of subdivision (j) shall be based on the criteria set forth in Chapter 1 (commencing with Section 68000) of Part 41 for determining nonresident and resident tuition.

(l) (1) "Dependent," for purposes of subdivision (j), is a person who, because of his or her relationship to an individual killed as a result of injuries sustained during the terrorist attacks of September 11, 2001, qualifies for compensation under the federal September 11th Victim Compensation Fund of 2001 (Title IV (commencing with Section 401) of Public Law 107-42).

(2) A dependent who is the surviving spouse of an individual killed in the terrorist attacks of September 11, 2001, is entitled to the waivers provided in this section until January 1, 2013.

(3) A dependent who is the surviving child, natural or adopted, of an individual killed in the terrorist attacks of September 11, 2001, is entitled to the waivers under subdivision (j) until that person attains the age of 30 years.

(4) A dependent of an individual killed in the terrorist attacks of September 11, 2001, who is determined to be eligible by the California Victim Compensation and Government Claims Board, is also entitled to the waivers provided in this section until January 1, 2013.

(m) (1) It is the intent of the Legislature that sufficient funds be provided to support the provision of a fee waiver for every student who demonstrates eligibility pursuant to subdivisions (g) to (j), inclusive.

(2) From funds provided in the annual Budget Act, the board of governors shall allocate to community college districts, pursuant to this subdivision, an amount equal to 2 percent of the fees waived pursuant to subdivisions (g) to (j), inclusive. From funds provided in the annual Budget Act, the board of governors shall allocate to community college districts, pursuant to this subdivision, an amount equal to ninety-one cents (\$0.91) per credit unit waived pursuant to subdivisions (g) to (j), inclusive, for determination of financial need and delivery of student financial aid services, on the basis of the number of students for whom fees are waived. Funds allocated to a community college district for determination of financial need and delivery of student financial aid

services shall supplement, and shall not supplant, the level of funds allocated for the administration of student financial aid programs during the 1992–93 fiscal year.

(n) The board of governors shall adopt regulations implementing this section.

SEC. 14. Section 76360 of the Education Code is amended to read:

76360. (a) (1) The governing board of a community college district may require students in attendance and employees of the district to pay a fee, in an amount, not to exceed forty dollars (\$40) per semester and twenty dollars (\$20) per intersession, to be established by the board, for parking services. The fee shall only be required of students and employees using parking services and shall not exceed the actual cost of providing parking services.

(2) To encourage ridesharing and carpooling, for a student who certifies, in accordance with procedures established by the board, that he or she regularly has two or more passengers commuting to the community college with him or her in the vehicle parked at the community college, the fee shall not exceed thirty dollars (\$30) per semester and ten dollars (\$10) per intersession.

(b) (1) The governing board may require payment of a parking fee at a campus in excess of the limits set forth in subdivision (a) for the purpose of funding the construction of on-campus parking facilities if both of the following conditions exist at the campus:

(A) The full-time equivalent (FTES) per parking space on the campus exceeds the statewide average FTES per parking space on community college campuses.

(B) The market price per square foot of land adjacent to the campus exceeds the statewide average market price per square foot of land adjacent to community college campuses.

(2) If the governing board requires payment of a parking fee in excess of the limits set forth in subdivision (a), the fee may not exceed the actual cost of constructing a parking structure.

(c) Students who receive financial assistance pursuant to any programs described in subdivision (g) of Section 76300 shall be exempt from parking fees imposed pursuant to this section that exceed twenty dollars (\$20) per semester.

(d) The governing board of a community college district may also require the payment of a fee, to be established by the governing board, for the use of parking services by persons other than students and employees.

(e) All parking fees collected shall be deposited in the designated fund of the district in accordance with the California Community Colleges Budget and Accounting Manual, and shall be expended only for parking

services or for purposes of reducing the costs to students and employees of the college of using public transportation to and from the college.

(f) Fees collected for use of parking services provided for by investment of student body funds under the authority of Section 76064 shall be deposited in a designated fund in accordance with the California Community Colleges Budget and Accounting Manual for repayment to the student organization.

(g) "Parking services," as used in this section, means the purchase, construction, and operation and maintenance of parking facilities for vehicles and motor vehicles as defined by Sections 415 and 670 of the Vehicle Code.

SEC. 15. Section 76375 of the Education Code is amended to read:

76375. (a) (1) The governing board of a community college district may establish an annual building and operating fee for the purpose of financing, constructing, enlarging, remodeling, refurbishing, and operating a student body center, which fee shall be required of all students attending a community college where the student body center is to be located.

(2) The fee shall be imposed by the governing board, at its option, only after a favorable vote of two-thirds of the students voting in an election held for that purpose at a community college, in the manner prescribed by the Board of Governors of the California Community Colleges, and open to all regular students enrolled in credit classes at the community college. The election shall occur on a regularly scheduled college day and at least 20 percent of the students enrolled in credit classes as of October 1 of the college year during which the election is held must cast a ballot for the election to be declared valid.

(3) The annual building and operating fee shall not exceed one dollar (\$1) per credit hour, up to a maximum of ten dollars (\$10) per student per fiscal year. The fee requirement shall not apply to students enrolled in the noncredit courses designated by Section 84757. The fee requirement shall not apply to a student who is a recipient of the benefits under the Temporary Assistance for Needy Families program, the Supplemental Security Income/State Supplementary Program, or the General Assistance program.

(4) The fee authorized by this section shall be supplemental to all other fees charged to community college students.

(5) If fee income is used to retire obligations the district incurs when it uses a revenue bond to construct a student center, the fee shall remain in effect at least until the bond obligation is retired.

(b) Each community college district shall be responsible for the custody of the moneys collected pursuant to this section, and shall provide the necessary accounting records and controls thereof. The district shall

be reimbursed from these funds in an amount to cover the cost of custodial and accounting services provided by the district in connection with these funds. These funds may be expended by the district only upon submission and approval of the appropriate claim schedule by the student government or its designee.

(c) All unexpended funds and money collected by any community college district pursuant to this section shall be available for financing, constructing, enlarging, remodeling, refurbishing, and operating a student body center, and until so used, shall, subject to the approval of the student government, be deposited or invested in trust by the appropriate district official in any one or more of the following ways:

(1) Deposits in trust accounts of a bank or banks whose accounts are insured by the Federal Deposit Insurance Corporation.

(2) Investment certificates or withdrawable shares in state chartered savings and loan associations and savings accounts of federal savings and loan associations, if the associations are doing business in this state and have their accounts insured by the Federal Savings and Loan Insurance Corporation.

(3) Purchase of any of the securities authorized for investment by Section 16430 of the Government Code.

(4) Participation funds that are exempt from federal income tax pursuant to Section 501(c)(3) of Title 26 of the United States Code and that are open exclusively to nonprofit colleges, universities, and independent schools.

(5) Investment certificates or withdrawable shares in federal or state credit unions, if the credit unions are doing business in this state and have their accounts insured by the National Credit Union Administration, and if any money so invested or deposited is invested or deposited in certificates, shares, or accounts fully recovered by that insurance.

(6) Deposits with the county treasurer of the county in which the district is located.

(d) The student government of a community college with an annual building and operating fee pursuant to this section shall determine the appropriate uses of the fee income and the student body center facility itself.

SEC. 16. Section 78020 of the Education Code is amended to read: 78020. For purposes of this article:

(a) "Contract education" means those situations in which a community college district contracts with a public or private entity for the purposes of providing instruction or services or both by the community college.

(b) "Credit" refers to any class offered for community college credit, regardless of whether the class generates state apportionments.

(c) "Noncredit" refers to courses that meet the criteria for apportionment pursuant to Section 84757.

(d) "Not-for-credit" refers to classes, including community services classes, that are offered without credit and that are not eligible for apportionments pursuant to Section 84757.

SEC. 17. Section 78021 of the Education Code is amended to read:

78021. (a) The governing board of any community college district may establish, or with one or more community college districts may establish, contract education programs within or outside the state by agreement with any public or private agency, corporation, association, or any other person or body, to provide specific educational programs or training to meet the specific needs of these bodies.

(b) The contracting community college district or districts shall recover, from all revenue sources, including, but not necessarily limited to, public and private sources, or any combination thereof, an amount equal to, but not less than, the actual costs, including administrative costs, incurred in providing these programs or training.

(c) The attendance of students in these contract education programs shall not be included for purposes of calculating the full-time equivalent students (FTES) for apportionments to these districts, unless all statutory and regulatory conditions for generating FTES are met.

SEC. 18. Section 78032 of the Education Code is amended to read:

78032. (a) The Board of Governors of the California Community Colleges may, pursuant to a finding that one or more of the following concerns in any community college district requires the restriction of interdistrict attendance, impose one or more restrictions upon interdistrict attendance with regard to that district as it deems necessary:

(1) Protection of the financial health of the district, and of educational program integrity, including, but not limited to, maintenance of the appropriate quality and scope of student educational opportunity.

(2) The need to avoid overcrowding, in light of the available space in the district.

(3) The priority that resident students not be displaced by students who do not reside in the district.

(b) No restriction adopted under subdivision (a) shall apply for a period of longer than two years, absent additional action of the board of governors to continue that restriction.

(c) (1) No community college district shall recruit any student who is a resident of any other community college district, except where an agreement exists between those districts authorizing each district to recruit within the boundaries of the other district.

(2) If, pursuant to an agreement as described in paragraph (1), a community college district recruits within the boundaries of another

community college district, it shall recruit from all high schools within that other district, and may not favor any high schools over other high schools within that other district.

(3) For purposes of this section:

(A) "Recruiting" means either or both of the following actions by a community college district, where the apparent purpose is to encourage student attendance in that district:

(i) The mailing by a community college district, to any address not within its boundaries, of class schedules or other written information, except to current or former students of the district or at the addressee's request.

(ii) The personal visit by a representative of the community college district to any high school, except in response to an invitation from the school district of which the high school is a part.

(B) "Recruiting" does not include any information provided by a community college district through radio, television, or any newspaper or other publication that is not published or otherwise issued by the district, and for which distribution is not limited to residents of the district.

(d) The board of governors shall authorize the Chancellor of the California Community Colleges to retain in any fiscal year an amount of up to 5 percent of the appropriation calculated under Chapter 5 (commencing with Section 84700) of Part 50 as a penalty applicable to any community college district that violates this article, including, but not necessarily limited to, any restriction imposed by the board of governors under this section. Any funds retained pursuant to this subdivision shall revert to the General Fund.

SEC. 19. Section 78103 of the Education Code is amended to read:

78103. The libraries shall be open for the use of the faculty and the students of the community college district during the day. In addition, the libraries may be open at other hours, including evenings and Saturdays, as the governing board may determine. Libraries open to serve students during evening and Saturday hours shall be under the supervision of academic personnel.

SEC. 20. Section 78271 of the Education Code is amended to read:

78271. The State Department of Transportation is authorized to make available to community colleges offering actual flight experience as part of the regular curriculum a basic insurance program and to ensure that adequate supervision and precautionary measures are taken by the flight school operators contracted to provide services for community college students. The governing board of any community college district offering actual flight experience as part of the regular curriculum may participate in the basic insurance program provided by the department, and pay

from the funds of the district a pro rata share of the cost of the insurance program.

SEC. 21. Section 78275.5 of the Education Code is repealed.

SEC. 22. Section 84751 of the Education Code is amended to read:

84751. In calculating each community college district's revenue level for each fiscal year pursuant to subdivision (a) of Section 84750, the board of governors shall subtract, from the total revenues owed, all of the following:

(a) The local property tax revenue specified by law for general operating support, exclusive of bond interest and redemption.

(b) Ninety-eight percent of the fee revenues collected pursuant to Section 76300.

(c) Timber yield tax revenues received pursuant to Section 38905.1 of the Revenue and Taxation Code.

(d) Any amounts received pursuant to Section 33492.15, 33607.5, or 33607.7 of the Health and Safety Code, and Section 33676 of the Health and Safety Code as amended by Section 2 of Chapter 1368 of the Statutes of 1990, that are considered to be from property tax revenues pursuant to those sections for the purposes of community college revenue levels, except those amounts that are allocated exclusively for educational facilities.

SEC. 23. Section 85235 of the Education Code is amended to read:

85235. Each order drawn against the funds of a community college district shall be transmitted to the county superintendent of schools, and, if approved and signed by him or her, shall become a requisition on the county auditor. The county superintendent may prescribe alternative procedures for districts determined to be fiscally accountable pursuant to Section 85266.

SEC. 24. Section 85236 of the Education Code is amended to read:

85236. The county superintendent of schools may examine each order on community college district funds transmitted to him or her, in the order in which it is received in his or her office. If it appears that the order is properly drawn for the payment of legally authorized expenses against the proper funds of the district, and that there are sufficient moneys in the fund or funds against which the order is drawn to pay it, he or she shall endorse upon it "examined and approved," and shall, in attestation thereof, affix his or her signature and number and date the requisition and transmit it directly to the county auditor, in the order in which the order is received in his or her office. The county superintendent may prescribe alternative methods for districts determined to be fiscally accountable pursuant to Section 85266.

SEC. 25. Section 85237 of the Education Code is amended to read:

85237. (a) If, at any time during a fiscal year, the county superintendent of schools concludes that the expenditures of a community college district in the territory within his or her jurisdiction are likely to exceed the anticipated income of the district for that fiscal year, he or she shall notify the district in writing of that conclusion, and may conduct a comprehensive review of the financial and budgetary conditions of the district.

(b) The superintendent shall report his or her findings and recommendations under this section to the governing board of the district, and may include recommendations of methods by which the budgeted expenditures for the balance of the fiscal year may be brought into balance with the revenue of the district. The report shall be made to the governing board at a public meeting of the governing board. The governing board shall, no later than 15 days after receipt of the report, notify the county superintendent of schools of its proposed actions on those recommendations.

SEC. 26. Section 85237.5 of the Education Code is amended to read:

85237.5. (a) At any time during a fiscal year, the county superintendent may audit the expenditures and internal controls of community college districts he or she determines to be fiscally accountable. The county superintendent shall report his or her findings and recommendation to the governing board of the district.

(b) The governing board shall, no later than 15 days after receipt of the report made under this section, notify the county superintendent of schools of its proposed actions on his or her recommendation. Upon review of the governing board report, the county superintendent, at his or her discretion, may revoke the authority for the district to be fiscally accountable pursuant to Section 85266.

SEC. 27. Section 85238 of the Education Code is amended to read:

85238. If the order is disapproved by the county superintendent of schools, it shall be returned to the governing board of the community college district, except as otherwise provided in this code for the registration of warrants, with a statement of his or her reasons for disapproving the order.

SEC. 28. Section 85239 of the Education Code is amended to read:

85239. (a) The county auditor may examine each order and requisition on community college district funds transmitted by the county superintendent of schools. If the county auditor allows the order and requisition, he or she shall endorse thereon "examined and allowed," and shall date, number, and sign it, whereupon it shall become a warrant on the county treasurer. The county auditor shall detach any bill attached to the requisition, and shall number the bill, giving it the same number given to the warrant, and file it in his or her office. The county auditor

shall thereupon return the order, requisition, and warrant to the county superintendent of schools, who shall transmit it to the governing board of the district for issuance to the payee or to the order of the payee.

(b) (1) Any requisition of the county superintendent of schools, whether based upon written order of the governing board of a community college district or authorized by law, shall constitute full authority for the signature for allowance thereof by the county auditor as a warrant on the county treasurer, and no other authority shall be necessary or required for that action by the county auditor.

(2) "Requisition," as used in this section, includes any order or demand signed by the county superintendent of schools directing the county auditor to draw his or her warrant on the county treasurer.

SEC. 29. Section 85240 of the Education Code is amended to read:

85240. (a) In lieu of drawing a warrant as provided in Section 85239, the county auditor may, with the approval of the governing board of the community college district, endorse, date, and number the order and requisition, and may prepare a separate warrant on the county treasurer for the same amount as the order and requisition. The warrant shall show that it had been drawn on the order of a community college district, shall name the community college district, and shall show the payee and date of issue, as well as other information deemed appropriate by the county auditor.

(b) The county auditor shall draw the separate warrant by signing it, and no other signature shall be required. Thereupon, the county auditor shall transmit the separate warrant to the county superintendent of schools, who shall transmit it to the governing board of the district for issuance to the payee or to the order of the payee, or, with the approval of the governing board of the district, shall transmit it to the payee.

(c) The order and requisition may direct the transfer of the amount of the separate warrant from the funds of the district to a clearing fund in the county treasury, which shall be known as the Schools Commercial Revolving Fund, to the end that separate warrants for all districts may be drawn against a single revolving fund.

SEC. 30. Section 85243 of the Education Code is amended to read:

85243. (a) The county superintendent of schools shall keep, open to the inspection of the public, a register of warrants, showing the fund upon which the requisitions have been drawn, the number, in whose favor, and for what purpose they were drawn.

(b) The county superintendent of schools shall prescribe rules for community college districts determined to be fiscally accountable, pursuant to Section 85266, that retain copies of warrants and supporting documents within the district files.

SEC. 31. Section 85244 of the Education Code is amended to read:

85244. (a) Orders for the payment of wages and payroll orders for the payment of wages of employees employed full time in positions that are not academic positions shall be drawn twice during each calendar month on days designated in advance by the governing board of each community college district to which this section is made applicable. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month.

(b) The governing board of each community college district that has 5,000 or more full-time equivalent students (FTES), and the governing board of each district with less than 5,000 FTES in a county with a population in excess of 4,000,000 persons as determined by the 1960 federal census, shall make this section applicable to the board, whenever a majority of the employees of the district employed full time in positions that are not academic positions petition the board in writing to do so.

(c) The governing board of a community college district that has less than 5,000 FTES, other than a community college district situated in a county with a population in excess of 4,000,000 persons as determined by the 1960 federal census, may, on the petition in writing of a majority of the employees of the district employed full time in positions that are not academic positions, make this section applicable to the board.

SEC. 32. Section 85265.5 of the Education Code is amended to read:

85265.5. (a) In a county in which the board of supervisors has transferred educational functions to the county board of education pursuant to Section 1080, and a single budget has been authorized for the purposes of the county school service fund, county board of education, county committee on school district organization, and the office of the county superintendent of schools pursuant to Sections 1620 to 1625, inclusive, the duties of the county auditor specified in Article 4 (commencing with Section 85230) and this article shall be performed by the county superintendent of schools.

(b) A listing of all warrants approved and allowed by the county superintendent of schools pursuant to this section shall be forwarded to the county auditor on the same day the warrants are forwarded to the district or the payee. The form of the warrant and the form and content of the warrant listing shall be as prescribed by the county auditor.

(c) Notwithstanding Section 27005 of the Government Code, or any other section requiring orders for warrants or warrants to be signed by the county auditor, the county treasurer in counties subject to this section shall pay warrants that are signed by the county superintendent of schools,

and the county auditor shall not be liable under his or her bond or otherwise for any warrant issued pursuant to this section.

(d) This section shall apply only in those counties in which the county board of supervisors has adopted its provisions by resolution.

SEC. 33. Section 85280 of the Education Code is amended to read:

85280. When any order against the funds of a community college district is presented to the county superintendent of schools, and the order constitutes a valid claim against the funds of the district, and moneys are not available in the funds of the district from which to pay the order, the county superintendent shall endorse on the order the words "Not approved for want of funds," and shall register the order in the records of his or her office.

SEC. 34. Section 85281 of the Education Code is amended to read:

85281. The county superintendent of schools shall number and date the registered order, and shall transmit the registered order to the governing board of the community college district that drew the order. The governing board shall deliver the registered order to the payee or to the order of the payee. From the date of registration, the registered order shall bear interest at the rate of 5 percent per annum until the date upon which notice is given, pursuant to this article, that the county superintendent of schools is ready to approve the registered order.

SEC. 35. Section 85282 of the Education Code is amended to read:

85282. Whenever moneys are available for the payment of the registered order, the county superintendent of schools shall give notice, in a newspaper published in the county, or if there is no newspaper, by written notice posted at the courthouse, stating that he or she is ready to approve the order. The notice may list any number of registered orders of one or more districts for the payment of which moneys are available, giving the name or names of the district or districts and listing the registered orders in the order of registration for each district.

SEC. 36. Section 85284 of the Education Code is amended to read:

85284. The county superintendent of schools shall approve the registered orders of each district, and sign them as requisitions on the county auditor, in the order of their presentation. The county superintendent shall enter on each the amount of interest due and the total amount, including principal and interest, payable. Each approved registered order shall thereupon be governed by the procedure established in this code relative to payments from community college district funds.

SEC. 37. Section 85288 of the Education Code is amended to read:

85288. The county superintendent of schools shall report to the county treasurer and the county auditor within 10 days after the end of each month the amount of the interest computed pursuant to this article. The report shall show each district for which interest has been computed, the

numbers of the registered orders for which the interest is to be paid, and the total amount of the interest charged to each district. The county superintendent shall also, upon transmitting to the governing board of a community college district registered orders which have been approved and allowed as warrants against the funds of the district, report in writing to the clerk or secretary of the district the amount of interest computed on the registered orders and the numbers of the registered orders for which the interest is to be paid.

SEC. 38. Section 85301 of the Education Code is amended to read:

85301. When any order on community college district funds is received by the county superintendent of schools, and there is insufficient money in the fund or funds against which the order is drawn to pay the order in full, the county superintendent shall endorse on the order "to be registered for lack of sufficient funds," sign, date, and number it as a requisition on the county auditor, and transmit the requisition to the county auditor. The county auditor shall endorse on the order "examined and allowed," sign, date, and number it as a warrant on the county treasurer, and return the warrant to the county superintendent of schools, who shall transmit it to the governing board of the community college district for issuance to the payee or to his or her order.

SEC. 39. Section 85302 of the Education Code is amended to read:

85302. When the warrant is presented to the county treasurer for payment, he or she shall endorse, register, advertise, and pay it, with interest at the rate of 5 percent per annum, in the manner prescribed, as nearly as may be, for county warrants in Sections 29821 to 29824, inclusive, and Sections 29826 and 29827 of the Government Code.

SEC. 40. Section 87061 of the Education Code is amended to read:

87061. If an employee of a community college district, including a district having the merit system as outlined in Article 3 (commencing with Section 88060) of Chapter 4, employed in an academic position is assigned to a position in the classified service of the same district, the employee shall retain all sickness and injury, sabbatical leave, and other rights and benefits. All seniority and tenure rights accumulated by the employee at the time of assignment to the position in the classified service shall be secured to the employee during the period of time he or she occupies a position in the classified service. The employee's return to academic service at any time shall be treated as if there had not been an interruption in his or her academic service.

SEC. 41. Section 87781 of the Education Code is amended to read:

87781. (a) (1) Every academic employee employed five days a week by a community college district shall be entitled to 10 days' leave of absence for illness or injury and any additional days in addition thereto that the governing board may allow for illness or injury, exclusive of all

days he or she is not required to render service to the district, with full pay for a college year of service.

(2) An employee employed for less than five schooldays a week shall be entitled, for a college year of service, to that proportion of 10 days' leave of absence for illness or injury as the number of days he or she is employed per week bears to five, and is entitled to those additional days in addition thereto as the governing board may allow for illness or injury to academic employees employed for less than five schooldays per week. Pay for any day of those absences shall be the same as the pay that would have been received had the employee served during the day.

(b) Credit for leave of absence need not be accrued prior to taking leave by the employee, and the leave of absence may be taken at any time during the college year. If the employee does not take the full amount of leave allowed in any school year under this section, the amount not taken shall be accumulated from year to year with additional days as the governing board may allow.

(c) The governing board of each community college district shall adopt rules and regulations requiring and prescribing the manner of proof of illness or injury for the purposes of this section. These rules and regulations shall not discriminate against evidence of treatment and the need therefor by the practice of the religion of any well-recognized church or denomination.

(d) Nothing in this section shall be deemed to modify or repeal any provision in Chapter 3 (commencing with Section 120175) of Part 1 of Division 105 of the Health and Safety Code.

(e) Section 87780 does not apply to the first 10 days of absence on account of illness or accident of any employee employed five days per week or to the proportion of 10 days of absence to which the employee employed less than five days per week is entitled hereunder on account of illness or accident or to additional days granted by the governing board. Any employee shall have the right to utilize sick leave provided for in this section and the benefit provided by Section 87780 for absences necessitated by pregnancy, miscarriage, childbirth, and recovery therefrom.

SEC. 42. The Legislature finds and declares that the apportionment and growth funds provided to the California Community Colleges pursuant to the Budget Act of 2005, as enacted by Chapters 38 and 39 of the Statutes of 2005, are sufficient to provide for any costs that may be incurred by community college districts for students accommodated pursuant to the authority granted by paragraph (3) of subdivision (a) of Section 76140 of the Education Code, as added by this act. It is the intent of the Legislature not to augment these appropriations or to provide additional appropriations for these purposes.

SEC. 43. 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 important statutory revisions, and to allow students who have been displaced by Hurricane Katrina an opportunity to continue their educational careers in California, in time for the beginning of the 2005–06 academic year, it is necessary that this act take effect immediately.

CHAPTER 655

An act to amend Section 7582.2 of, and to add Chapter 11.4 (commencing with Section 7574) to Division 3 of, the Business and Professions Code, relating to private security officers.

[Approved by Governor October 7, 2005. Filed with
Secretary of State October 7, 2005.]

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

SECTION 1. Chapter 11.4 (commencing with Section 7574) is added to Division 3 of the Business and Professions Code, to read:

CHAPTER 11.4. PROPRIETARY SECURITY SERVICES ACT

7574. This chapter may be cited as the Proprietary Security Services Act.

7574.1. A proprietary private security officer, as used in this chapter, is an unarmed individual who is employed exclusively by any one employer whose primary duty is to provide security services for his or her employer, whose services are not contracted to any other entity or person, and who is not exempt pursuant to Section 7582.2, and who meets both of the following criteria:

- (a) Is required to wear a distinctive uniform clearly identifying the individual as a security officer.
- (b) Is likely to interact with the public while performing his or her duties.

7574.2. A person who meets the definition of a proprietary private security officer shall register with the Department of Consumer Affairs, subject to the adoption of reasonable rules by the director. Those rules shall include, but are not limited to, the following criteria:

(a) Background checks as described in Section 7583.9.

(b) Payment of an application fee.

7574.3. Section 7574.2 shall apply on and after July 1, 2006, to any person hired as a proprietary private security officer on and after January 1, 2006. For a person hired as a proprietary private security officer before January 1, 2006, the section shall apply on and after January 1, 2007.

SEC. 2. Section 7582.2 of the Business and Professions Code is amended to read:

7582.2. This chapter does not apply to the following:

(a) A person who does not meet the requirements to be a proprietary private security officer, as defined in Section 7574.1, and is employed exclusively and regularly by any employer who does not provide contract security services for other entities or persons, in connection with the affairs of the employer only and where there exists an employer-employee relationship if that person at no time carries or uses any deadly weapon in the performance of his or her duties. For purposes of this subdivision, “deadly weapon” is defined to include any instrument or weapon of the kind commonly known as a blackjack, slungshot, billy, sandclub, sandbag, metal knuckles, any dirk, dagger, pistol, revolver, or any other firearm, any knife having a blade longer than five inches, any razor with an unguarded blade and any metal pipe or bar used or intended to be used as a club.

(b) An officer or employee of the United States of America, or of this state or a political subdivision thereof, while the officer or employee is engaged in the performance of his or her official duties, including uniformed peace officers employed part time by a public agency pursuant to a written agreement between a chief of police or sheriff and the public agency, provided the part-time employment does not exceed 50 hours in any calendar month.

(c) A person engaged exclusively in the business of obtaining and furnishing information as to the financial rating of persons.

(d) A charitable philanthropic society or association duly incorporated under the laws of this state that is organized and maintained for the public good and not for private profit.

(e) Patrol special police officers appointed by the police commission of any city, county, or city and county under the express terms of its charter who also under the express terms of the charter (1) are subject to suspension or dismissal after a hearing on charges duly filed with the commission after a fair and impartial trial, (2) must be not less than 18 years of age nor more than 40 years of age, (3) must possess physical qualifications prescribed by the commission, and (4) are designated by the police commission as the owners of a certain beat or territory as may be fixed from time to time by the police commission.

(f) An attorney at law in performing his or her duties as an attorney at law.

(g) A collection agency or an employee thereof while acting within the scope of his or her employment, while making an investigation incidental to the business of the agency, including an investigation of the location of a debtor or his or her property where the contract with an assignor creditor is for the collection of claims owed or due or asserted to be owed or due or the equivalent thereof.

(h) Admitted insurers and agents and insurance brokers licensed by the state, performing duties in connection with insurance transacted by them.

(i) Any bank subject to the jurisdiction of the Commissioner of Financial Institutions of the State of California under Division 1 (commencing with Section 99) of the Financial Code or the Comptroller of Currency of the United States.

(j) A person engaged solely in the business of securing information about persons or property from public records.

(k) A peace officer of this state or a political subdivision thereof while the peace officer is employed by a private employer to engage in off-duty employment in accordance with Section 1126 of the Government Code. However, nothing herein shall exempt such peace officer who either contracts for his or her services or the services of others as a private patrol operator or contracts for his or her services as or is employed as an armed private security officer. For purposes of this subdivision, "armed security officer" means an individual who carries or uses a firearm in the course and scope of that contract or employment.

(l) A retired peace officer of the state or political subdivision thereof when the retired peace officer is employed by a private employer in employment approved by the chief law enforcement officer of the jurisdiction where the employment takes place, provided that the retired officer is in a uniform of a public law enforcement agency, has registered with the bureau on a form approved by the director, and has met any training requirements or their equivalent as established for security personnel under Section 7583.5. This officer may not carry a loaded or concealed firearm unless he or she is exempted under the provisions of subdivision (a) of Section 12027 of the Penal Code or paragraph (1) of subdivision (b) of Section 12031 of the Penal Code or has met the requirements set forth in Section 12033 of the Penal Code. However, nothing herein shall exempt the retired peace officer who contracts for his or her services or the services of others as a private patrol operator.

(m) A licensed insurance adjuster in performing his or her duties within the scope of his or her license as an insurance adjuster.

(n) Any savings association subject to the jurisdiction of the Commissioner of Financial Institutions or the Office of Thrift Supervision.

(o) Any secured creditor engaged in the repossession of the creditor's collateral and any lessor engaged in the repossession of leased property in which it claims an interest.

(p) A peace officer in his or her official police uniform acting in accordance with subdivisions (c) and (d) of Section 70 of the Penal Code.

(q) An unarmed, uniformed security person employed exclusively and regularly by a motion picture studio facility employer who does not provide contract security services for other entities or persons in connection with the affairs of that employer only and where there exists an employer-employee relationship if that person at no time carries or uses any deadly weapon, as defined in subdivision (a), in the performance of his or her duties, which may include, but are not limited to, the following business purposes:

(1) The screening and monitoring access of employees of the same employer.

(2) The screening and monitoring access of prearranged and preauthorized invited guests.

(3) The screening and monitoring of vendors and suppliers.

(4) Patrolling the private property facilities for the safety and welfare of all who have been legitimately authorized to have access to the facility.

(r) The changes made to this section by the act adding this subdivision during the 2005-06 Regular Session of the Legislature shall apply as follows:

(1) On and after July 1, 2006, to a person hired as a security officer on and after January 1, 2006.

(2) On and after January 1, 2007, to a person hired as a security officer before January 1, 2006.

CHAPTER 656

An act to add Section 14602.8 to the Vehicle Code, relating to vehicles.

[Approved by Governor October 7, 2005. Filed with
Secretary of State October 7, 2005.]

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

SECTION 1. Section 14602.8 is added to the Vehicle Code, to read:

14602.8. (a) (1) If a peace officer determines that a person has been convicted of a violation of Section 23140, 23152, or 23153, that the violation occurred within the preceding 10 years, and that one or more of the following circumstances applies to that person, the officer may immediately cause the removal and seizure of the vehicle that the person was driving, under either of the following circumstances:

(A) The person was driving a vehicle when the person had 0.10 percent or more, by weight, of alcohol in his or her blood.

(B) The person driving the vehicle refused to submit to or complete a chemical test requested by the peace officer.

(2) A vehicle impounded pursuant to paragraph (1) shall be impounded for the following period of time:

(A) Five days, if the person has been convicted once of violating Section 23140, 23152, or 23153, and the violation occurred within the preceding 10 years.

(B) Fifteen days, if the person has been convicted two or more times of violating Section 23140, 23152, or 23153, or any combination thereof, and the violations occurred within the preceding 10 years.

(3) Within two working days after impoundment, the impounding agency shall send a notice by certified mail, return receipt requested, to the legal owner of the vehicle, at the address obtained from the department, informing the owner that the vehicle has been impounded. Failure to notify the legal owner within two working days shall prohibit the impounding agency from charging for more than five days' impoundment when the legal owner redeems the impounded vehicle. The impounding agency shall maintain a published telephone number that provides information 24 hours a day regarding the impoundment of vehicles and the rights of a registered owner to request a hearing.

(b) The registered and legal owner of a vehicle that is removed and seized under subdivision (a) or his or her agent shall be provided the opportunity for a storage hearing to determine the validity of, or consider any mitigating circumstances attendant to, the storage, in accordance with Section 22852.

(c) Any period during which a vehicle is subjected to storage under this section shall be included as part of the period of impoundment ordered by the court under Section 23594.

(d) (1) The impounding agency shall release the vehicle to the registered owner or his or her agent prior to the end of the impoundment period under any of the following circumstances:

(A) When the vehicle is a stolen vehicle.

(B) When the vehicle is subject to bailment and is driven by an unlicensed employee of a business establishment, including a parking service or repair garage.

(C) When the driver of the vehicle is not the sole registered owner of the vehicle and the vehicle is being released to another registered owner of the vehicle who agrees not to allow the driver to use the vehicle until after the end of the impoundment period.

(2) A vehicle shall not be released pursuant to this subdivision without presentation of the registered owner's or agent's currently valid driver's license to operate the vehicle and proof of current vehicle registration, or upon order of a court.

(e) The registered owner or his or her agent is responsible for all towing and storage charges related to the impoundment, and any administrative charges authorized under Section 22850.5.

(f) A vehicle removed and seized under subdivision (a) shall be released to the legal owner of the vehicle or the legal owner's agent prior to the end of the impoundment period if all of the following conditions are met:

(1) The legal owner is a motor vehicle dealer, bank, credit union, acceptance corporation, or other licensed financial institution legally operating in this state, or is another person who is not the registered owner and holds a security interest in the vehicle.

(2) The legal owner or the legal owner's agent pays all towing and storage fees related to the seizure of the vehicle. A lien sale processing fee shall not be charged to the legal owner who redeems the vehicle prior to the 10th day of impoundment. The impounding authority or any person having possession of the vehicle shall not collect from the legal owner of the type specified in paragraph (1), or the legal owner's agent any administrative charges imposed pursuant to Section 22850.5 unless the legal owner voluntarily requested a poststorage hearing.

(3) (A) The legal owner or the legal owner's agent presents either lawful foreclosure documents or an affidavit of repossession for the vehicle, and a security agreement or title showing proof of legal ownership for the vehicle. All presented documents may be originals, photocopies, or facsimile copies, or may be transmitted electronically. The impounding agency shall not require a document to be notarized. The impounding agency may require the agent of the legal owner to produce a photocopy or facsimile copy of its repossession agency license or registration issued pursuant to Chapter 11 (commencing with Section 7500) of Division 3 of the Business and Professions Code, or to demonstrate, to the satisfaction of the impounding agency, that the agent is exempt from licensure pursuant to Section 7500.2 or 7500.3 of the Business and Professions Code.

(B) Administrative costs authorized under subdivision (a) of Section 22850.5 shall not be charged to the legal owner of the type specified in paragraph (1), who redeems the vehicle unless the legal owner voluntarily

requests a poststorage hearing. A city, county, city or county, or state agency shall not require a legal owner or a legal owner's agent to request a poststorage hearing as a requirement for release of the vehicle to the legal owner or the legal owner's agent. The impounding agency shall not require any documents other than those specified in this paragraph. The impounding agency shall not require any documents to be notarized.

(C) As used in this paragraph, "foreclosure documents" means an "assignment" as that term is defined in subdivision (o) of Section 7500.1 of the Business and Professions Code.

(g) (1) A legal owner or the legal owner's agent who obtains release of the vehicle pursuant to subdivision (f) may not release the vehicle to the registered owner of the vehicle or any agents of the registered owner, unless the registered owner is a rental car agency, until after the termination of the impoundment period.

(2) The legal owner or the legal owner's agent shall not relinquish the vehicle to the registered owner until the registered owner or that owner's agent presents his or her valid driver's license or valid temporary driver's license to the legal owner or the legal owner's agent. The legal owner or the legal owner's agent shall make every reasonable effort to ensure that the license presented is valid.

(3) Prior to relinquishing the vehicle, the legal owner may require the registered owner to pay all towing and storage charges related to the impoundment and any administrative charges authorized under Section 22850.5 that were incurred by the legal owner in connection with obtaining custody of the vehicle.

(h) (1) A vehicle removed and seized under subdivision (a) shall be released to a rental car agency prior to the end of the impoundment period if the agency is either the legal owner or registered owner of the vehicle and the agency pays all towing and storage fees related to the seizure of the vehicle.

(2) The owner of a rental vehicle that was seized under this section may continue to rent the vehicle upon recovery of the vehicle. However, the rental car agency shall not rent another vehicle to the driver of the vehicle that was seized until the impoundment period has expired.

(3) The rental car agency may require the person to whom the vehicle was rented to pay all towing and storage charges related to the impoundment and any administrative charges authorized under Section 22850.5 that were incurred by the rental car agency in connection with obtaining custody of the vehicle.

(i) Notwithstanding any other provision of this section, the registered owner, and not the legal owner, shall remain responsible for any towing and storage charges related to the impoundment, any administrative

charges authorized under Section 22850.5, and any parking fines, penalties, and administrative fees incurred by the registered owner.

(j) The impounding agency is not liable to the registered owner for the improper release of the vehicle to the legal owner or the legal owner's agent provided the release complies with this section.

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

CHAPTER 657

An act to amend Sections 6710, 6714, 6715, 6736, 6736.1, 6755.1, 6780, 7804.1, 7806, 7810, 7815.5, 7830.1, 7833, 7835.1, 7837, 7841.1, 7850, 7850.1, 7852.1, 7872, 8710, 8741, 8741.1, 8761, and 8764 of, and to repeal Section 8753 of, the Business and Professions Code, relating to professions and vocations.

[Approved by Governor October 7, 2005. Filed with
Secretary of State October 7, 2005.]

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

SECTION 1. Section 6710 of the Business and Professions Code is amended to read:

6710. (a) There is in the Department of Consumer Affairs a Board for Professional Engineers and Land Surveyors, which consists of 13 members.

(b) Any reference in any law or regulation to the Board of Registration for Professional Engineers and Land Surveyors is deemed to refer to the Board for Professional Engineers and Land Surveyors.

(c) This section shall become inoperative on July 1, 2008, and, as of January 1, 2009, is repealed, unless a later enacted statute, that becomes effective on or before January 1, 2009, deletes or extends the dates on which it becomes inoperative and is repealed. The repeal of this section renders the board subject to the review required by Division 1.2 (commencing with Section 473).

SEC. 2. Section 6714 of the Business and Professions Code, as amended by Section 2 of Chapter 48 of the Statutes of 2005, is amended to read:

6714. The board shall appoint an executive officer at a salary to be fixed and determined by the board with the approval of the Director of Finance.

This section shall become inoperative on July 1, 2008, and, as of January 1, 2009, is repealed, unless a later enacted statute, that becomes effective on or before January 1, 2009, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 3. Section 6715 of the Business and Professions Code is amended to read:

6715. The board shall compile and maintain, or may have compiled and maintained on its behalf, a register of all licensees that contains information showing the name, address of record, type of branch license, license number, the date the license was issued, and the date the license will expire.

SEC. 4. Section 6736 of the Business and Professions Code is amended to read:

6736. No person shall use the title, "structural engineer," or any combination of these words or abbreviations thereof, unless he or she is a licensed civil engineer in this state and unless he or she has been found qualified as a structural engineer according to the rules and regulations established for structural engineers by the board.

SEC. 5. Section 6736.1 of the Business and Professions Code is amended to read:

6736.1. (a) No person shall use the title, "soil engineer," "soils engineer," or "geotechnical engineer," or any combination of these words or abbreviations thereof, unless he or she is a licensed civil engineer in this state and files an application to use the appropriate title with the board and the board determines the applicant is qualified to use the requested title.

(b) The board shall establish qualifications and standards to use the title "soil engineer," "soils engineer," or "geotechnical engineer." However, each applicant shall demonstrate a minimum of four years qualifying experience beyond that required for licensure as a civil engineer, and shall pass the examination specified by the board.

(c) For purposes of this section, "qualifying experience" means proof of responsible charge of soil engineering projects in at least 50 percent of the major areas of soil engineering, as determined by the board.

(d) Nothing contained in this chapter requires existing references to "soil engineering," "soils engineering," "geotechnical engineering," "soil engineer," "soils engineer," or "geotechnical engineer," in local agency

ordinances, building codes, regulations, or policies, to mean that those activities or persons must be registered or authorized to use the relevant title or authority.

SEC. 6. Section 6755.1 of the Business and Professions Code is amended to read:

6755.1. (a) The second division of the examination for registration as a professional engineer shall include questions to test the applicant's knowledge of state laws and the board's rules and regulations regulating the practice of professional engineering. The board shall administer the test on state laws and board rules regulating the practice of engineering in this state as a separate part of the second division of the examination for registration as a professional engineer.

(b) On and after April 1, 1988, the second division of the examination for registration as a civil engineer shall also include questions to test the applicant's knowledge of seismic principles and engineering surveying principles as defined in Section 6731.1. No registration for a civil engineer shall be issued by the board on or after January 1, 1988, to any applicant unless he or she has successfully completed questions to test his or her knowledge of seismic principles and engineering surveying principles.

The board shall administer the questions to test the applicant's knowledge of seismic principles and engineering surveying principles as a separate part of the second division of the examination for registration as a civil engineer.

It is the intent of the Legislature that this section confirm the authority of the board to issue registrations prior to April 1, 1988, to applicants based on examinations not testing the applicant's knowledge of seismic principles and engineering surveying principles as defined in Section 6731.1.

SEC. 7. Section 6780 of the Business and Professions Code is amended to read:

6780. (a) A petitioner may petition the board for reinstatement or modification of penalty, including reduction, modification, or termination of probation, after the following minimum periods have elapsed from the effective date of the decision ordering the disciplinary action, or if the order of the board or any portion of it is stayed by a court of law, from the date the disciplinary action is actually implemented in its entirety:

(1) Except as otherwise provided in this section, at least three years for reinstatement of a certificate that was revoked or surrendered. However, the board may, in its sole discretion, specify in its order of revocation or surrender a lesser period of time that shall be at minimum one year.

(2) At least two years for early termination of a probation period of three years or more.

(3) At least one year for early termination of a probation period of less than three years.

(4) At least one year for reduction or modification of a condition of probation.

(b) The board shall notify the Attorney General of the filing of the petition. The petitioner and the Attorney General shall be given timely notice by letter of the time and place of the hearing on the petition, and the petitioner and the Attorney General shall be given the opportunity to present both oral and documentary evidence and argument to the board. The petitioner shall at all times have the burden of proof to establish by clear and convincing evidence that he or she is entitled to the relief sought in the petition.

(c) The board itself or an administrative law judge, if one is designated by the board, shall hear the petition and shall prepare a written decision setting forth the reasons supporting the decision.

(d) The board may grant or deny the petition or may impose any terms and conditions that it reasonably deems appropriate as a condition of reinstatement or reduction or modification of the penalty.

(e) No petition shall be considered while the petitioner is under sentence for any criminal offense, including any period during which the petitioner is on court-imposed probation or parole. No petition shall be considered while there is an accusation or petition to revoke probation pending against the petitioner.

(f) The board may, in its discretion, deny without hearing or argument any petition that is filed pursuant to this section within a period of two years from the effective date of a prior decision following a hearing under this section.

(g) Judicial review of the board's decision following a hearing under this section may be sought by way of a petition for writ of administrative mandamus pursuant to Section 1094.5 of the Code of Civil Procedure. The party seeking to overturn the board's decision shall have the burden of proof in any mandamus proceeding. In the mandamus proceeding, if it is alleged that there has been an abuse of discretion because the board's findings are not supported by the evidence, abuse of discretion is established if the court determines that the findings are not supported by substantial evidence in light of the whole record.

(h) The following definitions apply for purposes of this section:

(1) "Certificate" includes certificate of registration or license as a professional engineer; certificates of authority to use the titles "structural engineer," "geotechnical engineer," "soil engineer," "soils engineer," or "consulting engineer;" and certification as an engineer-in-training.

(2) "Petitioner" means a professional engineer or an engineer-in-training whose certificate has been revoked, suspended, or surrendered or placed on probation.

SEC. 8. Section 7804.1 of the Business and Professions Code is amended to read:

7804.1. Only a person registered as a geophysicist under the provisions of this chapter shall be entitled to take and use the title "professional geophysicist." Only a person registered as a geophysicist and certified under the provisions of this chapter shall be entitled to take and use the title of a registered certified specialty geophysicist.

SEC. 9. Section 7806 of the Business and Professions Code is amended to read:

7806. A subordinate is any person who assists a professional geologist or professional geophysicist in the practice of geology or geophysics without assuming the responsible charge of work.

SEC. 10. Section 7810 of the Business and Professions Code is amended to read:

7810. The Board for Geologists and Geophysicists is within the department and is subject to the jurisdiction of the department. Except as provided in this section, the board shall consist of eight members, five of whom shall be public members, two of whom shall be geologists, and one of whom shall be a geophysicist.

Each member shall hold office until the appointment and qualification of the member's successor or until one year has elapsed from the expiration of the term for which the member was appointed, whichever occurs first. Vacancies occurring prior to the expiration of the term shall be filled by appointment for the remainder of the unexpired term.

Each appointment shall be for a four-year term expiring June 1 of the fourth year following the year in which the previous term expired. No person shall serve as a member of the board for more than two consecutive terms.

The Governor shall appoint three of the public members and the three members qualified as provided in Section 7811. The Senate Committee on Rules and the Speaker of the Assembly shall each appoint a public member, and their initial appointment shall be made to fill, respectively, the first and second public member vacancies that occurred on or after January 1, 1983.

At the time the first vacancy is created by the expiration of the term of a public member appointed by the Governor, the board shall be reduced to consist of seven members, four of whom shall be public members, two of whom shall be geologists, and one of whom shall be a geophysicist. Notwithstanding any other provision of law, the term of

that member shall not be extended for any reason, except as provided in this section.

This section shall become inoperative on July 1, 2008, and, as of January 1, 2009, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2009, deletes or extends the dates on which it becomes inoperative and is repealed. The repeal of this section renders the board subject to the review required by Division 1.2 (commencing with Section 473).

SEC. 11. Section 7815.5 of the Business and Professions Code is amended to read:

7815.5. The board may appoint a person exempt from civil service who shall be designated as an executive officer and who shall exercise the powers and perform the duties delegated by the board and vested in him or her by this chapter.

This section shall become inoperative on July 1, 2008, and, as of January 1, 2009, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 2009, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 12. Section 7830.1 of the Business and Professions Code is amended to read:

7830.1. After one year following the effective date of this section, it shall be unlawful for anyone other than a geophysicist registered under this chapter to stamp or seal any plans, specifications, plats, reports, or other documents with the seal or stamp of a registered geophysicist, professional geophysicist, or registered certified specialty geophysicist, or to use in any manner the title "registered geophysicist," "professional geophysicist," or the title of any registered certified specialty geophysicist unless registered, or registered and certified, under this chapter.

SEC. 13. Section 7833 of the Business and Professions Code is amended to read:

7833. This chapter does not prohibit one or more geologists or geophysicists from practicing through the entity of a sole proprietorship, partnership, or corporation. In a partnership or corporation whose primary activity consists of geological services, at least one partner or officer shall be a professional geologist. In a partnership or corporation whose primary activity consists of geophysical services, at least one partner or officer shall be a professional geophysicist.

SEC. 14. Section 7835.1 of the Business and Professions Code is amended to read:

7835.1. All geophysical plans, specifications, reports, or documents shall be prepared by a professional geophysicist, registered certified specialty geophysicist, professional geologist, registered certified specialty geologist, or by a subordinate employee under his or her

direction. In addition, they shall be signed by the professional geophysicist, registered certified specialty geophysicist, professional geologist, or registered certified specialty geologist, or stamped with his or her seal, either of which shall indicate his or her responsibility for them.

SEC. 15. Section 7837 of the Business and Professions Code is amended to read:

7837. A subordinate to a geologist or geophysicist registered under this chapter, insofar as he or she acts solely in that capacity, is exempt from registration under the provisions of this chapter. This exemption, however, does not permit any subordinate to practice geology or geophysics for others in his or her own right or to use the title "professional geologist" or "professional geophysicist."

SEC. 16. Section 7841.1 of the Business and Professions Code is amended to read:

7841.1. An applicant for registration as a geophysicist shall have all of the following qualifications. This section shall not apply to applicants for registration as geologists.

(a) Not have committed any acts or crimes constituting grounds for denial of licensure under Section 480.

(b) Meet one of the following educational requirements fulfilled at a school or university whose curricula meet criteria established by rules of the board.

(1) Graduation with a major in a geophysical science or any other discipline which in the opinion of the board is relevant to geophysics.

(2) Completion of a combination of at least 30 semester hours, in courses which in the opinion of the board are relevant to geophysics. At least 24 semester hours, or the equivalent, shall be in the third or fourth year, or graduate courses.

(c) Have at least seven years of professional geophysical work which shall include either a minimum of three years of professional geophysical work under the supervision of a professional geophysicist, except that prior to July 1, 1973, professional geophysical work shall qualify under this subdivision if it is under the supervision of a qualified geophysicist, or a minimum of five years' experience in responsible charge of professional geophysical work. Professional geophysical work does not include the routine maintenance or operation of geophysical instruments, or, even if carried out under the responsible supervision of a professional geophysicist, the routine reduction or plotting of geophysical observations.

Each year of undergraduate study in the geophysical sciences referred to in this section shall count as one-half year of training up to a maximum

of two years, and each year of graduate study or research counts as a year of training.

Teaching in the geophysical sciences referred to in this section at a college level shall be credited year for year toward meeting the requirement in this category, provided that the total teaching experience includes six semester units per semester, or equivalent if on the quarter system, of third or fourth year or graduate courses.

Credit for undergraduate study, graduate study, and teaching, individually, or in any combination thereof, shall in no case exceed a total of four years towards meeting the requirements for at least seven years of professional geophysical work as set forth above.

The ability of the applicant shall have been demonstrated by his or her having performed the work in a responsible position, as the term "responsible position" is defined in regulations adopted by the board. The adequacy of the required supervision and experience shall be determined by the board in accordance with standards set forth in regulations adopted by it.

(d) Successfully pass a written examination.

SEC. 17. Section 7850 of the Business and Professions Code is amended to read:

7850. Any applicant who has passed the examination and has otherwise qualified hereunder as a geologist, upon payment of the registration fee fixed by this chapter shall have a certificate of registration issued to him or her as a professional geologist.

SEC. 18. Section 7850.1 of the Business and Professions Code is amended to read:

7850.1. Any applicant who has passed the examination and has otherwise qualified hereunder as a geophysicist, upon payment of the registration fee fixed by this chapter shall have a certificate of registration issued to him or her as a professional geophysicist.

SEC. 19. Section 7852.1 of the Business and Professions Code is amended to read:

7852.1. (a) Each geophysicist registered under this chapter may, upon registration, obtain a seal of the design authorized by the board bearing the registrant's name, number of his or her certificate, and the legend "professional geophysicist."

(b) Each specialty geophysicist certified under this chapter may, upon certification, obtain a seal of the design authorized by the board bearing the registrant's name, number of his or her certificate and the legend "certified specialty geophysicist."

SEC. 20. Section 7872 of the Business and Professions Code is amended to read:

7872. Every person is guilty of a misdemeanor and for each offense of which he or she is convicted is punishable by a fine of not more than one thousand dollars (\$1,000) or by imprisonment not to exceed three months, or by both fine and imprisonment:

(a) Who, unless he or she is exempt from registration under this chapter, practices or offers to practice geology or geophysics for others in this state according to the provisions of this chapter without legal authorization.

(b) Who presents or attempts to file as his or her own the certificate of registration of another.

(c) Who gives false evidence of any kind to the board, or to any member thereof, in obtaining a certificate of registration.

(d) Who impersonates or uses the seal of any other practitioner.

(e) Who uses an expired or revoked certificate of registration.

(f) Who shall represent himself or herself as, or use the title of, professional geologist, or any other title whereby the person could be considered as practicing or offering to practice geology for others, unless he or she is qualified by registration as a geologist under this chapter, or who shall represent himself or herself as, or use the title of, professional geophysicist, or any other title whereby the person could be considered as practicing or offering to practice geophysics for others, unless he or she is qualified by registration as a geophysicist under this chapter.

(g) Who manages, or conducts as manager, proprietor, or agent, any place of business from which geological or geophysical work is solicited, performed or practiced for others, unless the geological work is supervised or performed by a professional geologist, or unless the geophysical work is supervised or performed by a professional geophysicist or geologist.

(h) Who violates any provision of this chapter.

SEC. 21. Section 8710 of the Business and Professions Code is amended to read:

8710. (a) The Board for Professional Engineers and Land Surveyors is vested with power to administer the provisions and requirements of this chapter, and may make and enforce rules and regulations that are reasonably necessary to carry out its provisions.

(b) The board may adopt rules and regulations of professional conduct that are not inconsistent with state and federal law. The rules and regulations may include definitions of incompetence and negligence. Every person who holds a license or certificate issued by the board pursuant to this chapter, or a license or certificate issued to a civil engineer pursuant to Chapter 7 (commencing with Section 6700), shall be governed by these rules and regulations.

(c) This section shall become inoperative on July 1, 2008, and, as of January 1, 2009, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 2009, deletes or extends the dates on which it becomes inoperative and is repealed. The repeal of this section shall render the board subject to the review required by Division 1.2 (commencing with Section 473).

SEC. 22. Section 8741 of the Business and Professions Code is amended to read:

8741. (a) The first division of the examination shall test the applicant's fundamental knowledge of surveying, mathematics, and basic science. The board may prescribe by regulation reasonable educational or experience requirements including two years of postsecondary education in land surveying, two years of experience in land surveying, or a combination of postsecondary education and experience in land surveying totaling two years for admission to the first division of the examination. Applicants who have passed the engineer-in-training examination, or who hold professional engineer registration, are exempt from this division of the examination.

The second division of the examination shall test the applicant's ability to apply his or her knowledge and experience and to assume responsible charge in the professional practice of land surveying.

(b) The applicant for the second division examination shall have successfully passed the first division examination, or shall be exempt therefrom. The applicant shall be thoroughly familiar with (1) the procedure and rules governing the survey of public lands as set forth in "Manual of Surveying Instructions," published by the Bureau of Land Management, Department of the Interior, Washington, D.C. and (2) the principles of real property relating to boundaries and conveyancing.

(c) The board may by rule provide for a waiver of the first division of the examination for applicants whose education and experience qualifications substantially exceed the requirements of Section 8742.

(d) The board may by rule provide for a waiver of the second division of the examination and the assignment to a special examination for those applicants whose educational qualifications are equal to, and whose experience qualifications substantially exceed, those qualifications established under subdivision (c). The special examination may be either written or oral, or a combination of both.

SEC. 23. Section 8741.1 of the Business and Professions Code is amended to read:

8741.1. The second division of the examination for licensure as a land surveyor shall include an examination that incorporates a national examination for land surveying by a nationally recognized entity approved by the board, and a supplemental California specific

examination. The California specific examination shall test the applicant's knowledge of the provisions of this chapter and the board's rules and regulations regulating the practice of professional land surveying in this state.

The board shall use the national examination on or before June 1, 2003. In the meantime, the board may continue to provide the current state-only second division examination and administer the test on the provisions of this chapter and board rules as a separate part of the second division examination for licensure as a land surveyor.

SEC. 24. Section 8753 of the Business and Professions Code is repealed.

SEC. 25. Section 8761 of the Business and Professions Code is amended to read:

8761. (a) Any licensed land surveyor or civil engineer authorized to practice land surveying may practice land surveying and prepare maps, plats, reports, descriptions, or other documentary evidence in connection with that practice. All maps, plats, reports, descriptions, or other documents shall be prepared by, or under the responsible charge of a licensed land surveyor or civil engineer authorized to practice land surveying and shall include his or her name and license number. If the document has multiple pages or sheets, the signature, the seal or stamp, date of signing and sealing or stamping, and expiration date of the license shall appear, at a minimum, on the title sheet, cover sheet or page, or signature sheet.

(b) Interim maps, plats, reports, descriptions, or other documents shall include a notation as to the intended purpose of the map, plat, report, description, or other document, such as "preliminary" or "for examination only."

(c) All final maps, plats, reports, descriptions, or other documents issued by a licensed land surveyor or civil engineer authorized to practice land surveying shall bear the signature and seal or stamp of the licensee, the date of signing and sealing or stamping, and the expiration date of the license.

(d) It is unlawful for any person to sign, stamp, seal, or approve any map, plat, report, description, or other document unless the person is authorized to practice land surveying.

(e) It is unlawful for any person to stamp or seal any map, plat, report, description, or other document with the seal after the certificate of the licensee that is named on the seal has expired or has been suspended or revoked, unless the certificate has been renewed or reissued.

SEC. 26. Section 8764 of the Business and Professions Code is amended to read:

8764. The record of survey shall show the applicable provisions of the following consistent with the purpose of the survey:

(a) All monuments found, set, reset, replaced, or removed, describing their kind, size, and location, and giving other data relating thereto.

(b) Bearing or witness monuments, basis of bearings, bearing and length of lines, scale of map, and north arrow.

(c) Name and legal designation of the property in which the survey is located, and the date or time period of the survey.

(d) The relationship to those portions of adjacent tracts, streets, or senior conveyances which have common lines with the survey.

(e) Memorandum of oaths.

(f) Statements required by Section 8764.5.

(g) Any other data necessary for the intelligent interpretation of the various items and locations of the points, lines, and areas shown, or convenient for the identification of the survey or surveyor, as may be determined by the civil engineer or land surveyor preparing the record of survey.

The record of survey shall also show, either graphically or by note, the reason or reasons, if any, why the mandatory filing provisions of paragraphs (1) to (5), inclusive, of subdivision (b) of Section 8762 apply.

The record of survey need not consist of a survey of an entire property.

SEC. 27. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

CHAPTER 658

An act to amend Sections 25, 2909, 2911, 2912, 2914, 2920, 2933, 2936, 2942, 2946, 2983, 2987, 2988, 3751, 4980.03, 4980.40, 4980.43, 4982.05, 4982.26, 4986.71, 4990.1, 4990.8, 4992.31, 4992.33, 5079, 8000, 8005, 8010, 8025, 8030.2, 8030.4, 8030.6, 8030.8, 8520, 8528, and 22253.2 of, to add Section 5054 to, and to repeal Section 2945 of, the Business and Professions Code, and to amend Section 19167 of the Revenue and Taxation Code, relating to professions and vocations.

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

SECTION 1. Section 25 of the Business and Professions Code is amended to read:

25. Any person applying for a license, registration, or the first renewal of a license, after the effective date of this section, as a licensed marriage and family therapist, a licensed clinical social worker or as a licensed psychologist shall, in addition to any other requirements, show by evidence satisfactory to the agency regulating the business or profession, that he or she has completed training in human sexuality as a condition of licensure. The training shall be creditable toward continuing education requirements as deemed appropriate by the agency regulating the business or profession, and the course shall not exceed more than 50 contact hours.

The Board of Psychology shall exempt any persons whose field of practice is such that they are not likely to have use for this training.

“Human sexuality” as used in this section means the study of a human being as a sexual being and how he or she functions with respect thereto.

The content and length of the training shall be determined by the administrative agency regulating the business or profession and the agency shall proceed immediately upon the effective date of this section to determine what training, and the quality of staff to provide the training, is available and shall report its determination to the Legislature on or before July 1, 1977.

In the event that any licensing board or agency proposes to establish a training program in human sexuality, the board or agency shall first consult with other licensing boards or agencies which have established or propose to establish a training program in human sexuality to ensure that the programs are compatible in scope and content.

SEC. 2. Section 2909 of the Business and Professions Code is amended to read:

2909. Nothing in this chapter shall be construed as restricting or preventing activities of a psychological nature or the use of the official title of the position for which they were employed on the part of the following persons, provided those persons are performing those activities as part of the duties for which they were employed, are performing those activities solely within the confines of or under the jurisdiction of the organization in which they are employed and do not offer to render or render psychological services as defined in Section 2903 to the public for a fee, monetary or otherwise, over and above the salary they receive for the performance of their official duties with the organization in which they are employed:

(a) Persons who hold a valid and current credential as a school psychologist issued by the California Department of Education.

(b) Persons who hold a valid and current credential as a psychometrist issued by the California Department of Education.

(c) Persons employed in positions as psychologists or psychological assistants, or in a student counseling service, by accredited or approved colleges, junior colleges or universities; federal, state, county or municipal governmental organizations which are not primarily involved in the provision of direct health or mental health services. However, those persons may, without obtaining a license under this act, consult or disseminate their research findings and scientific information to other such accredited or approved academic institutions or governmental agencies. They may also offer lectures to the public for a fee, monetary or otherwise, without being licensed under this chapter.

(d) Persons who meet the educational requirements of subdivision (b) of Section 2914 and who have one year or more of the supervised professional experience referenced in subdivision (c) of Section 2914, if they are employed by nonprofit community agencies that receive a minimum of 25 percent of their financial support from any federal, state, county, or municipal governmental organizations for the purpose of training and providing services. Those persons shall be registered by the agency with the board at the time of employment and shall be identified in the setting as a "registered psychologist." Those persons shall be exempt from this chapter for a maximum period of 30 months from the date of registration.

SEC. 3. Section 2911 of the Business and Professions Code is amended to read:

2911. Nothing in this chapter shall be construed as restricting the activities and services of a graduate student or psychological intern in psychology pursuing a course of study leading to a graduate degree in psychology at an accredited or approved college or university and working in a training program, or a postdoctoral trainee working in a postdoctoral placement overseen by the American Psychological Association (APA), the Association of Psychology Postdoctoral and Internship Centers (APPIC), or the California Psychology Internship Council (CAPIC), provided that these activities and services constitute a part of his or her supervised course of study and that those persons are designated by the title "psychological intern," "psychological trainee," "postdoctoral intern," or another title clearly indicating the training status appropriate to his or her level of training. The aforementioned terms shall be reserved for persons enrolled in the doctoral program leading to one of the degrees listed in subdivision (b) of Section 2914 at an

accredited or approved college or university or in a formal postdoctoral internship overseen by APA, APPIC, or CAPIC.

SEC. 4. Section 2912 of the Business and Professions Code is amended to read:

2912. Nothing in this chapter shall be construed to restrict or prevent a person who is licensed as a psychologist at the doctoral level in another state or territory of the United States or in Canada from offering psychological services in this state for a period not to exceed 30 days in any calendar year.

SEC. 5. Section 2914 of the Business and Professions Code is amended to read:

2914. Each applicant for licensure shall comply with all of the following requirements:

(a) Is not subject to denial of licensure under Division 1.5.

(b) Possess an earned doctorate degree (1) in psychology, (2) in educational psychology, or (3) in education with the field of specialization in counseling psychology or educational psychology. Except as provided in subdivision (g), this degree or training shall be obtained from an accredited university, college, or professional school. The board shall make the final determination as to whether a degree meets the requirements of this section.

No educational institution shall be denied recognition as an accredited academic institution solely because its program is not accredited by any professional organization of psychologists, and nothing in this chapter or in the administration of this chapter shall require the registration with the board by educational institutions of their departments of psychology or their doctoral programs in psychology.

An applicant for licensure trained in an educational institution outside the United States or Canada shall demonstrate to the satisfaction of the board that he or she possesses a doctorate degree in psychology that is equivalent to a degree earned from a regionally accredited university in the United States or Canada. These applicants shall provide the board with a comprehensive evaluation of the degree performed by a foreign credential evaluation service that is a member of the National Association of Credential Evaluation Services (NACES), and any other documentation the board deems necessary.

(c) Have engaged for at least two years in supervised professional experience under the direction of a licensed psychologist, the specific requirements of which shall be defined by the board in its regulations, or under suitable alternative supervision as determined by the board in regulations duly adopted under this chapter, at least one year of which shall be after being awarded the doctorate in psychology. If the supervising licensed psychologist fails to provide verification to the

board of the experience required by this subdivision within 30 days after being so requested by the applicant, the applicant may provide written verification directly to the board.

If the applicant sends verification directly to the board, the applicant shall file with the board a declaration of proof of service, under penalty of perjury, of the request for verification. A copy of the completed verification forms shall be provided to the supervising psychologist and the applicant shall prove to the board that a copy has been sent to the supervising psychologist by filing a declaration of proof of service under penalty of perjury, and shall file this declaration with the board when the verification forms are submitted.

Upon receipt by the board of the applicant's verification and declarations, a rebuttable presumption affecting the burden of producing evidence is created that the supervised, professional experience requirements of this subdivision have been satisfied. The supervising psychologist shall have 20 days from the day the board receives the verification and declaration to file a rebuttal with the board.

The authority provided by this subdivision for an applicant to file written verification directly shall apply only to an applicant who has acquired the experience required by this subdivision in the United States.

The board shall establish qualifications by regulation for supervising psychologists and shall review and approve applicants for this position on a case-by-case basis.

(d) Take and pass the examination required by Section 2941 unless otherwise exempted by the board under this chapter.

(e) Show by evidence satisfactory to the board that he or she has completed training in the detection and treatment of alcohol and other chemical substance dependency. This requirement applies only to applicants who matriculate on or after September 1, 1985.

(f) (1) Show by evidence satisfactory to the board that he or she has completed coursework in spousal or partner abuse assessment, detection, and intervention. This requirement applies to applicants who began graduate training during the period commencing on January 1, 1995, and ending on December 31, 2003.

(2) An applicant who began graduate training on or after January 1, 2004, shall show by evidence satisfactory to the board that he or she has completed a minimum of 15 contact hours of coursework in spousal or partner abuse assessment, detection, and intervention strategies, including knowledge of community resources, cultural factors, and same gender abuse dynamics. An applicant may request an exemption from this requirement if he or she intends to practice in an area that does not include the direct provision of mental health services.

(3) Coursework required under this subdivision may be satisfactory if taken either in fulfillment of other educational requirements for licensure or in a separate course. This requirement for coursework shall be satisfied by, and the board shall accept in satisfaction of the requirement, a certification from the chief academic officer of the educational institution from which the applicant graduated that the required coursework is included within the institution's required curriculum for graduation.

(g) An applicant holding a doctoral degree in psychology from an approved institution is deemed to meet the requirements of this section if all of the following are true:

(1) The approved institution offered a doctoral degree in psychology designed to prepare students for a license to practice psychology and was approved by the Bureau for Private Postsecondary and Vocational Education on or before July 1, 1999.

(2) The approved institution has not, since July 1, 1999, had a new location, as described in Section 94721 of the Education Code.

(3) The approved institution is not a franchise institution, as defined in Section 94729.3 of the Education Code.

SEC. 6. Section 2920 of the Business and Professions Code is amended to read:

2920. The Board of Psychology shall enforce and administer this chapter. The board shall consist of nine members, four of whom shall be public members.

This section shall become inoperative on July 1, 2008, and, as of January 1, 2009, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 2009, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 7. Section 2933 of the Business and Professions Code is amended to read:

2933. Except as provided by Section 159.5, the board shall employ and shall make available to the board within the limits of the funds received by the board all personnel necessary to carry out this chapter. The board may employ, exempt from the State Civil Service Act, an executive officer to the Board of Psychology. The board shall make all expenditures to carry out this chapter. The board may accept contributions to effectuate the purposes of this chapter.

This section shall become inoperative on July 1, 2008, and, as of January 1, 2009, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 2009, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 8. Section 2936 of the Business and Professions Code is amended to read:

2936. The board shall adopt a program of consumer and professional education in matters relevant to the ethical practice of psychology. The board shall establish as its standards of ethical conduct relating to the practice of psychology, the "Ethical Principles and Code of Conduct" published by the American Psychological Association (APA). Those standards shall be applied by the board as the accepted standard of care in all licensing examination development and in all board enforcement policies and disciplinary case evaluations.

To facilitate consumers in receiving appropriate psychological services, all licensees and registrants shall be required to post, in a conspicuous location in their principal psychological business office, a notice which reads as follows:

"NOTICE TO CONSUMERS: The Department of Consumer Affairs Board of Psychology receives and responds to questions and complaints regarding the practice of psychology. If you have questions or complaints, you may contact the board on the Internet at www.psychboard.ca.gov, by calling 1-866-503-3221, or by writing to the following address:

Board of Psychology
1422 Howe Avenue, Suite 22
Sacramento, California 95825-3236"

SEC. 9. Section 2942 of the Business and Professions Code is amended to read:

2942. The board may examine by written or computer-assisted examination or by both. All aspects of the examination shall be in compliance with Section 139. The examination shall be available for administration at least twice a year at the time and place and under supervision as the board may determine. The passing grades for the examinations shall be established by the board in regulations and shall be based on psychometrically sound principles of establishing minimum qualifications and levels of competency.

Examinations for a psychologist's license may be conducted by the board under a uniform examination system, and for that purpose the board may make arrangements with organizations furnishing examination material as may in its discretion be desirable.

SEC. 10. Section 2945 of the Business and Professions Code is repealed.

SEC. 11. Section 2946 of the Business and Professions Code is amended to read:

2946. The board shall grant a license to any person who passes the board's supplemental licensing examination and, at the time of application, has been licensed for at least five years by a psychology licensing authority in another state or Canadian province if the

requirements for obtaining a certificate or license in that state or province were substantially equivalent to the requirements of this chapter.

A psychologist certified or licensed in another state or province and who has made application to the board for a license in this state may perform activities and services of a psychological nature without a valid license for a period not to exceed 180 calendar days from the time of submitting his or her application or from the commencement of residency in this state, whichever first occurs.

The board at its discretion may waive the examinations, when in the judgment of the board the applicant has already demonstrated competence in areas covered by the examinations. The board at its discretion may waive the examinations for diplomates of the American Board of Professional Psychology.

SEC. 12. Section 2983 of the Business and Professions Code is amended to read:

2983. Every person to whom a license is issued shall, as a condition precedent to its issuance, and in addition to any application, examination or other fee, pay the prescribed initial license fee.

SEC. 13. Section 2987 of the Business and Professions Code is amended to read:

2987. The amount of the fees prescribed by this chapter shall be determined by the board, and shall be as follows:

(a) The application fee for a psychologist shall not be more than fifty dollars (\$50).

(b) The examination and reexamination fees for the examinations shall be the actual cost to the board of developing, purchasing, and grading of each examination, plus the actual cost to the board of administering each examination.

(c) The initial license fee is an amount equal to the renewal fee in effect on the last regular renewal date before the date on which the license is issued.

(d) The biennial renewal fee for a psychologist shall be four hundred dollars (\$400). The board may increase the renewal fee to an amount not to exceed five hundred dollars (\$500).

(e) The application fee for registration and supervision of a psychological assistant by a supervisor under Section 2913, which is payable by that supervisor, shall not be more than seventy-five dollars (\$75).

(f) The annual renewal fee for registration of a psychological assistant shall not be more than seventy-five dollars (\$75).

(g) The duplicate license or registration fee is five dollars (\$5).

(h) The delinquency fee is twenty-five dollars (\$25).

(i) The endorsement fee is five dollars (\$5).

Notwithstanding any other provision of law, the board may reduce any fee prescribed by this section, when, in its discretion, the board deems it administratively appropriate.

SEC. 14. Section 2988 of the Business and Professions Code is amended to read:

2988. A licensed psychologist who for reasons, including, but not limited to, retirement, ill health, or absence from the state, is not engaged in the practice of psychology, may apply to the board to request that his or her license be placed on an inactive status. A licensed psychologist who holds an inactive license shall pay a biennial renewal fee, fixed by the board, of no more than forty dollars (\$40). A psychologist holding an inactive license shall be exempt from continuing education requirements specified in Section 2915, but shall otherwise be subject to this chapter and shall not engage in the practice of psychology in this state. Licensees on inactive status who have not committed any acts or crimes constituting grounds for denial of licensure and have completed the continuing education requirements specified in Section 2915 may, upon their request have their license to practice psychology placed on active status.

SEC. 15. Section 3751 of the Business and Professions Code is amended to read:

3751. (a) A person whose license has been revoked, surrendered, or suspended, or placed on probation, may petition the board for reinstatement, modification, or termination of probation, provided the person has paid all outstanding fees, fines, and cost recovery in full, and monthly probation monitoring payments are current.

(b) A person petitioning for reinstatement of his or her license that has been revoked or surrendered for three or more years shall also meet the current education requirements required for initial licensure.

(c) A petition may be filed only after a period of time has elapsed, but not less than the following minimum periods from the effective date of the decision ordering that disciplinary action:

(1) At least three years for reinstatement of a license that has been revoked or surrendered.

(2) At least two years for early termination of probation of three years or more.

(3) At least one year for modification of a condition, or reinstatement of a license revoked or surrendered for mental or physical illness, or termination of probation of less than three years.

(d) The petition shall state any facts as may be required by the board. The petition shall be accompanied by at least two verified recommendations from licensed health care practitioners who have personal knowledge of the professional activities of the petitioner since

the disciplinary penalty was imposed. The board may accept or reject the petition.

(e) Written or oral argument may be provided by the petitioner or, at the request of the board, by the Attorney General. Unless the board or the petitioner requests the presentation of oral argument, the petition shall be considered and voted upon by mail. If the petitioner or the board requests the opportunity for oral argument, the petition shall be heard by the board or the board may assign the petition to an administrative law judge.

(f) Consideration shall be given to all activities of the petitioner since the disciplinary action was taken, the offense for which the petitioner was disciplined, the petitioner's activities during the time the license was in good standing, and the petitioner's rehabilitative efforts, general reputation for truth, and professional ability.

(g) The board may deny the petition for reinstatement, reinstate the license without terms and conditions, require an examination for the reinstatement, restoration, or modification of probation, or reinstate the license with terms and conditions as it deems necessary. Where a petition is heard by an administrative law judge, the administrative law judge shall render a proposed decision to the board denying the petition for reinstatement, reinstating the license without terms and conditions, requiring an examination for the reinstatement, or reinstating the license with terms and conditions as he or she deems necessary. The board may take any action with respect to the proposed decision and petition as it deems appropriate.

(h) No petition shall be considered under either of the following circumstances:

(1) If the petitioner is under sentence for any criminal offense including any period during which the petitioner is on court-imposed probation or parole.

(2) If an accusation or a petition to revoke probation is pending against the person.

(i) The board may deny without a hearing or argument any petition filed pursuant to this section within a period of three years from the effective date of the prior decision.

(j) Petitions for reinstatement shall include a processing fee equal to fees charged pursuant to subdivisions (a) and (h) of Section 3775. In addition, petitions for reinstatement that are granted shall include a fee equal to the fee charged pursuant to subdivision (d) of Section 3775, before the license may be reinstated.

(k) Nothing in this section shall be deemed to alter Sections 822 and 823.

SEC. 16. Section 4980.03 of the Business and Professions Code is amended to read:

4980.03. (a) "Board," as used in this chapter, means the Board of Behavioral Sciences.

(b) "Intern," as used in this chapter, means an unlicensed person who has earned his or her master's or doctor's degree qualifying him or her for licensure and is registered with the board.

(c) "Trainee," as used in this chapter, means an unlicensed person who is currently enrolled in a master's or doctor's degree program, as specified in Section 4980.40, that is designed to qualify him or her for licensure under this chapter, and who has completed no less than 12 semester units or 18 quarter units of coursework in any qualifying degree program.

(d) "Applicant," as used in this chapter, means an unlicensed person who has completed a master's or doctoral degree program, as specified in Section 4980.40, and whose application for registration as an intern is pending, or an unlicensed person who has completed the requirements for licensure as specified in this chapter, is no longer registered with the board as an intern, and is currently in the examination process.

(e) "Advertise," as used in this chapter, includes, but is not limited to, the issuance of any card, sign, or device to any person, or the causing, permitting, or allowing of any sign or marking on, or in, any building or structure, or in any newspaper or magazine or in any directory, or any printed matter whatsoever, with or without any limiting qualification. It also includes business solicitations communicated by radio or television broadcasting. Signs within church buildings or notices in church bulletins mailed to a congregation shall not be construed as advertising within the meaning of this chapter.

(f) "Experience," as used in this chapter, means experience in interpersonal relationships, psychotherapy, marriage and family therapy, and professional enrichment activities that satisfies the requirement for licensure as a marriage and family therapist pursuant to Section 4980.40.

(g) "Supervisor," as used in this chapter, means an individual who meets all of the following requirements:

(1) Has been licensed for at least two years as a marriage and family therapist, licensed clinical social worker, licensed psychologist, or licensed physician certified in psychiatry by the American Board of Psychiatry and Neurology.

(2) Has not provided therapeutic services to the trainee or intern.

(3) Has been licensed or certified for at least two years prior to acting as a supervisor.

(4) Has a current and valid license that is not under suspension or probation.

(5) Complies with supervision requirements established by board regulations.

(h) "Professional enrichment activities," as used in this chapter, include both of the following:

(1) Workshops, seminars, training sessions, or conferences directly related to marriage and family therapy attended by the applicant that are approved by the applicant's supervisor.

(2) Participation by the applicant in group, marital or conjoint, family, or individual psychotherapy by an appropriately licensed professional.

SEC. 17. Section 4980.40 of the Business and Professions Code is amended to read:

4980.40. To qualify for a license, an applicant shall have all the following qualifications:

(a) Applicants shall possess a doctor's or master's degree in marriage, family, and child counseling, marital and family therapy, psychology, clinical psychology, counseling psychology, or counseling with an emphasis in either marriage, family, and child counseling or marriage and family therapy, obtained from a school, college, or university accredited by the Western Association of Schools and Colleges, or approved by the Bureau for Private Postsecondary and Vocational Education. The board has the authority to make the final determination as to whether a degree meets all requirements, including, but not limited to, course requirements, regardless of accreditation or approval. In order to qualify for licensure pursuant to this subdivision, a doctor's or master's degree program shall be a single, integrated program primarily designed to train marriage and family therapists and shall contain no less than 48 semester or 72 quarter units of instruction. The instruction shall include no less than 12 semester units or 18 quarter units of coursework in the areas of marriage, family, and child counseling, and marital and family systems approaches to treatment.

The coursework shall include all of the following areas:

(1) The salient theories of a variety of psychotherapeutic orientations directly related to marriage and family therapy, and marital and family systems approaches to treatment.

(2) Theories of marriage and family therapy and how they can be utilized in order to intervene therapeutically with couples, families, adults, children, and groups.

(3) Developmental issues and life events from infancy to old age and their effect upon individuals, couples, and family relationships. This may include coursework that focuses on specific family life events and the psychological, psychotherapeutic, and health implications that arise within couples and families, including, but not limited to, childbirth,

child rearing, childhood, adolescence, adulthood, marriage, divorce, blended families, stepparenting, and geropsychology.

(4) A variety of approaches to the treatment of children.

The board shall, by regulation, set forth the subjects of instruction required in this subdivision.

(b) (1) In addition to the 12 semester or 18 quarter units of coursework specified above, the doctor's or master's degree program shall contain not less than six semester or nine quarter units of supervised practicum in applied psychotherapeutic techniques, assessment, diagnosis, prognosis, and treatment of premarital, couple, family, and child relationships, including dysfunctions, healthy functioning, health promotion, and illness prevention, in a supervised clinical placement that provides supervised fieldwork experience within the scope of practice of a marriage and family therapist.

(2) For applicants who enrolled in a degree program on or after January 1, 1995, the practicum shall include a minimum of 150 hours of face-to-face experience counseling individuals, couples, families, or groups.

(3) The practicum hours shall be considered as part of the 48 semester or 72 quarter unit requirement.

(c) As an alternative to meeting the qualifications specified in subdivision (a), the board shall accept as equivalent degrees, those master's or doctor's degrees granted by educational institutions whose degree program is approved by the Commission on Accreditation for Marriage and Family Therapy Education.

(d) All applicants shall, in addition, complete the coursework or training specified in Section 4980.41.

(e) All applicants shall be at least 18 years of age.

(f) All applicants shall have at least two years of experience that meet the requirements of Section 4980.43.

(g) The applicant shall pass a board administered written or oral examination or both types of examinations, except that an applicant who passed a written examination and who has not taken and passed an oral examination shall instead be required to take and pass a clinical vignette written examination.

(h) The applicant shall not have committed acts or crimes constituting grounds for denial of licensure under Section 480. The board shall not issue a registration or license to any person who has been convicted of a crime in this or another state or in a territory of the United States that involves sexual abuse of children or who is required to register pursuant to Section 290 of the Penal Code or the equivalent in another state or territory.

(i) (1) An applicant applying for intern registration who, prior to December 31, 1987, met the qualifications for registration, but who failed to apply or qualify for intern registration may be granted an intern registration if the applicant meets all of the following criteria:

(A) The applicant possesses a doctor's or master's degree in marriage, family, and child counseling, marital and family therapy, psychology, clinical psychology, counseling psychology, counseling with an emphasis in marriage, family, and child counseling, or social work with an emphasis in clinical social work obtained from a school, college, or university currently conferring that degree that, at the time the degree was conferred, was accredited by the Western Association of Schools and Colleges, and where the degree conferred was, at the time it was conferred, specifically intended to satisfy the educational requirements for licensure by the Board of Behavioral Sciences.

(B) The applicant's degree and the course content of the instruction underlying that degree have been evaluated by the chief academic officer of a school, college, or university accredited by the Western Association of Schools and Colleges to determine the extent to which the applicant's degree program satisfies the current educational requirements for licensure, and the chief academic officer certifies to the board the amount and type of instruction needed to meet the current requirements.

(C) The applicant completes a plan of instruction that has been approved by the board at a school, college, or university accredited by the Western Association of Schools and Colleges that the chief academic officer of the educational institution has, pursuant to subparagraph (B), certified will meet the current educational requirements when considered in conjunction with the original degree.

(2) A person applying under this subdivision shall be considered a trainee, as that term is defined in Section 4980.03, once he or she is enrolled to complete the additional coursework necessary to meet the current educational requirements for licensure.

(j) An applicant for licensure trained in an educational institution outside the United States shall demonstrate to the satisfaction of the board that he or she possesses a qualifying degree that is equivalent to a degree earned from a school, college, or university accredited by the Western Association of Schools and Colleges, or approved by the Bureau of Private Postsecondary and Vocational Education. These applicants shall provide the board with a comprehensive evaluation of the degree performed by a foreign credential evaluation service that is a member of the National Association of Credential Evaluation Services (NACES), and shall provide any other documentation the board deems necessary.

SEC. 18. Section 4980.43 of the Business and Professions Code is amended to read:

4980.43. (a) Prior to applying for licensure examinations, each applicant shall complete experience that shall comply with the following:

(1) A minimum of 3,000 hours completed during a period of at least 104 weeks.

(2) Not more than 40 hours in any seven consecutive days.

(3) Not less than 1,700 hours of supervised experience completed subsequent to the granting of the qualifying master's or doctor's degree.

(4) Not more than 1,300 hours of experience obtained prior to completing a master's or doctor's degree. This experience shall be composed as follows:

(A) Not more than 750 hours of counseling and direct supervisor contact.

(B) Not more than 250 hours of professional enrichment activities excluding personal psychotherapy.

(C) Not more than 100 hours of personal psychotherapy. The applicant shall be credited for three hours of experience for each hour of personal psychotherapy.

(5) No hours of experience may be gained prior to completing either 12 semester units or 18 quarter units of graduate instruction and becoming a trainee except for personal psychotherapy.

(6) No hours of experience gained more than six years prior to the date the application for licensure was filed, except that up to 500 hours of clinical experience gained in the supervised practicum required by subdivision (b) of Section 4980.40 shall be exempt from this six-year requirement.

(7) Not more than 1000 hours of experience for direct supervisor contact and professional activities.

(8) Not more than 500 hours of experience providing group therapy or group counseling.

(9) Not more than 250 hours of experience administering and evaluating psychological tests of counselees, writing clinical reports, writing progress notes, or writing process notes.

(10) Not more than 250 hours of experience providing counseling or crisis counseling on the telephone.

(11) Not less than 500 total hours of experience in diagnosing and treating couples, families, and children.

(b) All applicants, trainees, and registrants shall be at all times under the supervision of a supervisor who shall be responsible for ensuring that the extent, kind, and quality of counseling performed is consistent with the training and experience of the person being supervised, and who shall be responsible to the board for compliance with all laws, rules, and regulations governing the practice of marriage and family therapy. Supervised experience shall be gained by interns and trainees either as

an employee or as a volunteer. The requirements of this chapter regarding gaining hours of experience and supervision are applicable equally to employees and volunteers. Experience shall not be gained by interns or trainees as an independent contractor.

(c) Supervision shall include at least one hour of direct supervisor contact in each week for which experience is credited in each work setting, as specified:

(1) A trainee shall receive an average of at least one hour of direct supervisor contact for every five hours of client contact in each setting.

(2) Each individual supervised after being granted a qualifying degree shall receive an average of at least one hour of direct supervisor contact for every 10 hours of client contact in each setting in which experience is gained.

(3) For purposes of this section, "one hour of direct supervisor contact" means one hour of face-to-face contact on an individual basis or two hours of face-to-face contact in a group of not more than eight persons.

(4) All experience gained by a trainee shall be monitored by the supervisor as specified by regulation. The 5-to-1 and 10-to-1 ratios specified in this subdivision shall be applicable to all hours gained on or after January 1, 1995.

(d) (1)

A trainee may be credited with supervised experience completed in any setting that meets all of the following:

(A) Lawfully and regularly provides mental health counseling or psychotherapy.

(B) Provides oversight to ensure that the trainee's work at the setting meets the experience and supervision requirements set forth in this chapter and is within the scope of practice for the profession as defined in Section 4980.02.

(C) Is not a private practice owned by a licensed marriage and family therapist, a licensed psychologist, a licensed clinical social worker, a licensed physician and surgeon, or a professional corporation of any of those licensed professions.

(2) Experience may be gained by the trainee solely as part of the position for which the trainee volunteers or is employed.

(e) (1) An intern may be credited with supervised experience completed in any setting that meets both of the following:

(A) Lawfully and regularly provides mental health counseling or psychotherapy.

(B) Provides oversight to ensure that the intern's work at the setting meets the experience and supervision requirements set forth in this chapter and is within the scope of practice for the profession as defined in Section 4980.02.

(2) An applicant shall not be employed or volunteer in a private practice, as defined in subparagraph (C) of paragraph (1) of subdivision (d), until registered as an intern.

(3) While an intern may be either a paid employee or a volunteer, employers are encouraged to provide fair remuneration to interns.

(4) Except for periods of time during a supervisor's vacation or sick leave, an intern who is employed or volunteering in private practice shall be under the direct supervision of a licensee enumerated in subdivision (f) of Section 4980.40. The supervising licensee shall either be employed by and practice at the same site as the intern's employer, or shall be an owner or shareholder of the private practice. Alternative supervision may be arranged during a supervisor's vacation or sick leave if the supervision meets the requirements of this section.

(5) Experience may be gained by the intern solely as part of the position for which the intern volunteers or is employed.

(f) Except as provided in subdivision (g), all persons shall register with the board as an intern in order to be credited for postdegree hours of supervised experience gained toward licensure.

(g) Except when employed in a private practice setting, all postdegree hours of experience shall be credited toward licensure so long as the applicant applies for the intern registration within 90 days of the granting of the qualifying master's or doctor's degree and is thereafter granted the intern registration by the board.

(h) Trainees, interns, and applicants shall not receive any remuneration from patients or clients, and shall only be paid by their employers.

(i) Trainees, interns, and applicants shall only perform services at the place where their employers regularly conduct business, which may include performing services at other locations, so long as the services are performed under the direction and control of their employer and supervisor, and in compliance with the laws and regulations pertaining to supervision. Trainees and interns shall have no proprietary interest in the employer's business.

(j) Trainees, interns, or applicants who provide volunteered services or other services, and who receive no more than a total, from all work settings, of five hundred dollars (\$500) per month as reimbursement for expenses actually incurred by those trainees, interns, or applicants for services rendered in any lawful work setting other than a private practice shall be considered an employee and not an independent contractor. The board may audit applicants who receive reimbursement for expenses, and the applicants shall have the burden of demonstrating that the payments received were for reimbursement of expenses actually incurred.

(k) Each educational institution preparing applicants for licensure pursuant to this chapter shall consider requiring, and shall encourage,

its students to undergo individual, marital or conjoint, family, or group counseling or psychotherapy, as appropriate. Each supervisor shall consider, advise, and encourage his or her interns and trainees regarding the advisability of undertaking individual, marital or conjoint, family, or group counseling or psychotherapy, as appropriate. Insofar as it is deemed appropriate and is desired by the applicant, the educational institution and supervisors are encouraged to assist the applicant in locating that counseling or psychotherapy at a reasonable cost.

SEC. 19. Section 4982.05 of the Business and Professions Code is amended to read:

4982.05. (a) Except as provided in subdivisions (b), (c), and (e), any accusation filed against a licensee pursuant to Section 11503 of the Government Code shall be filed within three years from the date the board discovers the alleged act or omission that is the basis for disciplinary action, or within seven years from the date the alleged act or omission that is the basis for disciplinary action occurred, whichever occurs first.

(b) An accusation filed against a licensee pursuant to Section 11503 of the Government Code alleging the procurement of a license by fraud or misrepresentation is not subject to the limitations set forth in subdivision (a).

(c) The limitation provided for by subdivision (a) shall be tolled for the length of time required to obtain compliance when a report required to be filed by the licensee or registrant with the board pursuant to Article 11 (commencing with Section 800) of Chapter 1 is not filed in a timely fashion.

(d) If an alleged act or omission involves a minor, the seven-year limitations period provided for by subdivision (a) and the 10-year limitations period provided for by subdivision (e) shall be tolled until the minor reaches the age of majority.

(e) An accusation filed against a licensee pursuant to Section 11503 of the Government Code alleging sexual misconduct shall be filed within three years after the board discovers the act or omission alleged as the grounds for disciplinary action, or within 10 years after the act or omission alleged as the grounds for disciplinary action occurs, whichever occurs first. This subdivision shall apply to a complaint alleging sexual misconduct received by the board on and after January 1, 2002.

(f) The limitations period provided by subdivision (a) shall be tolled during any period if material evidence necessary for prosecuting or determining whether a disciplinary action would be appropriate is unavailable to the board due to an ongoing criminal investigation.

(g) For purposes of this section, “discovers” means the later of the occurrence of any of the following with respect to each act or omission alleged as the basis for disciplinary action:

(1) The date the board received a complaint or report describing the act or omission.

(2) The date, subsequent to the original complaint or report, on which the board became aware of any additional acts or omissions alleged as the basis for disciplinary action against the same individual.

(3) The date the board receives from the complainant a written release of information pertaining to the complainant’s diagnosis and treatment.

SEC. 20. Section 4982.26 of the Business and Professions Code is amended to read:

4982.26. The board shall revoke any license issued under this chapter upon a decision made in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, that contains any finding of fact that the licensee or registrant engaged in any act of sexual contact, as defined in Section 729, when that act is with a patient, or with a former patient when the relationship was terminated primarily for the purpose of engaging in that act. The revocation shall not be stayed by the administrative law judge or the board.

SEC. 21. Section 4986.71 of the Business and Professions Code is amended to read:

4986.71. The board shall revoke any license issued under this chapter upon a decision made in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, that contains any finding of fact that the licensee engaged in any act of sexual contact, as defined in Section 729, when that act is with a patient, or with a former patient when the relationship was terminated primarily for the purpose of engaging in that act, shall contain an order of revocation. The revocation shall not be stayed by the administrative law judge or the board.

SEC. 22. Section 4990.1 of the Business and Professions Code is amended to read:

4990.1. There is in the Department of Consumer Affairs a Board of Behavioral Sciences which consists of 11 members.

This section shall become inoperative on July 1, 2008, and, as of January 1, 2009, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 2009, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 23. Section 4990.8 of the Business and Professions Code is amended to read:

4990.8. The executive officer shall exercise the powers and perform the duties delegated by the board and vested in him or her by this chapter.

This section shall become inoperative on July 1, 2008, and, as of January 1, 2009, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 2009, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 24. Section 4992.31 of the Business and Professions Code is amended to read:

4992.31. (a) Except as provided in subdivisions (b), (c), and (e), any accusation filed against a licensee pursuant to Section 11503 of the Government Code shall be filed within three years from the date the board discovers the alleged act or omission that is the basis for disciplinary action, or within seven years from the date the alleged act or omission that is the basis for disciplinary action occurred, whichever occurs first.

(b) An accusation filed against a licensee pursuant to Section 11503 of the Government Code alleging the procurement of a license by fraud or misrepresentation is not subject to the limitations set forth in subdivision (a).

(c) The limitation provided for by subdivision (a) shall be tolled for the length of time required to obtain compliance when a report required to be filed by the licensee or registrant with the board pursuant to Article 11 (commencing with Section 800) of Chapter 1 is not filed in a timely fashion.

(d) If an alleged act or omission involves a minor, the seven-year limitations period provided for by subdivision (a) and the 10-year limitations period provided for by subdivision (e) shall be tolled until the minor reaches the age of majority.

(e) An accusation filed against a licensee pursuant to Section 11503 of the Government Code alleging sexual misconduct shall be filed within three years after the board discovers the act or omission alleged as the ground for disciplinary action, or within 10 years after the act or omission alleged as the ground for disciplinary action occurs, whichever occurs first. This subdivision shall apply to a complaint alleging sexual misconduct received by the board on and after January 1, 2002.

(f) The limitations period provided by subdivision (a) shall be tolled during any period if material evidence necessary for prosecuting or determining whether a disciplinary action would be appropriate is unavailable to the board due to an ongoing criminal investigation.

(g) For purposes of this section, "discovers" means the later of the occurrence of any of the following with respect to each act or omission alleged as the basis for disciplinary action:

(1) The date the board received a complaint or report describing the act or omission.

(2) The date, subsequent to the original complaint or report, on which the board became aware of any additional acts or omissions alleged as the basis for disciplinary action against the same individual.

(3) The date the board receives from the complainant a written release of information pertaining to the complainant's diagnosis and treatment.

SEC. 25. Section 4992.33 of the Business and Professions Code is amended to read:

4992.33. The board shall revoke any license issued under this chapter upon a decision made in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, that contains any finding of fact that the licensee or registrant engaged in any act of sexual contact, as defined in Section 729, when that act is with a patient, or with a former patient when the relationship was terminated primarily for the purpose of engaging in that act. The revocation shall not be stayed by the administrative law judge or the board.

SEC. 26. Section 5054 is added to the Business and Professions Code, to read:

5054. (a) Notwithstanding any other provision of this chapter, an individual or firm holding a valid and current license, certificate, or permit to practice public accountancy from another state may prepare tax returns for natural persons who are California residents or estate tax returns for the estates of natural persons who were clients at the time of death without obtaining a permit to practice public accountancy issued by the board under this chapter or a practice privilege pursuant to Article 5.1 (commencing with Section 5096) provided that the individual or firm does not physically enter California to practice public accountancy pursuant to Section 5051, does not solicit California clients, and does not assert or imply that the individual or firm is licensed or registered to practice public accountancy in California.

(b) The board may, by regulation, limit the number of tax returns that may be prepared pursuant to subdivision (a).

SEC. 27. Section 5079 of the Business and Professions Code is amended to read:

5079. (a) Notwithstanding any other provision of this chapter, any firm lawfully engaged in the practice of public accountancy in this state may have owners who are not licensed as certified public accountants or public accountants if the following conditions are met:

(1) Nonlicensee owners shall be natural persons or entities, such as partnerships, professional corporations, or others, provided that each ultimate beneficial owner of an equity interest in that entity shall be a

natural person materially participating in the business conducted by the firm or an entity controlled by the firm.

(2) Nonlicensee owners shall materially participate in the business of the firm, or an entity controlled by the firm, and their ownership interest shall revert to the firm upon the cessation of any material participation.

(3) Licensees shall in the aggregate, directly or beneficially, comprise a majority of owners, except that firms with two owners may have one owner who is a nonlicensee.

(4) Licensees shall in the aggregate, directly or beneficially, hold more than half of the equity capital and possess majority voting rights.

(5) Nonlicensee owners shall not hold themselves out as certified public accountants or public accountants and each licensed firm shall disclose actual or potential involvement of nonlicensee owners in the services provided.

(6) There shall be a certified public accountant or public accountant who has ultimate responsibility for each financial statement attest and compilation service engagement.

(7) Except as permitted by the board in the exercise of its discretion, a person may not become a nonlicensee owner or remain a nonlicensee owner if the person has done either of the following:

(A) Been convicted of any crime, an element of which is dishonesty or fraud, under the laws of any state, of the United States, or of any other jurisdiction.

(B) Had a professional license or the right to practice revoked or suspended for reasons other than nonpayment of dues or fees, or has voluntarily surrendered a license or right to practice with disciplinary charges or a disciplinary investigation pending, and not reinstated by a licensing or regulatory agency of any state, or of the United States, including, but not limited to, the Securities and Exchange Commission or Public Company Accounting Oversight Board, or of any other jurisdiction.

(b) (1) A nonlicensee owner of a licensed firm shall report to the board in writing of the occurrence of any of the events set forth in paragraph (7) of subdivision (a) within 30 days of the date the nonlicensee owner has knowledge of the event. A conviction includes the initial plea, verdict, or finding of guilt, pleas of no contest, or pronouncement of sentence by a trial court even though that conviction may not be final or sentence actually imposed until appeals are exhausted.

(2) A California nonlicensee owner of a licensed firm shall report to the board in writing the occurrence of any of the following events occurring on or after January 1, 2006, within 30 days of the date the California nonlicensee owner has knowledge of the events:

(A) Any notice of the opening or initiation of a formal investigation of the nonlicensee owner by the Securities and Exchange Commission or its designee, or any notice from the Securities and Exchange Commission to a nonlicensee owner requesting a Wells submission.

(B) Any notice of the opening or initiation of an investigation of the nonlicensee owner by the Public Company Accounting Oversight Board or its designee.

(C) Any notice of the opening or initiation of an investigation of the nonlicensee owner by another professional licensing agency.

(3) The report required by paragraphs (1) and (2) shall be signed by the nonlicensee owner and set forth the facts that constitute the reportable event. If the reportable event involves the action of an administrative agency or court, the report shall identify the name of the agency or court, the title of the matter, and the date of occurrence of the event.

(4) Notwithstanding any other provision of law, reports received by the board pursuant to paragraph (2) shall not be disclosed to the public pursuant to the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code) other than (A) in the course of any disciplinary proceeding by the board after the filing of a formal accusation, (B) in the course of any legal action to which the board is a party, (C) in response to an official inquiry from a state or federal agency, (D) in response to a subpoena or summons enforceable by order of a court, or (E) when otherwise specifically required by law.

(5) Nothing in this subdivision shall impose a duty upon any licensee or nonlicensee owner to report to the board the occurrence of any events set forth in paragraph (7) of subdivision (a) or paragraph (2) of this subdivision either by or against any other nonlicensee owner.

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

(1) "Licensee" means a certified public accountant or public accountant in this state or a certified public accountant in good standing in another state.

(2) "Material participation" means an activity that is regular, continuous, and substantial.

(d) All firms with nonlicensee owners shall certify at the time of registration and renewal that the firm is in compliance with this section.

(e) The board shall adopt regulations to implement, interpret, or make specific this section.

SEC. 28. 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, 2008, and, as of January 1, 2009, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 2009, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 29. Section 8005 of the Business and Professions Code is amended to read:

8005. The Court Reporters Board of California is charged with the executive functions necessary for effectuating the purposes of this chapter. It may appoint committees as it deems necessary or proper. The board may appoint, prescribe the duties, and fix the salary of an executive officer. Except as provided by Section 159.5, the board may also employ other employees as may be necessary, subject to civil service and other provisions of law.

This section shall become inoperative on July 1, 2008, and, as of January 1, 2009, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 2009, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 30. Section 8010 of the Business and Professions Code is amended to read:

8010. Information regarding a complaint against a specific licensee may not be disclosed to the public until an accusation has been filed by the board and the licensee has been notified of the filing of the accusation against his or her license and the disciplinary proceedings to be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code. This section does not apply to citations, fines, letters of reprimand, or orders of abatement, which shall be disclosed to the public upon notice to the licensee.

SEC. 31. Section 8025 of the Business and Professions Code is amended to read:

8025. A certificate issued under this chapter may be suspended, revoked, denied, or other disciplinary action may be imposed for one or more of the following causes:

(a) Conviction of any felony or any misdemeanor if the misdemeanor is substantially related to the functions and duties of a court reporter. The record of conviction, or a certified copy thereof, is conclusive evidence of the conviction.

(b) Failure to notify the board of a conviction described in subdivision (a), in accordance with Section 8024 or 8024.2.

(c) Fraud or misrepresentation resorted to in obtaining a certificate hereunder.

(d) Fraud, dishonesty, corruption, willful violation of duty, gross negligence or incompetence in practice, or unprofessional conduct in or directly related to the practice of shorthand reporting.

“Unprofessional conduct” includes, but is not limited to, acts contrary to professional standards concerning confidentiality; impartiality; filing and retention of notes; notifications, availability, delivery, execution and certification of transcripts; and any provision of law substantially related to the duties of a certified shorthand reporter.

(e) Repeated unexcused failure, whether or not willful, to transcribe notes of cases pending on appeal and to file the transcripts of those notes within the time required by law or to transcribe or file notes of other proceedings within the time required by law or agreed to by contract. Violation of this subdivision shall also be deemed an act endangering the public health, safety, or welfare within the meaning of Section 494.

(f) Loss or destruction of stenographic notes, whether on paper or electronic media, that prevents the production of a transcript due to negligence of the licensee.

(g) Failure to comply with, or to pay a monetary sanction imposed by, any court for failure to provide timely transcripts. The record of the court order, or a certified copy thereof, is conclusive evidence that the sanction was imposed.

(h) Failure to pay a civil penalty relating to the provision of court reporting services or products.

(i) The revocation of, suspension of, or other disciplinary action against a license to act as a certified shorthand reporter by another state. A certified copy of the revocation, suspension, or disciplinary action by the other state is conclusive evidence of that action.

(j) Violation of this chapter or the statutes, rules, and regulations pertaining to certified shorthand reporters.

SEC. 32. Section 8030.2 of the Business and Professions Code is amended to read:

8030.2. (a) To provide shorthand reporting services to low-income litigants in civil cases, who are unable to otherwise afford those services, funds generated by fees received by the board pursuant to subdivision (c) of Section 8031 in excess of funds needed to support the board's operating budget for the fiscal year in which a transfer described below is made shall be used by the board for the purpose of establishing and maintaining a Transcript Reimbursement Fund. The Transcript Reimbursement Fund shall be established by a transfer of funds from the Court Reporters' Fund and shall be maintained in an amount no less than three hundred thousand dollars (\$300,000) for each fiscal year.

(b) All moneys held in the Court Reporters' Fund on the effective date of this section in excess of the board's operating budget for the 1996-97 fiscal year shall be used as provided in subdivision (a).

(c) Refunds and unexpended funds that are anticipated to remain in the Transcript Reimbursement Fund at the end of the fiscal year shall be considered by the board in establishing the fee assessment pursuant to Section 8031 so that the assessment shall maintain the Transcript Reimbursement Fund at the appropriate level in the following fiscal year.

(d) The Transcript Reimbursement Fund is hereby created in the State Treasury. Notwithstanding Section 13340 of the Government Code, moneys in the Transcript Reimbursement Fund are continuously appropriated for the purposes of this chapter.

(e) Applicants who have been reimbursed pursuant to this chapter for services provided to litigants and who are awarded court costs or attorneys' fees by judgment or by settlement agreement shall refund the full amount of that reimbursement to the fund within 90 days of receipt of the award or settlement.

(f) Subject to the limitations of this chapter, the board shall maintain the fund at a level that is sufficient to pay all qualified claims. To accomplish this objective, the board shall utilize all refunds, unexpended funds, fees, and any other moneys received by the board.

(g) Notwithstanding Section 16346 of the Government Code, all unencumbered funds remaining in the Transcript Reimbursement Fund as of June 29, 2011, shall be transferred to the Court Reporters' Fund.

This section shall become inoperative on July 1, 2011, and, as of January 1, 2012, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2012, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 33. Section 8030.4 of the Business and Professions Code is amended to read:

8030.4. As used in this chapter:

(a) "Qualified legal services project" means a nonprofit project incorporated and operated exclusively in California that provides as its primary purpose and function legal services without charge to indigent persons, has a board of directors or advisory board composed of both attorneys and consumers of legal services, and provides for community participation in legal services programming. Legal services projects funded either in whole or in part by the Legal Services Corporation or with Older Americans Act funds are presumed to be qualified legal services projects for the purposes of this chapter.

(b) "Qualified support center" means an incorporated nonprofit legal services center, having an office or offices in California, which office

or offices provide legal services or technical assistance without charge to qualified legal services projects and their clients on a multicounty basis in California. Support centers funded either in whole or in part by the Legal Services Corporation or with Older Americans Act funds are presumed to be qualified legal services projects for the purposes of this chapter.

(c) "Other qualified project" means a nonprofit organization formed for charitable or other public purposes, not receiving funds from the Legal Services Corporation or pursuant to the Older Americans Act, which organization or association provides free legal services to indigent persons.

(d) "Pro bono attorney" means any attorney, law firm, or legal corporation, licensed to practice law in this state, which undertakes without charge to the party the representation of an indigent person, referred by a qualified legal services project, qualified support center, or other qualified project, in a case not considered to be fee generating as defined in this chapter.

(e) "Applicant" means a qualified legal services project, qualified support center, other qualified project, or pro bono attorney applying to receive funds from the Transcript Reimbursement Fund established by this chapter. The term "applicant" shall not include persons appearing pro se to represent themselves at any stage of the case.

(f) "Indigent person" means either a person whose income is 125 percent or less of the current poverty threshold established by the Office of Management and Budget of the United States, a disabled person whose income after meeting medical and other disability-related special expenses is 125 percent or less of that current poverty threshold, or a person who receives or is eligible to receive supplemental security income.

(g) "Fee-generating case" means any case or matter which, if undertaken on behalf of an eligible client by an attorney in private practice, reasonably may be expected to result in payment of a fee for legal services from an award to a client, from public funds, or from an opposing party. A reasonable expectation as to payment of a legal fee exists wherever a client enters into a contingent fee agreement with his or her lawyer. If there is no contingent fee agreement, a case is not considered fee generating if adequate representation is deemed to be unavailable because of the occurrence of any of the following circumstances:

(1) Where the applicant has determined that referral is not possible because of any of the following:

(A) The case has been rejected by the local lawyer referral service, or if there is no such service, by two private attorneys who have experience in the subject matter of the case.

(B) Neither the referral service nor any lawyer will consider the case without payment of a consultation fee.

(C) The case is of the type that private attorneys in the area ordinarily do not accept, or do not accept without prepayment of a fee.

(D) Emergency circumstances compel immediate action before referral can be made, but the client is advised that, if appropriate and consistent with professional responsibility, referral will be attempted at a later time.

(2) Where recovery of damages is not the principal object of the case and a request for damages is merely ancillary to an action for equitable or other nonpecuniary relief; or inclusion of a counterclaim requesting damages is necessary for effective defense or because of applicable rules governing joinder of counterclaims.

(3) Where a court appoints an applicant or an employee of an applicant pursuant to a statute or a court rule or practice of equal applicability to all attorneys in the jurisdiction.

(4) In any case involving the rights of a claimant under a public supported benefit program for which entitlement to benefit is based on need.

(h) "Legal Services Corporation" means the Legal Services Corporation established under the Legal Services Corporation Act of 1974, Public Law 93-355, as amended.

(i) "Supplemental security income recipient" means an individual receiving or eligible to receive payments under Title XVI of the Social Security Act, Public Law 92-603, as amended, or payment under Chapter 3 (commencing with Section 12000) of Part 3 of Division 9 of the Welfare and Institutions Code.

(j) "Lawyer referral service" means a lawyer referral program authorized by the State Bar of California pursuant to the rules of professional conduct.

(k) "Older Americans Act" means the Older Americans Act of 1965, Public Law 89-73, as amended.

(l) "Rules of professional conduct" means those rules adopted by the State Bar pursuant to Sections 6076 and 6077.

(m) "Certified shorthand reporter" means a shorthand reporter certified pursuant to Article 3 (commencing with Section 8020) performing shorthand reporting services pursuant to Section 8017.

(n) "Case" means a single legal proceeding from its inception, through all levels of hearing, trial, and appeal, until its ultimate conclusion and disposition.

(o) This section shall become inoperative on July 1, 2011, and, as of January 1, 2012, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2012, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 34. Section 8030.6 of the Business and Professions Code is amended to read:

8030.6. The board shall disburse funds from the Transcript Reimbursement Fund for the costs, exclusive of per diem charges, of preparing either an original transcript and one copy thereof, or where appropriate, a copy of the transcript, of court or deposition proceedings, or both, incurred as a contractual obligation between the shorthand reporter and the applicant, for litigation conducted in California. If no deposition transcript is ordered, the board may reimburse the applicant or the certified shorthand reporter designated in the application for per diem costs. The rate of per diem for depositions shall not exceed seventy-five dollars (\$75) for a half day, or one hundred twenty-five dollars (\$125) for a full day. In the event that a transcript is ordered within one year of the date of the deposition, but subsequent to the per diem having been reimbursed by the Transcript Reimbursement Fund, the amount of the per diem shall be deducted from the amount of transcript. Reimbursement may be obtained through the following procedures:

(a) The applicant or certified shorthand reporter shall promptly submit to the board the certified shorthand reporter's invoice for transcripts together with the appropriate documentation as is required by this chapter.

(b) Except as provided in subdivision (c), the board shall promptly determine if the applicant or the certified shorthand reporter is entitled to reimbursement under this chapter and shall make payment as follows:

(1) Regular customary charges for preparation of original deposition transcripts and one copy thereof, or a copy of the transcripts.

(2) Regular customary charges for expedited deposition transcripts up to a maximum of two thousand five hundred dollars (\$2,500) per case.

(3) Regular customary charges for the preparation of original transcripts and one copy thereof, or a copy of transcripts of court proceedings.

(4) Regular customary charges for expedited or daily charges for preparation of original transcripts and one copy thereof or a copy of transcripts of court proceedings.

(5) The charges may not include notary or handling fees. The charges may include actual shipping costs and exhibits, except that the cost of exhibits may not exceed thirty-five cents (\$0.35) each or a total of thirty-five dollars (\$35) per transcript.

(c) The maximum amount reimbursable by the fund under subdivision (b) may not exceed twenty thousand dollars (\$20,000) per case per year.

(d) If entitled, and funds are available, the board shall forthwith disburse the appropriate sum to the applicant or the certified shorthand reporter when documentation as provided in subdivision (d) of Section 8030.8 accompanies the application. A notice shall be sent to the recipient requiring the recipient to file a notice with the court in which the action is pending stating the sum of reimbursement paid pursuant to this section. The notice filed with the court shall also state that if the sum is subsequently included in any award of costs made in the action, that the sum is to be ordered refunded by the applicant to the Transcript Reimbursement Fund whenever the sum is actually recovered as costs. The court may not consider whether payment has been made from the Transcript Reimbursement Fund in determining the appropriateness of any award of costs to the parties. The board shall also forthwith notify the applicant that the reimbursed sum has been paid to the certified shorthand reporter and shall likewise notify the applicant of the duty to refund any of the sum actually recovered as costs in the action.

(e) If not entitled, the board shall forthwith return a copy of the invoice to the applicant and the designated certified shorthand reporter together with a notice stating the grounds for denial.

(f) The board shall complete its actions under this subdivision within 30 days of receipt of the invoice and all required documentation, including a completed application.

(g) Applications for reimbursements from the fund shall be filled on a first-come basis.

(h) Applications for reimbursement that cannot be paid from the fund due to insufficiency of the fund for that fiscal year shall be held over until the next fiscal year to be paid out of the renewed fund.

(i) This section shall become inoperative on July 1, 2011, and, as of January 1, 2012, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2012, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 35. Section 8030.8 of the Business and Professions Code is amended to read:

8030.8. (a) For purposes of this chapter, documentation accompanying an invoice is sufficient to establish entitlement for reimbursement from the Transcript Reimbursement Fund if it is filed with the executive officer on an application form prescribed by the board that is complete in all respects, and that establishes all of the following:

(1) The case name and number and that the litigant or litigants requesting the reimbursement are indigent persons.

(2) The applicant is qualified under the provisions of this chapter.

(3) The case is not a fee-generating case, as defined in Section 8030.4.

(4) The invoice or other documentation shall evidence that the certified shorthand reporter to be reimbursed was, at the time the services were rendered, a duly licensed certified shorthand reporter.

(5) The invoice shall be accompanied by a statement, signed by the applicant, stating that the charges are for transcripts actually provided as indicated on the invoice.

(6) The applicant has acknowledged, in writing, that as a condition of entitlement for reimbursement that the applicant agrees to refund the entire amount disbursed from the Transcript Reimbursement Fund from any costs or attorneys' fees awarded to the applicant by the court or provided for in any settlement agreement in the case.

(7) The certified shorthand reporter's invoice for transcripts shall include separate itemizations of charges claimed, as follows:

(A) Total charges and rates for customary services in preparation of an original transcript and one copy or a copy of the transcript of depositions.

(B) Total charges and rates for expedited deposition transcripts.

(C) Total charges and rates in connection with transcription of court proceedings.

(b) For an applicant claiming to be eligible pursuant to subdivision (a), (b), or (c) of Section 8030.4, a letter from the director of the project or center, certifying that the project or center meets the standards set forth in one of those subdivisions and that the litigant or litigants are indigent persons, is sufficient documentation to establish eligibility.

(c) For an applicant claiming to be eligible pursuant to subdivision (d) of Section 8030.4, a letter certifying that the applicant meets the requirements of that subdivision, that the case is not a fee-generating case, as defined in subdivision (g) of Section 8030.4, and that the litigant or litigants are indigent persons, together with a letter from the director of a project or center defined in subdivision (a), (b), or (c) of Section 8030.4 certifying that the litigant or litigants had been referred by that project or center to the applicant, is sufficient documentation to establish eligibility.

(d) The applicant may receive reimbursement directly from the board when the applicant has previously paid the certified shorthand reporter for transcripts as provided in Section 8030.6. To receive payment directly, the applicant shall submit, in addition to all other required documentation, an itemized statement signed by the certified shorthand reporter performing the services that describes payment for transcripts in accordance with the requirements of Section 8030.6.

(e) The board may prescribe appropriate forms to be used by applicants and certified shorthand reporters to facilitate these requirements.

(f) This chapter does not restrict the contractual obligation or payment for services, including, but not limited to, billing the applicant directly, during the pendency of the claim.

(g) This section shall become inoperative on July 1, 2011, and, as of January 1, 2012, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2012, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 36. Section 8520 of the Business and Professions Code is amended to read:

8520. (a) There is in the Department of Consumer Affairs a Structural Pest Control Board, which consists of seven members.

(b) Subject to the jurisdiction conferred upon the director by Division 1 (commencing with Section 100) of this code, the board is vested with the power to and shall administer the provisions of this chapter.

(c) It is the intent of the Legislature that consumer protection is the primary mission of the board.

(d) This section shall become inoperative on July 1, 2011, and, as of January 1, 2012, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 2012, deletes or extends the dates on which it becomes inoperative and is repealed. The repeal of this section renders the board subject to the review required by Division 1.2 (commencing with Section 473).

SEC. 37. Section 8528 of the Business and Professions Code is amended to read:

8528. With the approval of the director, the board shall appoint a registrar, fix his or her compensation and prescribe his or her duties.

The registrar is the executive officer and secretary of the board.

This section shall become inoperative on July 1, 2011, and, as of January 1, 2012, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 2012, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 38. Section 22253.2 of the Business and Professions Code is amended to read:

22253.2. (a) The Franchise Tax Board shall notify the California Tax Education Council when it identifies an individual who has violated paragraph (1) of subdivision (a) of Section 22253.

(b) Upon receiving the notice described in subdivision (a), the California Tax Education Council shall notify the Attorney General, a district attorney, or a city attorney of the violation. Upon receiving this notice, the Attorney General, a district attorney, or a city attorney may do any of the following:

(1) Cite individuals preparing tax returns in violation of subdivision (a) of Section 22253.

(2) Levy a fine up to five thousand dollars (\$5,000) per violation.

(3) Issue a cease and desist order, which shall remain in effect until the individual has complied with paragraph (1) of subdivision (a) of Section 22253.

(c) The California Tax Education Council may enter into an agreement with the Franchise Tax Board to provide reimbursement to the Franchise Tax Board for any expenses incurred by the Franchise Tax Board to implement subdivision (a) of this section.

SEC. 39. Section 19167 of the Revenue and Taxation Code is amended to read:

19167. A penalty shall be imposed under this section for any of the following:

(a) In accordance with Section 6695(a) of the Internal Revenue Code, for failure to furnish a copy of the return to the taxpayer, as required by Section 18625.

(b) In accordance with Section 6695(c) of the Internal Revenue Code, for failure to furnish an identifying number, as required by Section 18624.

(c) In accordance with Section 6695(d) of the Internal Revenue Code, for failure to retain a copy or list, as required by Section 18625 or for failure to retain an electronic filing declaration, as required by Section 18621.5.

(d) Failure to register as a tax preparer with the California Tax Education Council, as required by Section 22253 of the Business and Professions Code, unless it is shown that the failure was due to reasonable cause and not due to willful neglect.

(1) The amount of the penalty under this subdivision for the first failure to register is two thousand five hundred dollars (\$2,500). This penalty shall be waived if proof of registration is provided to the Franchise Tax Board within 90 days from the date notice of the penalty is mailed to the tax preparer.

(2) The amount of the penalty under this subdivision for a failure to register, other than the first failure to register, is five thousand dollars (\$5,000).

(e) The Franchise Tax Board shall not impose the penalties authorized by subdivision (d) until either one of the following has occurred:

(1) Commencing January 1, 2006, and continuing each year thereafter, there is an appropriation in the Franchise Tax Board's annual budget to fund the costs associated with the penalty authorized by subdivision (d).

(2) (A) An agreement has been executed between the California Tax Education Council and the Franchise Tax Board that provides that an amount equal to all first year costs associated with the penalty authorized by subdivision (d) shall be received by the Franchise Tax Board. For purposes of this subparagraph, first year costs include, but are not limited

to, costs associated with the development of processes or systems changes, if necessary, and labor.

(B) An agreement has been executed between the California Tax Education Council and the Franchise Tax Board that provides that the annual costs incurred by the Franchise Tax Board associated with the penalty authorized by subdivision (d) shall be reimbursed by the California Tax Education Council to the Franchise Tax Board.

(C) Pursuant to the agreement described in subparagraph (A), the Franchise Tax Board has received an amount equal to the first year costs described in that subparagraph.

SEC. 40. The Legislature finds and declares that the amendments made to Sections 4982.26, 4986.71, and 4992.33 of the Business and Professions Code made by Sections 20, 21, and 25 of this act do not constitute a change in, but are declaratory of, existing law.

CHAPTER 659

An act to amend Sections 473.15, 1601.1, 1616.5, 1742, and 4929 of, to repeal Section 4929.5 of, and to repeal and add Sections 4928 and 4934 of, the Business and Professions Code, relating to professions and vocations.

[Approved by Governor October 7, 2005. Filed with
Secretary of State October 7, 2005.]

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

SECTION 0.5. 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, 2010.

(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.

SECTION 1. Section 1601.1 of the Business and Professions Code is amended to read:

1601.1. (a) There shall be in the Department of Consumer Affairs the Dental Board of California in which the administration of this chapter is vested. The board shall consist of eight practicing dentists, one registered dental hygienist, one registered dental assistant, and four public members. Of the eight practicing dentists, one shall be a member of a faculty of any California dental college and one shall be a dentist practicing in a nonprofit community clinic. The appointing powers, described in Section 1603, may appoint to the board a person who was a member of the prior board. The board shall be organized into standing committees dealing with examinations, enforcement, and other subjects as the board deems appropriate.

(b) For purposes of this chapter, any reference in this chapter to the Board of Dental Examiners shall be deemed to refer to the Dental Board of California.

(c) The board shall have all authority previously vested in the existing board under this chapter. The board may enforce all disciplinary actions undertaken by the previous board.

(d) This section shall become inoperative on July 1, 2008, and, as of January 1, 2009, is repealed, unless a later enacted statute that is enacted before January 1, 2009, deletes or extends the dates on which it becomes inoperative and is repealed. The repeal of this section renders the board subject to the review required by Division 1.2 (commencing with Section 473).

SEC. 2. Section 1616.5 of the Business and Professions Code is amended to read:

1616.5. (a) The board, by and with the approval of the director, may appoint a person exempt from civil service who shall be designated as an executive officer and who shall exercise the powers and perform the duties delegated by the board and vested in him or her by this chapter.

(b) This section shall become inoperative on July 1, 2008, and, as of January 1, 2009, is repealed, unless a later enacted statute that is enacted before January 1, 2009, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 3. Section 1742 of the Business and Professions Code is amended to read:

1742. (a) There is within the jurisdiction of the board a Committee on Dental Auxiliaries.

(b) The Committee on Dental Auxiliaries shall have the following areas of responsibility and duties:

(1) The committee shall have the following duties and authority related to education programs and curriculum:

(A) Shall evaluate all dental auxiliary programs applying for board approval in accordance with board rules governing the programs.

(B) May appoint board members to any evaluation committee. Board members so appointed shall not make a final decision on the issue of program or course approval.

(C) Shall report and make recommendations to the board as to whether a program or course qualifies for approval. The board retains the final authority to grant or deny approval to a program or course.

(D) Shall review and document any alleged deficiencies that might warrant board action to withdraw or revoke approval of a program or course, at the request of the board.

(E) May review and document any alleged deficiencies that might warrant board action to withdraw or revoke approval of a program or course, at its own initiation.

(2) The committee shall have the following duties and authority related to applications:

(A) Shall review and evaluate all applications for licensure in the various dental auxiliary categories to ascertain whether a candidate meets the appropriate licensing requirements specified by statute and board regulations.

(B) Shall maintain application records, cashier application fees, and perform any other ministerial tasks as are incidental to the application process.

(C) May delegate any or all of the functions in this paragraph to its staff.

(D) Shall issue auxiliary licenses in all cases, except where there is a question as to a licensing requirement. The board retains final authority to interpret any licensing requirement. If a question arises in the area of interpreting any licensing requirement, it shall be presented by the committee to the board for resolution.

(3) The committee shall have the following duties and authority regarding examinations:

(A) Shall advise the board as to the type of license examination it deems appropriate for the various dental auxiliary license categories.

(B) Shall, at the direction of the board, develop or cause to be developed, administer, or both, examinations in accordance with the board's instructions and periodically report to the board on the progress of those examinations. The following shall apply to the examination procedure:

(i) The examination shall be submitted to the board for its approval prior to its initial administration.

(ii) Once an examination has been approved by the board, no further approval is required unless a major modification is made to the examination.

(iii) The committee shall report to the board on the results of each examination and shall, where appropriate, recommend pass points.

(iv) The board shall set pass points for all dental auxiliary licensing examinations.

(C) May appoint board members to any examination committee established pursuant to subparagraph (B).

(4) The committee shall periodically report and make recommendations to the board concerning the level of fees for dental auxiliaries and the need for any legislative fee increase. However, the board retains final authority to set all fees.

(5) The committee shall be responsible for all aspects of the license renewal process, which shall be accomplished in accordance with this chapter and board regulations. The committee may delegate any or all of its functions under this paragraph to its staff.

(6) The committee shall have no authority with respect to the approval of continuing education providers; the board retains all of this authority.

(7) The committee shall advise the board as to appropriate standards of conduct for auxiliaries, the proper ordering of enforcement priorities, and any other enforcement-related matters that the board may, in the future, delegate to the committee. The board shall retain all authority with respect to the enforcement actions, including, but not limited to, complaint resolution, investigation, and disciplinary action against auxiliaries.

(8) The committee shall have the following duties regarding regulations:

(A) To review and evaluate all suggestions or requests for regulatory changes related to dental auxiliaries.

(B) To report and make recommendations to the board, after consultation with departmental legal counsel and the board's executive officer.

(C) To include in any report regarding a proposed regulatory change, at a minimum, the specific language of the proposed changes and the reasons for and facts supporting the need for the change. The board has the final rulemaking authority.

(c) This section shall become inoperative on July 1, 2008, and, as of January 1, 2009, is repealed, unless a later enacted statute which becomes effective on or before January 1, 2009, deletes or extends the dates on which it becomes inoperative and is repealed. The repeal of this section renders the committee subject to the review required by Division 1.2 (commencing with Section 473).

SEC. 4. Section 4928 of the Business and Professions Code is repealed.

SEC. 5. Section 4928 is added to the Business and Professions Code, to read:

4928. The Acupuncture Board, which consists of seven members, shall enforce and administer this chapter. The appointing powers, as described in Section 4929, may appoint to the board a person who was a member of the prior board prior to the repeal of that board on January 1, 2006.

This section shall become inoperative on July 1, 2008, and as of January 1, 2009, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 2009, deletes or extends the dates on which it becomes inoperative and is repealed.

The repeal of this section renders the board subject to the review required by Division 1.2 (commencing with Section 473).

SEC. 6. Section 4929 of the Business and Professions Code is amended to read:

4929. Three members of the board shall be acupuncturists with at least five years of experience in acupuncture and four members shall be public members who do not hold a license or certificate as a physician and surgeon or acupuncturist. The acupuncturist members shall be appointed to represent a cross section of the cultural backgrounds of licensed members of the acupuncturist profession.

The Governor shall appoint the three acupuncturist members and two of the public members. All members appointed to the board by the Governor shall be subject to confirmation by the Senate. The Senate Rules Committee and the Speaker of the Assembly shall each appoint a public member. Any member of the board may be removed by the appointing power for neglect of duty, misconduct, or malfeasance in office, after being provided with a written statement of the charges and an opportunity to be heard.

SEC. 7. Section 4929.5 of the Business and Professions Code is repealed.

SEC. 8. Section 4934 of the Business and Professions Code is repealed.

SEC. 9. Section 4934 is added to the Business and Professions Code, to read:

4934. (a) The board, by and with the approval of the director, may employ personnel necessary for the administration of this chapter, and the board, by and with the approval of the director, may appoint an executive officer who is exempt from the provisions of the Civil Service Act.

(b) This section shall become inoperative on July 1, 2008, and, as of January 1, 2009, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 2009, deletes or extends the dates on which it becomes inoperative and is repealed.

CHAPTER 660

An act to add Section 2250 to the Elections Code, and to add Section 1679 to the Vehicle Code, relating to voter registration information.

[Approved by Governor October 7, 2005. Filed with
Secretary of State October 7, 2005.]

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

SECTION 1. Section 2250 is added below the heading of Chapter 4 of Division 2 of the Elections Code, to read:

2250. On and after July 1, 2007, in any document mailed by a state agency that offers a person the opportunity to register to vote pursuant to the National Voter Registration Act of 1993 (42 U.S.C. Sec. 1973gg), that state agency shall include a notice informing prospective voters that if they have not received voter registration information within 30 days of requesting it, they should contact their local elections office or the office of the Secretary of State.

SEC. 2 Section 1679 is added to the Vehicle Code, to read:

1679. On and after July 1, 2006, in any document mailed by the department that offers a person the opportunity to register to vote pursuant to the National Voter Registration Act of 1993 (42 U.S.C. Sec. 1973gg), the department shall include a notice informing prospective voters that if they have not received voter registration information within 30 days of requesting it, they should contact their local elections office or the office of the Secretary of State.

CHAPTER 661

An act to amend Sections 24600, 25025, 26004, and 27024 of, and to add Section 25024.5 to, the Education Code, relating to state teachers' retirement.

[Approved by Governor October 7, 2005. Filed with
Secretary of State October 7, 2005.]

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

SECTION 1. Section 24600 of the Education Code is amended to read:

24600. (a) A retirement allowance under this part begins to accrue on the effective date of the member's retirement and ceases on the earlier of the day of the member's death or the day on which the retirement allowance is terminated for a reason other than the member's death.

(b) A retirement allowance payable to an option beneficiary under this part begins to accrue on the day following the day of the retired member's death and ceases on the day of the option beneficiary's death.

(c) A disability allowance under this part begins to accrue on the effective date of the member's disability allowance and ceases on the

earlier of the day of the member's death or the day on which the disability allowance is terminated for a reason other than the member's death.

(d) A family allowance under this part begins to accrue on the day following the day of the member's death and ceases on the day of the event that terminates eligibility for the allowance.

(e) A survivor benefit allowance payable to a surviving spouse under this part pursuant to Chapter 23 (commencing with Section 23850) begins to accrue on the day the member would have attained 60 years of age or on the day following the day of the member's death, as elected by the surviving spouse, and ceases on the day of the surviving spouse's death.

(f) A child's portion of an allowance under this part begins to accrue on the effective date of that allowance and ceases on the earlier of either the termination of the child's eligibility or the termination of the allowance.

(g) Supplemental payments issued under this part pursuant to Sections 24411, 24412, and 24415 to retired members, disabled members, and beneficiaries shall begin to accrue pursuant to Sections 24411, 24412, and 24415 and shall cease to accrue as of the termination dates specified in subdivisions (a) to (f), inclusive, of this section.

(h) Notwithstanding any other provision of this part or other law, distributions payable under the plan with respect to the Defined Benefit Program and the Defined Benefit Supplement Program shall be made in accordance with applicable provisions of the Internal Revenue Code of 1986 and related regulations. The required beginning date of benefit payments that represent the entire interest of the member in the plan with respect to the Defined Benefit Program and the Defined Benefit Supplement Program shall be either:

(1) In the case of a refund of contributions, as described in Chapter 18 (commencing with Section 23100) of this part and distribution of an amount equal to the balance of credits in a member's Defined Benefit Supplement account, as described in Chapter 38 (commencing with Section 25000) of this part, not later than April 1 of the calendar year following the later of (A) the calendar year in which the member attains the age at which the Internal Revenue Code of 1986 requires a distribution of benefits or (B) the calendar year in which the member terminates employment within the meaning of subdivision (i).

(2) In the case of a retirement allowance, as defined in Section 22166, not later than April 1 of the calendar year following the later of (A) the calendar year in which the member attains the age at which the Internal Revenue Code of 1986 requires a distribution of benefits or (B) the calendar year in which the member terminates employment within the meaning of subdivision (i), to continue over the life of the member or the lives of the member and the member's option beneficiary, or over

the life expectancy of the member or the life expectancy of the member and the member's option beneficiary.

(i) For purposes of subdivision (h), the phrase "terminates employment" means the later of:

(1) The date the member ceases to perform creditable service subject to coverage under this plan.

(2) The date the member ceases employment in a position subject to coverage under another public retirement system in this state if the compensation earnable while a member of the other system may be considered in the determination of final compensation pursuant to Section 22134, 22135, or 22136.

SEC. 2. Section 25024.5 is added to the Education Code, to read:

25024.5. A member who is reemployed and again performs creditable service subject to coverage under the plan may not receive a termination benefit under this part if less than five years have elapsed following the date the most recent termination benefit was distributed to the member. This section does not apply to a member who has reached the age at which the Internal Revenue Code of 1986 requires a distribution of benefits.

SEC. 3. Section 25025 of the Education Code is amended to read:

25025. (a) A termination benefit under the Defined Benefit Supplement Program shall be payable after six calendar months have elapsed following the date the member terminated employment as specified in Section 25024.

(b) Except as provided in subdivision (c), the application for the termination benefit shall be automatically canceled if the member performs creditable service within six calendar months following the date of termination of employment.

(c) Subdivision (b) does not apply if the member has reached that age at which the Internal Revenue Code of 1986 requires a distribution of benefits. A member who has reached this age shall receive a distribution commencing on the earlier of the date that the member has met the conditions of subdivision (a) or the conditions of subdivision (h) of Section 24600.

SEC. 4. Section 26004 of the Education Code is amended to read:

26004. Notwithstanding any other provision of law:

(a) The benefits payable to any participant or beneficiary under this part shall be subject to the limitations imposed by Section 415 of Title 26 of the United States Code.

(b) The amount of compensation that is taken into account in computing benefits under this part for a plan year shall not exceed the annual compensation limit applicable to that plan year in accordance with Section 401(a)(17) of Title 26 of the United States Code as that

section read on the effective date of this section and as that section may be amended after that date. The determination of compensation for a 12-month period shall be subject to the annual compensation limit in effect for the calendar year in which the 12-month period begins. In a determination of average compensation over more than one 12-month period, the amount of compensation taken into account for each 12-month period shall be subject to the respective annual compensation limit applicable to that period.

(c) Distributions from the plan under this part shall be made in accordance with Section 401(a)(9) of Title 26 of the United States Code, including the incidental death benefit requirements of Section 401(a)(9)(G) and the regulations thereunder. The required beginning date of benefit payments that represent the entire interest of the participant shall be as follows:

(1) In the case of a lump-sum distribution of a retirement benefit, disability benefit, or termination benefit, the lump-sum payment shall be made not later than April 1 of the calendar year following the later of (A) the calendar year in which the participant attains the age at which the Internal Revenue Code of 1986 requires a distribution of benefits or (B) the calendar year in which the participant terminates all employment subject to coverage by the plan.

(2) In the case of a retirement benefit or disability benefit that is to be paid in the form of an annuity, payment of the annuity shall begin not later than April 1 of the calendar year following the later of (A) the calendar year in which the participant attains the age of at which the Internal Revenue Code of 1986 requires a distribution of benefits or (B) the calendar year in which the participant terminates employment in all positions subject to coverage by the plan, with the annuity to continue over the life of the participant or the life of the participant and the participant's option beneficiary, or over a period not to exceed the life expectancy of the participant or the life expectancy of the participant and the participant's option beneficiary.

(3) In the case of a death benefit, distributions shall commence no later than the date provided in Section 27001.

(d) If a person becomes entitled to a distribution from the plan under this part that constitutes an eligible rollover distribution within the meaning of Section 401(a)(31) of Title 26 of the United States Code, the person may elect under terms and conditions established by the board to have the distribution or a portion thereof paid directly to a plan that constitutes an eligible retirement plan within the meaning of Section 401(a)(31), as specified by that person. Upon the exercise of the election by a person with respect to a distribution or a portion thereof, the distribution from the plan of the amount so designated, once distributable

under the terms of the plan, shall be made in the form of a direct rollover to the eligible retirement plan so specified. This subdivision does not apply to the surviving domestic partner of a member, consistent with Section 402 of the Internal Revenue Code.

(e) The amount of any benefit from the plan under this part that is determined on the basis of actuarial assumptions shall be based on actuarial assumptions adopted by the board pursuant to Section 26213 as a plan amendment with respect to the Cash Balance Benefit Program and those assumptions shall preclude employer discretion and comply with Section 401(a)(25) of Title 26 of the United States Code.

SEC. 5. Section 27204 of the Education Code is amended to read:

27204. (a) The termination benefit under this part shall not be payable before six calendar months have elapsed following the date of termination of employment.

(b) Except as provided in subdivision (c), the application for the termination benefit shall be automatically canceled if the participant performs creditable service within six calendar months following the date of termination of employment.

(c) Subdivision (b) does not apply if the participant has reached that age at which the Internal Revenue Code of 1986 requires a distribution of benefits. A participant who has reached this age shall receive a distribution commencing on the earlier of the date that the participant has met the conditions of subdivision (a) or the conditions of subdivision (c) of Section 26004.

CHAPTER 662

An act to add Section 12803.4 to the Government Code, and to amend Sections 382.1 and 739.1 of the Public Utilities Code, relating to low-income utility assistance programs.

[Approved by Governor October 7, 2005. Filed with
Secretary of State October 7, 2005.]

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

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

(a) It is in the public interest to ensure that all persons eligible for gas and electric service under tariffs established for the California Alternate Rates for Energy or CARE program are enrolled in the program.

(b) It is in the public interest to achieve automatic enrollment of persons eligible for the CARE program through interagency cooperation

among the California Health and Human Services Agency, including the State Department of Health Services and the State Department of Social Services, the Public Utilities Commission, electrical corporations, and gas corporations.

SEC. 2. Section 12803.4 is added to the Government Code, to read:

12803.4. The Secretary of the California Health and Human Services Agency shall evaluate, on or before April 1, 2006, how the use of established state and federal programs and databases may be optimized in order to facilitate the automatic enrollment of eligible customers into the California Alternate Rates for Energy or CARE program established pursuant to Section 739.1 of the Public Utilities Code, while complying with state and federal privacy laws.

SEC. 3. Section 382.1 of the Public Utilities Code is amended to read:

382.1. (a) There is hereby established a Low-Income Oversight Board that shall advise the commission on low-income electric, gas, and water customer issues and shall serve as a liaison for the commission to low-income ratepayers and representatives. The Low-Income Oversight Board shall replace the Low-Income Advisory Board in existence on January 1, 2000. The Low-Income Oversight Board shall do all of the following to advise the commission regarding the commission's duties:

(1) Monitor and evaluate implementation of all programs provided to low-income electricity, gas, and water customers.

(2) Assist in the development and analysis of any assessments of low-income customer need.

(3) Encourage collaboration between state and utility programs for low-income electricity and gas customers to maximize the leverage of state and federal energy efficiency funds to both lower the bills and increase the comfort of low-income customers.

(4) Provide reports to the Legislature, as requested, summarizing the assessment of need, audits, and analysis of program implementation.

(5) Assist in streamlining the application and enrollment process of programs for low-income electricity and gas customers with general low-income programs, including, but not limited to, the Universal Lifeline Telephone Service (ULTS) program and, including compliance with Section 739.1.

(6) Encourage the usage of the network of community service providers in accordance with Section 381.5.

(b) The Low-Income Oversight Board shall be comprised of 11 members to be selected as follows:

(1) Five members selected by the commission who have expertise in the low-income community and who are not affiliated with any state

agency or utility group. These members shall be selected in a manner to ensure an equitable geographic distribution.

(2) One member selected by the Governor.

(3) One member selected by the commission who is a commissioner or commissioner designee.

(4) One member selected by the Department of Community Services and Development.

(5) One member selected by the commission who is a representative of private weatherization contractors.

(6) One member selected by the commission who is a representative of an electrical or gas corporation.

(7) One member selected by the commission who is a representative of a water corporation.

(c) The Low-Income Oversight Board shall alternate meeting locations between northern, central, and southern California.

(d) The Low-Income Oversight Board may establish a technical advisory committee consisting of low-income service providers, utility representatives, consumer organizations, and commission staff, to assist the board and may request utility representatives and commission staff to assist the technical advisory committee.

(e) The commission shall do all of the following in conjunction with the board:

(1) Work with the board, interested parties, and community-based organizations to increase participation in programs for low-income customers.

(2) Provide technical support to the board.

(3) Ensure that the energy burden of low-income electricity and gas customers is reduced.

(4) Provide formal notice of board meetings in the commission's daily calendar.

(f) (1) Members of the board and members of the technical advisory committee shall be eligible for compensation in accordance with state guidelines for necessary travel.

(2) Members of the board and members of the technical advisory committee who are not salaried state service employees shall be eligible for reasonable compensation for attendance at board meetings.

(3) All reasonable costs incurred by the board in carrying out its duties pursuant to subdivision (a), including staffing, travel, and administrative costs, shall be reimbursed through the public utilities reimbursement account and shall be part of the budget of the commission and the commission shall consult with the board in the preparation of that portion of the commission's annual proposed budget.

SEC. 4. Section 739.1 of the Public Utilities Code is amended to read:

739.1. (a) The commission shall establish a program of assistance to low-income electric and gas customers, the cost of which shall not be borne solely by any single class of customer. The program shall be referred to as the California Alternate Rates for Energy or CARE program. The commission shall ensure that the level of discount for low-income electric and gas customers correctly reflects the level of need.

(b) The commission shall work with the public utility electrical and gas corporations to establish penetration goals. The commission shall authorize recovery of all administrative costs associated with the implementation of the CARE program that the commission determines to be reasonable, through a balancing account mechanism. Administrative costs shall include, but are not limited to, outreach, marketing, regulatory compliance, certification and verification, billing, measurement and evaluation, and capital improvements and upgrades to communications and processing equipment.

(c) The commission shall examine methods to improve CARE enrollment and participation. This examination shall include, but need not be limited to, comparing information from CARE and the Universal Lifeline Telephone Service (ULTS) to determine the most effective means of utilizing that information to increase CARE enrollment, automatic enrollment of ULTS customers who are eligible for the CARE program, customer privacy issues, and alternative mechanisms for outreach to potential enrollees. The commission shall ensure that a customer consents prior to enrollment. The commission shall consult with interested parties, including ULTS providers, to develop the best methods of informing ULTS customers about other available low-income programs, as well as the best mechanism for telephone providers to recover reasonable costs incurred pursuant to this section.

(d) The commission shall improve the CARE application process by cooperating with other entities and representatives of California government, including the California Health and Human Services Agency and the Secretary of California Health and Human Services, to ensure that all gas and electric customers eligible for public assistance programs in California that reside within the service territory of an electrical corporation or gas corporation, are enrolled in the CARE program. To the extent practicable, the commission shall develop a CARE application process using the existing ULTS application process as a model. The commission shall work with public utility electrical and gas corporations and the Low-Income Oversight Board established in Section 382.1 to meet the low-income objectives in this section.

(e) The commission's program of assistance to low-income electric and gas customers shall, as soon as practicable, include nonprofit group living facilities specified by the commission, if the commission finds that the residents in these facilities substantially meet the commission's low-income eligibility requirements and there is a feasible process for certifying that the assistance shall be used for the direct benefit, such as improved quality of care or improved food service, of the low-income residents in the facilities. The commission shall authorize utilities to offer discounts to eligible facilities licensed or permitted by appropriate state or local agencies, and to facilities, including women's shelters, hospices, and homeless shelters, that may not have a license or permit but provide other proof satisfactory to the utility that they are eligible to participate in the program.

(f) It is the intent of the Legislature that the commission ensure CARE program participants are afforded the lowest possible electric and gas rates and, to the extent possible, are exempt from additional surcharges attributable to the current energy crisis.

CHAPTER 663

An act to add Chapter 8.5 (commencing with Section 8720) to Division 1 of Title 2 of the Government Code, relating to Mexican repatriation.

[Approved by Governor October 7, 2005. Filed with
Secretary of State October 7, 2005.]

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

SECTION 1. Chapter 8.5 (commencing with Section 8720) is added to Division 1 of Title 2 of the Government Code, to read:

CHAPTER 8.5. MEXICAN REPATRIATION

8720. This chapter may be cited as the "Apology Act for the 1930s Mexican Repatriation Program."

8721. The Legislature finds and declares all of the following:

(a) Beginning in 1929, government authorities and certain private sector entities in California and throughout the United States undertook an aggressive program to forcibly remove persons of Mexican ancestry from the United States.

(b) In California alone, approximately 400,000 American citizens and legal residents of Mexican ancestry were forced to go to Mexico.

(c) In total, it is estimated that two million people of Mexican ancestry were forcibly relocated to Mexico, approximately 1.2 million of whom had been born in the United States, including the State of California.

(d) Throughout California, massive raids were conducted on Mexican-American communities, resulting in the clandestine removal of thousands of people, many of whom were never able to return to the United States, their country of birth.

(e) These raids also had the effect of coercing thousands of people to leave the country in the face of threats and acts of violence.

(f) These raids targeted persons of Mexican ancestry, with authorities and others indiscriminately characterizing these persons as “illegal aliens” even when they were United States citizens or permanent legal residents.

(g) Authorities in California and other states instituted programs to wrongfully remove persons of Mexican ancestry and secure transportation arrangements with railroads, automobiles, ships, and airlines to effectuate the wholesale removal of persons out of the United States to Mexico.

(h) As a result of these illegal activities, families were forced to abandon, or were defrauded of, personal and real property, which often was sold by local authorities as “payment” for the transportation expenses incurred in their removal from the United States to Mexico.

(i) As a further result of these illegal activities, United States citizens and legal residents were separated from their families and country and were deprived of their livelihood and United States constitutional rights.

(j) As a further result of these illegal activities, United States citizens were deprived of the right to participate in the political process guaranteed to all citizens, thereby resulting in the tragic denial of due process and equal protection of the laws.

8722. The State of California apologizes to those individuals described in Section 8721 for the fundamental violations of their basic civil liberties and constitutional rights committed during the period of illegal deportation and coerced emigration. The State of California regrets the suffering and hardship those individuals and their families endured as a direct result of the government sponsored Repatriation Program of the 1930s.

8723. A plaque commemorating the individuals described in Section 8721 shall be installed and maintained by the Department of Parks and Recreation at an appropriate public place in Los Angeles. If the plaque is not located on state property, the department shall consult with the appropriate local jurisdiction to determine a site owned by the City or County of Los Angeles for location of the plaque.

CHAPTER 664

An act relating to the Oakland Army Base, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 7, 2005. Filed with
Secretary of State October 7, 2005.]

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

SECTION 1. This act shall be known, and may be cited, as the Oakland Army Base Public Trust Exchange Act.

SEC. 2. The following definitions apply for purposes of this act:

(a) "1911 grant" means Chapter 657 of the Statutes of 1911, as amended.

(b) "Agency" or "ORA" means the Oakland Redevelopment Agency, or any successor redevelopment agency.

(c) "BCDC" means the San Francisco Bay Conservation and Development Commission.

(d) "City" means the City of Oakland, a charter city.

(e) "Commission" means the State Lands Commission.

(f) "Consent Agreement" means that agreement entitled, "Consent Agreement between Oakland Base Reuse Authority, City of Oakland by and through the Oakland Redevelopment Agency and State of California, California Environmental Protection Agency, Department of Toxic Substances Control, Concerning Oakland Army Base, Oakland California," signed on behalf of DTSC on May 19, 2003.

(g) "Covenant to Restrict Use of Property" means the "Covenant to Restrict Use of Property, Environmental Restriction, Former Oakland Army Base, Oakland California" by and between the Oakland Base Reuse Authority, the City of Oakland by and through the Oakland Redevelopment Agency, and the State of California, Department of Toxic Substances Control, signed on behalf of DTSC on August 7, 2003.

(h) "DTSC" means the California Environmental Protection Agency, Department of Toxic Substances Control.

(i) "EDC property" means all that real property situated in the City of Oakland, California, within the former Oakland Army Base, which was conveyed in fee from the United States to OBRA by that certain "Quitclaim Deed for No-Cost Economic Development Conveyance Parcel, County of Alameda, California," Deed No. DACA 05-9-03-567, recorded August 8, 2003, as document 2003466370 in the Official Records of Alameda County, as more particularly described in that deed.

(j) "Gateway development area" means that portion of the OARB redevelopment property located within the area defined as the Gateway development area in the reuse plan.

(k) "Governor" means the Governor of the State of California.

(l) "Granted lands" means lands granted in trust by the state to the city or other trustee pursuant to this act, the town grant, or the 1911 grant.

(m) "Lease" means any temporary rights to occupy or use property, or the grant of such rights, including, but not limited to, franchises, permits, privileges, licenses, assignments, easements, or leasehold interests.

(n) "OARB" or "base" refers to that portion of the property commonly known as the former Oakland Army Base, initially considered for disposition by the Army as part of the federal base reuse and closure process.

(o) "OARB adjacent parcels" means those portions of the OARB redevelopment property which are surrounded by or adjacent to the EDC property, but not within the EDC property, and are more particularly described as follows:

PARCEL 1, A portion of that certain Parcel of land described in that certain Indenture between the Southern Pacific Company and the United States of America, recorded March 2, 1942, in Book 4189 of Official Records, Page 197 in the Office of the Recorder of said Alameda County (hereinafter referred to as 4189 O.R. 197), being Parcel B as described in that unrecorded "Transfer and Acceptance of Military Real Property" from the Military Traffic Management Command of the Oakland Army Base to the 63rd RSC, dated December 17, 1998, (hereinafter referred to as the Building 780 Parcel), and being more particularly described as follows:

COMMENCING at City of Oakland monument No. 7SE13, said monument being a pin set in concrete, in a monument well marking the intersection of the centerlines of Maritime Street and 10th Street, as said streets are shown on that unrecorded map entitled "Oakland Army Terminal Boundary Map" prepared by Wilsey & Ham Engineers in 1958 for the U.S. Army Corps of Engineers, File No. 45-I-286 (hereinafter referred to as the Army Map), said monument is further described as being Port of Oakland Monument ID H006 as shown upon Record of Survey 990, filed for record in Book 18 of Record of Surveys, at Pages 50-60, Alameda County Official Records;

Thence North 77°06'11" East 1106.11 feet to the most western corner of said Building 780 Parcel, said corner being marked by a bolt and washer stamped "LS 6379", being the POINT OF BEGINNING of Parcel 1;

Thence along the northwest, northeast, southeast and southwest lines of said Building 780 Parcel the following eight courses:

1. North 8°06'06" East, 425.20 feet to the most northern corner of said parcel, said corner being marked by a concrete nail and shiner stamped "LS 6379";
2. South 81°58'14" East, 655.73 feet to the most eastern corner of said parcel;
3. South 8°01'46" West, 294.89 feet to the southeast corner of said parcel, said corner being marked by a pipe and plug stamped "LS 6379";
4. North 82°02'59" West, 117.67 feet to an angle point in said southwest line, said angle point being marked by a pipe and plug stamped "LS 6379";
5. North 7°49'06" East, 31.76 feet to an angle point in said southwest line, said angle point being marked by a pipe and plug stamped "LS 6379";
6. North 82°00'47" West, 261.81 feet to an angle point in said southwest line;
7. South 7°59'16" West, 161.25 feet to an angle point in said southwest line, said angle point being marked by a 2.5" brass disk and bolt stamped "LS 6379";
8. North 82°03'57" West, 276.78 feet to the POINT OF BEGINNING, containing 221,199 square feet (5.078 acres) more or less, measured in ground distances.

PARCEL 2, A portion of that Parcel of land described in that certain Indenture between the Southern Pacific Company and the United States of America, recorded February 15, 1979, as Document 79-030025, in the Office of the Recorder of said Alameda County (hereinafter referred to as Doc. 79-030025); A portion of the Parcel of land described in that certain Indenture between the Southern Pacific Company and the United States of America, recorded March 2, 1942, in Book 4189 of Official Records, Page 197 in the Office of the Recorder of said Alameda County (hereinafter referred to as 4189 O.R. 197); A portion of the lands described in that certain Final Judgment as to Interests of Defendant City of Oakland, A Municipal Corporation, United States of America vs. City of Oakland et al., Case No. 21758-L, Case No. 21930-L, Case No. 22084-L, District Court of the United States in and for the Northern District of California, Southern Division, recorded February 24, 1960, Reel 032, Image 660 of Official Records in the Office of the Recorder of said Alameda County hereinafter referred to as Reel: 032, Image:660) all of which being the "Parcel Encompassing Building 762" as described in that certain unrecorded "Transfer and Acceptance of Military Real Property" from the Military Traffic Management Command of the Oakland Army Base to the 63rd RSC, dated September 3, 1997,

(hereinafter referred to as the Building 762 Parcel), and being more particularly described as follows:

COMMENCING at City of Oakland monument No. 7SE13, said monument being a pin set in concrete, in a monument well marking the intersection of the centerlines of Maritime Street and 10th Street, as said streets are shown on that unrecorded map entitled "Oakland Army Terminal Boundary Map" prepared by Wilsey & Ham Engineers in 1958 for the U.S. Army Corps of Engineers, File No. 45-I-286 (hereinafter referred to as the Army Map), said monument is further described as being Port of Oakland Monument ID H006 as shown upon Record of Survey 990, filed for record in Book 18 of Record of Surveys, at Pages 50-60, Alameda County Official Records;

Thence, North 43°48'16" East 958.07 feet to the most western corner of said Building 762 Parcel, said corner being marked by a $\frac{5}{8}$ " rebar with plastic cap stamped "LS 5671", being the POINT OF BEGINNING;

Thence, along the northwest, northeast, southeast and southwest lines of said Building 762 Parcel the following four courses:

1. North 41°02'39" East, 238.78 feet to the most northern corner of said parcel;

2. South 82°00'39" East, 299.96 feet to the most eastern corner of said parcel, said corner being marked by a $\frac{5}{8}$ " rebar with plastic cap stamped "LS 5671";

3. South 07°51'10" West, 200.86 feet to the most southern corner of said parcel, said corner being marked by a $\frac{5}{8}$ " rebar with plastic cap stamped "LS 5671";

4. North 81°54'53" West, 430.68 feet to the POINT OF BEGINNING, containing 73,278 square feet (1.682 acres) more or less, measured in ground distances.

PARCEL 3, A portion of the Parcels of land described in that certain Indenture between the Southern Pacific Company and the United States of America, recorded April 23, 1941, in Book 4017 of Official Records, Page 485 in the Office of the Recorder of said Alameda County (hereinafter referred to as 4017 O.R. 485); A portion of the lands described in that certain Final Judgment as to Interests of Defendant City of Oakland, A Municipal Corporation, United States of America vs. City of Oakland, et al., Case No. 21758-L, Case No. 21930-L, Case No. 22084-L, District Court of the United States in and for the Northern District of California, Southern Division, recorded February 24, 1960, Reel 032, Image 660 of Official Records in the Office of the Recorder of said Alameda County (hereinafter referred to as Reel: 32, Image:660); A portion of the lands described in that certain Final Judgment as to Parcel No. 6, United States of America vs. City of Oakland, State of California, et al., Case No. 21930-L, District Court of the United States

in and for the Northern District of California, Southern Division, recorded May 23, 1960, Reel 092, Image 111 of Official Records, in the Office of the Recorder of said Alameda County (hereinafter referred to as Reel: 092, Image:111), all of which are more particularly described as follows:

COMMENCING at City of Oakland monument No. 7SE13, said monument being a pin set in concrete in a monument well marking the intersection of the centerlines of Maritime Street and 10th Street, as said streets are shown on that unrecorded map entitled "Oakland Army Terminal Boundary Map" prepared by Wilsey & Ham Engineers in 1958 for the U.S. Army Corps of Engineers, File No. 45-I-286 (hereinafter referred to as the Army Map), said monument also being Port of Oakland Monument ID H006 as shown upon Record of Survey 990, filed for record in Book 18 of Records of Surveys, at Pages 50-60, Alameda County Official Records;

Thence North 48°22'05" East, 5692.24 feet to the northern most corner of Parcel 1, Tract 1 as described in that certain Final Judgment as to Tract 1 and as to Lack of Interests of Certain Persons as to Property Subject to the Above Action, United States of America vs. Santa Fe Land and Improvement Co., Southern Pacific Railroad Company, et al., Case No. 23099-S, District Court of the United States in and for the Northern District of California, Southern Division, recorded October 22, 1951, in Book 6566 of Official Records, Page 301 in the Office of the Recorder of said Alameda County (hereinafter referred to as 6566 O.R. 301), said corner being the northwest terminus of the course described as "North 71°40'17" West 585.40 feet" in the description of said Parcel 1, Tract 1 (6566 O.R. 301), said corner being marked by a 2½" brass disk with punch mark stamped "City of Oakland Survey Station 8NW9" as shown on Record of Survey No. 1705, filed in Book 26 of Records of Surveys, at Page 1, Alameda County Official Records;

Thence along the northwestern line of said Parcel 1, Tract 1 (6566 O.R. 301) South 79°57'58" West, 9.41 feet to the beginning of a nontangent curve concave southwesterly, having a radius of 599.96 feet and a central angle of 20°37'16", from which beginning the radius point bears South 36°18'10" West;

Thence along said curve to the right, an arc distance of 215.93 feet to a point on the generally northeastern line of Parcel A as described in an unrecorded "Transfer and Acceptance of Military Real Property" from the Military Traffic Management Command of the Oakland Army Base to the 63rd RSC, dated December 17, 1998, said Parcel A being commonly referred to as the "Subaru Lot" (said Parcel A will hereinafter be referred to as the Subaru Lot), being a point on the course described as "South 70°14'01" East, 101.26 feet" in the description of said Parcel

A (the Subaru Lot), and being the POINT OF BEGINNING of Parcel 3 as herein described;

Thence along the northeastern, eastern and southeastern lines of said Parcel A (the Subaru Lot) the following twelve courses:

1. South 70°14'16" East, 42.04 feet to an angle point in said line, said point being marked by a 1 ½" brass disk with bolt stamped "LS 6379";
2. South 71°46'24" East, 32.44 feet to an angle point in said line, said point being marked by a 1 ½" brass disk with bolt stamped "LS 6379";
3. South 74°35'56" East, 103.17 feet to an angle point in said line, said point being marked by a 1 ½" brass disk with bolt stamped "LS 6379";
4. South 71°25'40" East, 87.02 feet to the beginning of a nontangent curve concave southwesterly, having a radius of 354.97 feet and a central angle of 59°49'02", from which the radius point bears South 30°09'08" West, said beginning of curve being marked by a 1 ½" brass disk with bolt stamped "LS 6379";
5. along said curve to the right, an arc distance of 370.59 feet to the beginning of a compound curve concave westerly, having a radius of 199.99 feet and a central angle of 25°52'29", said point of compound curvature being marked by a nail and washer with tag stamped "LS 6379";
6. along said curve to the right, an arc distance of 90.32 feet to a point of tangency being marked by a nail and washer with tag stamped "LS 6379";
7. South 25°50'39" West, 100.04 feet to an angle point in said line, said point being marked by a nail and washer with tag stamped "LS 6379";
8. South 30°42'24" West, 148.96 feet to an angle point in said line, said point being marked by a nail and washer with tag stamped "LS 6379";
9. South 37°08'59" West, 99.92 feet to an angle point in said line, said point being marked by a nail and washer with tag stamped "LS 6379";
10. South 40°33'22" West, 49.03 feet to an angle point in said line, said point being marked by a nail and washer with tag stamped "LS 6379";
11. South 49°48'18" West, 93.04 feet to an angle point in said line;
12. South 56°00'39" West, 30.42 feet to a point on the generally northeastern line of Parcel 56444 as described in that certain Quitclaim Deed, recorded on February 13, 2002, as Document No. 2002072863 of Official Records, in the Office of the Recorder of Alameda County (hereinafter referred to as Doc. 2002072863), said point being the beginning of a nontangent curve concave southwesterly, having a radius

of 1647.00 feet and a central angle of $08^{\circ}46'22''$, from which beginning point the radius point bears South $46^{\circ}46'37''$ West;

Thence along the generally northeastern line of said Parcel 56444 (Doc. 2002072863) the following eight courses:

1. along said curve to the left, an arc distance of 252.18 feet to a point from which the radius point bears South $38^{\circ}00'16''$ West, being the beginning of a nontangent curve concave southwesterly, having a radius of 1647.00 feet and a central angle of $07^{\circ}24'24''$, from which the radius point bears South $39^{\circ}39'54''$ West;

2. along said curve to the left, an arc distance of 212.91 feet to a point of tangency;

3. North $57^{\circ}44'30''$ West, 113.40 feet to an angle point;

4. North $49^{\circ}58'48''$ West, 124.70 feet to an angle point;

5. North $59^{\circ}26'20''$ West, 696.99 feet to an angle point;

6. North $38^{\circ}53'13''$ West, 28.48 feet to an angle point;

7. North $59^{\circ}26'21''$ West, 95.01 feet to an angle point;

8. North $65^{\circ}41'40''$ West, 26.04 feet to a point on the generally northwestern line of said Parcel A (the Subaru Lot), said point being the beginning of a nontangent curve concave easterly, having a radius of 20.00 feet and a central angle of $29^{\circ}55'43''$, from which beginning point the radius point bears North $87^{\circ}47'11''$ East;

Thence along the northwesterly, northerly and northeasterly lines of said Parcel A (the Subaru Lot) the following thirteen courses:

1. along said curve to the right, an arc distance of 10.45 feet to the beginning of a compound curve concave southeasterly, having a radius of 199.99 feet and a central angle of $39^{\circ}56'30''$, said point of compound curvature being marked by a $1\frac{1}{2}''$ brass disk and spike stamped "LS 6379";

2. along said curve to the right, an arc distance of 139.42 feet to a point of tangency being marked by a 1" iron pipe with plug and tack stamped "LS 6379";

3. North $67^{\circ}39'24''$ East, 25.68 feet to the beginning of a curve concave southerly, having a radius of 299.98 feet and a central angle of $25^{\circ}11'31''$;

4. along said curve to the right, an arc distance of 131.90 feet to a point of tangency being marked by a 1" iron pipe with plug stamped "LS 6379";

5. South $87^{\circ}09'05''$ East, 415.50 feet to an angle point in said line, said point being marked by a 1" iron pipe with plug stamped "LS 6379";

6. North $80^{\circ}41'00''$ East, 170.83 feet to an angle point in said line, said point being marked by a 1" iron pipe with plug stamped "LS 6379";

7. South $70^{\circ}15'39''$ East, 49.25 feet to an angle point in said line, said point being marked by a $1\frac{1}{2}''$ brass disk with bolt stamped "LS 6379";

8. South 72°38'25" East, 67.85 feet to an angle point in said line, said point being marked by a 1 ½" brass disk with bolt stamped "LS 6379";

9. South 69°32'54" East, 44.74 feet to an angle point in said line, said point being marked by a 1 ½" brass disk with bolt stamped "LS 6379";

10. South 66°07'36" East, 44.94 feet to an angle point in said line, said point being marked by a ¾" brass tag in concrete stamped "LS 6379";

11. South 63°28'21" East, 40.88 feet to an angle point in said line, said point being marked by a 1 ½" brass disk with bolt stamped "LS 6379";

12. South 69°21'45" East, 49.64 feet to an angle point in said line, said point being marked by a 1 ½" brass disk with bolt stamped "LS 6379";

13. South 70°14'16" East, 59.22 feet to the POINT OF BEGINNING, containing 829,036 square feet (19.032 acres), more or less, measured in ground distances.

Bearings and distances called for in the descriptions of Parcels 1, 2, and 3 herein are based upon the California Coordinate System, Zone III, North American Datum of 1983 (1986 values) as shown upon that certain map entitled Record of Survey 990, filed in Book 18 of Record of Surveys, Pages 50-60, Alameda County Records unless otherwise indicated. To obtain ground level distances, multiply distances called for herein by 1.0000705.

PARCEL 4, All of Parcel 56444 as described in that certain Quitclaim Deed, recorded February 13, 2002, as Document No. 2002072863 of Official Records, in the Office of the Recorder of said Alameda County, California.

PARCEL 5, A portion of the lands described as Parcel 2 in that certain Quitclaim Deed between the State of California and the City of Oakland, recorded February 23, 1979, as Doc. No. 79-034788 of Official Records, in the Office of the Recorder of Alameda County (hereinafter referred to as Doc. 79-034788), being all that land underlying that certain aerial easement described as Parcel 1 of that certain Grant Deed between the City of Oakland and the State of California, recorded February 3, 1995, as Doc. No. 95-028117 of Official Records, in the Office of the Recorder of Alameda County (hereinafter referred to as Doc. 95-028117), and being more particularly described as follows:

COMMENCING at City of Oakland monument No. 7SE13, said monument being a pin set in concrete, in a monument well marking the intersection of the centerlines of Maritime Street and 10th Street, as said streets are shown on that unrecorded map entitled "Oakland Army Terminal Boundary Map" prepared by Wilsey & Ham Engineers in 1958 for the U.S. Army Corps of Engineers, File No. 45-I-286 (hereinafter

referred to as the Army Map), said monument is further described as being Port of Oakland Monument ID H006 as shown upon Record of Survey 990, filed for record in Book 18 of Records of Surveys, at Pages 50-60, Alameda County Official Records;

Thence North 24°14'22" East, 4601.25 feet to the eastern most corner of that land underlying said aerial easement described as Parcel 1 (Doc. 95-028117), said corner being a point on the northwest line of the lands described in that certain Final Judgment as to Tract 23, United States of America vs. City of Oakland, State of California, et al., Case No. 21930-L, District Court of the United States in and for the Northern District of California, Southern Division, recorded January 11, 1950, in Book 5987 of Official Records, Page 319 in the Office of the Recorder of Alameda County (hereinafter referred to as 5987 O.R. 319), being marked by a 1" iron pipe and CalTrans cap, as shown on Record of Survey No. 1687, filed in Book 25 of Records of Surveys, at Pages 58-69, Alameda County Official Records and being the POINT OF BEGINNING;

Thence along said northwest line of said Tract 23 (5987 O.R. 319), South 71°46'34" West, 315.39 feet to an angle point in the generally northwest line of the lands described in that certain Final Judgment as to Tract 5, United States of America vs. City of Oakland, State of California, et al., Case No. 21930-L, District Court of the United States in and for the Northern District of California, Southern Division, recorded February 16, 1951, in Book 6361 of Official Records, Page 334 in the Office of the Recorder of Alameda County (hereinafter referred to as 6361 O.R. 334), said angle point being marked by a 1 ½" brass disk in top of concrete culvert, as shown on said unrecorded map entitled "Oakland Army Terminal Boundary Map" (the Army Map);

Thence along the generally northwest line of said Tract 5 (6361 O.R. 334), South 64°17'11" West, 77.77 feet to an angle point on the generally southern line of said land underlying said aerial easement (Doc. 95-028117);

Thence along said generally southern line of said land underlying said aerial easement (Doc. 95-028117) the following five courses:

1. North 09°10'00" West, 85.90 feet to the beginning of a nontangent curve concave southerly, having a radius of 1457.00 feet and a central angle of 12°33'12", from which beginning the radius point bears South 01°08'14" West;

2. Along said curve to the left, an arc distance of 319.22 feet to a point of tangency;

3. South 78°35'02" West, 301.18 feet;

4. South $77^{\circ}23'57''$ West, 93.57 feet to the beginning of a curve concave northerly, having a radius of 295.00 feet and a central angle of $58^{\circ}05'18''$;

5. Along said curve to the right, an arc distance of 299.08 feet to a point on the generally northwest line of said Parcel 2 (Doc. 79-034788), being an angle point from which the radius point bears North $45^{\circ}29'15''$ East;

Thence along said generally northwest line of said Parcel 2 (Doc. 79-034788) North $78^{\circ}23'41''$ East, 168.32 feet to the western most corner of Parcel 2 described in that certain Grant Deed from the City of Oakland to the State of California, recorded February 3, 1995, as Doc. No. 95-028117 of Official Records, in the Office of the Recorder of Alameda County (hereinafter referred to as Doc. 95-028117), said corner being marked by a railroad spike in asphalt, as shown on said Record of Survey No. 1687;

Thence along the generally southern line of said Parcel 2 (Doc. 95-028117) the following six courses:

1. North $89^{\circ}46'56''$ East, 212.20 feet;
2. North $85^{\circ}56'18''$ East, 430.96 feet;
3. North $60^{\circ}51'27''$ East, 202.98 feet to the beginning of a nontangent curve concave southerly, having a radius of 1492.00 feet and a central angle of $6^{\circ}52'33''$, from which beginning the radius point bears South $03^{\circ}12'08''$ West;

4. Along said curve to the right, an arc distance of 179.05 feet to an angle point from which the radius point bears South $10^{\circ}04'41''$ West;

5. South $20^{\circ}40'48''$ East, 21.16 feet to an angle point marked by a 1" iron pipe and CalTrans cap, as shown on said Record of Survey No. 1687;

6. North $69^{\circ}19'13''$ East, 78.44 feet to a point on the generally northeast line of said Parcel 2 (Doc. 79-034788), being the beginning of a nontangent curve concave southwesterly, having a radius of 571.21 feet and a central angle of $4^{\circ}19'29''$, from which beginning the radius point bears South $28^{\circ}56'43''$ West, said point being marked by a 1" iron pipe and CalTrans cap, as shown on said Record of Survey No. 1687;

Thence along the generally northeast line of said Parcel 2 (Doc. 79-034788) the following two courses:

1. Along said curve to the right, an arc distance of 43.12 feet to a point of tangency marked by a 1" iron pipe and CalTrans cap, as shown on said Record of Survey No. 1687;

2. South $56^{\circ}43'48''$ East, 98.27 feet to the POINT OF BEGINNING, containing 127,320 square feet (2.923 acres), more or less, measured in ground distances.

Bearings and distances called for herein are based upon the California Coordinate System, Zone III, North American Datum of 1983 (1986 values) as shown upon that certain map entitled Record of Survey 990, filed in Book 18 of Record of Surveys, Pages 50-60, Alameda County Records unless otherwise indicated. To obtain ground level distances, multiply distances called for herein by 1.0000705.

(p) "OARB MOA" means the document entitled "Memorandum of Agreement for Oakland Army Base Among the Oakland Base Reuse Authority, the Oakland Redevelopment Agency, the City of Oakland, a Municipal Corporation, Acting by and through its City Council, and the City of Oakland, a Municipal Corporation, Acting by and through its Board of Port Commissioners," dated July 8, 2003.

(q) "OARB redevelopment property" means the EDC property, the Port Sliver parcels, and the OARB adjacent parcels.

(r) "OARB trust lands" means all lands, including tidelands, within the OARB redevelopment property that are presently subject to the public trust or will be subject to the trust following a trust exchange.

(s) "OBRA" means the Oakland Base Reuse Authority, a joint powers agency.

(t) "Port" or "Port of Oakland" means the Port Department of the City of Oakland established by the Charter of the City of Oakland, exclusive control and management of which the charter vests in the Board of Port Commissioners.

(u) "Port development area" means that portion of the OARB redevelopment property located within the area defined as the Port of Oakland development area in the reuse plan.

(v) "Port Sliver parcels" means all that real property situated in the City of Oakland, California, comprised of portions of the property granted to the city by the 1911 grant, and more particularly described as follows:

PARCEL 1, A portion of the lands described as Parcel 2 in that certain Quitclaim Deed between the State of California and the City of Oakland, recorded February 23, 1979, as Doc. No. 79-034788 of Official Records, in the Office of the Recorder of Alameda County (hereinafter referred to as Doc. 79-034788), being more particularly described as follows:

COMMENCING at City of Oakland monument No. 7SE13, said monument being a pin set in concrete, in a monument well marking the intersection of the centerlines of Maritime Street and 10th Street, as said streets are shown on that unrecorded map entitled "Oakland Army Terminal Boundary Map" prepared by Wilsey & Ham Engineers in 1958 for the U.S. Army Corps of Engineers, File No. 45-I-286 (hereinafter referred to as the Army Map), said monument is further described as being Port of Oakland Monument ID H006 as shown upon Record of

Survey 990, filed for record in Book 18 of Records of Surveys, at Pages 50-60, Alameda County Official Records;

Thence North $06^{\circ}22'58''$ West, 3704.99 feet to the western most corner of said Parcel 2 (Doc. 79-034788), said corner being marked by a concrete nail and CalTrans tag set flush, as shown on Record of Survey No. 1687, filed in Book 25 of Records of Surveys, at Pages 58-69, Alameda County Official Records, and being the POINT OF BEGINNING of Parcel 1 as herein described;

Thence along the western and generally northern lines of said Parcel 2 (Doc. 79-034788) the following three courses:

1. North $21^{\circ}36'13''$ East, 249.00 feet to an angle point marked by a 1" iron pipe and CalTrans cap under a cyclone fence, as shown on said Record of Survey No. 1687;

2. North $75^{\circ}30'42''$ East, 642.22 feet to an angle point marked by a 1" iron pipe and CalTrans cap, as shown on said Record of Survey No. 1687;

3. North $78^{\circ}23'41''$ East, 230.24 feet to the western most corner of Parcel 1 described in that certain Grant Deed from the City of Oakland to the State of California, recorded February 3, 1995, as Doc. No. 95-028117 of Official Records, in the Office of the Recorder of Alameda County (hereinafter referred to as Doc. 95-028117), said corner being the beginning of a nontangent curve concave northerly, having a radius of 295.00 feet and a central angle of $58^{\circ}05'18''$, from which beginning the radius point bears North $45^{\circ}29'15''$ East;

Thence along the generally southern line of said Parcel 1 (Doc. 95-028117) the following five courses:

1. along said curve to the left, an arc distance of 299.08 feet to a point of tangency;

2. North $77^{\circ}23'57''$ East, 93.57 feet;

3. North $78^{\circ}35'02''$ East, 301.18 feet to the beginning of a curve concave southeasterly, having a radius of 1457.00 feet and a central angle of $12^{\circ}33'12''$;

4. along said curve to the right, an arc distance of 319.22 feet to an angle point from which the radius point bears South $01^{\circ}08'14''$ West;

5. South $09^{\circ}10'00''$ East, 85.90 feet to a point on the northwest line of the lands described in that certain Final Judgment as to Tract 5, United States of America vs. City of Oakland, State of California, et al., Case No. 21930-L, District Court of the United States in and for the Northern District of California, Southern Division, recorded February 16, 1951, in Book 6361 of Official Records, Page 334 in the Office of the Recorder of Alameda County (hereinafter referred to as 6361 O.R. 334);

Thence along the generally northwest line of said Tract 5 (6361 O.R. 334), South $64^{\circ}17'11''$ West, 319.86 feet to a point on the generally

southern line of Parcel "S" described in that certain Indenture and Conveyance by and between the State of California, acting by and through its Department of Public Works and the California Toll Bridge Authority, and the City of Oakland, a municipal corporation, acting by and through its Board of Port Commissioners, recorded February 17, 1942, in Book 4186 of Official Records, Page 156, in the Office of the Recorder of Alameda County (hereinafter referred to as 4186 O.R. 156);

Thence along said generally southern line of said Parcel "S" (4186 O.R. 156), South $81^{\circ}36'26''$ West, 1660.88 feet to the POINT OF BEGINNING, containing 416,298 square feet (9.557 acres), more or less, measured in ground distances.

PARCEL 2, A portion of the lands described in that certain act of the Legislature of the State of California entitled "An act granting certain tidelands and submerged lands of the State of California to the City of Oakland and regulating the management, use and control thereof," approved May 1, 1911, as Chapter 657 of Statutes of 1911, and amendatory acts, more particularly described as follows:

COMMENCING at City of Oakland monument No. 7SE13, said monument being a pin set in concrete, in a monument well marking the intersection of the centerlines of Maritime Street and 10th Street, as said streets are shown on that unrecorded map entitled "Oakland Army Terminal Boundary Map" prepared by Wilsey & Ham Engineers in 1958 for the U.S. Army Corps of Engineers, File No. 45-I-286 (hereinafter referred to as the Army Map), said monument is further described as being Port of Oakland Monument ID H006 as shown upon Record of Survey 990, filed for record in Book 18 of Records of Surveys, at Pages 50-60, Alameda County Official Records;

Thence South $38^{\circ}00'05''$ West, 989.35 feet to the eastern most corner of Parcel Seven as described in that certain Quitclaim Deed, recorded June 15, 1999, as Doc. No. 99-222447 of Official Records, in the Office of the Recorder of Alameda County (hereinafter referred to as Doc. 99-222447), being a point on the agreed-upon location of the "Low Tide Line of 1852" as described in City of Oakland Ordinance No. 3099, a certified copy of which was recorded on October 10, 1910, in Book 1837 of Deeds, Page 84, in the Office of the Recorder of Alameda County (hereinafter referred to as 1837 Deeds 84), said point being marked by a pin set in concrete in a monument well, as shown on said Army Map;

Thence northeasterly along said agreed-upon location of the "Low Tide Line of 1852" (1837 Deeds 84) North $41^{\circ}00'50''$ East, 3829.19 feet;

Thence departing from the said agreed-upon location of the "Low Tide Line of 1852", North $48^{\circ}48'07''$ West, 1380.09 feet to a point on the generally southern line of Parcel 1, Tract 14 as described in said

Final Judgment as to Interests of Defendant City of Oakland, A Municipal Corporation, United States of America vs. City of Oakland et al., Case No. 21758-L, Case No. 21930-L, Case No. 22084-L (Reel: 32, Image: 660), being the POINT OF BEGINNING of Parcel 2 as herein described;

Thence along the generally southern line of said Parcel 1 (Reel: 32, Image: 660) the following two courses:

1. North 86°48'30" East, 461.63 feet to an angle point;
2. South 08°03'07" West, 385.68 feet to a point on a line that bears North 48°48'07" West from the herein above described Point "A";

Thence North 48°48'07" West, 540.75 feet to the POINT OF BEGINNING, containing 87,323 square feet (2.005 acres), more or less, measured in ground distances.

Bearings and distances called for herein are based upon the California Coordinate System, Zone III, North American Datum of 1983 (1986 values) as shown upon that certain map entitled Record of Survey 990, filed in Book 18 of Record of Surveys, Pages 50-60, Alameda County Records unless otherwise indicated. To obtain ground level distances, multiply distances called for herein by 1.0000705.

(w) "Public trust" or "trust" means the public trust for commerce, navigation, and fisheries.

(x) "RAP/RMP" means the "Final Remedial Action Plan, Oakland Army Base, Oakland, California" and "Final Risk Management Plan, Oakland Army Base, Oakland, California" prepared by OBRA and approved by DTSC on September 27, 2002.

(y) "Reuse plan" means the document entitled "Oakland Base Reuse Authority - Gateway to the East Bay: Final Reuse Plan for the Oakland Army Base adopted July 31, 2002."

(z) "Tidelands" means lands waterward of the ordinary high water mark, and includes submerged lands.

(aa) "Town grant" means Chapter 107 of the Statutes of 1852.

(bb) "Trustee" or "trustees" means OBRA, ORA, the city, and the port, to the extent these entities are authorized by this act or the 1911 grant to administer OARB trust lands.

SEC. 3. The Legislature finds and declares all of the following:

(a) The purpose of this act is to resolve public trust title uncertainties in the lands comprising the Oakland Army Base redevelopment property, and to facilitate the productive reuse of those lands in a manner that will further the purposes of the trust. To effectuate this purpose, this act approves and authorizes the commission to carry out a boundary settlement and trust exchange under which those lands having the greatest value to the trust will be exchanged into the trust, and those lands that are not needed for trust purposes will be exchanged out of the trust.

(b) The OARB redevelopment property includes lands that, at the time California became a state, were tidelands. By virtue of its sovereignty, the state acquired title to these lands in trust for the people of the state for purposes of commerce, navigation, and fisheries.

(c) The lands comprising that portion of the OARB redevelopment property north of the 1862 Oakland city charter line, established by Section 2 of Chapter 294 of the Statutes of 1862, were conveyed by the state into private ownership pursuant to Chapter 388 of the Statutes of 1869-1870. These lands were filled prior to 1980 and were freed of the trust by application of the holding and decision of the California Supreme Court in *City of Berkeley v. Superior Court* (1980) 26 Cal. 3d 515.

(d) The remaining tidelands within the OARB redevelopment property were granted to the Town of Oakland and later the City of Oakland by the Legislature. Through a series of grants, including in particular the town grant and the 1911 grant, the State of California granted to the Town of Oakland and later the City of Oakland, subject to certain reservations, all the right, title, and interest of the State of California held by the state by virtue of its sovereignty in and to certain tidelands therein described to be forever held by the city and by its successors in trust.

(e) The location of tidelands within OARB redevelopment property is subject to uncertainty that could result in lengthy land title litigation. The factors bearing on the uncertainty as to the extent of tidelands within the OARB redevelopment property include, but are not limited to, legal questions concerning an 1852 transfer of tidelands along the Oakland waterfront to a private party by the Town of Oakland; the effect of subsequent litigation and court decisions concerning that transfer; and the basis and validity of a 1910 boundary line agreement entered into by the City of Oakland and a private party within the OARB redevelopment property purporting to establish the waterward boundary of lands transferred by the Town of Oakland to a private party in 1852 at what is now the eastern line of Maritime Street.

(f) Through a series of acquisitions and condemnation actions beginning in 1941, the United States Army obtained title to what came to be known as the Oakland Army Base. The United States acquired the entirety of the EDC property west of the eastern line of Maritime Street through several condemnation actions, which culminated in a stipulated final judgment in 1952 in *United States v. 72 Acres of Land*, N.D. Cal. Nos. 21758-L, 21930-L and 22084-L.

(g) The former Oakland Army Base was used by the United States from 1941 until it was closed in 1999, primarily as an Army cargo and distribution facility. Pursuant to the Defense Base Closure and Realignment Act of 1990 (Part A of Title XXIX of P.L. 101-510), the

base was designated for closure in 1995. OBRA was created in 1995 and is the legally recognized local reuse authority for the base under the base closure process. In 1999, the base was closed and OBRA assumed management and control of most of the base. In August 2003, the Army transferred the EDC property to OBRA as a no-cost economic development conveyance. Under federal base closure law, OBRA is required to reinvest proceeds generated at or received from the base for employment generation and economic development of the base for a period of seven years following conveyance.

(h) To address hazardous substances on the EDC property, OBRA commissioned, and DTSC approved in 2002, the RAP/RMP, which set forth cleanup obligations and standards and established risk management protocols for the EDC property. In 2003, OBRA, ORA, and DTSC entered into the consent agreement, providing a schedule for implementing the RAP/RMP, and the Covenant to Restrict Use of Property, establishing use limitations to ensure that future use and development of the EDC property is consistent with the protection of human health and the environment. Prior to the transfer of the EDC property from the Army to OBRA, the Army issued a Finding of Suitability for Early Transfer (FOSET) pursuant to Section 120(h)(3)(C) of the Comprehensive Environmental Response Compensation and Liability Act (CERCLA) (42 U.S.C. Section 9620(h)(3)(C)) and U.S. Department of Defense guidance (1998). In the FOSET, the Army determined that: (1) use restrictions placed on the EDC property through the Covenant to Restrict Use of Property assured protection of human health and the environment; (2) the response actions and risk management protocols identified in the RAP/RMP will assure remediation of the EDC property; (3) the schedule for undertaking those actions is adequately set forth in the consent agreement; and (4) there are adequate funds available to ensure completion of the remediation. Based on the findings in the FOSET and additional financial assurances from the city, OBRA, ORA, and the port to ensure completion of the remediation, the Governor, in accordance with Section 120(h)(3)(C) of CERCLA, concurred with the Army that the EDC property was suitable for early transfer and deferred the covenant required by Section 120(h)(3)(B) of CERCLA.

(i) In anticipation of the transfer of the EDC property to OBRA, the city and the port worked together on a reuse and redevelopment vision for the base, culminating in OBRA's adoption of a final reuse plan for the OARB redevelopment property in 2002. The reuse plan was designed to maximize trust benefits by identifying the optimal configuration of trust lands given current and anticipated port needs, potential waterfront recreational opportunities, and the desire to minimize bay fill.

(j) The reuse plan contemplates a port development area of approximately 235 acres adjacent to the port's existing Oakland Outer Harbor terminals. OBRA has transferred to the port approximately 20 acres of land that is presently filled and 50 acres of land that is presently submerged within the port development area west of the eastern line of Maritime Street. Most of the lands in the proposed port development area are located in the portion of the OARB redevelopment property east of Maritime Street, and will later be transferred by OBRA to the port. The port is also seeking to acquire certain interests in the OARB adjacent parcels, which are essential for the port to acquire in order for the port to meet the year 2020 cargo throughput demand forecasts in BCD's San Francisco Bay Area Seaport Plan. The acquisition of the port development area lands will allow the port to consolidate and reconfigure its existing terminals, expand its cargo capacity, create a new larger and more productive Joint Intermodal Rail Terminal, and construct its proposed Berth 21 project. The port development program was designed to allow the port to achieve the year 2020 cargo throughput demand forecasts set forth in the BCD's San Francisco Bay Area Seaport Plan. The port has estimated that, as a result of the increased capacity and more efficient design of port facilities made possible by the development of the port development area, overall cargo throughput at the port's maritime facilities could be increased by approximately 500,000 metric tons, exceeding the throughput demand forecasts contained in the seaport plan and conferring a substantial benefit on the region and the state.

(k) The Gateway development area is situated adjacent to the Bay Bridge touchdown in Oakland at the point of entry to Oakland and the East Bay. The reuse plan proposes a mixed-use development plan to revitalize this area and to satisfy OBRA's federal job-creation and redevelopment obligations. OBRA has proposed the development of a high-quality destination open-space park that would encompass the entire existing waterfront within the proposed Gateway development area. Development of this park would open almost a mile of previously inaccessible waterfront to the public for recreational purposes, and would directly connect with lands currently held by the federal government to the west of the OARB redevelopment property anticipated for use in the future as a shoreline regional park. The remaining lands in the Gateway development area would be developed for a variety of commercial or light industrial uses which would create significant economic and employment benefits for Oakland.

(l) Over the past several decades, the community of west Oakland has experienced a sharp decline in economic vitality as a result of a decline in Oakland's industrial base. In 2000, the city approved and adopted the Oakland Army Base Area Redevelopment Plan for the

Oakland Army Base Area Redevelopment Project, pursuant to the Community Redevelopment Law (Part 1 (commencing with Section 33000) of Division 24 of the Health and Safety Code). The redevelopment project area includes the OARB redevelopment property. The redevelopment project is intended to mitigate the economic and social degradation faced by the city due to the closure of the Army base by redesigning and redeveloping portions of the project area which are improperly utilized, improving pedestrian and vehicular circulation, and constructing and installing infrastructure and other improvements to stimulate new development, employment, and social and economic growth. The city and OBRA anticipate that ORA will succeed to OBRA's interest in the Gateway development area portion of the OARB redevelopment property.

(m) In recognition of the improved efficiencies and increased maritime cargo capability that the reconfigured port marine terminals and Joint Intermodal Rail Terminal would provide, and to ensure the availability of adequate land for port ancillary uses, including trucking uses, BCDC amended the San Francisco Bay plan and the San Francisco Bay Area seaport plan in 2001 to add certain lands to its designated port priority use area, retain the port priority use designation over the port development area and a portion of the Gateway development area, and remove the designation from the remainder of the Gateway development area. BCDC determined that the additional port priority use acreage for port ancillary uses is sufficient to meet the need for directly related port ancillary uses at the Port of Oakland.

(n) The historical circumstances surrounding the grants and conveyances of tidelands within the OARB redevelopment property, the 1910 boundary line agreement, the fact and manner of the federal government's acquisition of tidelands for OARB, and other factors relating to the state's public trust claims have all created uncertainties as to the nature and extent of the state's sovereign interest in the OARB redevelopment property. These legal uncertainties, including trial litigation and possible appeals from trial court rulings, would delay development of the OARB redevelopment property for years, to the detriment of its use for both public trust and nonpublic trust purposes. It is in the best interests of the people of the state to resolve these uncertainties in a manner that furthers trust purposes.

(o) A configuration of trust lands that is based on the 1910 boundary line agreement would not reflect current and anticipated trust needs. The lands east of Maritime Street within the port development area are needed to expand the port's terminal and transportation capacity and meet BCDC's 2020 cargo throughput demand forecasts. The lands west of the eastern line of Maritime Street within the Gateway development area

are not needed to meet these forecasts. The waterfront portion of these lands is better suited for park and recreational purposes, and the landward portion is no longer needed for trust purposes.

(p) (1) A trust exchange is needed to confirm the state's sovereign interest in lands within the OARB redevelopment property and to place the trust on the lands of greatest value to the trust. A trust exchange that substantially reflects the proposed trust land configuration illustrated in Section 16 and that complies with the requirements of this act will further trust purposes and substantially benefit the trust while allowing OBRA to achieve redevelopment goals set forth in the reuse plan and state redevelopment law and to satisfy federal reinvestment obligations.

(2) The diagram in Section 16 reflects the configuration of trust lands that is most advantageous to the public trust in light of all relevant considerations, including, but not limited to, port improvement plans, public access, and other present and anticipated future trust needs; legal and factual uncertainties in existing trust title; port ancillary uses; current and anticipated future transportation needs; and the city's redevelopment and reinvestment obligations.

(q) Following the exchange, all lands within the OARB redevelopment property immediately adjacent to the waterfront, as well as certain interior lands that have high trust values, will be subject to the public trust. The lands on which the trust will be terminated pursuant to the exchange have been or will be cut off from navigable waters, are no longer needed or required for the promotion of the public trust, and constitute a relatively small portion of the lands originally granted to the city. The port's Berth 21 project is part of a highly beneficial program of harbor development that will require the filling with solid earth of approximately 28 acres of land below the present line of mean high tide, including a strip of approximately 0.84 acres that is located in the Gateway development area. The findings required by this act will ensure that the trust is not terminated on this strip of land pursuant to an exchange until it has been filled and cut off from the waterfront. With the exception of this strip, all lands on which the trust will be terminated have already been filled and cut off from navigable waters as the result of a highly beneficial program of harbor development. This act requires that the commission ensure that the lands added to the trust pursuant to the exchange are of equal or greater value than the lands taken out of the trust.

(r) The OARB adjacent parcels are not part of the EDC property that was transferred to OBRA, but are located within the OARB redevelopment property, and are included in the port development area or the Gateway development area. The city, OBRA, ORA, and the port are seeking to acquire title or certain other rights and interests in these

lands. This act authorizes the commission to incorporate the OARB adjacent parcels into the trust exchange as necessary and appropriate to further trust purposes.

(s) This legislation advances the purposes of the Defense Base Closure and Realignment Act of 1990 (Part A of Title XXIX of P.L. 101-510), the Community Redevelopment Law (Part 1 (commencing with Section 33000) of Division 24 of the Health and Safety Code), and the public trust, and is in the best interests of the people of this state.

SEC. 4. Except for the portions of the EDC property in which OBRA has previously transferred to the port all of OBRA's right, title, and interest, which shall be held by the port subject to the public trust and the requirements and reservations set forth in the 1911 grant and this act, all of the state's right, title, and interest in the lands within the EDC property, including any right, title, and interest in such lands currently held by the city by virtue of a prior grant from the state, are granted to and vested in OBRA, subject to the public trust and the requirements and reservations set forth in the 1911 grant and this act, and subject to agreements among OBRA, ORA, the city, and the port providing for the transfer to the port of other portions of the EDC property included within the port development area, to the extent that those agreements and any of their terms, conditions, and covenants are consistent with applicable law related to the public trust.

SEC. 5. Nothing in this act shall be construed as granting, conveying, extinguishing, or limiting any property interest in the OARB redevelopment property held by the California Department of Transportation in its proprietary capacity.

SEC. 6. (a) Notwithstanding the restrictions on alienation in the 1911 grant, OARB trust lands may be conveyed by and among OBRA, ORA, the city, and the port in accordance with applicable requirements, of the Charter of the City of Oakland, other applicable legal requirements, and any applicable contractual requirements, provided that any contractual requirements are consistent with applicable law related to the public trust. Any such conveyance for which conveyance documents are executed after the recordation of an exchange agreement authorized by this act shall require the prior approval of the commission, which shall not be unreasonably withheld. Upon acquiring fee title in any OARB trust lands pursuant to such conveyance or pursuant to an exchange, OBRA, ORA, the city, or the port shall succeed to all of the state's sovereign right, title, and interest in those lands, subject to the requirements of this act and the 1911 grant, and shall become the trustee for those lands.

(b) Notwithstanding subdivision (a) of this section, at such time that the Oakland Army Base Area Redevelopment Plan terminates, or on

January 1, 2045, whichever is earlier, the city (including the port) shall become the sole grantee of OARB trust lands, unless an extension is approved by the commission. This subdivision shall not apply to any OARB trust lands for which fee title is held by a state agency.

SEC. 7. Each trustee may use, conduct, operate, maintain, manage, administer, regulate, improve, lease, and control the OARB trust lands it owns and may do all things necessary in connection with that authority that conform with the terms of this act, the 1911 grant, and the public trust, including the development of public open space and recreational facilities.

SEC. 8. Monetary contributions by the port to a community trust fund established or funded by the city, OBRA, or ORA in connection with redevelopment of the EDC property shall be used only for uses and purposes consistent with the trust and the requirements of this act. Contributions by the port to this community trust fund shall not exceed a total of two million dollars (\$2,000,000). The trustee with control or supervisory authority over the community trust fund (hereinafter "supervisory trustee") shall separately account for, and provide the commission an annual statement of, all moneys received from the port and expenditures of those moneys. Prior to expending any community trust fund moneys received from the port, the supervisory trustee shall provide commission staff with a list and description of potential projects that would be funded in whole or in part with those moneys. Within 90 days of the submittal of the list to the commission staff, the executive officer of the commission shall either approve the list or notify the supervisory trustee which projects on the list are not consistent with the public trust. The supervisory trustee may appeal to the commission any decision by the executive officer to disapprove some or all of the projects on the list. No port moneys shall be spent on community trust fund projects unless both of the following conditions are met:

(a) The executive officer or the commission has approved one or more of the potential projects on the list.

(b) The expenditures are for one or more of the approved projects that are on the list.

SEC. 9. The Legislature hereby approves an exchange of public trust lands within the OARB redevelopment property, whereby certain lands that meet the criteria set forth in this act and are not now useful for public trust purposes will be freed from the public trust and may be conveyed free of any trust interest, and certain other lands that are useful for public trust purposes will be made subject to the public trust, provided that the exchange results in a configuration of trust lands substantially similar to that shown on the diagram in Section 16 of this act and otherwise complies with the requirements of this act.

SEC. 10. All lands exchanged into the trust under this act shall be held by the appropriate trustee or trustees subject to the public trust, and the requirements of this act and the 1911 grant, and all lands exchanged out of the trust under this act shall be free of the public trust, the requirements of this act, the town grant, and the 1911 grant.

SEC. 11. The precise boundaries of the lands to be exchanged shall be determined by the trustees with trustee authority over the lands to be exchanged, subject to the approval of the commission. The commission is authorized to settle by agreement with the appropriate trustees any disputes as to the location of the mean high water line in its last natural state, the boundaries of tidelands conveyed into private ownership pursuant to various statutes, and any other boundary lines which the commission deems necessary to effectuate the exchange. The commission may include any of the OARB adjacent parcels in the exchange if it determines that the inclusion of these lands would be substantially consistent with the configuration of trust lands shown in the diagram in Section 16 of this act and would otherwise satisfy the requirements of this act. Nothing in this act shall be construed as limiting the authority of the commission to approve additional trust land exchanges or to enter into boundary settlements involving the OARB redevelopment property pursuant to any other provision of law.

SEC. 12. (a) The commission is authorized to approve an exchange of public trust lands within the OARB redevelopment property that meets the requirements of this act. Pursuant to this authority, the commission shall establish appropriate procedures for effectuating the exchange. The procedures shall include provisions for ensuring that the requirements specified in either paragraph (1) or (2) have occurred:

(1) Property to be received or confirmed in public trust ownership has been remediated consistent with the requirements of the RAP/RMP and Consent Agreement, and there are no land use covenants or restrictions on the property, other than the existing Covenant to Restrict Use of Property, that impede its use for public trust purposes, unless approved by the commission.

(2) Sufficient protections are in place to ensure that the remedial actions for property to be received or confirmed in public trust ownership will be completed consistent with the timeframe and standards set forth in the RAP/RMP and Consent Agreement, and there are no land use covenants or restrictions on the property, other than the existing Covenant to Restrict Use of Property, that impede its use for public trust purposes, unless approved by the commission. Protections may be demonstrated by a showing of sufficient financial assurances consistent with Oakland Base Reuse Authority Resolution No. 2003-13, Port of Oakland Resolution No. 03150, Oakland City Council Resolution No. 77857, and

Oakland Redevelopment Agency Resolution No. 2003-29, as those resolutions read on January 1, 2004, and may include insurance, third-party indemnifications, and sufficient funds to complete remediation.

(3) The commission may consult with DTSC regarding the factors stated in paragraphs (1) and (2).

(b) The commission shall not approve the exchange of any OARB trust lands unless it finds all of the following:

(1) The configuration of OARB trust lands upon completion of the exchange will not differ significantly from the configuration shown on the diagram in Section 16 of this act, includes all lands within the OARB redevelopment property that are below mean high tide at the time of the exchange, with the exception of the strip of submerged land within the Gateway development area that will be filled and cut off from the waterfront by the Berth 21 project described in subdivision (q) of Section 3 of this act, and consists of lands suitable to be impressed with the public trust.

(2) The final layout of streets in the Gateway development area and the port development area will provide public vehicular, pedestrian, and bicycle access to the public trust lands within those respective areas, and through those areas to the lands adjoining the Gateway development area on its westerly side, and will be consistent with the beneficial use of those lands.

(3) The value of the lands to be exchanged into the trust is equal to or greater than the value of the lands to be exchanged out of the trust. The commission may take into consideration the degree of uncertainty, if any, as to whether the lands are presently subject to the trust.

(4) The lands to be taken out of the trust have been filled and reclaimed as the result of a highly beneficial program of harbor development, are cut off from access to navigable waters, are no longer needed or required for the promotion of the public trust, and constitute a relatively small portion of the lands originally granted to the city, and that the exchange will not result in substantial interference with trust uses and purposes.

(5) The OARB MOA has been amended to eliminate the concept of the "City Cash-Out Remedy" as defined in Section 1.1(a)(17) and as referenced in Sections 2.2(d), 3.3(c)(1), 4.1, 5.1(b)(2), 5.1(c)(2), 5.1(e), 6.2(b)(3), 6.5, 8.4, 11.17, and elsewhere in the OARB MOA, or in any amendment to the OARB MOA.

(6) Each trustee, and any state agency, which owns fee title in any of the lands to be exchanged has approved the exchange.

(c) The commission shall impose additional conditions on the exchange authorized by this act if the commission determines that these conditions are necessary for the protection of the public trust.

(d) For purposes of effectuating the exchange authorized by this section, the commission is authorized to do all of the following:

(1) Receive and accept on behalf of the state any lands or interest in lands conveyed to the state by the trustees, including lands that are now and that will remain subject to the public trust.

(2) Convey to the trustees by patent all of the right, title, and interest of the state in lands that are to be free of the public trust upon completion of an exchange of lands as authorized by this act and as approved by the commission.

(3) Convey to the trustees by patent all of the right, title, and interest of the state in lands that are to be subject to the public trust and the terms of this act and the 1911 grant upon completion of an exchange of lands as authorized by this act and as approved by the commission, subject to the terms, conditions, and reservations as the commission may determine are necessary to meet the requirements of this act.

(4) This subdivision shall not be construed as authorizing the commission to convey to the trustees any property interest in the OARB redevelopment property held by the California Department of Transportation in its proprietary capacity as of the date of the conveyance.

SEC. 13. Any agreement for the exchange of, or trust termination over, granted lands, or to establish boundary lines, entered into pursuant to this act, shall be conclusively presumed to be valid unless held to be invalid in an appropriate proceeding in a court of competent jurisdiction to determine the validity of the agreement commenced within 60 days after the recording of the agreement.

SEC. 14. (a) An action may be brought under Chapter 4 (commencing with Section 760.010) of Title 10 of Part 2 of the Code of Civil Procedure by the parties to any agreement entered into pursuant to this act to confirm the validity of the agreement. Notwithstanding any provision of Section 764.080 of the Code of Civil Procedure, the statement of decision in the action shall include a recitation of the underlying facts and a determination whether the agreement meets the requirements of this act, Sections 3 and 4 of Article X of the California Constitution, and any other law applicable to the validity of the agreement.

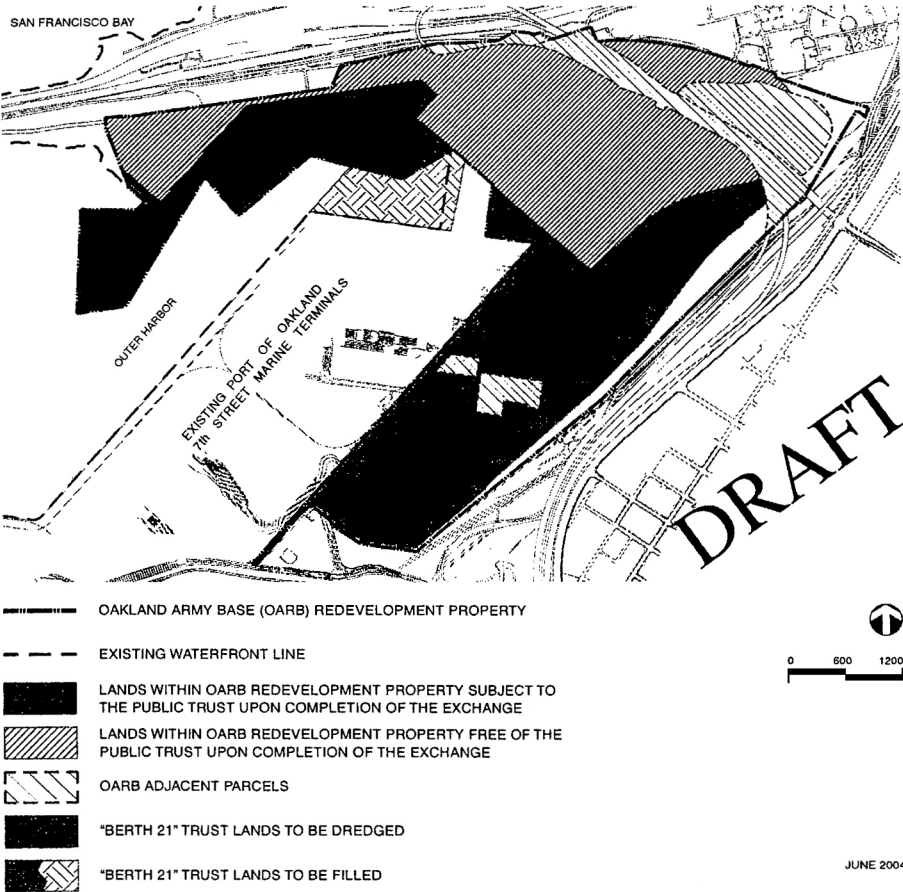
(b) For purposes of Section 764.080 of the Code of Civil Procedure and unless otherwise agreed in writing, any settlement or exchange agreement entered into pursuant to this act shall be deemed to be entered into on the date it is executed by the executive officer of the commission, who shall be the last of the parties to sign prior to the signature of the

Governor. The effective date of the agreement shall be deemed to be the date on which it is executed by the Governor pursuant to Section 6107 of the Public Resources Code.

SEC. 15. Notwithstanding Section 6359 of the Public Resources Code or any other provision of law, the grant of trust lands authorized herein shall be deemed effective as of the effective date of this act.

SEC. 16. The following diagram is a part of this act:

OAKLAND ARMY BASE
PUBLIC TRUST EXCHANGE ACT



SEC. 17. The Legislature finds and declares that, because of the unique circumstances applicable only to the trust lands described in this act, relating to the Oakland Army Base redevelopment property, 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. 18. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

The public benefits of improving the trust land configuration, resolving title disputes, and redeveloping the lands within the OARB redevelopment property, cannot be obtained until a trust exchange is completed. To prevent interference with the purposes of the public trust and to avoid prolonged delays in realizing the fullest use of those lands for the maximum benefit of the statutory trust purposes, immediate implementation of the trust exchange process is required. It is necessary, therefore, that this act take effect immediately.

CHAPTER 665

An act to amend Section 12811 of the Vehicle Code, relating to vehicles, and making an appropriation therefor.

[Approved by Governor October 7, 2005. Filed with
Secretary of State October 7, 2005.]

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

SECTION 1. Section 12811 of the Vehicle Code is amended to read:

12811. (a) (1) (A) When the department determines that the applicant is lawfully entitled to a license, it shall issue to the person a driver's license as applied for. The license shall state the class of license for which the licensee has qualified and shall contain the distinguishing number assigned to the applicant, the date of expiration, the true full name, age, and mailing address of the licensee, a brief description and engraved picture or photograph of the licensee for the purpose of identification, and space for the signature of the licensee.

(B) Each license shall also contain a space for the endorsement of a record of each suspension or revocation thereof.

(C) The department shall use whatever process or processes, in the issuance of engraved or colored licenses, that prohibit, as near as possible,

the ability to alter or reproduce the license, or prohibit the ability to superimpose a picture or photograph on the license without ready detection.

(2) In addition to the requirements of paragraph (1), a license issued to a person under 18 years of age shall display the words “provisional until age 18.”

(b) (1) The front of an application for an original or renewal of a driver’s license or identification card shall contain a space for any applicant, age 16 or older, to give his or her consent to be an organ and tissue donor upon death. An applicant who gives consent shall be directed to read a statement on the back of the application that shall contain the following statement:

“If you marked on the front of the application that you want to be an organ and tissue donor upon death, your consent shall serve as a legally binding document as outlined under the California Uniform Anatomical Gift Act. Except in the case where the donor is under the age of 18, the donation does not require the consent of any other person. For donors under the age of 18, the legal guardian of the donee shall make the final decision regarding the donation. If you want to change your decision to consent in the future, or if you want to limit the donation to specific organs or tissues, you must contact Donate Life California by mail at 1760 Creekside Oaks Drive, #160, Sacramento, CA 95833, or through the World Wide Web at www.donateLIFeCalifornia.org, or www.doneVIDACalifornia.org.”

(2) Notwithstanding any other provision of law, a person under age 18 may register as a donor. However, the legal guardian of that person shall make the final decision regarding the donation.

(3) The department shall collect donor designation information on all applications for an original or renewal driver’s license or identification card.

(4) The department shall print the word “DONOR” or another appropriate designation on the face of a driver’s license or identification card to a person who registered as a donor on a form issued under this section.

(5) On a weekly basis, the department shall electronically transmit to Donate Life California, a nonprofit organization established and designated as the California Organ and Tissue Donor Registrar pursuant to Section 7152.7 of the Health and Safety Code, all of the following information on every applicant that has indicated his or her willingness to participate in the organ donation program:

- (A) His or her true full name.
- (B) His or her residence or mailing address.
- (C) His or her date of birth.

(D) His or her California driver's license number or identification card number.

(6) (A) A person who applies for an original or renewal driver's license or identification card may designate a voluntary contribution of two dollars (\$2) for the purpose of promoting and supporting organ and tissue donation. This contribution shall be collected by the department, and treated as a voluntary contribution to Donate Life California and not as a fee for the issuance of a driver's license or identification card.

(B) The department may use the donations collected under this paragraph to cover its actual administrative costs incurred under paragraphs (3) to (5), inclusive. The department shall deposit all revenue derived under this paragraph and remaining after the department's deduction for administrative costs in the Donate Life California Trust Subaccount, which is hereby created in the Motor Vehicle Account in the State Transportation Fund. Notwithstanding Section 13340 of the Government Code, all revenue in this subaccount is continuously appropriated, without regard to fiscal years, to the Controller for allocation to Donate Life California and shall be expended for the purpose of increasing participation in organ donation programs.

(7) The enrollment form shall be posted on the Internet Web sites for the department and the California Health and Human Services Agency.

(8) The enrollment shall constitute a legal document under the Uniform Anatomical Gift Act (Chapter 3.5 (commencing with Section 7150) of Part 1 of Division 7 of the Health and Safety Code) and shall remain binding after the donor's death despite any express desires of next of kin opposed to the donation. Except as provided in paragraph (2) of subdivision (b), the donation does not require the consent of any other person.

(9) Donate Life California shall ensure that all additions and deletions to the California Organ and Tissue Donor Registry, established pursuant to Section 7152.7 of the Health and Safety Code, shall occur within 30 days of receipt.

(10) Information obtained by Donate Life California for the purposes of this subdivision shall be used for these purposes only and shall not be disseminated further by Donate Life California.

(c) A public entity or employee shall not be liable for any loss, detriment, or injury resulting directly or indirectly from false or inaccurate information contained in the form provided pursuant to subdivision (b).

(d) A contract shall not be awarded to any nongovernmental entity for the processing of driver's licenses, unless the contract conforms to all applicable state contracting laws and all applicable procedures set forth in the State Contracting Manual.

- (e) This section shall become operative on July 1, 2006.

CHAPTER 666

An act to amend Sections 42301 and 42310 of, and to add Sections 42310.3 and 42321.5 to, the Public Resources Code, relating to recycling.

[Approved by Governor October 7, 2005. Filed with
Secretary of State October 7, 2005.]

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

SECTION 1. Section 42301 of the Public Resources Code is amended to read:

42301. For purposes of this chapter, the following definitions apply:

(a) "Container manufacturer" means a company or a successor company that sells any rigid plastic packaging container subject to this chapter to a manufacturer that sells or offers for sale in this state any product packaged in that container.

(b) "Curbside collection program" means a recycling program that collects materials set out by households for collection at the curb at intervals not less than every two weeks. "Curbside collection program" does not include redemption centers, buyback locations, drop-off programs, material recovery facilities, or plastic recovery facilities.

(c) "Refillable package" means a rigid plastic packaging container that the board determines is routinely returned to and refilled by the product manufacturer at least five times with the original product contained by the package.

(d) "Reusable package" means a rigid plastic packaging container that the board determines is routinely reused by consumers at least five times to store the original product contained by the package.

(e) "Manufacturer" means the producer or generator of a product that is sold or offered for sale in the state and that is stored inside of a rigid plastic packaging container.

(f) "Rigid plastic packaging container" means any plastic package having a relatively inflexible finite shape or form, with a minimum capacity of eight fluid ounces or its equivalent volume and a maximum capacity of five fluid gallons or its equivalent volume, that is capable of maintaining its shape while holding other products, including, but not limited to, bottles, cartons, and other receptacles, for sale or distribution in the state.

(g) "Postconsumer material" means a material that would otherwise be destined for solid waste disposal, having completed its intended end use and product lifecycle. Postconsumer material does not include materials and byproducts generated from, and commonly reused within, an original manufacturing and fabrication process.

(h) "Recycled" means a product or material that has been reused in the production of another product and has been diverted from disposal in a landfill.

(i) "Recycling rate" means the proportion, as measured by weight, volume, or number, of a rigid plastic packaging container sold or offered for sale in the state that is being recycled in a given calendar year, that is one of the following:

(1) A particular type of rigid plastic packaging container, such as a milk jug, soft drink container, or detergent bottle.

(2) A product-associated rigid plastic packaging container.

(3) A single resin type, as specified in Section 18015, of rigid plastic packaging container, notwithstanding the exemption of that container from this chapter pursuant to subdivision (b), (c), or (d) of Section 42340.

(j) (1) "Source reduced container" means either of the following:

(A) A rigid plastic packaging container for which the manufacturer seeks compliance as of January 1, 1995, whose package weight per unit or use of product has been reduced by 10 percent when compared with the packaging used for that product by the manufacturer from January 1, 1990, to December 31, 1994.

(B) A rigid plastic container for which the manufacturer seeks compliance after January 1, 1995, whose package weight per unit or use of product has been reduced by 10 percent when compared with one of the following:

(i) The packaging used for the product by the manufacturer on January 1, 1995.

(ii) The packaging used for that product by the manufacturer over the course of the first full year of commerce in this state.

(iii) The packaging used in commerce that same year for similar products whose containers have not been considered source reduced.

(2) A rigid plastic packaging container is not a source reduced container for the purposes of this chapter if the packaging reduction was achieved by any of the following:

(A) Substituting a different material type for a material that previously constituted the principal material of the container.

(B) Increasing a container's weight per unit or use of product after January 1, 1991.

(C) Packaging changes that adversely affect the potential for the rigid plastic packaging container to be recycled or to be made of postconsumer material.

(k) “Product-associated rigid plastic packaging container” means a brand-specific, rigid plastic packaging line that may have one or more sizes, shapes, or designs and that is used in conjunction with a particular generic product line.

(l) “PETE” means polyethylene terephthalate as specified in subdivision (a) of Section 18015.

(m) “HDPE” means high-density polyethylene.

SEC. 2. Section 42310 of the Public Resources Code is amended to read:

42310. Except as otherwise provided in this chapter, every rigid plastic packaging container sold or offered for sale in this state shall, on average, meet one of the following criteria:

(a) Be made from 25 percent postconsumer material.

(b) Have a recycling rate of 45 percent if it is a product-associated rigid plastic packaging container or a single resin type of rigid plastic packaging container, as demonstrated to the board by the product maker, container manufacturer, or other entity. The board may take appropriate action to verify the demonstration, but the board is not required to expend state funds to conduct a survey or calculate the rate.

(c) Be a reusable package or a refillable package.

(d) Be a source reduced container.

(e) Is a container containing floral preservative that is subsequently reused by the floral industry for at least two years.

SEC. 3. Section 42310.3 is added to the Public Resources Code, to read:

42310.3. (a) Notwithstanding Section 42310, a manufacturer is in compliance with the requirements of this chapter if the manufacturer demonstrates through its own actions, or the actions of another company under the same corporate ownership, that one of the following actions were taken during the same period for which the manufacturer is subject to this chapter, with regard to a rigid plastic packaging container that stores the manufacturer’s product that is sold or intended for sale in this state:

(1) The manufacturer, or another company under the same corporate ownership, consumed a volume of postconsumer material generated in the state in the manufacture of a rigid plastic packaging container subject to Section 42310, or a rigid plastic packaging container that is not subject to that section, that resulted in the consumption of an equivalent amount of postconsumer material that the rigid plastic packaging container is

otherwise required to contain, as specified in subdivision (a) of Section 42310.

(2) The manufacturer, or any company under the same corporate ownership, arranged by contractual agreement for the purchase and consumption of postconsumer material generated in the state and exported to another state or country for the manufacture of rigid plastic packaging containers that is equivalent to, or exceeds the volume of, the postconsumer material that the rigid plastic packaging container is otherwise required to contain, as specified in subdivision (a) of Section 42310.

(b) The board shall determine the manner of demonstrating compliance with the requirements of this section.

SEC. 4. Section 42321.5 is added to the Public Resources Code, to read:

42321.5. (a) A container manufacturer who sells a rigid plastic packaging container to a manufacturer and who submits a certification to the manufacturer, for purposes of this chapter, shall not provide any false or misleading information. A container manufacturer who submits to a manufacturer a certification with false or misleading information is subject to the same penalties and fines that are imposed upon a manufacturer that does not comply with Sections 42321 and 42322.

(b) Notwithstanding Sections 42321 and 42322, a manufacturer is not subject to any fine or penalty for not complying with this chapter as a result of the submittal of false or misleading information by a container manufacturer to the manufacturer with regard to a container sold to that manufacturer.

SEC. 5. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

CHAPTER 667

An act to add Section 17538.43 to the Business and Professions Code, relating to advertising.

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

SECTION 1. Section 17538.43 is added to the Business and Professions Code, to read:

17538.43. (a) As used in this section, the following terms have the following meanings:

(1) "Telephone facsimile machine" means equipment that has the capacity to do either or both of the following:

(A) Transcribe text or images, or both, from paper into an electronic signal and to transmit that signal over a regular telephone line.

(B) Transcribe text or images, or both, from an electronic signal received over a regular telephone line onto paper.

(2) "Unsolicited advertisement" means any material advertising the commercial availability or quality of any property, goods, or services that is transmitted to any person or entity without that person's or entity's prior express invitation or permission. Prior express invitation or permission may be obtained for a specific or unlimited number of advertisements and may be obtained for a specific or unlimited period of time.

(b) (1) It is unlawful for a person or entity, if either the person or entity or the recipient is located within California, to use any telephone facsimile machine, computer, or other device to send, or cause another person or entity to use such a device to send, an unsolicited advertisement to a telephone facsimile machine.

(2) In addition to any other remedy provided by law, including a remedy provided by the Telephone Consumer Act (47 U.S.C. Sec. 227 and following), a person or entity may bring an action for a violation of this subdivision seeking the following relief:

(A) Injunctive relief against further violations.

(B) Actual damages or statutory damages of five hundred dollars (\$500) per violation, whichever amount is greater.

(C) Both injunctive relief and damages as set forth in subparagraphs (A) and (B).

If the court finds that the defendant willfully or knowingly violated this subdivision, the court may, in its discretion, increase the amount of the award to an amount equal to not more than three times the amount otherwise available under subparagraph (B).

(c) It is unlawful for a person or entity, if either the person or entity or the recipient is located in California, to do either of the following:

(1) Initiate any communication using a telephone facsimile machine that does not clearly mark, in a margin at the top or bottom of each transmitted page or on the first page of each transmission, the date and time sent, an identification of the business, other entity, or individual

sending the message, and the telephone number of the sending machine or of the business, other entity, or individual.

(2) Use a computer or other electronic device to send any message via a telephone facsimile machine unless it is clearly marked, in a margin at the top or bottom of each transmitted page of the message or on the first page of the transmission, the date and time it is sent and the identification of the business, other entity, or individual sending the message and the telephone number of the sending machine or of the business, other entity, or individual.

(d) This section shall not apply to a facsimile sent by or on behalf of a professional or trade association that is a tax-exempt nonprofit organization and in furtherance of the association's tax-exempt purpose to a member of the association, provided that all of the following conditions are met:

(1) The member voluntarily provided the association the facsimile number to which the facsimile was sent.

(2) The facsimile is not primarily for the purpose of advertising the commercial availability or quality of any property, goods, or services of one or more third parties.

(3) The member who is sent the facsimile has not requested that the association stop sending facsimiles for the purpose of advertising the commercial availability or quality of any property, goods, or services of one or more third parties.

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 668

An act to amend Section 31683 of the Food and Agricultural Code, and to add Chapter 7 (commencing with Section 122330) to Part 6 of Division 105 of the Health and Safety Code, relating to dogs.

[Approved by Governor October 7, 2005. Filed with
Secretary of State October 7, 2005.]

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

SECTION 1. Section 31683 of the Food and Agricultural Code is amended to read:

31683. Nothing in this chapter shall be construed to prevent a city or county from adopting or enforcing its own program for the control of potentially dangerous or vicious dogs that may incorporate all, part, or none of this chapter, or that may punish a violation of this chapter as a misdemeanor or may impose a more restrictive program to control potentially dangerous or vicious dogs. Except as provided in Section 122331 of the Health and Safety Code, no program regulating any dog shall be specific as to breed.

SEC. 2. Chapter 7 (commencing with Section 122330) is added to Part 6 of Division 105 of the Health and Safety Code, to read:

CHAPTER 7. SPAY/NEUTER AND BREEDING PROGRAMS FOR ANIMALS

122330. The Legislature finds and declares all of the following:

(a) Uncontrolled and irresponsible breeding of animals contributes to pet overpopulation, inhumane treatment of animals, mass euthanasia at local shelters, and escalating costs for animal care and control; this irresponsible breeding also contributes to the production of defective animals that present a public safety risk.

(b) Though no specific breed of dog is inherently dangerous or vicious, the growing pet overpopulation and lack of regulation of animal breeding practices necessitates a repeal of the ban on breed-specific solutions and a more immediate alternative to existing laws.

(c) It is therefore the intent of the Legislature in enacting this chapter to permit cities and counties to take appropriate action aimed at eliminating uncontrolled and irresponsible breeding of animals

122331. (a) Cities and counties may enact dog breed-specific ordinances pertaining only to mandatory spay or neuter programs and breeding requirements, provided that no specific dog breed, or mixed dog breed, shall be declared potentially dangerous or vicious under those ordinances.

(b) Jurisdictions that implement programs described in subdivision (a) shall measure the effect of those programs by compiling statistical information on dog bites. The information shall, at a minimum, identify dog bites by severity, the breed of the dog involved, whether the dog was altered, and whether the breed of dog was subject to a program

established pursuant to subdivision (a). These statistics shall be submitted quarterly to the State Public Health Veterinarian.

CHAPTER 669

An act to add Section 597z to the Penal Code, relating to animals.

[Approved by Governor October 7, 2005. Filed with
Secretary of State October 7, 2005.]

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

SECTION 1. Section 597z is added to the Penal Code, to read:

597z. (a) (1) Except as otherwise authorized under any other provision of law, it shall be a crime, punishable as specified in subdivision (b), for any person to sell one or more dogs under eight weeks of age, unless, prior to any physical transfer of the dog or dogs from the seller to the purchaser, the dog or dogs are approved for sale, as evidenced by written documentation from a veterinarian licensed to practice in California.

(2) For the purposes of this section, the sale of a dog or dogs shall not be considered complete, and thereby subject to the requirements and penalties of this section, unless and until the seller physically transfers the dog or dogs to the purchaser.

(b) (1) Any person who violates this section shall be guilty of an infraction or a misdemeanor.

(2) An infraction under this section shall be punishable by a fine not to exceed two hundred fifty dollars (\$250).

(3) With respect to the sale of two or more dogs in violation of this section, each dog unlawfully sold shall represent a separate offense under this section.

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

(1) An organization, as defined in Section 501(c)(3) of the Internal Revenue Code, or any other organization that provides, or contracts to provide, services as a public animal sheltering agency.

(2) A pet dealer as defined under Article 2 (commencing with Section 122125) of Chapter 5 of Part 6 of Division 105 of the Health and Safety Code.

(3) A public animal control agency or shelter, society for the prevention of cruelty to animals shelter, humane society shelter, or rescue group regulated under Division 14 (commencing with Section 30501) of the Food and Agricultural Code.

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 670

An act to amend Sections 6254, 6254.10, 65352.3, 65560, and 65562.5 of the Government Code, relating to public records, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 7, 2005. Filed with
Secretary of State October 7, 2005.]

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 may not be used directly or indirectly, or furnished to another, 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. Nothing in this paragraph shall be construed to prohibit or limit a scholarly, journalistic, political, or government use of address information obtained pursuant to this paragraph.

(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 and the Legislative Analyst's Office. The committee and that office 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 and records of Native American places, features, and objects described in Sections 5097.9 and 5097.993 of the Public Resources Code maintained by, or in the possession of, the Native American Heritage Commission, another state agency, or a local agency.

(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).

(cc) All information provided to the Secretary of State by a person for the purpose of registration in the Advance Health Care Directive Registry, except that those records shall be released at the request of a health care provider, a public guardian, or the registrant's legal representative.

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. 1.5. 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 may not be used directly or indirectly, or furnished to another, 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. Nothing in this paragraph shall be construed to prohibit or limit a scholarly, journalistic, political, or government use of address information obtained pursuant to this paragraph.

(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 and the Legislative Analyst's Office. The committee and that office 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 and records of Native American places, features, and objects described in Sections 5097.9 and 5097.993 of the Public Resources Code maintained by, or in the possession of, the Native American Heritage Commission, another state agency, or a local agency.

(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) Critical infrastructure information, as defined in Section 131(3) of Title 6 of the United States Code, that is voluntarily submitted to the California Office of Homeland Security for use by that office, including the identity of the person who or entity that voluntarily submitted the information. As used in this subdivision, "voluntarily submitted" means submitted in the absence of the office exercising any legal authority to compel access to or submission of critical infrastructure information. This subdivision shall not affect the status of information in the possession of any other state or local governmental agency.

(cc) All information provided to the Secretary of State by a person for the purpose of registration in the Advance Health Care Directive Registry, except that those records shall be released at the request of a health care provider, a public guardian, or the registrant's legal representative.

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. Section 6254.10 of the Government Code is amended to read:

6254.10. Nothing in this chapter requires disclosure of records that relate to archaeological site information and reports maintained by, or in the possession of, the Department of Parks and Recreation, the State Historical Resources Commission, the State Lands Commission, the Native American Heritage Commission, another state agency, or a local agency, including the records that the agency obtains through a consultation process between a California Native American tribe and a state or local agency.

SEC. 3. Section 65352.3 of the Government Code is amended to read:

65352.3. (a) (1) Prior to the adoption or any amendment of a city or county's general plan, proposed on or after March 1, 2005, the city or county shall conduct consultations with California Native American tribes that are on the contact list maintained by the Native American Heritage Commission for the purpose of preserving or mitigating impacts to places, features, and objects described in Sections 5097.9 and 5097.993 of the Public Resources Code that are located within the city or county's jurisdiction.

(2) From the date on which a California Native American tribe is contacted by a city or county pursuant to this subdivision, the tribe has 90 days in which to request a consultation, unless a shorter timeframe has been agreed to by that tribe.

(b) Consistent with the guidelines developed and adopted by the Office of Planning and Research pursuant to Section 65040.2, the city or county shall protect the confidentiality of information concerning the specific identity, location, character, and use of those places, features, and objects.

SEC. 4. Section 65560 of the Government Code is amended to read:

65560. (a) "Local open-space plan" is the open-space element of a county or city general plan adopted by the board or council, either as the local open-space plan or as the interim local open-space plan adopted pursuant to Section 65563.

(b) "Open-space land" is any parcel or area of land or water that is essentially unimproved and devoted to an open-space use as defined in this section, and that is designated on a local, regional or state open-space plan as any of the following:

(1) Open space for the preservation of natural resources including, but not limited to, areas required for the preservation of plant and animal life, including habitat for fish and wildlife species; areas required for ecologic and other scientific study purposes; rivers, streams, bays and

estuaries; and coastal beaches, lakeshores, banks of rivers and streams, and watershed lands.

(2) Open space used for the managed production of resources, including but not limited to, forest lands, rangeland, agricultural lands and areas of economic importance for the production of food or fiber; areas required for recharge of groundwater basins; bays, estuaries, marshes, rivers and streams which are important for the management of commercial fisheries; and areas containing major mineral deposits, including those in short supply.

(3) Open space for outdoor recreation, including but not limited to, areas of outstanding scenic, historic and cultural value; areas particularly suited for park and recreation purposes, including access to lakeshores, beaches, and rivers and streams; and areas which serve as links between major recreation and open-space reservations, including utility easements, banks of rivers and streams, trails, and scenic highway corridors.

(4) Open space for public health and safety, including, but not limited to, areas which require special management or regulation because of hazardous or special conditions such as earthquake fault zones, unstable soil areas, flood plains, watersheds, areas presenting high fire risks, areas required for the protection of water quality and water reservoirs and areas required for the protection and enhancement of air quality.

(5) Open space in support of the mission of military installations that comprises areas adjacent to military installations, military training routes, and underlying restricted airspace that can provide additional buffer zones to military activities and complement the resource values of the military lands.

(6) Open space for the protection of places, features, and objects described in Sections 5097.9 and 5097.993 of the Public Resources Code.

SEC. 5. Section 65562.5 of the Government Code is amended to read:

65562.5. On and after March 1, 2005, if land designated, or proposed to be designated as open space, contains a place, feature, or object described in Sections 5097.9 and 5097.993 of the Public Resources Code, the city or county in which the place, feature, or object is located shall conduct consultations with the California Native American tribe, if any, that has given notice pursuant to Section 65092 for the purpose of determining the level of confidentiality required to protect the specific identity, location, character, or use of the place, feature, or object and for the purpose of developing treatment with appropriate dignity of the place, feature, or object in any corresponding management plan.

SEC. 6. The Legislature finds and declares that Sections 1 and 2 of this act, which amend Sections 6254 and 6254.10, respectively, of the Government Code, impose limitations on the public's right of access to

the meetings of public bodies or the writings of public officials and agencies within the meaning of Section 3 of Article I of the California Constitution. Pursuant to that constitutional provision, the Legislature makes the following findings to demonstrate the interest protected by this limitation and the need for protecting that interest:

In order to continue to provide protection for California Native American prehistoric, archaeological, cultural, spiritual, and ceremonial places, as described in Sections 5097.9 and 5097.993 of the Public Resources Code, and to specify the necessary confidentiality afforded to those specific locations, it is necessary to enact the express public-right-of-access exemption provided for in Sections 1 and 2 of this act.

SEC. 7. Section 1.5 of this bill incorporates amendments to Section 6254 of the Government Code proposed by both this bill and AB 1495. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2006, (2) each bill amends Section 6254 of the Government Code, and (3) this bill is enacted after AB 1495, in which case Section 1 of this bill shall not become operative.

SEC. 8. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to clarify, at the earliest possible time, the confidentiality intended by Chapter 905 of the Statutes of 2004 (SB 18), as to California Native American prehistoric, archaeological, cultural, spiritual, and ceremonial places, and to correct certain erroneous cross-reference contained in Chapter 905, at the earliest possible time, it is necessary that this act take effect immediately.

CHAPTER 671

An act to amend Sections 1797.98a and 1797.98c of, and to amend and repeal Section 1797.98e of, the Health and Safety Code, and to amend Sections 16952, 16953.3, 16955, and 16956 of, and to add Sections 16952.1 and 16956.5 to, the Welfare and Institutions Code, relating to emergency medical services.

[Approved by Governor October 7, 2005. Filed with
Secretary of State October 7, 2005.]

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

SECTION 1. This act shall be known and may be cited as the Emergency Room Funding Act.

SEC. 2. Section 1797.98a of the Health and Safety Code is amended to read:

1797.98a. (a) The fund provided for in this chapter shall be known as the Maddy Emergency Medical Services (EMS) Fund.

(b) (1) Each county may establish an emergency medical services fund, upon adoption of a resolution by the board of supervisors. The moneys in the fund shall be available for the reimbursements required by this chapter. The fund shall be administered by each county, except that a county electing to have the state administer its medically indigent services program may also elect to have its emergency medical services fund administered by the state.

(2) Costs of administering the fund shall be reimbursed by the fund, based on the actual administrative costs, not to exceed 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. The administering agency shall not disburse funds in excess of the total amount of a qualified claim.

SEC. 2.5. Section 1797.98a of the Health and Safety Code is amended to read:

1797.98a. (a) The fund provided for in this chapter shall be known as the Maddy Emergency Medical Services (EMS) Fund.

(b) (1) Each county may establish an emergency medical services fund, upon adoption of a resolution by the board of supervisors. The moneys in the fund shall be available for the reimbursements required by this chapter. The fund shall be administered by each county, except that a county electing to have the state administer its medically indigent services program may also elect to have its emergency medical services fund administered by the state.

(2) Costs of administering the fund shall be reimbursed by the fund, based on the actual administrative costs, not to exceed 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. The administering agency shall not disburse funds in excess of the total amount of a qualified claim.

(e) Of the money deposited into the fund pursuant to Section 76000.5 of the Government Code, 15 percent shall be utilized to provide funding for all pediatric trauma centers throughout the county, both publicly and privately owned and operated. Expenditure of money shall be limited to reimbursement to physicians and surgeons, and hospitals for patients who do not make payment for services, or to hospitals for expanding the services provided at pediatric trauma centers, including the purchase of equipment. Counties that do not maintain a pediatric trauma center shall utilize the money deposited into the fund pursuant to Section 76000.5 of the Government Code to improve access to pediatric trauma and emergency services in the county, with preference for funding given to hospitals that specialize in services to children, and physicians and surgeons who provide care for children. Funds spent for the purposes of

this section, shall be known as Richie's Fund. This subdivision shall remain in effect only until January 1, 2009, and shall have no force or effect on or after that date, unless a later enacted statute, that is chaptered before January 1, 2009, deletes or extends that date.

(f) Costs of administering money deposited into the fund pursuant to Section 76000.5 of the Government Code shall be reimbursed from the money collected, not to exceed 10 percent. This subdivision shall remain in effect only until January 1, 2009, and shall have no force or effect on or after that date, unless a later enacted statute, that is chaptered before January 1, 2009, deletes or extends that date.

SEC. 3. Section 1797.98c of the Health and Safety Code is amended to read:

1797.98c. (a) Physicians and surgeons wishing to be reimbursed shall submit their claims for emergency services provided to patients who do not make any payment for services and for whom no responsible third party makes any payment.

(b) If, after receiving payment from the fund, a physician and surgeon is reimbursed by a patient or a responsible third party, the physician and surgeon shall do one of the following:

(1) Notify the administering agency, and, after notification, the administering agency shall reduce the physician and surgeon's future payment of claims from the fund. In the event there is not a subsequent submission of a claim for reimbursement within one year, the physician and surgeon shall reimburse the fund in an amount equal to the amount collected from the patient or third-party payer, but not more than the amount of reimbursement received from the fund.

(2) Notify the administering agency of the payment and reimburse the fund in an amount equal to the amount collected from the patient or third-party payer, but not more than the amount of the reimbursement received from the fund for that patient's care.

(c) Reimbursement of claims for emergency services provided to patients by any physician and surgeon shall be limited to services provided to a patient who does not have health insurance coverage for emergency services and care, 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, with the exception of claims submitted for reimbursement through Section 1011 of the federal Medicare Prescription Drug, Improvement and Modernization Act of 2003, and where all of the following conditions have been met:

(1) The physician and surgeon has inquired if there is a responsible third-party source of payment.

(2) The physician and surgeon has billed for payment of services.

(3) Either of the following:

(A) At least three months have passed from the date the physician and surgeon billed the patient or responsible third party, during which time the physician and surgeon has made two attempts to obtain reimbursement and has not received reimbursement for any portion of the amount billed.

(B) The physician and surgeon has received actual notification from the patient or responsible third party that no payment will be made for the services rendered by the physician and surgeon.

(4) The physician and surgeon has stopped any current, and waives any future, collection efforts to obtain reimbursement from the patient, upon receipt of moneys from the fund.

(d) A listing of patient names shall accompany a physician and surgeon's submission, and those names shall be given full confidentiality protections by the administering agency.

(e) Notwithstanding any other restriction on reimbursement, a county shall adopt a fee schedule and reimbursement methodology to establish a uniform reasonable level of reimbursement from the county's emergency medical services fund for reimbursable services.

(f) For the purposes of submission and reimbursement of physician and surgeon claims, the administering agency shall adopt and use the current version of the Physicians' Current Procedural Terminology, published by the American Medical Association, or a similar procedural terminology reference.

(g) Each administering agency of a fund under this chapter shall make all reasonable efforts to notify physicians and surgeons who provide, or are likely to provide, emergency services in the county as to the availability of the fund and the process by which to submit a claim against the fund. The administering agency may satisfy this requirement by sending materials that provide information about the fund and the process to submit a claim against the fund to local medical societies, hospitals, emergency rooms, or other organizations, including materials that are prepared to be posted in visible locations.

SEC. 4. Section 1797.98e of the Health and Safety Code, as amended by Section 2 of Chapter 524 of the Statutes of 2004, is amended to read:

1797.98e. (a) It is the intent of the Legislature that a simplified, cost-efficient system of administration of this chapter be developed so that the maximum amount of funds may be utilized to reimburse physicians and surgeons and for other emergency medical services purposes. The administering agency shall select an administering officer and shall establish procedures and time schedules for the submission and processing of proposed reimbursement requests submitted by physicians and surgeons. The schedule shall provide for disbursements

of moneys in the Emergency Medical Services Fund on at least a quarterly basis to applicants who have submitted accurate and complete data for payment. When the administering agency determines that claims for payment for physician and surgeon services are of sufficient numbers and amounts that, if paid, the claims would exceed the total amount of funds available for payment, the administering agency shall fairly prorate, without preference, payments to each claimant at a level less than the maximum payment level. Each administering agency may encumber sufficient funds during one fiscal year to reimburse claimants for losses incurred during that fiscal year for which claims will not be received until after the fiscal year. The administering agency may, as necessary, request records and documentation to support the amounts of reimbursement requested by physicians and surgeons and the administering agency may review and audit the records for accuracy. Reimbursements requested and reimbursements made that are not supported by records may be denied to, and recouped from, physicians and surgeons. Physicians and surgeons found to submit requests for reimbursement that are inaccurate or unsupported by records may be excluded from submitting future requests for reimbursement. The administering officer shall not give preferential treatment to any facility, physician and surgeon, or category of physician and surgeon and shall not engage in practices that constitute a conflict of interest by favoring a facility or physician and surgeon with which the administering officer has an operational or financial relationship. A hospital administrator of a hospital owned or operated by a county of a population of 250,000 or more as of January 1, 1991, or a person under the direct supervision of that person, shall not be the administering officer. The board of supervisors of a county or any other county agency may serve as the administering officer. The administering officer shall solicit input from physicians and surgeons and hospitals to review payment distribution methodologies to ensure fair and timely payments. This requirement may be fulfilled through the establishment of an advisory committee with representatives comprised of local physicians and surgeons and hospital administrators. In order to reduce the county's administrative burden, the administering officer may instead request an existing board, commission, or local medical society, or physicians and surgeons and hospital administrators, representative of the local community, to provide input and make recommendations on payment distribution methodologies.

(b) Each provider of health services that receives payment under this chapter shall keep and maintain records of the services rendered, the person to whom rendered, the date, and any additional information the administering agency may, by regulation, require, for a period of three years from the date the service was provided. The administering agency

shall not require any additional information from a physician and surgeon providing emergency medical services that is not available in the patient record maintained by the entity listed in subdivision (f) where the emergency 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 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 medical services provided on the calendar day on which emergency medical services are first provided and on the immediately following two calendar days.

(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.

(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.

(l) Physicians and surgeons shall be eligible to receive payment for patient care services provided by, or in conjunction with, a properly credentialed nurse practitioner or physician's assistant for care rendered under the direct supervision of a physician and surgeon who is present in the facility where the patient is being treated and who is available for immediate consultation. Payment shall be limited to those claims that are substantiated by a medical record and that have been reviewed and countersigned by the supervising physician and surgeon in accordance with regulations established for the supervision of nurse practitioners and physician assistants in California.

SEC. 5. Section 1797.98e of the Health and Safety Code, as added by Section 3 of Chapter 524 of the Statutes of 2004, is repealed.

SEC. 6. Section 16952 of the Welfare and Institutions Code is amended to read:

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 that 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) (1) 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.

(2) 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, whether by the county or by the department through the emergency medical services contract-back program, shall be reimbursed by the account based on actual administrative costs, not to exceed 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 do not have health insurance coverage for emergency services and care, 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 with the exception of claims submitted for reimbursement through Section 1011 of the federal Medicare Prescription Drug, Improvement and Modernization Act of 2003.

(g) Physicians shall be eligible to receive payment for patient care services provided by, or in conjunction with, a properly credentialed nurse practitioner or physician’s assistant for care rendered under the direct supervision of a physician and surgeon who is present in the facility where the patient is being treated and who is available for immediate

consultation. Payment shall be limited to those claims that are substantiated by a medical record and that have been reviewed and countersigned by the supervising physician and surgeon in accordance with regulations established for the supervision of nurse practitioners and physician assistants in California.

(h) (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.

(i) Any physician may be reimbursed for up to 50 percent of the amount claimed pursuant to Section 16955 for the initial cycle of reimbursements made by the administering agency in a given year. All funds remaining at the end of the fiscal year shall be distributed proportionally, based on the dollar amount of claims submitted and paid to all physicians who submitted qualifying claims during that year. The administering agency shall not disburse funds in excess of the total amount of a qualified claim.

SEC. 7. Section 16952.1 is added to the Welfare and Institutions Code, to read:

16952.1. (a) Each county that elects to establish a Physicians Services Account in the county emergency medical services fund shall annually, on April 15, report to the Legislature on the implementation and status of the Physicians Services Account. 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 moneys deposited in the Physicians Services Account.

(2) The account balance and the amount of moneys disbursed to physicians and surgeons.

(3) The number of claims paid to physicians, 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, descriptions of the physician claims payment methodologies, the dollar amount of the total allowable claims submitted, and the percentage at which those claims are 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 hospital administrator organization, or names of specified physicians and hospital administrators, contracted to review claims payment methodologies.

(b) Each county shall make available to any member of the public, upon request, the report required under subdivision (a).

SEC. 8. Section 16953.3 of the Welfare and Institutions Code is amended to read:

16953.3. Notwithstanding any other restrictions on reimbursement, a county shall adopt a fee schedule to establish a uniform, reasonable level of reimbursement from the physician services account for reimbursable services.

SEC. 9. Section 16955 of the Welfare and Institutions Code is amended to read:

16955. Reimbursement for losses incurred by any physician shall be limited to services provided to a patient as established by subdivisions (f) and (g) 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. 10. Section 16956 of the Welfare and Institutions Code is amended to read:

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 quarterly, if funds remain available for disbursement, 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.

(f) The administering agency shall not give preferential treatment to any facility, physician, or category of physician and shall not engage in practices that constitute a conflict of interest by favoring a facility or physician with which the administering officer has an operational or financial relationship.

(g) Payments shall be made only for emergency medical services provided on the calendar day on which emergency medical services are first provided and on the immediately following two calendar days.

(h) Notwithstanding subdivision (g), if it is necessary to transfer the patient to a second facility that provides for a higher level of care for the treatment of the emergency condition, reimbursement shall be available for services provided to the facility to which the patient was transferred on the calendar day of transfer and on the immediately following two calendar days.

SEC. 11. Section 16956.5 is added to the Welfare and Institutions Code, to read:

16956.5. (a) The administering agency may establish an EMS Fund advisory committee. The committee shall include emergency physicians and emergency department oncall backup panel physicians. The committee shall advise the administering agency regarding distribution of funds pursuant to this section.

(b) If the administering agency establishes a committee pursuant to subdivision (a) and the committee, upon an affirmative vote by every member of the committee, recommends that the administering agency adopt a special fee schedule and claims submission criteria for reimbursement for services rendered to uninsured trauma patients, the administering agency may adopt the special fee schedule and claims submission criteria.

(c) Notwithstanding any provision of law to the contrary, in addition to reimbursement for trauma service rendered in the initial day and the following two calendar days, the administering agency may reimburse pursuant to this section for services rendered to uninsured trauma patients

beyond the calendar day on which emergency medical services are first provided and the immediately following two calendar days.

(d) Only up to 15 percent of the tobacco tax revenues allocated to the county's EMS Fund may be distributed through this special fee schedule.

(e) All providers who render services to uninsured trauma patients may submit claims for reimbursement under this section. No provider's claim shall be initially reimbursed pursuant to this section at greater than 50 percent of losses.

SEC. 12. Section 2.5 of this bill incorporates amendments to Section 1797.98a of the Health and Safety Code proposed by both this bill and SB 57. It shall become operative only if (1) both bills are enacted and become effective on or before January 1, 2006, (2) each bill amends Section 1797.98a of the Health and Safety Code, and (3) this bill is enacted after SB 57, in which case Section 2 of this bill shall not become operative.

CHAPTER 672

An act to add Section 3003 to the Fish and Game Code, relating to hunting.

[Approved by Governor October 7, 2005. Filed with
Secretary of State October 7, 2005.]

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

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

(1) California hunting licenses are valid only within the State of California, and may not be used to take animals located in other states.

(2) Any person issued a California hunting license must comply with the laws and regulations of California.

(3) A violation of the laws and regulations relating to hunting in the State of California may constitute a crime.

(b) It is the intent of the Legislature to make unlawful the taking of birds or mammals located both in state and out of state, if technology is used to aim and discharge a weapon used in the taking without the person discharging the weapon being physically present.

SEC. 2. Section 3003 is added to the Fish and Game Code, to read:

3003. (a) It is unlawful for any person to shoot, shoot at, or kill any bird or mammal with any gun or other device accessed via an Internet connection in this state.

(b) It is further unlawful for any person, firm, corporation, partnership, limited liability company, association, or other business entity to do either of the following:

(1) Own or operate a shooting range, site, or gallery located in the state for purposes of the online shooting or spearing of any bird or mammal.

(2) Create, maintain, or utilize an Internet Web site, or a service or business via any other means, from any location within the state for purposes of the online shooting or spearing of any bird or mammal for the purposes of this section.

(c) It is unlawful to possess or confine any bird or mammal in furtherance of an activity prohibited by this section.

(d) It is unlawful for any person in this state to import into, or export from, this state any bird or mammal, or any part thereof, that is killed by any device accessed via an Internet connection.

(e) Any bird or mammal, or any part thereof, that is possessed in violation of this section shall be subject to seizure by the department.

(f) For the purposes of this section, "online shooting or spearing" means the use of a computer or any other device, equipment, software, or technology, to remotely control the aiming and discharge of any weapon, including, but not limited to, any firearm, bow and arrow, spear, slingshot, harpoon, or any other projectile device.

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 673

An act to amend Section 35179.1 of, and to add Article 6.5 (commencing with Section 49030) to Chapter 6 of Part 27 of, the Education Code, relating to pupils.

[Approved by Governor October 7, 2005. Filed with
Secretary of State October 7, 2005.]

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

SECTION 1. Section 35179.1 of the Education Code is amended to read:

35179.1. (a) This section shall be known and may be cited as the 1998 California High School Coaching Education and Training Program.

(b) The Legislature finds and declares all of the following:

(1) The exploding demand in girls athletics, and an increase in the number of pupils participating in both boys and girls athletics, are causing an increase in the number of coaches needed statewide.

(2) Well-trained coaches are vital to the success of the experience of a pupil in sports and interscholastic athletic activities.

(3) Improvement in coaching is a primary need identified by hundreds of principals, superintendents, and school board members who participated in the development of a strategic plan for the California Interscholastic Federation (CIF) in 1993 and 1994.

(4) There are many concerns about safety, training, organization, philosophy, communications, and general management in coaching that need to be addressed.

(5) It is a conservative estimate that at least 25,000 coaches annually need training and an orientation just to meet current coaching regulations contained in Title 5 of the California Code of Regulations, including basic safety and CPR requirements.

(6) School districts, in conjunction with the California Interscholastic Federation, have taken the initial first steps toward building a statewide coaching education program by assembling a faculty of statewide trainers composed of school district administrators, coaches, and athletic directors using a national program being used in several states.

(c) It is, therefore, the intent of the Legislature to establish a California High School Coaching Education and Training Program. It is the intent of the Legislature that the program be administered by local school districts and emphasize the following components:

(1) Development of coaching philosophies consistent with school, school district, and school board goals.

(2) Sport psychology: emphasizing communication, reinforcement of the efforts of young people, effective delivery of coaching regarding technique and motivation of the pupil athlete.

(3) Sport pedagogy: how young athletes learn, and how to teach sport skills.

(4) Sport physiology: principles of training, fitness for sport, development of a training program, nutrition for athletes, and the harmful effects associated with the use of steroids and performance-enhancing dietary supplements by adolescents.

(5) Sport management: team management, risk management, and working within the context of an entire school program.

(6) Training: certification in CPR and first aid.

(7) Knowledge of, and adherence to, statewide rules and regulations, as well as school regulations including, but not necessarily limited to, eligibility, gender equity and discrimination.

(8) Sound planning and goal setting.

(d) This section does not endorse a particular coaching education or training program.

SEC. 2. Article 6.5 (commencing with Section 49030) is added to Chapter 6 of Part 27 of the Education Code, to read:

Article 6.5. Performance-Enhancing Substances

49030. (a) Sixty days after the posting of the United States Guide to Prohibited Substances and Prohibited Methods of Doping on the Web site of the department pursuant to subdivision (b), dietary supplements, as defined by subsection (ff) of Section 321 of Title 21 of the United States Code, that include any of the following substances, are prohibited from being used by a pupil participating in interscholastic high school sports:

(1) Synephrine.

(2) A prohibited substance enumerated by the United States Anti-Doping Agency Guide to Prohibited Substances and Prohibited Methods of Doping.

(b) The State Department of Health Services shall provide the State Department of Education with the United States Anti-Doping Agency Guide to Prohibited Substances and Prohibited Methods of Doping, on or before March 30, 2006. Upon receipt of the guide, the State Department of Education shall notify each school district that serves pupils in grades 9 to 12, inclusive, that the guide has been completed and shall post the guide on its Web site. The State Department of Health Services shall annually notify the State Department of Education of any amendments to the guide for the following school year. For an amendment to be applicable for the ensuing school year, the State Department of Health Services shall notify the State Department of Education as to that amendment no later than the March 30 immediately preceding the school year to which the amendment is to be applicable. Upon receipt of this notice, the State Department of Education shall notify each school district that serves pupils in grades 9 to 12, inclusive, that the guide has been amended and shall post the amended guide on its Web site. An amendment become effective until 60 days after the department posts the amended guide on its Web site.

49031. (a) A school may not accept a sponsorship from a manufacturer of a dietary supplement described in subdivision (a) of Section 49030, or from the distributor of a dietary supplement described in subdivision (a) of Section 49030 whose name appears on the labeling of the dietary supplement.

(b) A dietary supplement prohibited by Section 49030 may not be marketed on a schoolsite or at a school-related event.

(c) A dietary supplement prohibited by Section 49030 may not be sold or distributed on a schoolsite or at a school-related event.

(d) (1) For purposes of subdivision (b), "market" includes, but is not limited to, all of the following:

(A) Direct product advertising.

(B) Provision of educational materials.

(C) Product promotion by a school district employee or school district volunteer.

(D) Product placement.

(E) Clothing or equipment giveaways.

(F) Scholarships.

(2) For purposes of subdivision (b), "market" does not include the inadvertent display of a product name or product advertising by a person who is not a manufacturer or distributor of a dietary supplement described in subdivision (a) of Section 49030.

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

(1) An affiliate of a manufacturer or distributor of a dietary supplement described in subdivision (a) of Section 49030 if the affiliate does not manufacture or distribute a dietary supplement described in subdivision (a).

(2) A manufacturer or distributor of a dietary supplement described in subdivision (a) if no more than 50 percent of its annual gross sales are derived from the manufacture or distribution of dietary supplements as defined in subsection (ff) of Section 321 of Title 21 of the United States Code.

49032. (a) (1) Effective December 31, 2008, each high school sports coach shall have completed a coaching education program developed by his or her school district or the California Interscholastic Federation that meets the guidelines set forth in Section 35179.1.

(2) The coaching education program described by paragraph (1) may be taught by an athletic director or high school sports coach who is deemed to be qualified by the California Interscholastic Federation.

(b) Upon completion of the program, a high school sports coach shall be deemed to have completed the education requirement for the remainder of his or her time coaching at the high school level in any school district in the state.

(c) Each high school sports coach shall be responsible for the costs of taking the course.

(d) The training requirements of this section shall count toward the continuing education required for the renewal of the teaching credential of a coach who is also a certificated employee.

(e) Notwithstanding subdivision (a), a high school sports coach who does not meet the requirements of subdivision (a) may be used for no longer than one season of interscholastic competition.

(f) For the purposes of this section, "high school sports coach" means an employee or a volunteer who is authorized by a high school to be responsible for leading a school sports team of pupil athletes.

49033. The California Interscholastic Federation shall amend its constitution and bylaws to require, as a condition of participation in interscholastic sports, that school districts effective July 1, 2006, upon the notification provided pursuant to subdivision (b) of Section 49030, shall prohibit a pupil from participating in interscholastic high school sports, unless that pupil signs a pledge not to use anabolic steroids, as defined in Section 802 of Title 21 of the United States Code, without a prescription from a licensed health care practitioner or a dietary supplement prohibited by Section 49030 and the parent and guardian of that pupil signs a notification form regarding those restrictions.

49034. (a) The State Treasurer may accept voluntary contributions for the purpose of offsetting costs of training coaches pursuant to Sections 35179.2 and 35179.3. Contributions received by the State Treasurer shall be deposited in the California Coaching Education Fund, which is hereby created in the State Treasury.

(b) Funds deposited in the California Coaching Education Fund are available upon appropriation by the Legislature and may only be expended for purposes of Sections 35179.2 and 35179.3, and for administration of the California Coaching Education Fund.

CHAPTER 674

An act to amend Sections 125.3, 802, 802.1, 805.2, 2001, 2020, 2027, 2220.08, 2225, 2343, and 2435 of, to add Sections 473.16, 2026, 2334, 2435.2, and 2435.3 to, to add and repeal Sections 2006 and 2358 of, and to repeal Article 14 (commencing with Section 2340) of Chapter 5 of Division 2 of, the Business and Professions Code, to repeal Section 364.1 of the Code of Civil Procedure, and to amend Sections 11371, 11508, and 11523 of, to amend, repeal, and add Sections 12529 and 12529.5 to add Section 12529.7 to, and to add and repeal Section 12529.6 of, the

Government Code, relating to healing arts, and making an appropriation therefor.

[Approved by Governor October 7, 2005. Filed with
Secretary of State October 7, 2005.]

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

SECTION 1. It is the intent of the Legislature, through a request in 2006 to the Joint Legislative Audit Committee, that the Bureau of State Audits conduct a thorough performance audit of the diversion program of the Medical Board of California to evaluate the effectiveness and efficiency of the program, and make recommendations regarding the continuation of the program and any changes or reforms required to assure that physicians and surgeons participating in the program are appropriately monitored, and the public is protected from physicians and surgeons who are impaired due to alcohol or drug abuse or mental or physical illness. The audit shall be completed by June 30, 2007. The board and its staff shall cooperate with the audit, and the Medical Board of California shall provide data, information, and case files as requested by the auditor to perform all of its duties. The provision of confidential data, information, and case files by the Medical Board of California to the auditor shall not constitute a waiver of any exemption from disclosure or discovery or of any confidentiality protection or privilege otherwise provided by law that is applicable to the data, information, or case files.

SEC. 2. Section 125.3 of the Business and Professions Code, is amended to read:

125.3. (a) Except as otherwise provided by law, in any order issued in resolution of a disciplinary proceeding before any board within the department or before the Osteopathic Medical Board, upon request of the entity bringing the proceeding may request the administrative law judge to direct a licentiate found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

(b) In the case of a disciplined licentiate that is a corporation or a partnership, the order may be made against the licensed corporate entity or licensed partnership.

(c) A certified copy of the actual costs, or a good faith estimate of costs where actual costs are not available, signed by the entity bringing the proceeding or its designated representative shall be prima facie evidence of reasonable costs of investigation and prosecution of the case. The costs shall include the amount of investigative and enforcement

costs up to the date of the hearing, including, but not limited to, charges imposed by the Attorney General.

(d) The administrative law judge shall make a proposed finding of the amount of reasonable costs of investigation and prosecution of the case when requested pursuant to subdivision (a). The finding of the administrative law judge with regard to costs shall not be reviewable by the board to increase the cost award. The board may reduce or eliminate the cost award, or remand to the administrative law judge where the proposed decision fails to make a finding on costs requested pursuant to subdivision (a).

(e) Where an order for recovery of costs is made and timely payment is not made as directed in the board's decision, the board may enforce the order for repayment in any appropriate court. This right of enforcement shall be in addition to any other rights the board may have as to any licensee to pay costs.

(f) In any action for recovery of costs, proof of the board's decision shall be conclusive proof of the validity of the order of payment and the terms for payment.

(g) (1) Except as provided in paragraph (2), the board shall not renew or reinstate the license of any licensee who has failed to pay all of the costs ordered under this section.

(2) Notwithstanding paragraph (1), the board may, in its discretion, conditionally renew or reinstate for a maximum of one year the license of any licensee who demonstrates financial hardship and who enters into a formal agreement with the board to reimburse the board within that one-year period for the unpaid costs.

(h) All costs recovered under this section shall be considered a reimbursement for costs incurred and shall be deposited in the fund of the board recovering the costs to be available upon appropriation by the Legislature.

(i) Nothing in this section shall preclude a board from including the recovery of the costs of investigation and enforcement of a case in any stipulated settlement.

(j) This section does not apply to any board if a specific statutory provision in that board's licensing act provides for recovery of costs in an administrative disciplinary proceeding.

(k) Notwithstanding the provisions of this section, the Medical Board of California shall not request nor obtain from a licensee, investigation and prosecution costs for a disciplinary proceeding against the licensee. The board shall ensure that this subdivision is revenue neutral with regard to it and that any loss of revenue or increase in costs resulting from this subdivision is offset by an increase in the amount of the initial license

fee and the biennial renewal fee, as provided in subdivision (e) of Section 2435.

SEC. 3. Section 473.16 is added to the Business and Professions Code, to read:

473.16. The Joint Committee on Boards, Commissions, and Consumer Protection shall examine the composition of the Medical Board of California and its initial and biennial fees and report to the Governor and the Legislature its findings no later than July 1, 2008.

SEC. 4. Section 802 of the Business and Professions Code is amended to read:

802. (a) Every settlement, judgment, or arbitration award over three thousand dollars (\$3,000) of a claim or action for damages for death or personal injury caused by negligence, error or omission in practice, or by the unauthorized rendering of professional services, by a person who holds a license, certificate, or other similar authority from an agency mentioned in subdivision (a) of Section 800 (except a person licensed pursuant to Chapter 3 (commencing with Section 1200) or Chapter 5 (commencing with Section 2000) of Division 2) or the Osteopathic Initiative Act who does not possess professional liability insurance as to that claim shall, within 30 days after the written settlement agreement has been reduced to writing and signed by all the parties thereto or 30 days after service of the judgment or arbitration award on the parties, be reported to the agency that issued the license, certificate, or similar authority. A complete report shall be made by appropriate means by the person or his or her counsel, with a copy of the communication to be sent to the claimant through his or her counsel if the person is so represented, or directly if he or she is not. If, within 45 days of the conclusion of the written settlement agreement or service of the judgment or arbitration award on the parties, counsel for the claimant (or if the claimant is not represented by counsel, the claimant himself or herself) has not received a copy of the report, he or she shall himself or herself make the complete report. Failure of the licensee or claimant (or, if represented by counsel, their counsel) to comply with this section is a public offense punishable by a fine of not less than fifty dollars (\$50) or more than five hundred dollars (\$500). Knowing and intentional failure to comply with this section or conspiracy or collusion not to comply with this section, or to hinder or impede any other person in the compliance, is a public offense punishable by a fine of not less than five thousand dollars (\$5,000) nor more than fifty thousand dollars (\$50,000).

(b) Every settlement over thirty thousand dollars (\$30,000), or judgment or arbitration award of any amount, of a claim or action for damages for death or personal injury caused by negligence, error or omission in practice, or by the unauthorized rendering of professional

services, by a physician and surgeon licensed pursuant to Chapter 5 (commencing with Section 2000) of Division 2, or the Osteopathic Initiative Act, who does not possess professional liability insurance as to the claim shall, within 30 days after the written settlement agreement has been reduced to writing and signed by all the parties thereto or 30 days after service of the judgment or arbitration award on the parties, be reported to the agency that issued the license, certificate, or similar authority. A settlement over thirty thousand dollars (\$30,000) shall also be reported if the settlement is based on the licensee's negligence, error, or omission in practice or his or her rendering of unauthorized professional services, and a party to the settlement is a corporation, medical group, partnership, or other corporate entity in which the licensee has an ownership interest or that employs or contracts with the licensee. A complete report including the name and license number of the physician and surgeon shall be made by appropriate means by the person or his or her counsel, with a copy of the communication to be sent to the claimant through his or her counsel if he or she is so represented, or directly if he or she is not. If, within 45 days of the conclusion of the written settlement agreement or service of the judgment or arbitration award on the parties, counsel for the claimant (or if the claimant is not represented by counsel, the claimant himself or herself) has not received a copy of the report, he or she shall himself or herself make the complete report. Failure of the physician and surgeon or claimant (or, if represented by counsel, their counsel) to comply with this section is a public offense punishable by a fine of not less than fifty dollars (\$50) nor more than five hundred dollars (\$500). Knowing and intentional failure to comply with this section or conspiracy or collusion not to comply with this section, or to hinder or impede any other person in the compliance, is a public offense punishable by a fine of not less than five thousand dollars (\$5,000) nor more than fifty thousand dollars (\$50,000).

(c) Every settlement, judgment, or arbitration award over ten thousand dollars (\$10,000) of a claim or action for damages for death or personal injury caused by negligence, error, or omission in practice, or by the unauthorized rendering of professional services, by a marriage and family therapist or clinical social worker licensed pursuant to Chapter 13 (commencing with Section 4980) or Chapter 14 (commencing with Section 4990) who does not possess professional liability insurance as to that claim shall within 30 days after the written settlement agreement has been reduced to writing and signed by all the parties thereto or 30 days after service of the judgment or arbitration award on the parties be reported to the agency that issued the license, certificate, or similar authority. A complete report shall be made by appropriate means by the person or his or her counsel, with a copy of the communication to be

sent to the claimant through his or her counsel if he or she is so represented, or directly if he or she is not. If, within 45 days of the conclusion of the written settlement agreement or service of the judgment or arbitration award on the parties, counsel for the claimant (or if he or she is not represented by counsel, the claimant himself or herself) has not received a copy of the report, he or she shall himself or herself make a complete report. Failure of the marriage and family therapist or clinical social worker or claimant (or, if represented by counsel, their counsel) to comply with this section is a public offense punishable by a fine of not less than fifty dollars (\$50) nor more than five hundred dollars (\$500). Knowing and intentional failure to comply with this section, or conspiracy or collusion not to comply with this section or to hinder or impede any other person in that compliance, is a public offense punishable by a fine of not less than five thousand dollars (\$5,000) nor more than fifty thousand dollars (\$50,000).

SEC. 5. Section 802.1 of the Business and Professions Code is amended to read:

802.1. (a) A physician and surgeon shall report either of the following to the Medical Board of California in writing within 30 days:

(1) The bringing of an indictment or information charging a felony against the physician and surgeon.

(2) The conviction of the physician and surgeon, including any verdict of guilty, or plea of guilty or no contest, of any felony or misdemeanor. A physician and surgeon shall report only those misdemeanors that are substantially related to the qualifications, functions, or duties of a physician and surgeon defined or identified by the Legislature pursuant to subdivision (d) of Section 2027.

(b) Failure to make a report required by this section shall be a public offense punishable by a fine not to exceed five thousand dollars (\$5,000).

SEC. 6. Section 805.2 of the Business and Professions Code is amended to read:

805.2. (a) It is the intent of the Legislature to provide for a comprehensive study of the peer review process as it is conducted by peer review bodies defined in paragraph (1) of subdivision (a) of Section 805, in order to evaluate the continuing validity of Section 805 and Sections 809 to 809.8, inclusive, and their relevance to the conduct of peer review in California.

(b) The Medical Board of California shall contract with an independent entity to conduct this study that is fair, objective, and free from bias that is directly familiar with the peer review process and does not advocate regularly before the board on peer review matters or on physician and surgeon disciplinary matters.

(c) The study by the independent entity shall include, but not be limited to, the following components:

(1) A comprehensive description of the various steps of and decisionmakers in the peer review process as it is conducted by peer review bodies throughout the state, including the role of other related committees of acute care health facilities and clinics involved in the peer review process.

(2) A survey of peer review cases to determine the incidence of peer review by peer review bodies, and whether they are complying with the reporting requirement in Section 805.

(3) A description and evaluation of the roles and performance of various state agencies, including the State Department of Health Services and occupational licensing agencies that regulate healing arts professionals, in receiving, reviewing, investigating, and disclosing peer review actions, and in sanctioning peer review bodies for failure to comply with Section 805.

(4) An assessment of the cost of peer review to licentiates and the facilities which employ them.

(5) An assessment of the time consumed by the average peer review proceeding, including the hearing provided pursuant to Section 809.2, and a description of any difficulties encountered by either licentiates or facilities in assembling peer review bodies or panels to participate in peer review decisionmaking.

(6) An assessment of the need to amend Section 805 and Sections 809 to 809.8, inclusive, to ensure that they continue to be relevant to the actual conduct of peer review as described in paragraph (1), and to evaluate whether the current reporting requirement is yielding timely and accurate information to aid licensing boards in their responsibility to regulate and discipline healing arts practitioners when necessary, and to assure that peer review bodies function in the best interest of patient care.

(7) Recommendations of additional mechanisms to stimulate the appropriate reporting of peer review actions under Section 805.

(8) Recommendations regarding the Section 809 hearing process to improve its overall effectiveness and efficiency.

(9) An assessment of the role of medical professionals, using professionals who are experts and are actively practicing medicine in this state, to review and investigate for the protection of consumers, allegations of substandard practice or professional misconduct.

(10) An assessment of the process to identify and retain a medical professional with sufficient expertise to review allegations of substandard practice or professional misconduct by a physician and surgeon, if the peer review process is discontinued.

(d) The independent entity shall exercise no authority over the peer review processes of peer review bodies. However, peer review bodies, health care facilities, health care clinics, and health care service plans shall cooperate with the independent entity and provide data, information, and case files as requested in the timeframes specified by the independent entity.

(e) The independent entity shall work in cooperation with and under the general oversight of the Executive Director of the Medical Board of California and shall submit a written report with its findings and recommendations to the board and the Legislature no later than July 31, 2007.

(f) Completion of the peer review study pursuant to this section shall be among the highest priorities of the Medical Board of California, and the board shall ensure that it is completed no later than July 31, 2007.

SEC. 7. Section 2001 of the Business and Professions Code is amended to read:

2001. There is in the Department of Consumer Affairs a Medical Board of California that consists of 21 members, nine of whom shall be public members.

The Governor shall appoint 19 members to the board, subject to confirmation by the Senate, seven of whom shall be public members. The Senate Rules Committee and the Speaker of the Assembly shall each appoint a public member, and their initial appointment shall be made to fill, respectively, the first and second public member vacancies that occur on or after January 1, 1983.

This section shall become inoperative on July 1, 2010, and, as of January 1, 2011, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 2011, deletes or extends the dates on which it becomes inoperative and is repealed. The repeal of this section renders the board subject to the review required by Division 1.2 (commencing with Section 473).

SEC. 8. Section 2006 is added to the Business and Professions Code, to read:

2006. (a) On and after January 1, 2006, any reference in this chapter to an investigation by the board, or one of its divisions, shall be deemed to refer to an investigation conducted by employees of the Department of Justice.

(b) This section shall become inoperative on July 1, 2008, and as of January 1, 2009, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2009, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 9. Section 2020 of the Business and Professions Code is amended to read:

2020. The board may employ an executive director exempt from the provisions of the Civil Service Act and may also employ investigators, legal counsel, medical consultants, and other assistance as it may deem necessary to carry into effect this chapter. The board may fix the compensation to be paid for services subject to the provisions of applicable state laws and regulations and may incur other expenses as it may deem necessary. Investigators employed by the board shall be provided special training in investigating medical practice activities.

The Attorney General shall act as legal counsel for the board for any judicial and administrative proceedings and his or her services shall be a charge against it.

This section shall become inoperative on July 1, 2010, and, as of January 1, 2011, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 2011, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 10. Section 2026 is added to the Business and Professions Code, to read:

2026. To the extent funds are available to reimburse the Little Hoover Commission, that commission shall study and make recommendations on the role of public disclosure in the public protection mandate of the board. This study shall include, but not be limited to, whether the public is adequately informed about physician misconduct by the current laws and regulations providing for disclosure. This study shall be commenced as soon as possible and completed no later than July 1, 2008.

SEC. 11. Section 2027 of the Business and Professions Code is amended to read:

2027. (a) On or after July 1, 2001, the board shall post on the Internet the following information in its possession, custody, or control regarding licensed physicians and surgeons:

(1) With regard to the status of the license, whether or not the licensee is in good standing, subject to a temporary restraining order (TRO), subject to an interim suspension order (ISO), or subject to any of the enforcement actions set forth in Section 803.1.

(2) With regard to prior discipline, whether or not the licensee has been subject to discipline by the board or by the board of another state or jurisdiction, as described in Section 803.1.

(3) Any felony convictions reported to the board after January 3, 1991.

(4) All current accusations filed by the Attorney General, including those accusations that are on appeal. For purposes of this paragraph, "current accusation" shall mean an accusation that has not been dismissed, withdrawn, or settled, and has not been finally decided upon

by an administrative law judge and the Medical Board of California unless an appeal of that decision is pending.

(5) Any malpractice judgment or arbitration award reported to the board after January 1, 1993.

(6) Any hospital disciplinary actions that resulted in the termination or revocation of a licensee's hospital staff privileges for a medical disciplinary cause or reason.

(7) Any misdemeanor conviction that is substantially related to the qualifications, functions, or duties of a physician and surgeon.

(8) Appropriate disclaimers and explanatory statements to accompany the above information, including an explanation of what types of information are not disclosed. These disclaimers and statements shall be developed by the board and shall be adopted by regulation.

(9) Any information required to be disclosed pursuant to Section 803.1.

(b) (1) From January 1, 2003, the information described in paragraphs (1) (other than whether or not the licensee is in good standing), (2), (4), (5), (7), and (9) of subdivision (a) shall remain posted for a period of 10 years from the date the board obtains possession, custody, or control of the information, and after the end of that period shall be removed from being posted on the board's Internet Web site. Information in the possession, custody, or control of the board prior to January 1, 2003, shall be posted for a period of 10 years from January 1, 2003. Settlement information shall be posted as described in paragraph (2) of subdivision (b) of Section 803.1.

(2) The information described in paragraphs (3) and (6) of subdivision (a) shall not be removed from being posted on the board's Internet Web site. Notwithstanding the provisions of this paragraph, if a licensee's hospital staff privileges are restored and the licensee notifies the board of the restoration, the information pertaining to the termination or revocation of those privileges, as described in paragraph (6) of subdivision (a), shall remain posted for a period of 10 years from the restoration date of the privileges, and at the end of that period shall be removed from being posted on the board's Internet Web site.

(c) The board shall provide links to other Web sites on the Internet that provide information on board certifications that meet the requirements of subdivision (b) of Section 651. The board may provide links to other Web sites on the Internet that provide information on health care service plans, health insurers, hospitals, or other facilities. The board may also provide links to any other sites that would provide information on the affiliations of licensed physicians and surgeons.

(d) The disclosure requirement imposed by paragraph (7) of subdivision (a) shall not become operative unless and until the Legislature

enacts legislation that defines or identifies those misdemeanor convictions that are substantially related to the qualifications, functions, or duties of a physician and surgeon. The board shall develop a proposal, in consultation with consumer groups, patient advocacy groups, the Attorney General, and the medical profession, for that legislation and submit it to the Legislature.

SEC. 12. Section 2220.08 of the Business and Professions Code is amended to read:

2220.08. (a) Except for reports received by the board pursuant to Section 805 that may be treated as complaints by the board and new complaints relating to a physician and surgeon who is the subject of a pending accusation or investigation or who is on probation, any complaint determined to involve quality of care, before referral to a field office for further investigation, shall meet the following criteria:

(1) It shall be reviewed by one or more medical experts with the pertinent education, training, and expertise to evaluate the specific standard of care issues raised by the complaint to determine if further field investigation is required.

(2) It shall include the review of the following, which shall be requested by the board:

(A) Relevant patient records.

(B) The statement or explanation of the care and treatment provided by the physician and surgeon.

(C) Any additional expert testimony or literature provided by the physician and surgeon.

(D) Any additional facts or information requested by the medical expert reviewers that may assist them in determining whether the care rendered constitutes a departure from the standard of care.

(b) If the board does not receive the information requested pursuant to paragraph (2) of subdivision (a) within 10 working days of requesting that information, the complaint may be reviewed by the medical experts and referred to a field office for investigation without the information.

(c) Nothing in this section shall impede the board's ability to seek and obtain an interim suspension order or other emergency relief.

SEC. 13. Section 2225 of the Business and Professions Code is amended to read:

2225. (a) Notwithstanding Section 2263 and any other provision of law making a communication between a physician and surgeon or a podiatrist and his or her patients a privileged communication, those provisions shall not apply to investigations or proceedings conducted under this chapter. Members of the board, the Senior Assistant Attorney General of the Health Quality Enforcement Section, members of the California Board of Podiatric Medicine, and deputies, employees, agents,

and representatives of the board or the Board of Podiatric Medicine and the Senior Assistant Attorney General of the Health Quality Enforcement Section shall keep in confidence during the course of investigations, the names of any patients whose records are reviewed and may not disclose or reveal those names, except as is necessary during the course of an investigation, unless and until proceedings are instituted. The authority of the board or the Board of Podiatric Medicine and the Health Quality Enforcement Section to examine records of patients in the office of a physician and surgeon or a podiatrist is limited to records of patients who have complained to the board or the Board of Podiatric Medicine about that licensee.

(b) Notwithstanding any other provision of law, the Attorney General and his or her investigative agents, and investigators and representatives of the board or the Board of Podiatric Medicine, may inquire into any alleged violation of the Medical Practice Act or any other federal or state law, regulation, or rule relevant to the practice of medicine or podiatric medicine, whichever is applicable, and may inspect documents relevant to those investigations in accordance with the following procedures:

(1) Any document relevant to an investigation may be inspected, and copies may be obtained, where patient consent is given.

(2) Any document relevant to the business operations of a licensee, and not involving medical records attributable to identifiable patients, may be inspected and copied where relevant to an investigation of a licensee.

(c) In all cases where documents are inspected or copies of those documents are received, their acquisition or review shall be arranged so as not to unnecessarily disrupt the medical and business operations of the licensee or of the facility where the records are kept or used.

(d) Where documents are lawfully requested from licensees in accordance with this section by the Attorney General or his or her agents or deputies, or investigators of the board or the Board of Podiatric Medicine, they shall be provided within 15 business days of receipt of the request, unless the licensee is unable to provide the documents within this time period for good cause, including, but not limited to, physical inability to access the records in the time allowed due to illness or travel. Failure to produce requested documents or copies thereof, after being informed of the required deadline, shall constitute unprofessional conduct. The board may use its authority to cite and fine a physician and surgeon for any violation of this section. This remedy is in addition to any other authority of the board to sanction a licensee for a delay in producing requested records.

(e) Searches conducted of the office or medical facility of any licensee shall not interfere with the recordkeeping format or preservation needs of any licensee necessary for the lawful care of patients.

SEC. 14. Section 2334 is added to the Business and Professions Code, to read:

2334. (a) Notwithstanding any other provision of law, with respect to the use of expert testimony in matters brought by the Medical Board of California, no expert testimony shall be permitted by any party unless the following information is exchanged in written form with counsel for the other party, as ordered by the Office of Administrative Hearings:

- (1) A curriculum vitae setting forth the qualifications of the expert.
- (2) A brief narrative statement of the general substance of the testimony that the expert is expected to give, including any opinion testimony and its basis.
- (3) A representation that the expert has agreed to testify at the hearing.
- (4) A statement of the expert's hourly and daily fee for providing testimony and for consulting with the party who retained his or her services.

(b) The exchange of the information described in subdivision (a) shall be completed at least 30 calendar days prior to the commencement date of the hearing.

(c) The Office of Administrative Hearings may adopt regulations governing the required exchange of the information described in this section.

SEC. 15. Section 2343 of the Business and Professions Code is amended to read:

2343. (a) Each member of a committee shall receive per diem and expenses as provided in Section 103.

(b) The program manager shall account for all expenses and revenues of the diversion program and separately report this information to the board on a quarterly basis.

SEC. 16. Section 2358 is added to the Business and Professions Code, to read:

2358. This article shall become inoperative on July 1, 2008, and, as of January 1, 2009, is repealed, unless a later enacted statute that is enacted before January 1, 2009, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 17. Section 2435 of the Business and Professions Code is amended to read:

2435. The following fees apply to the licensure of physicians and surgeons:

(a) Each applicant for a certificate based upon a national board diplomate certificate, each applicant for a certificate based on reciprocity,

and each applicant for a certificate based upon written examination, shall pay a nonrefundable application and processing fee, as set forth in subdivision (b), at the time the application is filed.

(b) The application and processing fee shall be fixed by the Division of Licensing by May 1 of each year, to become effective on July 1 of that year. The fee shall be fixed at an amount necessary to recover the actual costs of the licensing program as projected for the fiscal year commencing on the date the fees become effective.

(c) Each applicant who qualifies for a certificate, as a condition precedent to its issuance, in addition to other fees required herein, shall pay an initial license fee, if any. The initial license fee shall be seven hundred ninety dollars (\$790). An applicant enrolled in an approved postgraduate training program shall be required to pay only 50 percent of the initial license fee.

(d) The biennial renewal fee shall be seven hundred ninety dollars (\$790).

(e) Notwithstanding subdivisions (c) and (d) and to ensure that subdivision (k) of Section 125.3 is revenue neutral with regard to the board, the board may, by regulation, increase the amount of the initial license fee and the biennial renewal fee by an amount required to recover both of the following:

(1) The average amount received by the board during the three fiscal years immediately preceding July 1, 2006, as reimbursement for the reasonable costs of investigation and enforcement proceedings pursuant to Section 125.3.

(2) Any increase in the amount of investigation and enforcement costs incurred by the board after January 1, 2006, that exceeds the average costs expended for investigation and enforcement costs during the three fiscal years immediately preceding July 1, 2006. When calculating the amount of costs for services for which the board paid an hourly rate, the board shall use the average number of hours for which the board paid for those costs over these prior three fiscal years, multiplied by the hourly rate paid by the board for those costs as of July 1, 2005. Beginning January 1, 2009, the board shall instead use the average number of hours for which it paid for those costs over the three year period of fiscal years 2005-06, 2006-07, and 2007-08, multiplied by the hourly rate paid by the board for those costs as of July 1, 2005. In calculating the increase in the amount of investigation and enforcement costs, the board shall include only those costs for which it was eligible to obtain reimbursement under Section 125.3 and shall not include probation monitoring costs and disciplinary costs, including those associated with the citation and fine process and those required to implement subdivision (b) of Section 12529 of the Government Code.

(f) Notwithstanding Section 163.5, the delinquency fee shall be 10 percent of the biennial renewal fee.

(g) The duplicate certificate and endorsement fees shall each be fifty dollars (\$50), and the certification and letter of good standing fees shall each be ten dollars (\$10).

(h) It is the intent of the Legislature that, in setting fees pursuant to this section, the board shall maintain a reserve in the Contingent Fund of the Medical Board of California equal to approximately two months' operating expenditures.

(i) Not later than January 1, 2007, the Joint Legislative Audit Committee shall select an independent entity that is fair, objective, and free from bias and that does not regularly advocate before the board on licensure fee or on physician and surgeon disciplinary matters, to conduct a review of the board's financial status, its financial projections and historical projections, including, but not limited to, its projections related to expenses, revenues, and reserves. The independent entity shall, on the basis of the review, report to the Joint Legislative Audit Committee before January 1, 2008, on any adjustment to the amount of the licensure fee that is required to maintain the reserve amount in the Contingent Fund of the Medical Board of California pursuant to subdivision (h) of Section 2435, and whether a refund of any excess revenue should be made to licentiates.

SEC. 18. Section 2435.2 is added to the Business and Professions Code, to read:

2435.2. (a) Notwithstanding any other provision of law, if Article 14 (commencing with Section 2340) becomes inoperative or the diversion program described in that article is discontinued, the board shall reduce the amount of the following fees:

(1) The initial license fee, as described in subdivision (c) of Section 2435.

(2) The biennial renewal fee, as described in subdivision (d) of Section 2435.

(3) An increase in the fees established pursuant to subdivision (e) of Section 2435.

(b) The amount of the reductions made pursuant to subdivision (a) shall equal the board's cost of operating the diversion program.

(c) The board shall not make the reductions described in subdivision (a) if a diversion program is established by statute and requires the board to fund it in whole or in part from licensure fees.

SEC. 19. Section 2435.3 is added to the Business and Professions Code, to read:

2435.3. Notwithstanding any other provision of law, if Section 12529.6 of the Government Code remains operative on or after July 1,

2008, and is not repealed, the board may, by regulation, beginning January 1, 2009, increase the amount of the initial licensure fee and the biennial licensure renewal fee by a maximum of twenty dollars (\$20) each, if an increase is required for the cost of transferring those employees.

SEC. 20. Section 364.1 of the Code of Civil Procedure is repealed.

SEC. 21. Section 11371 of the Government Code is amended to read:

11371. (a) There is within the Office of Administrative Hearings a Medical Quality Hearing Panel, consisting of no fewer than five full-time administrative law judges. The administrative law judges shall have medical training as recommended by the Division of Medical Quality of the Medical Board of California and approved by the Director of the Office of Administrative Hearings.

(b) The director shall determine the qualifications of panel members, supervise their training, and coordinate the publication of a reporter of decisions pursuant to this section. The panel shall include only those persons specifically qualified and shall at no time constitute more than 25 percent of the total number of administrative law judges within the Office of Administrative Hearings. If the members of the panel do not have a full workload, they may be assigned work by the Director of the Office of Administrative Hearings. When the medically related case workload exceeds the capacity of the members of the panel, additional judges shall be requested to be added to the panels as appropriate. When this workload overflow occurs on a temporary basis, the Director of the Office of Administrative Hearings shall supply judges from the Office of Administrative Hearings to adjudicate the cases.

(c) The administrative law judges of the panel shall have panels of experts available. The panels of experts shall be appointed by the Director of the Office of Administrative Hearings, with the advice of the Medical Board of California. These panels of experts may be called as witnesses by the administrative law judges of the panel to testify on the record about any matter relevant to a proceeding and subject to cross-examination by all parties, and Section 11430.30 does not apply in a proceeding under this section. The administrative law judge may award reasonable expert witness fees to any person or persons serving on a panel of experts, which shall be paid from the Contingent Fund of the Medical Board of California upon appropriation by the Legislature.

SEC. 22. Section 11508 of the Government Code is amended to read:

11508. (a) The agency shall consult the office, and subject to the availability of its staff, shall determine the time and place of the hearing. The hearing shall be held at a hearing facility maintained by the office in Sacramento, Oakland, Los Angeles, or San Diego and shall be held

at the facility that is closest to the location where the transaction occurred or the respondent resides.

(b) Notwithstanding subdivision (a), the hearing may be held at either of the following places:

(1) A place selected by the agency that is closer to the location where the transaction occurred or the respondent resides.

(2) A place within the state selected by agreement of the parties.

(c) The respondent may move for, and the administrative law judge has discretion to grant or deny, a change in the place of the hearing. A motion for a change in the place of the hearing shall be made within 10 days after service of the notice of hearing on the respondent.

Unless good cause is identified in writing by the administrative law judge, hearings shall be held in a facility maintained by the office.

SEC. 23. Section 11523 of the Government Code is amended to read:

11523. Judicial review may be had by filing a petition for a writ of mandate in accordance with the provisions of the Code of Civil Procedure, subject, however, to the statutes relating to the particular agency. Except as otherwise provided in this section, the petition shall be filed within 30 days after the last day on which reconsideration can be ordered. The right to petition shall not be affected by the failure to seek reconsideration before the agency. On request of the petitioner for a record of the proceedings, the complete record of the proceedings, or the parts thereof as are designated by the petitioner in the request, shall be prepared by the Office of Administrative Hearings or the agency and shall be delivered to the petitioner, within 30 days after the request, which time shall be extended for good cause shown, upon the payment of the cost for the preparation of the transcript, the cost for preparation of other portions of the record and for certification thereof. The complete record includes the pleadings, all notices and orders issued by the agency, any proposed decision by an administrative law judge, the final decision, a transcript of all proceedings, the exhibits admitted or rejected, the written evidence and any other papers in the case. If the petitioner, within 10 days after the last day on which reconsideration can be ordered, requests the agency to prepare all or any part of the record, the time within which a petition may be filed shall be extended until 30 days after its delivery to him or her. The agency may file with the court the original of any document in the record in lieu of a copy thereof. If the petitioner prevails in overturning the administrative decision following judicial review, the agency shall reimburse the petitioner for all costs of transcript preparation, compilation of the record, and certification.

SEC. 24. Section 12529 of the Government Code is amended to read:

12529. (a) There is in the Department of Justice the Health Quality Enforcement Section. The primary responsibility of the section is to

investigate and prosecute proceedings against licensees and applicants within the jurisdiction of the Medical Board of California including all committees under the jurisdiction of the board or a division of the board, including the Board of Podiatric Medicine, and the Board of Psychology.

(b) The Attorney General shall appoint a Senior Assistant Attorney General of the Health Quality Enforcement Section. The Senior Assistant Attorney General of the Health Quality Enforcement Section shall be an attorney in good standing licensed to practice in the State of California, experienced in prosecutorial or administrative disciplinary proceedings and competent in the management and supervision of attorneys performing those functions.

(c) The Attorney General shall ensure that the Health Quality Enforcement Section is staffed with a sufficient number of experienced and able employees that are capable of handling the most complex and varied types of disciplinary actions against the licensees of the division or board.

(d) Funding for the Health Quality Enforcement Section shall be budgeted in consultation with the Attorney General from the special funds financing the operations of the Medical Board of California, the California Board of Podiatric Medicine, and the committees under the jurisdiction of the Medical Board of California or a division of the board, and the Board of Psychology, with the intent that the expenses be proportionally shared as to services rendered.

(e) This section shall become inoperative on July 1, 2008, and, as of January 1, 2009, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2009, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 25. Section 12529 is added to the Government Code, to read:

12529. (a) There is in the Department of Justice the Health Quality Enforcement Section. The primary responsibility of the section is to prosecute proceedings against licensees and applicants within the jurisdiction of the Medical Board of California including all committees under the jurisdiction of the board or a division of the board, including the Board of Podiatric Medicine, and the Board of Psychology, and to provide ongoing review of the investigative activities conducted in support of those prosecutions, as provided in subdivision (b) of Section 12529.5.

(b) The Attorney General shall appoint a Senior Assistant Attorney General of the Health Quality Enforcement Section. The Senior Assistant Attorney General of the Health Quality Enforcement Section shall be an attorney in good standing licensed to practice in the State of California, experienced in prosecutorial or administrative disciplinary proceedings

and competent in the management and supervision of attorneys performing those functions.

(c) The Attorney General shall ensure that the Health Quality Enforcement Section is staffed with a sufficient number of experienced and able employees that are capable of handling the most complex and varied types of disciplinary actions against the licensees of the division or board.

(d) Funding for the Health Quality Enforcement Section shall be budgeted in consultation with the Attorney General from the special funds financing the operations of the Medical Board of California, the California Board of Podiatric Medicine, and the committees under the jurisdiction of the Medical Board of California or a division of the board, and the Board of Psychology, with the intent that the expenses be proportionally shared as to services rendered.

(e) This section shall become operative July 1, 2008.

SEC. 26. Section 12529.5 of the Government Code is amended to read:

12529.5. (a) All complaints or relevant information concerning licensees that are within the jurisdiction of the Medical Board of California or the Board of Psychology shall be made available to the Health Quality Enforcement Section.

(b) The Senior Assistant Attorney General of the Health Quality Enforcement Section shall assign attorneys to work on location at the intake unit of the boards described in subdivision (d) of Section 12529 to assist in evaluating and screening complaints and to assist in developing uniform standards and procedures for processing complaints.

(c) The Senior Assistant Attorney General or his or her deputy attorneys general shall assist the boards, division, or allied health committees, including the Board of Podiatric Medicine, in designing and providing initial and in-service training programs for staff of the division, boards, or allied health committees, including, but not limited to, information collection and investigation.

(d) The determination to bring a disciplinary proceeding against a licensee of the division or the boards shall be made by the executive officer of the division, the board, or allied health committee, including the Board of Podiatric Medicine, or the Board of Psychology, as appropriate in consultation with the senior assistant.

(e) This section shall become inoperative on July 1, 2008, and, as of January 1, 2009, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2009, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 27. Section 12529.5 is added to the Government Code, to read:

12529.5. (a) All complaints or relevant information concerning licensees that are within the jurisdiction of the Medical Board of California or the Board of Psychology shall be made available to the Health Quality Enforcement Section.

(b) The Senior Assistant Attorney General of the Health Quality Enforcement Section shall assign attorneys to assist the division and the boards in intake and investigations and to direct discipline-related prosecutions. Attorneys shall be assigned to work closely with each major intake and investigatory unit of the boards, to assist in the evaluation and screening of complaints from receipt through disposition and to assist in developing uniform standards and procedures for the handling of complaints and investigations.

A deputy attorney general of the Health Quality Enforcement Section shall frequently be available on location at each of the working offices at the major investigation centers of the boards, to provide consultation and related services and engage in case review with the boards' investigative, medical advisory, and intake staff. The Senior Assistant Attorney General and deputy attorneys general working at his or her direction shall consult as appropriate with the investigators of the boards, medical advisors, and executive staff in the investigation and prosecution of disciplinary cases.

(c) The Senior Assistant Attorney General or his or her deputy attorneys general shall assist the boards, division, or allied health committees, including the Board of Podiatric Medicine, in designing and providing initial and in-service training programs for staff of the division, boards, or allied health committees, including, but not limited to, information collection and investigation.

(d) The determination to bring a disciplinary proceeding against a licensee of the division or the boards shall be made by the executive officer of the division, the board, or allied health committee, including the Board of Podiatric Medicine, or the Board of Psychology, as appropriate in consultation with the senior assistant.

(e) This section shall become operative July 1, 2008.

SEC. 28. Section 12529.6 is added to the Government Code, to read:

12529.6. (a) The Legislature finds and declares that the Medical Board of California, by ensuring the quality and safety of medical care, performs one of the most critical functions of state government. Because of the critical importance of the board's public health and safety function, the complexity of cases involving alleged misconduct by physicians and surgeons, and the evidentiary burden in the board's disciplinary cases, the Legislature finds and declares that using a vertical prosecution model for those investigations is in the best interests of the people of California.

(b) Notwithstanding any other provision of law, as of January 1, 2006, each complaint that is referred to a district office of the board for investigation, shall be simultaneously and jointly assigned to an investigator and to the deputy attorney general in the Health Quality Enforcement Section responsible for prosecuting the case if the investigation results in the filing of an accusation. The joint assignment of the investigator and the deputy attorney general shall exist for the duration of the disciplinary matter. During the assignment, the investigator so assigned shall, under the direction of the deputy attorney general, be responsible for obtaining the evidence required to permit the Attorney General to advise the board on legal matters such as whether the board should file a formal accusation, dismiss the complaint for a lack of evidence required to meet the applicable burden of proof, or take other appropriate legal action.

(c) The Medical Board of California, the Department of Consumer Affairs, and the Office of the Attorney General shall, if necessary, enter into an interagency agreement to implement this section.

(d) This section does not effect the requirements of section 12529.5 as applied to the Medical Board of California where complaints that have not been assigned to a field office for investigation are concerned.

(e) This section shall become inoperative on July 1, 2008, and, as of January 1, 2009, is repealed, unless a later enacted statute, that is enacted before January 1, 2009, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 29 Section 12529.7 is added to the Government Code, to read:

12529.7. By July 1, 2007, the Medical Board of California, in consultation with the Department of Justice, the Department of Consumer Affairs, the Department of Finance, and the Department of Personnel Administration, shall report and make recommendations to the Governor and the Legislature on the vertical prosecution model created under Section 12529.6.

SEC. 30. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

CHAPTER 675

An act to amend Sections 2460, 2531, 3504, 3516.1, 3710, 3716, 5810, 7000.5, and 7011 of, and to amend and repeal Sections 2531.75 and 3512 of, the Business and Professions Code, to amend Sections 12231 and 14999 of the Government Code, to amend Section 80.2 of the Harbors and Navigation Code, and to amend Section 5090.15 of the Public Resources Code, relating to boards and commissions.

[Approved by Governor October 7, 2005. Filed with
Secretary of State October 7, 2005.]

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

SECTION 1. Section 2460 of the Business and Professions Code is amended to read:

2460. There is created within the jurisdiction of the Medical Board of California and its divisions the California Board of Podiatric Medicine. This section shall become inoperative on July 1, 2008, and, as of January 1, 2009, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 2009, deletes or extends the dates on which it becomes inoperative and is repealed. The repeal of this section renders the California Board of Podiatric Medicine subject to the review required by Division 1.2 (commencing with Section 473).

SEC. 2. Section 2531 of the Business and Professions Code is amended to read:

2531. There is in the Department of Consumer Affairs a Speech-Language Pathology and Audiology Board in which the enforcement and administration of this chapter is vested. The Speech-Language Pathology and Audiology Board shall consist of nine members, three of whom shall be public members.

This section shall become inoperative on July 1, 2008, and, as of January 1, 2009, is repealed, unless a later enacted statute, that becomes effective on or before January 1, 2009, deletes or extends the inoperative and repeal dates. The repeal of this section renders the board subject to the review required by Division 1.2 (commencing with Section 473).

SEC. 3. Section 2531.75 of the Business and Professions Code is amended to read:

2531.75. (a) The board may appoint a person exempt from civil service who shall be designated as an executive officer and who shall exercise the powers and perform the duties delegated by the board and vested in him or her by this chapter.

(b) This section shall become inoperative on July 1, 2008, and, as of January 1, 2009, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2009, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 4. Section 3504 of the Business and Professions Code is amended to read:

3504. There is established a Physician Assistant Committee of the Medical Board of California. The committee consists of nine members. This section shall become inoperative on July 1, 2008, and, as of January 1, 2009, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 2009, deletes or extends the dates on which it becomes inoperative and is repealed. The repeal of this section renders the committee subject to the review required by Division 1.2 (commencing with Section 473).

SEC. 5. Section 3512 of the Business and Professions Code is amended to read:

3512. (a) Except as provided in Sections 159.5 and 2020, the committee shall employ within the limits of the Physician Assistant Fund all personnel necessary to carry out the provisions of this chapter including an executive officer who shall be exempt from civil service. The board and committee shall make all necessary expenditures to carry out the provisions of this chapter from the funds established by Section 3520. The committee may accept contributions to effect the purposes of this chapter.

(b) This section shall become inoperative on July 1, 2008, and, as of January 1, 2009, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2009, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 6. Section 3516.1 of the Business and Professions Code is amended to read:

3516.1. (a) (1) Notwithstanding any other provision of law, a physician who provides services in a medically underserved area may supervise not more than four physician assistants at any one time.

(2) As used in this section, "medically underserved area" means a "health professional(s) shortage area" (HPSA) as defined in Part 5 (commencing with Section 5.1) of Chapter 1 of Title 42 of the Code of Federal Regulations or an area of the state where unmet priority needs for physicians exist as determined by the California Healthcare Workforce Policy Commission pursuant to Section 128225 of the Health and Safety Code.

(b) This section shall become inoperative on July 1, 2008, and, as of January 1, 2009, is repealed, unless a later enacted statute that is enacted

before January 1, 2009, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 7. Section 3710 of the Business and Professions Code is amended to read:

3710. The Respiratory Care Board of California, hereafter referred to as the board, shall enforce and administer this chapter.

This section shall become inoperative on July 1, 2008, and, as of January 1, 2009, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2009, deletes or extends the dates on which it becomes inoperative and is repealed.

The repeal of this section renders the board subject to the review required by Division 1.2 (commencing with Section 473).

SEC. 8. Section 3716 of the Business and Professions Code is amended to read:

3716. The board may employ an executive officer exempt from civil service and, subject to the provisions of law relating to civil service, clerical assistants and, except as provided in Section 159.5, other employees as it may deem necessary to carry out its powers and duties.

This section shall become inoperative on July 1, 2008, and, as of January 1, 2009, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2009, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 9. Section 5810 of the Business and Professions Code is amended to read:

5810. (a) This chapter shall be subject to the review required by Division 1.2 (commencing with Section 473).

(b) This chapter shall remain in effect only until January 1, 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. 10. 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, 2008, and, as of January 1, 2009, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 2009, deletes or extends the dates on which it becomes inoperative and is repealed. The repeal of this section

renders the board subject to the review required by Division 1.2 (commencing with Section 473).

SEC. 11. Section 7011 of the Business and Professions Code is amended to read:

7011. The board, by and with the approval of the director, shall appoint a registrar of contractors and fix his or her compensation.

The registrar shall be the executive officer and secretary of the board and shall carry out all of the administrative duties as provided in this chapter and as delegated to him or her by the board.

For the purpose of administration of this chapter, there may be appointed a deputy registrar, a chief reviewing and hearing officer, and, subject to Section 159.5, other assistants and subordinates as may be necessary.

Appointments shall be made in accordance with the provisions of civil service laws.

This section shall become inoperative on July 1, 2008, and, as of January 1, 2009, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 2009, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 12. Section 12231 of the Government Code is amended to read:

12231. In carrying out the provisions of this article, the Secretary of State shall consult with and give consideration to the recommendations of the California Heritage Preservation Commission, which for that purpose shall serve in an advisory capacity to the Secretary of State.

SEC. 13. Section 14999 of the Government Code is amended to read:

14999. The Commission for Economic Development, hereinafter referred to as the commission, is continued in existence. The purpose of the commission is to provide continuing bipartisan legislative, executive branch and private sector support and guidance for the best possible overall economic development of the state by any and all of the following means:

(a) Assessing specific regional or local economic development problems and making recommendations for solving problems.

(b) Providing a forum for ongoing dialogue on economic issues between state government and the private sector.

(c) Recommending, where deemed appropriate, legislation to require evaluation of demonstration and ongoing economic development projects and programs to ensure continued cost effectiveness.

(d) Identifying and reporting important secondary effects on economic development of programs and regulations which may have other primary purposes.

(e) Undertaking specialized studies and preparing specialized reports at the request of the Governor or Legislature.

SEC. 14. Section 80.2 of the Harbors and Navigation Code is amended to read:

80.2. The commission shall be composed of seven members appointed by the Governor, with the advice and consent of the Senate. The members shall have experience and background consistent with the functions of the commission. In making appointments to the commission, the Governor shall give primary consideration to geographical location of the residence of members as related to boating activities and harbors. In addition to geographical considerations, the members of the commission shall be appointed with regard to their special interests in recreational boating. At least one of the members shall be a member of a recognized statewide organization representing recreational boaters. One member of the commission shall be a private small craft harbor owner and operator. One member of the commission shall be an officer or employee of a law enforcement agency responsible for enforcing boating laws. The first vacancy occurring on the commission on and after January 1, 1997, shall be filled by such an officer or employee.

The Governor shall appoint the first seven members of the commission for the following terms to expire on January 15: one member for one year, two members for two years, two members for three years, and two members for four years. Thereafter, appointments shall be for a four-year term. Vacancies occurring prior to the expiration of the term shall be filled by appointment for the unexpired term.

SEC. 15. Section 5090.15 of the Public Resources Code is amended to read:

5090.15. (a) There is in the department the Off-Highway Motor Vehicle Recreation Commission, consisting of seven members, three of whom shall be appointed by the Governor, two of whom shall be appointed by the Senate Committee on Rules, and two of whom shall be appointed by the Speaker of the Assembly.

(b) In order to be appointed to the commission, a nominee shall represent one or more of the following groups:

- (1) Off-highway vehicle recreation interests.
- (2) Biological or soil scientists.
- (3) Groups or associations of predominantly rural landowners.
- (4) Law enforcement.
- (5) Environmental protection organizations.
- (6) Nonmotorized recreationist interests.

It is the intent of the Legislature that appointees to the commission represent all of the groups delineated in paragraphs (1) to (6), inclusive, to the extent possible.

(c) Whenever any reference is made to the State Park and Recreation Commission pertaining to a duty, power, purpose, responsibility, or

jurisdiction of the State Park and Recreation Commission with respect to the state vehicular recreation areas, as established by this chapter, it shall be deemed to be a reference to, and to mean, the Off-Highway Motor Vehicle Recreation Commission.

(d) Based on the findings in the 2004 Off-Highway Vehicle Fuel Tax Study, the division shall, not later than January 1, 2005, prepare and submit to the Legislature a report that identifies the principal reasons why people are using off-road trails and facilities, and an estimate of the proportional amount of off-highway motor vehicle use by jurisdiction, as a means of assisting in the determination of how fuel tax and in lieu of property tax funds should be expended.

(e) This section shall become inoperative on July 1, 2007, and, as of January 1, 2008, is repealed, unless a later enacted statute that is enacted before January 1, 2008, deletes or extends the dates on which it becomes inoperative and is repealed.

CHAPTER 676

An act to amend Sections 60611 and 60640 of, and to amend, repeal, and add Section 8669 of, to the Education Code, relating to pupils, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 7, 2005. Filed with
Secretary of State October 7, 2005.]

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

SECTION 1. Section 8669 of the Education Code is amended to read:

8669. (a) It is the intent of the Legislature that at least 50 percent, but not more than 75 percent, of the actual costs of the California State Summer School for Mathematics and Science for each fiscal year would be financed by state funds beginning in the 1999–2000 fiscal year. The balance of the operating costs would be financed with fees and private support.

(b) Except as provided in subdivision (c), the Regents of the University of California shall set a tuition fee within a range that corresponds to actual program costs, up to but not exceeding two thousand two hundred dollars (\$2,200) per session in the year 2006, and may increase this fee by an amount up to 5 percent each year thereafter. It is the intent of the Legislature that the University of California award full or partial

scholarships on the basis of need and that pupils who are unable to pay all or part of the fee may petition the University of California for a fee reduction or waiver to ensure that a qualified applicant is not denied admission solely because of an ability to pay part or all of the fee. Any public announcement regarding the summer school program should include notification that need-based scholarships are available, and information regarding the procedure for applying for a scholarship award.

(c) For pupils who are not California residents, it is the intent of the Legislature that the Regents of the University of California set a tuition fee that is not less than the total actual costs to the summer school of services per pupil.

(d) The foundation authorized to be established pursuant to subdivision (f) of Section 8664 may raise funds from the private sector that may be used by the summer school for general program operating costs, scholarships, program augmentation, public relations, recruitment activity, or special projects. Private support may include, but not necessarily be limited to, direct grants to the summer school from private corporations or foundations, individual contributions, in-kind contributions, or fundraising benefits conducted by any entity.

(e) 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. Section 8669 is added to the Education Code, to read:

8669. (a) It is the intent of the Legislature that at least 50 percent, but not more than 75 percent, of the actual costs of the California State Summer School for Mathematics and Science for each fiscal year would be financed by state funds beginning in the 1999-2000 fiscal year. The balance of the operating costs would be financed with fees and private support.

(b) Except as provided in subdivision (c), the Regents of the University of California shall set a tuition fee within a range that corresponds to actual program costs, up to but not exceeding one thousand dollars (\$1,000) per session in the year 2000, and may increase this fee by an amount up to 5 percent each year thereafter. It is the intent of the Legislature that the University of California award full or partial scholarships on the basis of need and that pupils who are unable to pay all or part of the fee may petition the University of California for a fee reduction or waiver to ensure that a qualified applicant is not denied admission solely because of an ability to pay part or all of the fee. Any public announcement regarding the summer school program should include notification that need-based scholarships are available, and information regarding the procedure for applying for a scholarship award.

(c) For pupils who are not California residents, it is the intent of the Legislature that the Regents of the University of California set a tuition fee that is not less than the total actual costs to the summer school of services per pupil.

(d) The foundation authorized to be established pursuant to subdivision (f) of Section 8664 may raise funds from the private sector that may be used by the summer school for general program operating costs, scholarships, program augmentation, public relations, recruitment activity, or special projects. Private support may include, but not necessarily be limited to, direct grants to the summer school from private corporations or foundations, individual contributions, in-kind contributions, or fundraising benefits conducted by any entity.

(e) This section shall become operative on January 1, 2008.

SEC. 3. Section 60611 of the Education Code is amended to read:

60611. (a) A city, county, city and county, district superintendent of schools, or principal or teacher of any elementary or secondary school, including a charter school, shall not carry on any program of specific preparation of pupils for the statewide pupil assessment program or a particular test used therein.

(b) A city, county, city and county, district superintendent of schools, principal, or a teacher of an elementary or secondary school, including a charter school, may use instructional materials provided by the department or its agents in the academic preparation of pupils for the statewide pupil assessment if those instructional materials are embedded in an instructional program that is intended to improve pupil learning.

SEC. 4. Section 60640 of the Education Code, as amended by Section 15 of Chapter 233 of the Statutes of 2004, is amended to read:

60640. (a) There is hereby established the Standardized Testing and Reporting Program, to be known as the STAR Program.

(b) Commencing in the 2004-05 fiscal year and each fiscal year thereafter, and from the funds available for that purpose, each school district, charter school, and county office of education shall administer to each of its pupils in grades 3 and 7 the achievement test designated by the state board pursuant to Section 60642 and shall administer to each of its pupils in grades 2 to 11, inclusive, the standards-based achievement test provided for in Section 60642.5. The state board shall establish a testing period to provide that all schools administer these tests to pupils at approximately the same time during the instructional year, except as necessary to ensure test security and to meet the final filing date.

(c) The publisher and the school district shall provide two makeup days for the testing of previously absent pupils within the testing period established by the state board in subdivision (b).

(d) The governing board of the school district may administer achievement tests in grades other than those required by subdivision (b) as it deems appropriate.

(e) Pursuant to paragraph (17) of subsection (a) of Section 1412 of Title 20 of the United States Code, individuals with exceptional needs, as defined in Section 56026, shall be included in the testing requirement of subdivision (b) with appropriate accommodations in administration, where necessary, and those individuals with exceptional needs who are unable to participate in the testing, even with accommodations, shall be given an alternate assessment.

(f) (1) At the option of the school district, pupils with limited English proficiency who are enrolled in any of grades 2 to 11, inclusive, may take a second achievement test in their primary language. Primary language tests administered pursuant to this subdivision and subdivision (g) shall be subject to the requirements of subdivision (a) of Section 60641. These primary language tests shall produce individual pupil scores that are valid and reliable.

(2) Notwithstanding any other law, the state board shall designate for use, as part of this program, a single primary language test in each language for which a test is available for grades 2 to 11, inclusive, pursuant to the process used for designation of the assessment chosen in the 1997-98 fiscal year, as specified in Sections 60642 and 60643, as applicable.

(3) (A) The department shall use funds made available pursuant to Title VI of the federal No Child Left Behind Act of 2001 and appropriated by the annual Budget Act for the purpose of developing and adopting primary language assessments that are aligned to the state academic content standards. Subject to the availability of funds, primary language assessments shall be developed and adopted for reading/language arts and mathematics in the dominant primary language of limited-English-proficient pupils. The dominant primary language shall be determined by the count in the annual language census of the primary language of each limited-English-proficient pupil enrolled in the California public schools.

(B) Once a dominant primary language assessment is available for use for a specific grade level, it shall be administered in place of the assessment designated pursuant to paragraph (1) for that grade level.

(C) In choosing a contractor to develop a primary language assessment the state board shall consider the criteria for choosing a contractor or test publisher as specified by Sections 60642 and 60643, and as specified by Section 60642.5, as applicable.

(D) Subject to the availability of funds, the assessments shall be developed in grade order starting with the lowest grade subject to the STAR Program.

(E) If the state board contracts for the development of primary language assessments or test items to augment an existing assessment, the state shall retain ownership rights to the assessment and the test items. With the approval of the state board, the department may license the test for use in other states subject to a compensation agreement approved by the Department of Finance.

(F) On or before January 1, 2006, the department shall submit to the Legislature a report on the development and implementation of the initial primary language assessments and recommendations on the development and implementation of future assessments and funding requirements.

(g) A pupil identified as limited English proficient pursuant to the administration of a test made available pursuant to Section 60810 who is enrolled in any of grades 2 to 11, inclusive, and who either receives instruction in his or her primary language or has been enrolled in a school in the United States for less than 12 months shall be required to take a test in his or her primary language if a test is available.

(h) (1) The Superintendent shall apportion funds to school districts to enable school districts to meet the requirements of subdivisions (b), (e), (f), and (g).

(2) The state board shall annually establish the amount of funding to be apportioned to school districts for each test administered and shall annually establish the amount that each publisher shall be paid for each test administered under the agreements required pursuant to Section 60643. The amounts to be paid to the publishers shall be determined by considering the cost estimates submitted by each publisher each September and the amount included in the annual Budget Act, and by making allowance for the estimated costs to school districts for compliance with the requirements of subdivisions (b), (e), (f), and (g).

(3) An adjustment to the amount of funding to be apportioned per test may not be valid without the approval of the Director of Finance. A request for approval of an adjustment to the amount of funding to be apportioned per test shall be submitted in writing to the Director of Finance and the chairpersons of the fiscal committees of both houses of the Legislature with accompanying material justifying the proposed adjustment. The Director of Finance is authorized to approve only those adjustments related to activities required by statute. The Director of Finance shall approve or disapprove the amount within 30 days of receipt of the request and shall notify the chairpersons of the fiscal committees of both houses of the Legislature of the decision.

(i) For the purposes of making the computations required by Section 8 of Article XVI of the California Constitution, the appropriation for the apportionments made pursuant to paragraph (1) of subdivision (h), and the payments made to the publishers under the contracts required pursuant to Section 60643 or subparagraph (C) of paragraph (1) of subdivision (a) of Section 60605 between the department and the contractor, are “General Fund revenues appropriated for school districts,” as defined in subdivision (c) of Section 41202, for the applicable fiscal year, and included within the “total allocations to school districts and community college districts from General Fund proceeds of taxes appropriated pursuant to Article XIII B,” as defined in subdivision (e) of Section 41202, for that fiscal year.

(j) As a condition to receiving an apportionment pursuant to subdivision (h), a school district shall report to the Superintendent all of the following:

(1) The number of pupils enrolled in the school district in grades 2 to 11, inclusive.

(2) The number of pupils to whom an achievement test was administered in grades 2 to 11, inclusive, in the school district.

(3) The number of pupils in paragraph (1) who were exempted from the test at the request of their parents or guardians.

(k) The Superintendent and the state board are authorized and encouraged to assist postsecondary educational institutions to use the assessment results of the California Standards Tests, including, but not limited to, the augmented California Standards Tests, for academic credit, placement, or admissions processes.

(l) The Superintendent shall, with the approval of the state board, annually release to the public at least 25 percent of test items from the standards-based achievement test provided for in Section 60642.5 from the test administered in the previous year.

(m) This section shall become inoperative on July 1, 2007, and as of January 1, 2008, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2008, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 5. Section 60640 of the Education Code, as added by Section 16 of Chapter 233 of the Statutes of 2004, is amended to read:

60640. (a) There is hereby established the Standardized Testing and Reporting Program, to be known as the STAR Program.

(b) Commencing in the 2007-08 fiscal year and each fiscal year thereafter, and from the funds available for that purpose, each school district, charter school, and county office of education shall administer to each of its pupils in grades 3 and 7 the achievement test designated by the state board pursuant to Section 60642 and shall administer to each

of its pupils in grades 3 to 11, inclusive, the standards-based achievement test provided for in Section 60642.5. The state board shall establish a testing period to provide that all schools administer these tests to pupils at approximately the same time during the instructional year, except as necessary to ensure test security and to meet the final filing date.

(c) The publisher and the school district shall provide two makeup days for the testing of previously absent pupils within the testing period established by the state board in subdivision (b).

(d) The governing board of the school district may administer achievement tests in grades other than those required by subdivision (b) as it deems appropriate.

(e) Pursuant to paragraph (17) of subsection (a) of Section 1412 of Title 20 of the United States Code, individuals with exceptional needs, as defined in Section 56026, shall be included in the testing requirement of subdivision (b) with appropriate accommodations in administration, where necessary, and those individuals with exceptional needs who are unable to participate in the testing, even with accommodations, shall be given an alternate assessment.

(f) (1) At the option of the school district, a pupil with limited English proficiency who is enrolled in any of grades 3 to 11, inclusive, may take a second achievement test in his or her primary language. Primary language tests administered pursuant to this subdivision and subdivision (g) shall be subject to the requirements of subdivision (a) of Section 60641. These primary language tests shall produce individual pupil scores that are valid and reliable.

(2) Notwithstanding any other law, the state board shall designate for use, as part of this program, a single primary language test in each language for which a test is available for grades 3 to 11, inclusive, pursuant to the process used for designation of the assessment chosen in the 1997-98 fiscal year, as specified by Sections 60642 and 60643, and as specified by Section 60642.5, as applicable.

(3) (A) The department shall use funds made available pursuant to Title VI of the federal No Child Left Behind Act of 2001 and appropriated by the annual Budget Act for the purpose of developing and adopting primary language assessments that are aligned to the state academic content standards. Subject to the availability of funds, primary language assessments shall be developed and adopted for reading/language arts and mathematics in the dominant primary language of limited-English-proficient pupils. The dominant primary language shall be determined by the count in the annual language census of the primary language of each limited-English-proficient pupil enrolled in the California public schools.

(B) Once a dominant primary language assessment is available for use for a specific grade level, it shall be administered in place of the assessment designated pursuant to paragraph (1) for that grade level.

(C) In selecting a contractor to develop a primary language assessment, the state board shall consider the criteria for choosing a contractor or test publisher as specified by Sections 60642 and 60643, and as specified by Section 60642.5, as applicable.

(D) Subject to the availability of funds, the assessments shall be developed in grade order starting with the lowest grade subject to the STAR Program.

(E) If the state board contracts for the development of primary language assessments or test items to augment an existing assessment, the state shall retain ownership rights to the assessment and the test items. With the approval of the state board, the department may license the test for use in other states subject to a compensation agreement approved by the Department of Finance.

(g) A pupil identified as limited English proficient pursuant to the administration of a test made available pursuant to Section 60810 who is enrolled in any of grades 3 to 11, inclusive, and who either receives instruction in his or her primary language or has been enrolled in a school in the United States for less than 12 months shall be required to take a test in his or her primary language if a test is available.

(h) (1) The Superintendent shall apportion funds to school districts to enable school districts to meet the requirements of subdivision (b), the alternative assessment required by subdivision (e), and subdivisions (f) and (g).

(2) The state board shall annually establish the amount of funding to be apportioned to school districts for each test administered and shall annually establish the amount that each publisher shall be paid for each test administered under the agreements required pursuant to Section 60643. The amounts to be paid to the publishers shall be determined by considering the cost estimates submitted by each publisher each September and the amount included in the annual Budget Act, and by making allowance for the estimated costs to school districts for compliance with the requirements of subdivision (b), the alternative assessment required by subdivision (e), and subdivisions (f) and (g).

(3) An adjustment to the amount of funding to be apportioned per test may not be valid without the approval of the Director of Finance. A request for approval of an adjustment to the amount of funding to be apportioned per test shall be submitted in writing to the Director of Finance and the chairpersons of the fiscal committees of both houses of the Legislature with accompanying material justifying the proposed adjustment. The Director of Finance is authorized to approve only those

adjustments related to activities required by statute. The Director of Finance shall approve or disapprove the amount within 30 days of receipt of the request and shall notify the chairpersons of the fiscal committees of both houses of the Legislature of the decision.

(i) For the purposes of making the computations required by Section 8 of Article XVI of the California Constitution, the appropriation for the apportionments made pursuant to paragraph (1) of subdivision (h), and the payments made to the publishers under the contracts required pursuant to Section 60643 or subparagraph (C) of paragraph (1) of subdivision (a) of Section 60605 between the department and the contractor, are "General Fund revenues appropriated for school districts," as defined in subdivision (c) of Section 41202, for the applicable fiscal year, and included within the "total allocations to school districts and community college districts from General Fund proceeds of taxes appropriated pursuant to Article XIII B," as defined in subdivision (e) of Section 41202, for that fiscal year.

(j) As a condition to receiving an apportionment pursuant to subdivision (h), a school district shall report to the Superintendent all of the following:

(1) The number of pupils enrolled in the school district in grades 3 to 11, inclusive.

(2) The number of pupils to whom an achievement test was administered in grades 3 to 11, inclusive, in the school district.

(3) The number of pupils in paragraph (1) who were exempted from the test at the request of their parents or guardians.

(k) The Superintendent and the state board are authorized and encouraged to assist postsecondary educational institutions to use the assessment results of the California Standards Tests, including, but not limited to, the augmented California Standards Tests, for academic credit, placement, or admissions processes.

(l) The Superintendent shall, with the approval of the state board, annually release to the public at least 25 percent of test items from the standards-based achievement test provided for in Section 60642.5 from the test administered in the previous year.

(m) This section shall become operative July 1, 2007.

SEC. 6. The sum of two million two hundred eighty-five thousand dollars (\$2,285,000) is hereby reappropriated from the Proposition 98 Reversion Account to the State Department of Education for the Standardized Testing and Reporting Program. These funds shall be used to cover costs incurred during the 2004-05 fiscal year to maintain and score the direct writing assessment for grades 4 and 7 for the program funded by Schedule 3 of Item 6110-113-0001 of Section 2.00 of the Budget Act of 2004 (Chapter 208, Statutes of 2004).

SEC. 7. 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.

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 ensure that the summer school program and the pupil testing programs affected by this act are properly implemented, pursuant to changes made by this act, it is necessary that this act take effect immediately.

CHAPTER 677

An act to amend Section 1798.3 of the Civil Code, to amend Sections 1240, 1628, 1629, 8092, 8208, 8212, 8222, 8226, 8352, 8421, 17592.70, 35186, 38101, 41327.2, 41344, 41344.1, 41402, 41511, 41521, 41530, 41976, 41976.5, 42127, 42132, 42282, 42282.1, 42285, 42285.2, 44225.6, 44252.1, 44258.9, 44664, 45037, 48660.2, 48900.8, 48980, 49423, 49423.1, 51226.1, 52515, 52520, 52570, 52571, 52572, 54749, 56195.7, and 56362.7 of, to add Sections 42285.4, 44265.6, and 56836.07 to, to repeal Section 52247 of, and to repeal and add Section 48213 of, the Education Code, to amend Section 7572.5 of the Government Code, to repeal Chapter 1.2 (commencing with Section 628) of Title 15 of Part 1 of the Penal Code, to amend Section 34501.5 of the Vehicle Code, to amend Section 11 of Chapter 14 of the Statutes of 2003, to amend Item 6110-183-0890 of Section 2.00 of Chapter 208 of the Statutes of 2004, and to amend Section 18 of Chapter 895 of the Statutes of 2004, relating to public schools, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 7, 2005. Filed with
Secretary of State October 7, 2005.]

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

SECTION 1. Section 1798.3 of the Civil Code is amended to read:
1798.3. As used in this chapter:

(a) The term “personal information” means any information that is maintained by an agency that identifies or describes an individual,

including, but not limited to, his or her name, social security number, physical description, home address, home telephone number, education, financial matters, and medical or employment history. It includes statements made by, or attributed to, the individual.

(b) The term “agency” means every state office, officer, department, division, bureau, board, commission, or other state agency, except that the term agency shall not include:

(1) The California Legislature.

(2) Any agency established under Article VI of the California Constitution.

(3) The State Compensation Insurance Fund, except as to any records which contain personal information about the employees of the State Compensation Insurance Fund.

(4) A local agency, as defined in subdivision (a) of Section 6252 of the Government Code.

(c) The term “disclose” means to disclose, release, transfer, disseminate, or otherwise communicate all or any part of any record orally, in writing, or by electronic or any other means to any person or entity.

(d) The term “individual” means a natural person.

(e) The term “maintain” includes maintain, acquire, use, or disclose.

(f) The term “person” means any natural person, corporation, partnership, limited liability company, firm, or association.

(g) The term “record” means any file or grouping of information about an individual that is maintained by an agency by reference to an identifying particular such as the individual’s name, photograph, finger or voice print, or a number or symbol assigned to the individual.

(h) The term “system of records” means one or more records, which pertain to one or more individuals, which is maintained by any agency, from which information is retrieved by the name of an individual or by some identifying number, symbol or other identifying particular assigned to the individual.

(i) The term “governmental entity,” except as used in Section 1798.26, means any branch of the federal government or of the local government.

(j) The term “commercial purpose” means any purpose which has financial gain as a major objective. It does not include the gathering or dissemination of newsworthy facts by a publisher or broadcaster.

(k) The term “regulatory agency” means the Department of Financial Institutions, the Department of Corporations, the Department of Insurance, the Department of Real Estate, and agencies of the United States or of any other state responsible for regulating financial institutions.

SEC. 1.5. Section 1240 of the Education Code is amended to read:

1240. The county superintendent of schools shall do all of the following:

(a) Superintend the schools of his or her county.

(b) Maintain responsibility for the fiscal oversight of each school district in his or her county pursuant to the authority granted by this code.

(c) (1) Visit and examine each school in his or her county at reasonable intervals to observe its operation and to learn of its problems. He or she may annually present a report of the state of the schools in his or her county, and of his or her office, including, but not limited to, his or her observations while visiting the schools, to the board of education and the board of supervisors of his or her county.

(2) (A) To the extent that funds are appropriated for purposes of this paragraph, the county superintendent, or his or her designee, shall annually present a report to the governing board of each school district under his or her jurisdiction, the county board of education of his or her county, and the board of supervisors of his or her county describing the state of the schools in the county or of his or her office that are ranked in deciles 1 to 3, inclusive, of the 2003 base Academic Performance Index, as defined in subdivision (b) of Section 17592.70, and shall include, among other things, his or her observations while visiting the schools.

(B) The county superintendent of the Counties of Alpine, Amador, Del Norte, Mariposa, Plumas, Sierra, and the City and County of San Francisco shall contract with another county office of education or an independent auditor to conduct the required visits and make all reports required by this paragraph.

(C) The results of the visit shall be reported to the governing board of the school district on a quarterly basis at a regularly scheduled meeting held in accordance with public notification requirements.

(D) The visits made pursuant to this paragraph shall be conducted at least annually and shall meet the following criteria:

(i) Minimize disruption to the operation of the school.

(ii) Be performed by individuals who meet the requirements of Section 45125.1.

(iii) Consist of not less than 25-percent unannounced visits in each county. During unannounced visits in each county, the county superintendent shall not demand access to documents or specific school personnel. Unannounced visits shall only be used to observe the condition of school repair and maintenance and the sufficiency of instructional materials, as defined by Section 60119.

(E) The priority objective of the visits made pursuant to this paragraph shall be to determine the status of all of the following circumstances:

(i) Sufficient textbooks as defined in Section 60119 and as specified in subdivision (i).

(ii) The condition of a facility that poses an emergency or urgent threat to the health or safety of pupils or staff as defined in district policy, or as defined by paragraph (1) of subdivision (c) of Section 17592.72.

(iii) The accuracy of data reported on the school accountability report card with respect to the availability of sufficient textbooks and instructional materials as defined by Section 60119 and the safety, cleanliness, and adequacy of school facilities, including good repair as required by Sections 17014, 17032.5, 17070.75, and 17089.

(F) The county superintendent may make the status determinations described in subparagraph (E) during a single visit or multiple visits. In determining whether to make a single visit or multiple visits for this purpose, the county superintendent shall take into consideration factors such as cost-effectiveness, disruption to the schoolsite, deadlines, and availability of qualified reviewers.

(d) Distribute all laws, reports, circulars, instructions, and blanks that he or she may receive for the use of the school officers.

(e) Annually present a report to the governing board of the school district and the Superintendent regarding the fiscal solvency of any school district with a disapproved budget, qualified interim certification, or a negative interim certification, or that is determined at any time to be in a position of fiscal uncertainty pursuant to Section 42127.6.

(f) Keep in his or her office the reports of the Superintendent.

(g) Keep a record of his or her official acts, and of all the proceedings of the county board of education, including a record of the standing, in each study, of all applicants for certificates who have been examined, which shall be open to the inspection of any applicant or his or her authorized agent.

(h) Enforce the course of study.

(i) (1) Enforce the use of state textbooks and instructional materials and of high school textbooks and instructional materials regularly adopted by the proper authority in accordance with Section 51050.

(2) For purposes of this subdivision, sufficient textbooks or instructional materials has the same meaning as in subdivision (c) of Section 60119.

(3) (A) Commencing with the 2005-06 school year, if a school is ranked in any of deciles 1 to 3, inclusive, of the 2003 base Academic Performance Index, as defined in subdivision (b) of Section 17592.70, and is not currently under review through a state or federal intervention program, the county superintendent shall specifically review that school at least annually as a priority school. A review conducted for purposes of this paragraph shall be completed by the fourth week of the school

year. For the 2004-05 fiscal year only, the county superintendent shall make a diligent effort to conduct a visit to each school pursuant to this paragraph within 120 days of receipt of funds for this purpose.

(B) In order to facilitate the review of instructional materials before the fourth week of the school year, the county superintendent of schools in a county with 200 or more schools that are ranked in any of deciles 1 to 3, inclusive, of the 2003 base Academic Performance Index, as defined in subdivision (b) of Section 17592.70, may utilize a combination of visits and written surveys of teachers for the purpose of determining sufficiency of textbooks and instructional materials in accordance with subparagraph (A) of paragraph (1) of subdivision (a) of Section 60119 and as defined in subdivision (c) of Section 60119. If a county superintendent of schools elects to conduct written surveys of teachers, the county superintendent of schools shall visit the schools surveyed within the same academic year to verify the accuracy of the information reported on the surveys.

(C) For purposes of this paragraph, "written surveys" may include paper and electronic or online surveys.

(4) If the county superintendent determines that a school does not have sufficient textbooks or instructional materials in accordance with subparagraph (A) of paragraph (1) of subdivision (a) of Section 60119 and as defined by subdivision (c) of Section 60119, the county superintendent shall do all of the following:

(A) Prepare a report that specifically identifies and documents the areas or instances of noncompliance.

(B) Provide within five business days of the review, a copy of the report to the school district, as provided in subdivision (c), and forward the report to the Superintendent.

(C) Provide the school district with the opportunity to remedy the deficiency. The county superintendent shall ensure remediation of the deficiency no later than the second month of the school term.

(D) If the deficiency is not remedied as required pursuant to subparagraph (C), the county superintendent shall request the department, with approval by the State Board of Education, to purchase the textbooks or instructional materials necessary to comply with the sufficiency requirement of this subdivision. If the state board approves a recommendation from the department to purchase textbooks or instructional materials for the school district, the board shall issue a public statement at a regularly scheduled meeting indicating that the district superintendent and the governing board of the school district failed to provide pupils with sufficient textbooks or instructional materials as required by this subdivision. Before purchasing the textbooks or instructional materials, the department shall consult with the district to

determine which textbooks or instructional materials to purchase. All purchases of textbooks or instructional materials shall comply with Chapter 3.25 (commencing with Section 60420) of Part 33. The amount of funds necessary to the purchase the textbooks and materials is a loan to the school district receiving the textbooks or instructional materials. Unless the school district repays the amount owed based upon an agreed-upon repayment schedule with the Superintendent, the Superintendent shall notify the Controller and the Controller shall deduct an amount equal to the total amount used to purchase the textbooks and materials, from the next principal apportionment of the district or from another apportionment of state funds.

(j) Preserve carefully all reports of school officers and teachers.

(k) Deliver to his or her successor, at the close of his or her official term, all records, books, documents, and papers belonging to the office, taking a receipt for them, which shall be filed with the department.

(l) (1) Submit two reports during the fiscal year to the county board of education in accordance with the following:

(A) The first report shall cover the financial and budgetary status of the county office of education for the period ending October 31. The second report shall cover the period ending January 31. Both reports shall be reviewed by the county board of education and approved by the county superintendent of schools no later than 45 days after the close of the period being reported.

(B) As part of each report, the county superintendent shall certify in writing whether or not the county office of education is able to meet its financial obligations for the remainder of the fiscal year and, based on current forecasts, for two subsequent fiscal years. The certifications shall be classified as positive, qualified, or negative, pursuant to standards prescribed by the Superintendent, for the purposes of determining subsequent state agency actions pursuant to Section 1240.1. For purposes of this subdivision, a negative certification shall be assigned to any county office of education that, based upon current projections, will be unable to meet its financial obligations for the remainder of the fiscal year or for the subsequent fiscal year. A qualified certification shall be assigned to any county office of education that may not meet its financial obligations for the current fiscal year or two subsequent fiscal years. A positive certification shall be assigned to any county office of education that will meet its financial obligations for the current fiscal year and subsequent two fiscal years. In accordance with those standards, the Superintendent may reclassify any certification. If a county office of education receives a negative certification, the Superintendent, or his or her designee, may exercise the authority set forth in subdivision (c) of Section 1630. Copies of each certification, and of the report containing

that certification, shall be sent to the Superintendent at the time the certification is submitted to the county board of education. Copies of each qualified or negative certification and the report containing that certification shall be sent to the Controller at the time the certification is submitted to the county board of education.

(2) All reports and certifications required under this subdivision shall be in a format or on forms prescribed by the Superintendent, and shall be based on standards and criteria for fiscal stability adopted by the State Board of Education pursuant to Section 33127. The reports and supporting data shall be made available by the county superintendent of schools to any interested party upon request.

(3) This subdivision does not preclude the submission of additional budgetary or financial reports by the county superintendent to the county board of education or to the Superintendent.

(4) The county superintendent of schools is not responsible for the fiscal oversight of the community colleges in the county, however, he or she may perform financial services on behalf of those community colleges.

(m) If requested, act as agent for the purchase of supplies for the city and high school districts of his or her county.

(n) For purposes of Section 44421.5, report to the Commission on Teacher Credentialing the identity of any certificated person who knowingly and willingly reports false fiscal expenditure data relative to the conduct of any educational program. This requirement applies only if, in the course of his or her normal duties, the county superintendent of schools discovers information that gives him or her reasonable cause to believe that false fiscal expenditure data relative to the conduct of any educational program has been reported.

SEC. 2. Section 1628 of the Education Code is amended to read:

1628. On or before October 15 of each year, the county superintendent of schools shall prepare and file with the Superintendent, along with the statements received pursuant to subdivision (b) of Section 42100, a statement of all receipts and expenditures of the county office of education for the preceding fiscal year. The statement shall be in a format or on forms prescribed by the Superintendent, in accordance with regulations adopted by the State Board of Education. These forms may be amended periodically by the Superintendent to accommodate changes in statute or government reporting standards.

SEC. 3. Section 1629 of the Education Code is amended to read:

1629. On or before October 15 of each year, the county board of education shall adopt a resolution to identify, pursuant to Division 9 (commencing with Section 7900) of Title 1 of the Government Code, the estimated appropriations limit for the county office of education for

the current fiscal year and the actual appropriations limit for the county office of education for the preceding fiscal year. That resolution shall be adopted at a regular or special meeting of the board. Notwithstanding Section 7910 of the Government Code, documentation used in the identification of the appropriations limits shall be made available to the public on the date of the meeting at which the resolution is adopted.

SEC. 4. Section 8092 of the Education Code is amended to read:

8092. (a) A school district or districts, a county superintendent or superintendents, or the governing body of any agency maintaining a regional occupational center or program may contract with a private postsecondary school that is authorized or approved pursuant to Chapter 3 (commencing with Section 94300) of Part 59 and that has been in operation not less than two full calendar years prior to the effective date of the contract, to provide career technical skill training authorized by this code. A school district, community college district, or county superintendent of schools may contract with an activity center, work activity center, or sheltered workshop to provide career technical skill training authorized by this code in an adult education program for adults with disabilities operated pursuant to subdivision (a) of Section 41976.

(b) A contract between a public entity and a private postsecondary school entered into pursuant to this section, or an activity center, work activity center, or sheltered workshop, shall do all of the following:

(1) Provide that the amount contracted for per student shall not exceed the total direct and indirect costs to provide the same training in the public schools or the tuition the private postsecondary school charges its private students, whichever is lower.

(2) Provide that the public school receiving training in a private postsecondary school, or an activity center, work activity center, or sheltered workshop pursuant to that contract may not be charged additional tuition for any training included in the contract. The attendance of those students pursuant to a contract authorized by this section shall be credited to the public entity for the purposes of apportionments from the State School Fund.

(3) Provide that all programs, courses, and classes of instruction shall meet the standards set forth in the California State Plan for Career Technical Education, or is a course of study for adult schools approved by the department under Section 51056.

(c) The students who attend a private postsecondary school or an activity center, work activity center, or sheltered workshop pursuant to a contract under this section shall be enrollees of the public entity and the career technical instruction provided pursuant to that contract shall be under the exclusive control and management of the governing body of the contracting public entity.

(d) The Department of Finance and the State Department of Education may audit the accounts of both the public entity and the private party involved in these contracts to the extent necessary to ensure the integrity of the public funds involved.

SEC. 4.5. Section 8208 of the Education Code is amended to read: 8208. As used in this chapter:

(a) “Alternative payments” includes payments that are made by one child care agency to another agency or child care provider for the provision of child care and development services, and payments that are made by an agency to a parent for the parent’s purchase of child care and development services.

(b) “Alternative payment program” means a local government agency or nonprofit organization that has contracted with the department pursuant to Section 8220.2 to provide alternative payments and to provide support services to parents and providers.

(c) “Applicant or contracting agency” means a school district, community college district, college or university, county superintendent of schools, county, city, public agency, private nontax-exempt agency, private tax-exempt agency, or other entity that is authorized to establish, maintain, or operate services pursuant to this chapter. Private agencies and parent cooperatives, duly licensed by law, shall receive the same consideration as any other authorized entity with no loss of parental decisionmaking prerogatives as consistent with the provisions of this chapter.

(d) “Assigned reimbursement rate” is that rate established by the contract with the agency and is derived by dividing the total dollar amount of the contract by the minimum child day of average daily enrollment level of service required.

(e) “Attendance” means the number of children present at a child care and development facility. “Attendance,” for the purposes of reimbursement, includes excused absences by children because of illness, quarantine, illness or quarantine of their parent, family emergency, or to spend time with a parent or other relative as required by a court of law or that is clearly in the best interest of the child.

(f) “Capital outlay” means the amount paid for the renovation and repair of child care and development facilities to comply with state and local health and safety standards, and the amount paid for the state purchase of relocatable child care and development facilities for lease to qualifying contracting agencies.

(g) “Caregiver” means a person who provides direct care, supervision, and guidance to children in a child care and development facility.

(h) "Child care and development facility" means any residence or building or part thereof in which child care and development services are provided.

(i) "Child care and development programs" means those programs that offer a full range of services for children from infancy to 13 years of age for any part of a day, by a public or private agency, in centers and family child care homes. These programs include, but are not limited to, all of the following:

- (1) Campus child care and development.
- (2) General child care and development.
- (3) Migrant child care and development.
- (4) Child care provided by the California School Age Families Education Program (Article 7.1 (commencing with Section 54740) of Chapter 9 of Part 29).
- (5) State preschool.
- (6) Resource and referral.
- (7) Child care and development services for children with special needs.
- (8) Family child care home education network.
- (9) Alternative payment.
- (10) Child abuse protection and prevention services.
- (11) Schoolage community child care.

(j) "Child care and development services" means those services designed to meet a wide variety of needs of children and their families, while their parents or guardians are working, in training, seeking employment, incapacitated, or in need of respite. These services may include direct care and supervision, instructional activities, resource and referral programs, and alternative payment arrangements.

(k) "Children at risk of abuse, neglect, or exploitation" means children who are so identified in a written referral from a legal, medical, or social service agency, or emergency shelter.

(l) "Children with exceptional needs" means either of the following:

- (1) Infants and toddlers under three years of age who have been determined to be eligible for early intervention services pursuant to the California Early Intervention Services Act (Title 14 (commencing with Section 95000) of the Government Code) and its implementing regulations. These children include an infant or toddler with a developmental delay or established risk condition, or who is at high risk of having a substantial developmental disability, as defined in subdivision (a) of Section 95014 of the Government Code. These children shall have active individualized family service plans, shall be receiving early intervention services, and shall be children who require the special attention of adults in a child care setting.

(2) Children ages 3 to 21 years, inclusive, who have been determined to be eligible for special education and related services by an individualized education program team according to the special education requirements contained in Part 30 (commencing with Section 56000), and who meet eligibility criteria described in Section 56026 and Sections 56333 to 56338, inclusive, and Sections 3030 and 3031 of Title 5 of the California Code of Regulations. These children shall have an active individualized education program, shall be receiving early intervention services or appropriate special education and related services, and shall be children who require the special attention of adults in a child care setting. These children include children with mental retardation, hearing impairments (including deafness), speech or language impairments, visual impairments (including blindness), serious emotional disturbance (also referred to as emotional disturbance), orthopedic impairments, autism, traumatic brain injury, other health impairments, or specific learning disabilities, who need special education and related services consistent with paragraph (A) of subsection (3) of Section 1401 of Title 20 of the United States Code.

(m) "Closedown costs" means reimbursements for all approved activities associated with the closing of operations at the end of each growing season for migrant child development programs only.

(n) "Cost" includes, but is not limited to, expenditures that are related to the operation of child care and development programs. "Cost" may include a reasonable amount for state and local contributions to employee benefits, including approved retirement programs, agency administration, and any other reasonable program operational costs. "Cost" may also include amounts for licensable facilities in the community served by the program, including lease payments or depreciation, downpayments, and payments of principal and interest on loans incurred to acquire, rehabilitate, or construct licensable facilities, but these costs shall not exceed fair market rents existing in the community in which the facility is located. "Reasonable and necessary costs" are costs that, in nature and amount, do not exceed what an ordinary prudent person would incur in the conduct of a competitive business.

(o) "Elementary school," as contained in Section 425 of Title 20 of the United States Code (the National Defense Education Act of 1958, Public Law 85-864, as amended), includes early childhood education programs and all child development programs, for the purpose of the cancellation provisions of loans to students in institutions of higher learning.

(p) "Family child care home education network" means an entity organized under law that contracts with the department pursuant to Section 8245 to make payments to licensed family child care home

providers and to provide educational and support services to those providers and to children and families eligible for state-subsidized child care and development services. A family child care home education network may also be referred to as a family child care home system.

(q) "Health services" include, but are not limited to, all of the following:

(1) Referral, whenever possible, to appropriate health care providers able to provide continuity of medical care.

(2) Health screening and health treatment, including a full range of immunization recorded on the appropriate state immunization form to the extent provided by the Medi-Cal Act (Chapter 7 (commencing with Section 14000) of Part 3 of Division 9 of the Welfare and Institutions Code) and the Child Health and Disability Prevention Program (Article 6 (commencing with Section 124025) of Chapter 3 of Part 2 of Division 106 of the Health and Safety Code), but only to the extent that ongoing care cannot be obtained utilizing community resources.

(3) Health education and training for children, parents, staff, and providers.

(4) Followup treatment through referral to appropriate health care agencies or individual health care professionals.

(r) "Higher educational institutions" means the Regents of the University of California, the Trustees of the California State University, the Board of Governors of the California Community Colleges, and the governing bodies of any accredited private nonprofit institution of postsecondary education.

(s) "Intergenerational staff" means persons of various generations.

(t) "Limited-English-speaking-proficient" and "non-English-speaking-proficient children" means children who are unable to benefit fully from an English-only child care and development program as a result of either of the following:

(1) Having used a language other than English when they first began to speak.

(2) Having a language other than English predominantly or exclusively spoken at home.

(u) "Parent" means a biological parent, stepparent, adoptive parent, foster parent, caretaker relative, or any other adult living with a child who has responsibility for the care and welfare of the child.

(v) "Program director" means a person who, pursuant to Sections 8244 and 8360.1, is qualified to serve as a program director.

(w) "Proprietary child care agency" means an organization or facility providing child care, which is operated for profit.

(x) "Resource and referral programs" means programs that provide information to parents, including referrals and coordination of community

resources for parents and public or private providers of care. Services frequently include, but are not limited to: technical assistance for providers, toy-lending libraries, equipment-lending libraries, toy- and equipment-lending libraries, staff development programs, health and nutrition education, and referrals to social services.

(y) “Severely disabled children” are children with exceptional needs from birth to 21 years of age, inclusive, who require intensive instruction and training in programs serving pupils with the following profound disabilities: autism, blindness, deafness, severe orthopedic impairments, serious emotional disturbances, or severe mental retardation. “Severely disabled children” also include those individuals who would have been eligible for enrollment in a developmental center for handicapped pupils under Chapter 6 (commencing with Section 56800) of Part 30 as it read on January 1, 1980.

(z) “Short-term respite child care” means child care service to assist families whose children have been identified through written referral from a legal, medical, or social service agency, or emergency shelter as being neglected, abused, exploited, or homeless, or at risk of being neglected, abused, exploited, or homeless. Child care is provided for less than 24 hours per day in child care centers, treatment centers for abusive parents, family child care homes, or in the child’s own home.

(aa) (1) “Site supervisor” means a person who, regardless of his or her title, has operational program responsibility for a child care and development program at a single site. A site supervisor shall hold a permit issued by the Commission on Teacher Credentialing that authorizes supervision of a child care and development program operating in a single site. The Superintendent may waive the requirements of this subdivision if the superintendent determines that the existence of compelling need is appropriately documented.

(2) In respect to state preschool programs, a site supervisor may qualify under any of the provisions in this subdivision, or may qualify by holding an administrative credential or an administrative services credential. A person who meets the qualifications of a site supervisor under both Section 8244 and subdivision (e) of Section 8360.1 is also qualified under this subdivision.

(ab) “Standard reimbursement rate” means that rate established by the Superintendent pursuant to Section 8265.

(ac) “Startup costs” means those expenses an agency incurs in the process of opening a new or additional facility prior to the full enrollment of children.

(ad) “State preschool services” means part-day educational programs for low-income or otherwise disadvantaged prekindergarten-age children.

(ae) "Support services" means those services that, when combined with child care and development services, help promote the healthy physical, mental, social, and emotional growth of children. Support services include, but are not limited to: protective services, parent training, provider and staff training, transportation, parent and child counseling, child development resource and referral services, and child placement counseling.

(af) "Teacher" means a person with the appropriate permit issued by the Commission on Teacher Credentialing who provides program supervision and instruction that includes supervision of a number of aides, volunteers, and groups of children.

(ag) "Underserved area" means a county or subcounty area, including, but not limited to, school districts, census tracts, or ZIP Code areas, where the ratio of publicly subsidized child care and development program services to the need for these services is low, as determined by the Superintendent.

(ah) "Workday" means the time that the parent requires temporary care for a child for any of the following reasons:

- (1) To undertake training in preparation for a job.
- (2) To undertake or retain a job.
- (3) To undertake other activities that are essential to maintaining or improving the social and economic function of the family, are beneficial to the community, or are required because of health problems in the family.

SEC. 5. Section 8212 of the Education Code is amended to read:

8212. For purposes of this article, child care resource and referral programs, established to serve a defined geographic area, shall provide the following services:

(a) Identification of the full range of existing child care services through information provided by all relevant public and private agencies in the areas of service, and the development of a resource file of those services which shall be maintained and updated at least quarterly. These services shall include, but not be limited to, family day care homes, public and private day care programs, full-time and part-time programs, and infant, preschool, and extended care programs.

The resource file shall include, but not be limited to, the following information:

- (1) Type of program.
- (2) Hours of service.
- (3) Ages of children served.
- (4) Fees and eligibility for services.
- (5) Significant program information.

(b) (1) Establishment of a referral process which responds to parental need for information and which is provided with full recognition of the confidentiality rights of parents. Resource and referral programs shall make referrals to licensed child day care facilities. Referrals shall be made to unlicensed care facilities only if there is no requirement that the facility be licensed. The referral process shall afford parents maximum access to all referral information. This access shall include, but is not limited to, telephone referrals to be made available for at least 30 hours per week as part of a full week of operation. Every effort shall be made to reach all parents within the defined geographic area, including, but not limited to, any of the following:

- (A) Toll-free telephone lines.
- (B) Office space convenient to parents and providers.
- (C) Referrals in languages which are spoken in the community.

Each child care resource and referral program shall publicize its services through all available media sources, agencies, and other appropriate methods.

(2) (A) Provision of information to any person who requests a child care referral of his or her right to view the licensing information of a licensed child day care facility required to be maintained at the facility pursuant to Section 1596.859 of the Health and Safety Code and to access any public files pertaining to the facility that are maintained by the State Department of Social Services Community Care Licensing Division.

(B) A written or oral advisement in substantially the following form will comply with the requirements of subparagraph (A):

“State law requires licensed child day care facilities to make accessible to the public a copy of any licensing report pertaining to the facility that documents a facility visit or a substantiated complaint investigation. In addition, a more complete file regarding a child care licensee may be available at an office of the State Department of Social Services Community Care Licensing Division. You have the right to access any public information in these files.”

(c) Maintenance of ongoing documentation of requests for service tabulated through the internal referral process. The following documentation of requests for service shall be maintained by all child care resource and referral programs:

(1) Number of calls and contacts to the child care information and referral program or component.

- (2) Ages of children served.
- (3) Time category of child care request for each child.
- (4) Special time category, such as nights, weekends, and swing shift.
- (5) Reason that the child care is needed.

This information shall be maintained in a manner that is easily accessible for dissemination purposes.

(d) Provision of technical assistance to existing and potential providers of all types of child care services. This assistance shall include, but not be limited to:

(1) Information on all aspects of initiating new child care services including, but not limited to, licensing, zoning, program and budget development, and assistance in finding this information from other sources.

(2) Information and resources that help existing child care services providers to maximize their ability to serve the children and parents of their community.

(3) Dissemination of information on current public issues affecting the local and state delivery of child care services.

(4) Facilitation of communication between existing child care and child-related services providers in the community served.

Services prescribed by this section shall be provided in order to maximize parental choice in the selection of child care to facilitate the maintenance and development of child care services and resources.

(e) (1) A program operating pursuant to this article shall, within two business days of receiving notice, remove a licensed child day care facility with a revocation or a temporary suspension order, or that is on probation from the program's referral list.

(2) A program operating pursuant to this article shall, within two business days of receiving notice, notify all entities, operating a program under Article 3 (commencing with Section 8220) and Article 15.5 (commencing with Section 8350) in the program's jurisdiction, of a licensed child day care facility with a revocation or a temporary suspension order, or that is on probation.

SEC. 5.5. Section 8222 of the Education Code is amended to read:

8222. Payments made by alternative payment programs shall be equal to the fee charged to full-cost families in each program, not to exceed the applicable market rate ceiling. Alternative payment programs may expend more than the standard reimbursement rate for a particular child. However, the aggregate payments for services purchased by the agency during the contract year may not exceed the assigned reimbursable amount as established by the contract for the year.

No agency may make payments in excess of the fee charged to full-cost families.

This section does not preclude alternative payment programs from using the average daily enrollment adjustment factors for children with exceptional needs as provided in Section 8265.5.

SEC. 6. Section 8226 of the Education Code is amended to read:

8226. (a) When making referrals, every program operating pursuant to this article shall provide information to any person who requests a child care referral of his or her right to view the licensing information of a licensed child day care facility required to be maintained at the facility pursuant to Section 1596.859 of the Health and Safety Code and to access any public files pertaining to the facility that are maintained by the State Department of Social Services Community Care Licensing Division.

(b) A written or oral advisement in substantially the following form will comply with the requirements of subdivision (a):

“State law requires licensed child day care facilities to make accessible to the public a copy of any licensing report pertaining to the facility that documents a facility visit or a substantiated complaint investigation. In addition, a more complete file regarding a child care licensee may be available at an office of the State Department of Social Services Community Care Licensing Division. You have the right to access any public information in these files.”

(c) Every program operating pursuant to this article shall, within two days of receiving notice, remove from the program’s referral list the name of any licensed child day care facility with a revocation or a temporary suspension order or that is on probation.

(d) A program operating pursuant to this article shall, within two business days of being notified of a revocation or a temporary suspension order for a licensed child day care facility, do both of the following:

- (1) Terminate payment to the facility.
- (2) Notify each parent and the facility in writing that payment has been terminated and the reason for the termination.

(e) A program operating pursuant to this article shall, upon being notified that a licensed child day care facility has been placed on probation, provide written notice to each parent utilizing the facility that the facility has been placed on probation and that the parent has the option of selecting a different child day care provider or remaining with the facility without risk of subsidy payments to the provider being terminated. The Legislature urges each agency operating pursuant to this section to provide the written notice required by this subdivision in the primary language of the parent, to the extent feasible.

SEC. 7. Section 8352 of the Education Code is amended to read:

8352. (a) As soon as appropriate, a county welfare department shall refer families needing child care services to the local child care resource and referral program funded pursuant to Article 2 (commencing with Section 8210). Resource and referral program staff shall colocate with a county welfare department’s case management offices for aid under Chapter 2 (commencing with Section 11200) of Part 3 of Division 9 of

the Welfare and Institutions Code, or any successor program, or arrange other means of swift communication with parents and case managers of this aid. The local child care resource and referral program shall assist families to establish stable child care arrangements as soon as possible. These child care arrangements may include licensed and license-exempt care.

(b) A program operating pursuant to this article shall, within two business days of being notified of a revocation or a temporary suspension order for a licensed child day care facility, do both of the following:

- (1) Terminate payment to the facility.
- (2) Notify each parent and the facility in writing that payment has been terminated and the reason for the termination.

(c) A program operating pursuant to this article shall, upon being notified that a licensed child care facility has been placed on probation, provide written notice to each parent utilizing the facility that the facility has been placed on probation and that the parent has the option of selecting a different child day care provider or remaining with the facility without risk of subsidy payments to the provider being terminated. The Legislature urges each agency operating pursuant to this section to provide the written notice required by this subdivision in the primary language of the parent, to the extent feasible.

SEC. 8. Section 8421 of the Education Code is amended to read:

8421. There is hereby established the 21st Century High School After School Safety and Enrichment for Teens program. The purpose of the program is to create incentives for establishing locally driven after school enrichment programs that partner schools and communities to provide academic support and safe, constructive alternatives for high school pupils in the hours after the regular schoolday.

(a) A minimum of 10 high school after school programs shall be established to serve pupils in grades 9 to 12, inclusive.

(b) A high school after school program established pursuant to this article shall consist of the following two components:

(1) An academic assistance component that shall include, but need not be limited to, at least one of the following: preparation for the high school exit examination, tutoring, homework assistance, or college preparation, including information about the Cal Grant Program established pursuant to Article 3 (commencing with Section 69530) of Chapter 2 of Part 42. The assistance shall be aligned with the regular academic programs of the pupils.

(2) An enrichment activities component that may include, but need not be limited to, community service, career and technical education, job readiness, opportunities for mentoring and tutoring younger pupils,

service learning, arts, computer and technology training, physical fitness, and recreation activities.

(c) A program shall comply with locally determined requirements related to hours and days of program operation through the 2005-06 fiscal year. Commencing with the 2006-07 fiscal year and thereafter, a program shall comply with the requirements of the department related to the hours and days of program operation.

(d) An entity may operate programs on one or multiple sites. If an entity plans to operate programs at multiple sites, only one application is required.

(e) A program may operate on a schoolsite or on another site approved by the department during the grant application process. A program located off school grounds shall not be approved unless both of the following criteria are met:

(1) Safe transportation is available to transport participating pupils if necessary.

(2) The program is at least as available and accessible as similar programs conducted on schoolsites.

(f) Applicants for grants pursuant to this article shall ensure that all of the following requirements are fulfilled, if applicable:

(1) The application includes a description of the activities that will be available for pupils and lists the program hours.

(2) The application includes an estimate of the following:

(A) The number of pupils expected to attend the program on a regular basis.

(B) The average hours of attendance per pupil.

(C) The percentage of pupils expected to attend the program less than three days a week, three days a week, and more than three days a week, for each quarter or semester during the grant period.

(3) The application documents the commitments of each partner to operate a program at a location or locations that are safe and accessible to participating pupils.

(4) The application demonstrates that pupils were involved in the design of the program and describes the extent of that involvement.

(5) The application identifies federal, state, and local programs that will be combined or coordinated with the high school after school program for the most effective use of public resources, and describes a plan for implementing the high school after school program beyond federal grant funding.

(6) The applicant complies with all federal requirements in preparing and submitting the application, as described in the request for applications of the department.

(g) The department shall not establish minimum attendance requirements for individual pupils.

SEC. 8.5. Section 17592.70 of the Education Code is amended to read:

17592.70. (a) There is hereby established the School Facilities Needs Assessment Grant Program with the purpose to provide for a one-time comprehensive assessment of school facilities needs. The grant program shall be administered by the State Allocation Board.

(b) (1) The grants shall be awarded to school districts on behalf of schoolsites ranked in deciles 1 to 3, inclusive, on the Academic Performance Index (API), pursuant to Section 52056, based on the 2003 base API score for each school newly constructed prior to January 1, 2000.

(2) For purposes of this section, schools ranked in deciles 1 to 3, inclusive, on the 2003 base API shall include any schools determined by the department to meet either of the following:

(A) The school meets all of the following criteria:

(i) Does not have a valid base API score for 2003.

(ii) Is operating in fiscal year 2004-05 and was operating in fiscal year 2003-04 during the Standardized Testing and Reporting (STAR) Program testing period.

(iii) Has a valid base API score for 2002 that was ranked in deciles 1 to 3, inclusive, in that year.

(B) The school has an estimated base API score for 2003 that would be in deciles 1 to 3, inclusive.

(3) The department shall estimate an API score for any school meeting the criteria of clauses (i) and (ii) of subparagraph (A) of paragraph (2) and not meeting the criteria of clause (iii) of subparagraph (A) of paragraph (2), using available testing scores and any weighting or corrective factors it deems appropriate. The department shall provide those API scores to the Office of Public School Construction and post them on its Web site within 30 days of the enactment of this section.

(4) For purposes of this section, schools ranked in deciles 1 to 3, inclusive, on the 2003 base API shall exclude any schools determined by the department to be operated by county offices of education pursuant to Section 56140.

(c) The board shall allocate funds pursuant to subdivision (b) to school districts with jurisdiction over eligible schoolsites, based on ten dollars (\$10) per pupil enrolled in the eligible school as of October 2003, with a minimum allocation of seven thousand five hundred dollars (\$7,500) for each schoolsite.

(d) As a condition of receiving funds pursuant to this section, school districts shall do all of the following:

(1) Use the funds to develop a comprehensive needs assessment of all schoolsites eligible for grants pursuant to subdivision (b). The assessment shall contain, at a minimum, all of the following information for each schoolsite:

(A) The year each building that is currently used for instructional purposes was constructed.

(B) The year, if any, each building that is currently used for instructional purposes was last modernized.

(C) The pupil capacity of the school.

(D) The number of pupils enrolled in the school.

(E) The density of the school campus measured in pupils per acre.

(F) The total number of classrooms at the school.

(G) The age and number of portable classrooms at the school.

(H) Whether the school is operating on a multitrack, year-round calendar, and, if so, what type.

(I) Whether the school has a cafeteria, or an auditorium or other space used for pupil eating and not for class instruction.

(J) The useful life remaining of all major building systems for each structure housing instructional space, including, but not limited to, sewer, water, gas, electrical, roofing, and fire and life safety protection.

(K) The estimated costs for five years necessary to maintain functionality of each instructional space to maintain health, safety, and suitable learning environment, as applicable, including classroom, counseling areas, administrative space, libraries, gymnasiums, multipurpose and dining space, and the accessibility to those spaces.

(L) A list of necessary repairs.

(2) Use the data currently filed with the state as part of the process of applying for and obtaining modernization or construction funds for school facilities, or information that is available in the California Basic Education Data System for the element required in subparagraphs (D), (E), (F), and (G) of paragraph (1).

(3) Use the assessment as the baseline for the facilities inspection system required pursuant to subdivision (e) of Section 17070.75.

(4) Provide the results of the assessment to the Office of Public School Construction, including a report on the expenditures made in performing the assessment. It is the intent of the Legislature that the assessments be completed as soon as possible, but not later than January 1, 2006.

(5) If a school district does not need the full amount of the allocation it receives pursuant to this section, the school district shall expend the remaining funds for making facilities repairs identified in its needs assessment. The school district shall report to the Office of Public School Construction on the repairs completed pursuant to this paragraph and the cost of the repairs.

(6) Submit to the Office of Public School Construction an interim report regarding the progress made by the school district in completing the assessments of all eligible schools.

SEC. 8.7. Section 35186 of the Education Code is amended to read:

35186. (a) A school district shall use the uniform complaint process it has adopted as required by Chapter 5.1 (commencing with Section 4600) of Title 5 of the California Code of Regulations, with modifications, as necessary, to help identify and resolve any deficiencies related to instructional materials, emergency or urgent facilities conditions that pose a threat to the health and safety of pupils or staff, and teacher vacancy or misassignment.

(1) A complaint may be filed anonymously. A complainant who identifies himself or herself is entitled to a response if he or she indicates that a response is requested. A complaint form shall include a space to mark to indicate whether a response is requested. All complaints and responses are public records.

(2) The complaint form shall specify the location for filing a complaint. A complainant may add as much text to explain the complaint as he or she wishes.

(3) A complaint shall be filed with the principal of the school or his or her designee. A complaint about problems beyond the authority of the school principal shall be forwarded in a timely manner but not to exceed 10 working days to the appropriate school district official for resolution.

(b) The principal or the designee of the district superintendent, as applicable, shall make all reasonable efforts to investigate any problem within his or her authority. The principal or designee of the district superintendent shall remedy a valid complaint within a reasonable time period but not to exceed 30 working days from the date the complaint was received. The principal or designee of the district superintendent shall report to the complainant the resolution of the complaint within 45 working days of the initial filing. If the principal makes this report, the principal shall also report the same information in the same timeframe to the designee of the district superintendent.

(c) A complainant not satisfied with the resolution of the principal or the designee of the district superintendent has the right to describe the complaint to the governing board of the school district at a regularly scheduled hearing of the governing board. As to complaints involving a condition of a facility that poses an emergency or urgent threat, as defined in paragraph (1) of subdivision (c) of Section 17592.72, a complainant who is not satisfied with the resolution proffered by the principal or the designee of the district superintendent has the right to file an appeal to the Superintendent, who shall provide a written report

to the State Board of Education describing the basis for the complaint and, as appropriate, a proposed remedy for the issue described in the complaint.

(d) A school district shall report summarized data on the nature and resolution of all complaints on a quarterly basis to the county superintendent of schools and the governing board of the school district. The summaries shall be publicly reported on a quarterly basis at a regularly scheduled meeting of the governing board of the school district. The report shall include the number of complaints by general subject area with the number of resolved and unresolved complaints. The complaints and written responses shall be available as public records.

(e) The procedure required pursuant to this section is intended to address all of the following:

(1) A complaint related to instructional materials as follows:

(A) A pupil, including an English learner, does not have standards-aligned textbooks or instructional materials or state-adopted or district-adopted textbooks or other required instructional material to use in class.

(B) A pupil does not have access to instructional materials to use at home or after school.

(C) Textbooks or instructional materials are in poor or unusable condition, have missing pages, or are unreadable due to damage.

(2) A complaint related to teacher vacancy or misassignment as follows:

(A) A semester begins and a teacher vacancy exists.

(B) A teacher who lacks credentials or training to teach English learners is assigned to teach a class with more than 20-percent English learner pupils in the class. This subparagraph does not relieve a school district from complying with state or federal law regarding teachers of English learners.

(C) A teacher is assigned to teach a class for which the teacher lacks subject matter competency.

(3) A complaint related to the condition of facilities that pose an emergency or urgent threat to the health or safety of pupils or staff as defined in paragraph (1) of subdivision (c) of Section 17592.72 and any other emergency conditions the school district determines appropriate.

(f) In order to identify appropriate subjects of complaint, a notice shall be posted in each classroom in each school in the school district notifying parents, guardians, pupils, and teachers of the following:

(1) There should be sufficient textbooks and instructional materials. For there to be sufficient textbooks and instructional materials each pupil, including English learners, must have a textbook or instructional materials, or both, to use in class and to take home.

(2) School facilities must be clean, safe, and maintained in good repair.
(3) There should be no teacher vacancies or misassignments as defined in paragraphs (2) and (3) of subdivision (h).

(4) The location at which to obtain a form to file a complaint in case of a shortage. Posting a notice downloadable from the Web site of the department shall satisfy this requirement.

(g) A local educational agency shall establish local policies and procedures, post notices, and implement this section on or before January 1, 2005.

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

(1) "Good repair" has the same meaning as specified in subdivision (d) of Section 17002.

(2) "Misassignment" means the placement of a certificated employee in a teaching or services position for which the employee does not hold a legally recognized certificate or credential or the placement of a certificated employee in a teaching or services position that the employee is not otherwise authorized by statute to hold.

(3) "Teacher vacancy" means a position to which a single designated certificated employee has not been assigned at the beginning of the year for an entire year or, if the position is for a one-semester course, a position to which a single designated certificated employee has not been assigned at the beginning of a semester for an entire semester.

SEC. 9. Section 38101 of the Education Code is amended to read:

38101. (a) The governing board of a school district may authorize expenditures from the cafeteria fund or cafeteria account only for those charges from that fund or account that are defined in the California School Accounting Manual.

(b) A food service program shall not be charged more than once for expenditures for the same service. If a food service program is being charged for a service as a direct cost, the school district shall not also allocate that cost as a direct support cost or indirect cost.

(c) For purposes of this section, an "indirect cost" shall be limited to the lesser of the school district's prior year indirect cost rate as approved by the department or the statewide average approved indirect cost for the second prior fiscal year.

(d) Charges to, or transfers from, a food service program shall indicate when the charge or transfer was made and shall be accompanied by a written explanation of the purpose of, and basis for, the expenditure.

(e) This section does not authorize a school district to charge a food service program any charges prohibited by state or federal law or regulation.

(f) If the department and the Department of Finance concur that a school district has violated this section, the Superintendent shall direct

that school district to transfer double the amount improperly transferred to the general fund of the school district from that fund to the cafeteria fund of the school district or cafeteria account for the subsequent fiscal year which is then to be used for the improvement of the food service program of the school district. If the school district fails to make that transfer as directed, the Superintendent shall reduce the regular apportionment of the school district determined pursuant to Section 42238 and increase the child nutrition allowance of the school district determined pursuant to Section 41350 by double the amount improperly transferred to the general fund of the school district and that amount is then to be used for improvement of the food service program.

(g) It is the intent of the Legislature in enacting this section that responsible school district officials be held fully accountable for the accounting and reporting of food service programs and that minor and inadvertent instances of noncompliance be resolved in a fair and equitable manner to the satisfaction of the Superintendent and the Department of Finance.

(h) The Superintendent, with the approval of the Department of Finance, may waive up to the full transfer amount in subdivision (f) if he or she determines that the noncompliance involved is minor or inadvertent, or both.

SEC. 9.5. Section 41020 of the Education Code is amended to read:

41020. (a) It is the intent of the Legislature to encourage sound fiscal management practices among local educational agencies for the most efficient and effective use of public funds for the education of children in California by strengthening fiscal accountability at the district, county, and state levels.

(b) (1) Not later than the first day of May of each fiscal year, each county superintendent of schools shall provide for an audit of all funds under his or her jurisdiction and control and the governing board of each local educational agency shall either provide for an audit of the books and accounts of the local educational agency, including an audit of income and expenditures by source of funds, or make arrangements with the county superintendent of schools having jurisdiction over the local educational agency to provide for that auditing.

(2) A contract to perform the audit of a local educational agency that has a disapproved budget or has received a negative certification on any budget or interim financial report during the current fiscal year or either of the two preceding fiscal years, or for which the county superintendent of schools has otherwise determined that a lack of going concern exists, is not valid unless approved by the responsible county superintendent of schools and the governing board.

(3) If the governing board of a local educational agency has not provided for an audit of the books and accounts of the local educational agency by April 1, the county superintendent of schools having jurisdiction over the local educational agency shall provide for the audit of each local educational agency.

(4) An audit conducted pursuant to this section shall fully comply with the Government Auditing Standards issued by the Comptroller General of the United States.

(5) For purposes of this section, "local educational agency" does not include community colleges.

(c) Each audit conducted in accordance with this section shall include all funds of the local educational agency, including the student body and cafeteria funds and accounts and any other funds under the control or jurisdiction of the local educational agency. Each audit shall also include an audit of pupil attendance procedures.

(d) All audit reports for each fiscal year shall be developed and reported using a format established by the Controller after consultation with the Superintendent and the Director of Finance.

(e) (1) The cost of the audits provided for by the county superintendent of schools shall be paid from the county school service fund and the county superintendent of schools shall transfer the pro rata share of the cost chargeable to each district from district funds.

(2) The cost of the audit provided for by a governing board shall be paid from local educational agency funds. The audit of the funds under the jurisdiction and control of the county superintendent of schools shall be paid from the county school service fund.

(f) (1) The audits shall be made by a certified public accountant or a public accountant, licensed by the California Board of Accountancy, and selected by the local educational agency, as applicable, from a directory of certified public accountants and public accountants deemed by the Controller as qualified to conduct audits of local educational agencies, which shall be published by the Controller not later than December 31 of each year.

(2) Commencing with the 2003-04 fiscal year and except as provided in subdivision (d) of Section 41320.1, it is unlawful for a public accounting firm to provide audit services to a local educational agency if the lead audit partner, or coordinating audit partner, having primary responsibility for the audit, or the audit partner responsible for reviewing the audit, has performed audit services for that local educational agency in each of the six previous fiscal years. The Education Audits Appeal Panel may waive this requirement if the panel finds that no otherwise eligible auditor is available to perform the audit.

(3) It is the intent of the Legislature that, notwithstanding paragraph (2) of this subdivision, the rotation within public accounting firms conform to provisions of the federal Sarbanes-Oxley Act of 2002 (P.L. 107-204; 15 U.S.C. Sec. 7201 et seq.), and upon release of the report required by the act of the Comptroller General of the United States addressing the mandatory rotation of registered public accounting firms, the Legislature intends to reconsider the provisions of paragraph (2). In determining which certified public accountants and public accountants shall be included in the directory, the Controller shall use the following criteria:

(A) The certified public accountants or public accountants shall be in good standing as certified by the Board of Accountancy.

(B) The certified public accountants or public accountants, as a result of a quality control review conducted by the Controller pursuant to Section 14504.2, shall not have been found to have conducted an audit in a manner constituting noncompliance with subdivision (a) of Section 14503.

(g) (1) The auditor's report shall include each of the following:

(A) A statement that the audit was conducted pursuant to standards and procedures developed in accordance with Chapter 3 (commencing with Section 14500) of Part 9 of Division 1 of Title 1.

(B) A summary of audit exceptions and management improvement recommendations.

(C) Each audit of a local educational agency shall include an evaluation by the auditor on whether there is substantial doubt about the ability of the local educational agency to continue as a going concern for a reasonable period of time. This evaluation shall be based on the Statement of Auditing Standards (SAS) No. 59, as issued by the AICPA regarding disclosure requirements relating to the ability of the entity to continue as a going concern.

(2) To the extent possible, a description of correction or plan of correction shall be incorporated in the audit report, describing the specific actions that are planned to be taken, or that have been taken, to correct the problem identified by the auditor. The descriptions of specific actions to be taken or that have been taken shall not solely consist of general comments such as "will implement," "accepted the recommendation," or "will discuss at a later date."

(h) Not later than December 15, a report of each local educational agency audit for the preceding fiscal year shall be filed with the county superintendent of schools of the county in which the local educational agency is located, the department, and the Controller. The Superintendent shall make any adjustments necessary in future apportionments of all

state funds, to correct any audit exceptions revealed by those audit reports.

(i) (1) Commencing with the 2002-03 audit of local educational agencies pursuant to this section, each county superintendent of schools shall be responsible for reviewing the audit exceptions contained in an audit of a local educational agency under his or her jurisdiction related to attendance, inventory of equipment, internal control, and any miscellaneous items, and determining whether the exceptions have been either corrected or an acceptable plan of correction has been developed.

(2) Commencing with the 2004-05 audit of local educational agencies pursuant to this section, each county superintendent of schools shall include in the review of audit exceptions performed pursuant to this subdivision those audit exceptions related to use of instructional materials program funds, teacher misassignments pursuant to Section 44258.9, information reported on the school accountability report card required pursuant to Section 33126 and shall determine whether the exceptions are either corrected or an acceptable plan of correction has been developed.

(j) Upon submission of the final audit report to the governing board of each local educational agency and subsequent receipt of the audit by the county superintendent of schools having jurisdiction over the local educational agency, the county office of education shall do all of the following:

(1) Review audit exceptions related to attendance, inventory of equipment, internal control, and other miscellaneous exceptions. Attendance exceptions or issues shall include, but not be limited to, those related to revenue limits, adult education, and independent study.

(2) If a description of the correction or plan of correction has not been provided as part of the audit required by this section, then the county superintendent of schools shall notify the local educational agency and request the governing board of the local educational agency to provide to the county superintendent of schools a description of the corrections or plan of correction by March 15.

(3) Review the description of correction or plan of correction and determine its adequacy. If the description of the correction or plan of correction is not adequate, the county superintendent of schools shall require the local educational agency to resubmit that portion of its response that is inadequate.

(k) Each county superintendent of schools shall certify to the Superintendent and the Controller, not later than May 15, that his or her staff has reviewed all audits of local educational agencies under his or her jurisdiction for the prior fiscal year, that all exceptions that the county superintendent was required to review were reviewed, and that all of

those exceptions, except as otherwise noted in the certification, have been corrected by the local educational agency or that an acceptable plan of correction has been submitted to the county superintendent of schools. In addition, the county superintendent shall identify, by local educational agency, any attendance-related audit exception or exceptions involving state funds, and require the local educational agency to which the audit exceptions were directed to submit appropriate reporting forms for processing by the Superintendent.

(l) In the audit of a local educational agency for a subsequent year, the auditor shall review the correction or plan or plans of correction submitted by the local educational agency to determine if the exceptions have been resolved. If not, the auditor shall immediately notify the appropriate county office of education and the department and restate the exception in the audit report. After receiving that notification, the department shall either consult with the local educational agency to resolve the exception or require the county superintendent of schools to follow up with the local educational agency.

(m) (1) The Superintendent shall be responsible for ensuring that local educational agencies have either corrected or developed plans of correction for any one or more of the following:

(A) All federal and state compliance audit exceptions identified in the audit.

(B) Any exceptions that the county superintendent certifies as of May 15 have not been corrected.

(C) Any repeat audit exceptions that are not assigned to a county superintendent to correct.

(2) In addition, the Superintendent shall be responsible for ensuring that county superintendents of schools and each county board of education that serves as the governing board of a local educational agency either correct all audit exceptions identified in the audits of county superintendents of schools and of the local educational agencies for which the county boards of education serve as the governing boards or develop acceptable plans of correction for those exceptions.

(3) The Superintendent shall report annually to the Controller on his or her actions to ensure that school districts, county superintendents of schools, and each county board of education that serves as the governing board of a school district have either corrected or developed plans of correction for any of the exceptions noted pursuant to paragraph (1).

(n) To facilitate correction of the exceptions identified by the audits issued pursuant to this section, commencing with 2002-03 audits pursuant to this section, the Controller shall require auditors to categorize audit exceptions in each audit report in a manner that will make it clear to both the county superintendent of schools and the Superintendent which

exceptions they are responsible for ensuring the correction of by a local educational agency. In addition, the Controller annually shall select a sampling of county superintendents of schools and perform a followup of the audit resolution process of those county superintendents of schools and report the results of that followup to the Superintendent and the county superintendents of schools that were reviewed.

(o) County superintendents of schools shall adjust subsequent local property tax requirements to correct audit exceptions relating to local educational agency tax rates and tax revenues.

(p) If a governing board or county superintendent of schools fails or is unable to make satisfactory arrangements for the audit pursuant to this section, the Controller shall make arrangements for the audit and the cost of the audit shall be paid from local educational agency funds or the county school service fund, as the case may be.

(q) Audits of regional occupational centers and programs are subject to the provisions of this section.

(r) This section does not authorize examination of, or reports on, the curriculum used or provided for in any local educational agency.

(s) Notwithstanding any other provision of law, a nonauditing, management, or other consulting service to be provided to a local educational agency by a certified public accounting firm while the certified public accounting firm is performing an audit of the agency pursuant to this section must be in accord with Government Accounting Standards, Amendment No. 3, as published by the United States General Accounting Office.

SEC. 10. Section 41327.2 of the Education Code is amended 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 42131. 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. 11. Section 41344 of the Education Code is amended to read:

41344. (a) If, as the result of an audit or review, a local educational agency is required to repay an apportionment significant audit exception or to pay a penalty arising from an audit exception, the Superintendent and the Director of Finance, or their designees, shall jointly establish a plan for repayment of state school funds that the local educational agency received on the basis of average daily attendance, or other data, that did not comply with statutory or regulatory requirements that were conditions of the apportionments, or for payment of a penalty arising from an audit exception. A local educational agency shall request a plan within 90 days of receiving the final audit report or review, within 30 days of withdrawing or receiving a final determination regarding an appeal pursuant to subdivision (d), or, in the absence of an appeal pursuant to subdivision (d), within 30 days of withdrawing or receiving a determination of a summary review pursuant to subdivision (d) of Section 41344.1. At the time the local educational agency is notified, the Controller shall also be notified of the plan. The plan shall be established in accordance with the following:

(1) The Controller shall withhold the disallowed or penalty amount at the next principal apportionment or pursuant to paragraph (2), unless subdivision (d) of this section or subdivision (d) of Section 41344.1 applies, in which case the disallowed or penalty amount shall be withheld, at the next principal apportionment or pursuant to paragraph (2) following the determination regarding the appeal or summary appeal. In calculating a disallowed amount, the Controller shall determine the total amount of overpayment received by the local educational agency on the basis of average daily attendance, or other data, reported by the local educational agency that did not comply with one or more statutory or regulatory requirements that are conditions of apportionment.

(2) If the Superintendent and the Director of the Department of Finance concur that repayment of the full liability or payment of the penalty in the current fiscal year would constitute a severe financial hardship for the local agency, they may approve a plan of equal annual payments over a period of up to eight years. The plan shall include interest on each year's outstanding balance at the rate earned on the state's Pooled Money Investment Account during that year. The Superintendent and the Director of the Department of Finance shall jointly establish this plan. The Controller shall withhold amounts pursuant to the plan.

(3) If the Superintendent and the Director of the Department of Finance do not jointly establish a plan, the Controller shall withhold the entire disallowed amount determined pursuant to paragraph (1), or the penalty amount, at the next principal apportionment.

(b) (1) For purposes of computing average daily attendance pursuant to Section 42238.5, a local educational agency's prior fiscal year average daily attendance shall be reduced by an amount equal to any average daily attendance disallowed in the current year, by an audit or review, as defined in subdivision (e).

(2) Commencing with the 1999-2000 fiscal year, this subdivision may not result in a local educational agency repaying more than the value of the average daily attendance disallowed in the audit exception plus interest and other penalties or reductions in apportionments as provided by existing law.

(c) Notwithstanding any other provision of law, this section may not be waived under any authority set forth in this code except as provided in this section or Section 41344.1.

(d) Within 60 days of the date on which a local educational agency receives a final audit report resulting from an audit or review of all or any part of the operations of the local educational agency, or within 30 days of receiving a determination of a summary review pursuant to subdivision (d) of Section 41344.1, a local educational agency may appeal a finding contained in the final report, pursuant to Section 41344.1. Within 90 days of the date on which the appeal is received by the panel, a hearing shall be held at which the local educational agency may present evidence or arguments if the local educational agency believes that the final report contains any finding that was based on errors of fact or interpretation of law, or if the local educational agency believes in good faith that it was in substantial compliance with all legal requirements. A repayment schedule may not commence until the panel reaches a determination regarding the appeal. If the panel determines that the local educational agency is correct in its assertion, in whole or in part, the allowable portion of any apportionment payment that was withheld shall be paid at the next principal apportionment.

(e) As used in this section, "audit or review" means an audit conducted by the Controller's office, an annual audit conducted by a certified public accountant or a public accounting firm pursuant to Section 41020, and an audit or review conducted by a governmental agency that provided the local educational agency with an opportunity to provide a written response.

SEC. 12. Section 41344.1 of the Education Code is amended to read:
41344.1. (a) The Education Audit Appeals Panel is hereby established as a separate state agency. Its membership shall consist of

the Superintendent, the Director of the Department of Finance, and the Chief Executive Officer of the Fiscal Crisis and Management Assistance Team established pursuant to Section 42127.8 or their designees. The panel shall have the authority to expend funds, hire staff, make contracts, sue and be sued, and issue regulations in furtherance of its duties.

(b) The panel shall hear appeals filed pursuant to subdivision (d) of Section 41344. The Controller shall be a party to all appeals. The department and the Department of Finance may, at their election, timely intervene as a party in any appeal. The panel shall consider audit appeals pursuant to the administrative adjudication provisions of the Administrative Procedure Act (Chapter 4.5 (commencing with Section 11400) and Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code), except that it may adopt regulations specifying special pleadings that shall govern audit appeals. The panel may approve settlements and make findings of fact and interpretations of law.

(c) Compliance with all legal requirements is a condition to the state's obligation to make apportionments. A condition may be deemed satisfied if the panel finds there has been compliance or substantial compliance with all legal requirements. "Substantial compliance" means nearly complete satisfaction of all material requirements of a funding program that provide an educational benefit substantially consistent with the program's purpose. A minor or inadvertent noncompliance may be grounds for a finding of substantial compliance provided that the local educational agency can demonstrate it acted in good faith to comply with the conditions established in law or regulation necessary for apportionment of funding. The panel may further define "substantial compliance" by issuing regulations or through adjudicative opinions, or both. If the panel finds there has been substantial compliance, the panel may waive or reduce the reimbursement or penalty amount and may also order other remedial measures sufficient to induce full compliance in the future. Other remedial measures may include restoration of a reduction or penalty amount if full compliance is not rendered in the future, ordering special audits, and requiring special training.

(d) In addition to the normal appeal process specified above, there is hereby created a voluntary, informal, summary appeals process for noncompliant audit exceptions that clearly constitute substantial compliance as that term is defined in subdivision (c). Requests for summary review shall be made to the executive officer of the panel who may seek comment from the Department of Finance or Superintendent. Summary review shall be sought within 30 days of the date on which a local educational agency receives a final audit report resulting from an audit or review.

(1) If the executive officer concludes the conditions for finding substantial compliance are not clearly met or involve substantial questions of fact, the executive officer may deny the request for summary review and the appellant may pursue its claim through the normal appeal process.

(2) For appeals in which the total audit exceptions for full repayment or penalty constitute less than 150 units of average daily attendance or seven hundred fifty thousand dollars (\$750,000), whichever is less, the executive officer may waive or reduce the reimbursement or penalty upon a finding of substantial compliance and that other remedial measures are sufficient to induce full compliance in the future.

(3) For appeals in which the total audit exceptions for full repayment or penalty meet or exceed 150 units of average daily attendance or seven hundred fifty thousand dollars (\$750,000), whichever is greater, the executive officer may waive or reduce the reimbursement or penalty upon a finding of substantial compliance and order other remedial measures that are sufficient to induce full compliance in the future, if he or she has the written approval of the Department of Finance and the Superintendent. The executive officer shall provide the details of the proposed settlement and the rationale in writing to the Department of Finance and Superintendent and allow at least 30 days for their review.

(4) The right to appeal pursuant to subdivision (d) of Section 41344 is independent of this subdivision and an appellant may pursue his or her appeal under subdivision (b) regardless of the result under this subdivision. A local educational agency that has unresolved audit appeals pursuant to subdivision (d) of Section 41344 pending on January 1, 2003, may file a request for summary review under this subdivision for a period of 60 days after January 1, 2003.

SEC. 13. Section 41402 of the Education Code is amended to read:
41402. The maximum ratios of administrative employees to each 100 teachers in the various types of school districts shall be as follows:

- (a) In elementary school districts—9.
- (b) In unified school districts—8.
- (c) In high school districts—7.

This section shall not apply to a school district that has one or fewer administrators.

SEC. 14. Section 41511 of the Education Code is amended to read:
41511. Funding for the school safety consolidated competitive grant shall include the funding previously apportioned to school districts for carrying out the purposes of the following programs:

(a) Safe school planning and partnership minigrants, as funded pursuant to Item 6110-226-0001 of Section 2.00 of the annual Budget Act.

(b) School community policing as set forth in Article 6 (commencing with Section 32296) of Chapter 2.5 of Part 19.

(c) Gang-risk intervention as set forth in Chapter 5.5 (commencing with Section 58730) of Part 31.

(d) Safety plans for new schools, as funded pursuant to Item 6110-228-0001 of Section 2.00 of the annual Budget Act. Grant funds distributed to a school district in order to carry out the purpose of this subdivision are offsetting revenues within the meaning of subdivision (e) of Section 17556 of the Government Code for any reimbursable mandated cost claim for the development of school safety plans as required by Section 32281 of the Education Code. A school district that accepts funds in order to carry out the purpose of this subdivision shall reduce its estimated and actual mandate reimbursement claim by the amount of funding provided to it in order to carry out the purposes of this subdivision.

(e) School community violence prevention, as funded pursuant to Item 6110-228-0001 of Section 2.00 of the annual Budget Act.

(f) Conflict resolution, as funded pursuant to Item 6110-228-0001 of Section 2.00 of the annual Budget Act.

SEC. 15. Section 41521 of the Education Code is amended to read:

41521. (a) The teacher credentialing block grant shall include funding previously apportioned to school districts for purposes of beginning teacher support and assessment as set forth in Article 4.5 (commencing with Section 44279.1) of Chapter 2 of Part 25.

(b) For purposes of issuing teaching credentials, certificates, or other authorizations, the Commission on Teacher Credentialing shall approve the programs described by subdivision (a). To ensure the Superintendent has the requisite information to allocate funding based on the number of participating credential candidates pursuant to this article, the commission shall inform the Superintendent on an ongoing basis of the approval status of these programs and numbers of participating candidates in each approved program.

SEC. 16. Section 41530 of the Education Code is amended to read:

41530. (a) There is hereby established the professional development block grant. Commencing with the 2005-06 fiscal year, the Superintendent shall apportion block grant funds to a school district based on the number of certificated teachers employed by the school district in the immediately prior fiscal year.

(b) A school district may expend funds received pursuant to this article for any purpose authorized by the programs listed in Section 41531, as the statutes governing those programs read on January 1, 2004.

(c) For purposes of this article, "school district" includes a county office of education if county offices of education are eligible to receive

funds for the programs that are listed in Section 41531. The block grant of a county office of education shall be based only on those programs for which it was eligible to receive funds in the 2003-04 fiscal year.

SEC. 17. Section 41976 of the Education Code is amended to read:

41976. (a) For purposes of this chapter, the following classes and courses are authorized to be offered by school districts and county superintendents of schools for apportionment purposes from the adult education fund:

(1) Adult programs in parenting, including parent cooperative preschools, and classes in child growth and development, parent-child relationships, and parenting.

(2) Adult programs in elementary and secondary basic skills and other courses and classes required for the high school diploma. Apportionments for these courses and classes may only be generated by students who do not possess a high school diploma, except for remedial academic courses or classes in reading, mathematics, and language arts.

(3) Adult education programs in English as a second language.

(4) Adult education programs for immigrants eligible for educational services in citizenship, English as a second language, and workforce preparation classes in the basic skills of speaking, listening, reading, writing, mathematics, decisionmaking and problem solving skills, and other classes required for preparation to participate in job specific technical training.

(5) Adult education programs for adults with disabilities.

(6) Adult short-term career technical education programs with high employment potential. Any reference to "vocational" education or programs in adult education means "career technical" education or programs in adult education.

(7) Adult programs for older adults.

(8) Adult education programs for apprentices.

(9) Adult programs in home economics.

(10) Adult programs in health and safety education.

(b) No state apportionment shall be made for any course or class which is not set forth in subdivision (a).

SEC. 18. Section 41976.5 of the Education Code is amended to read:

41976.5. (a) Each school district or county superintendent of schools providing services in summer school programs for adults with disabilities in the 1977-78 school year shall continue in the 1980-81 fiscal year and each fiscal year thereafter to offer these programs.

(b) A school district or county superintendent of schools receiving apportionments from Section A of the State School Fund shall offer summer programs for graduating high school seniors in need of courses for graduation.

SEC. 19. 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. In addition, if the adopted budget is disapproved pursuant to subdivision (d), the governing board and the county superintendent of schools shall review the disapproval and the recommendations of the county superintendent of schools regarding revision of the budget at the public hearing. 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 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 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 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. 20. Section 42132 of the Education Code is amended to read:

42132. On or before September 15 of each year, the governing board of each school district shall adopt a resolution to identify, pursuant to Division 9 (commencing with Section 7900) of Title 1 of the Government Code, the estimated appropriations limit for the district for the current fiscal year and the actual appropriations limit for the district for the preceding fiscal year. That resolution shall be adopted at a regular or special meeting of the governing board. Notwithstanding Section 7910 of the Government Code, documentation used in the identification of the appropriations limits shall be made available to the public on the date of the meeting.

SEC. 21. Section 42282 of the Education Code is amended to read:

42282. For each district with fewer than 2,501 units of second principal apportionment average daily attendance, on account of each necessary small school, the county superintendent shall make the following computations:

(a) For each necessary small school which has an average daily attendance during the fiscal year of less than 26, exclusive of pupils attending the 7th and 8th grades of a junior high school, and for which school at least one teacher was hired full time, the county superintendent shall compute for the district fifty-two thousand nine hundred twenty-five dollars (\$52,925).

(b) For each necessary small school which has an average daily attendance during the fiscal year of 26 or more and less than 51, exclusive of pupils attending the 7th and 8th grades of a junior high school, and for which school at least two teachers were hired full time for more than one-half of the days schools were maintained, the county superintendent shall compute for the district one hundred five thousand eight hundred fifty dollars (\$105,850).

(c) For each necessary small school which has an average daily attendance during the fiscal year of 51 or more but less than 76, exclusive

of pupils attending the 7th and 8th grades of a junior high school, and for which school three teachers were hired full time for more than one-half of the days schools were maintained, the county superintendent shall compute for the district one hundred fifty-eight thousand seven hundred seventy-five dollars (\$158,775).

(d) For each necessary small school which has an average daily attendance during the fiscal year of 76 or more and less than 101, exclusive of pupils attending the 7th and 8th grades of a junior high school, and for which school four teachers were hired full time for more than one-half of the days schools were maintained, the county superintendent shall compute for the district two hundred eleven thousand seven hundred dollars (\$211,700). These school districts may use this funding calculation until the revenue limit per unit of average daily attendance multiplied by the average daily attendance produces state aid equal to the small school funding formula.

(e) For the 1998-99 fiscal year and each fiscal year thereafter, the ranges of average daily attendance specified in subdivisions (a) to (d), inclusive, shall be reduced by the statewide average rate of excused absence reported for elementary school districts for the 1996-97 fiscal year pursuant to Section 42238.7, with the resultant figures and ranges rounded to the nearest integer.

SEC. 22. Section 42282.1 of the Education Code is amended to read:

42282.1. (a) Notwithstanding Section 42282, or any other provision of law, each necessary small school in the Death Valley Unified School District shall qualify for the apportionment specified in subdivision (b) of Section 42282 if that school has an average daily attendance of 21 or more and less than 51, exclusive of pupils attending the 7th and 8th grades of a junior high school, and for which school at least two teachers were hired full-time for more than one-half of the days schools were maintained.

(b) It is the intent of the Legislature not to provide a special allowance to the Death Valley Unified School District for one of its schools by future legislation if the average daily attendance at the school is 18 or less.

SEC. 23. Section 42285 of the Education Code is amended to read:

42285. (a) A necessary small high school for the purposes of Section 42284, is a high school with an average daily attendance of less than 301, excluding continuation schools, which comes within any of the following conditions (except that a single high school maintained by a unified district, or a high school maintained by any district for the exclusive purpose of educating juvenile hall pupils or pupils with exceptional needs, shall be considered a necessary small high school):

(1) The projection of its future enrollment on the basis of the enrollment of the elementary schools in the district shows that within eight years the enrollment in high school in grades 9 to 12, inclusive, will exceed 300 pupils.

(2) Any one of the following combinations of distance and units of average daily attendance applies:

(A) The high school had an average daily attendance of less than 100 in grades 9 to 12, inclusive, during the preceding fiscal year and is more than 15 miles by well-traveled road from the nearest other public high school and either 90 percent of the pupils would be required to travel 20 miles or 25 percent of the pupils would be required to travel 30 miles one way from a point on a well-traveled road nearest their homes to the nearest other public high school.

(B) The high school had an average daily attendance of 100 or more and less than 150 in grades 9 to 12, inclusive, during the preceding fiscal year and is more than 10 miles by well-traveled road from the nearest other public high school and either 90 percent of the pupils would be required to travel 18 miles or 25 percent of the pupils would be required to travel 25 miles one way from a point on a well-traveled road nearest their homes to the nearest other public high school.

(C) The high school had an average daily attendance of 150 or more and less than 200 in grades 9 to 12, inclusive, during the preceding fiscal year and is more than 7½ miles by well-traveled road from the nearest other public high school and either 90 percent of the pupils would be required to travel 15 miles or 25 percent of the pupils would be required to travel 20 miles one way from a point on a well-traveled road nearest their homes to the nearest other public high school.

(D) The high school had an average daily attendance of 200 or more and less than 301 in grades 9 to 12, inclusive, during the preceding fiscal year and is more than five miles by well-traveled road from the nearest other public high school and either 90 percent of the pupils would be required to travel 10 miles or 25 percent of the pupils would be required to travel 15 miles to the nearest other public high school.

(3) Topographical or other conditions exist in the district which would impose unusual hardships on the pupils if the number of miles specified above were required to be traveled. In these cases, the Superintendent may, when requested, and after investigation, grant exceptions from the distance requirements.

(4) The Superintendent has approved the recommendation of a county committee on school district organization designating one of two or more schools as necessary isolated schools in a situation where the schools are operated by two or more districts and the average daily attendance of each of the schools is less than 301 in grades 9 to 12, inclusive.

(b) For the 1998-99 fiscal year and each fiscal year thereafter, the high school and junior high school average daily attendance figures specified in subdivision (a) and the ranges of average daily attendance specified in paragraph (2) of subdivision (a) shall be reduced by the statewide average rate of excused absence reported for high school districts for the 1996-97 fiscal year pursuant to Section 42238.7, with the resultant figures and ranges rounded to the nearest integer.

SEC. 23.5. Section 42285.2 of the Education Code is amended to read:

42285.2. (a) Notwithstanding any other provision of law, the Coachella Valley Unified School District is eligible to receive apportionments for the Sea View Elementary School and for the West Shores High School pursuant to the schedule for necessary small high schools set forth in Section 42284.

(b) If the amount of average daily attendance of either school exceeds 286, that school district shall no longer be entitled to receive apportionments as set forth in this section.

(c) Notwithstanding any other provision of law, the Coachella Valley Unified School District shall remain eligible to receive apportionments described in subdivision (a) until June 30, 2006, pursuant to Section 42286, at the end of which time the department shall review the average daily attendance numbers of each school described in subdivision (a) to determine whether the Coachella Valley Unified School District qualifies for continued funding as described in subdivision (a). If the department determines that either the Sea View Elementary School or the West Shores High School, or both, qualifies for continued funding as described in subdivision (a), the Coachella Valley Unified School District shall remain eligible to receive apportionments, as described in subdivision (a), for the school that remains entitled to receive apportionments, or for both schools if both remain entitled to receive apportionments. Funding for one school, or for both schools, if applicable, shall continue in two-year increments, commencing on July 1, 2006, with a review of attendance numbers and a determination of eligibility for each school by the department every two years, commencing July 1, 2008.

SEC. 24. Section 42285.4 is added to the Education Code, to read:

42285.4. Notwithstanding any other provision of law, the River Delta Unified School District is eligible to receive apportionments pursuant to the schedule and criteria for small necessary high schools set forth in Section 42284 if the school district has no more than 3,000 units of average daily attendance.

SEC. 25. Section 44225.6 of the Education Code is amended to read:

44225.6. (a) By April 15 of each year, the commission shall report to the Legislature and the Governor on the availability of teachers in California. This report shall include the following information:

(1) The number of individuals recommended for credentials by institutions of higher education and the type of credential or certificate, or both, for which they were recommended, including certificates issued pursuant to Sections 44253.3 and 44253.4.

(2) The number of individuals recommended by school districts operating district internship programs and the type of credential or certificate, or both, for which they were recommended, including certificates issued pursuant to Sections 44253.3 and 44253.4.

(3) The number of individuals receiving an initial credential based on a program completed outside of California and the type of credential or certificate, or both, for which they were recommended, including certificates issued pursuant to Sections 44253.3 and 44253.4.

(4) The number of individuals receiving an emergency permit, credential waiver, or other authorization that does not meet the definition of a highly qualified teacher under the federal No Child Left Behind Act of 2001 (20 U.S.C. Sec. 6301 et seq.).

(5) The number of individuals receiving the certificate of completion of staff development in methods of specially designed content instruction delivered in English pursuant to subdivision (d) of Section 44253.10.

(6) Statewide, by county, and by school district, the number of individuals serving in the following capacities and as a percentage of the total number of individuals serving as teachers statewide, in the county, and in the school district:

(A) University internship.

(B) District internship.

(C) Preinternship.

(D) Emergency permit.

(E) Credential waiver.

(F) Preliminary or professional clear credential.

(G) An authorization, other than those listed in this paragraph, that does not meet the definition of a highly qualified teacher under the federal No Child Left Behind Act of 2001 (20 U.S.C. Sec. 6301 et seq.) by category of authorization.

(H) Certificate issued pursuant to Section 44253.3.

(I) Certificates issued pursuant to Section 44253.3, 44253.4, or 44253.10, if available.

(J) The number of individuals serving English learner pupils in settings calling for English language development, in settings calling for specially designed academic instruction in English, or in primary language instruction, without the appropriate authorization under Section 44253.3,

44253.4, or 44253.10, or under another statute, if available. The Commission on Teacher Credentialing may utilize data from the department's Annual Language Census Survey to report the data required pursuant to this paragraph.

(7) The specific subjects and teaching areas in which there are a sufficient number of new holders of credentials to fill the positions currently held by individuals with emergency permits.

(b) The commission shall make this report available to school districts and county offices of education to assist them in the recruitment of credentialed teachers and shall make the report and supporting data publicly available on the commission's Web site.

(c) A common measure of whether teacher preparation programs are meeting the challenge of preparing increasing numbers of new teachers is the number of teaching credentials awarded. The number of teaching credentials recommended by these programs and awarded by the commission are indicators of the productivity of teacher preparation programs. The commission shall include in the report prepared for the Legislature and Governor pursuant to subdivision (a) the total number of teaching credentials recommended by all accredited teacher preparation programs authorized by the commission and the number recommended by each of the following:

- (1) The University of California system.
- (2) The California State University system.
- (3) Independent colleges and universities that offer teacher preparation programs approved by the commission.
- (4) Other institutions that offer teacher preparation programs approved by the commission.

SEC. 26. Section 44252.1 of the Education Code is amended to read:

44252.1. (a) It is the intent of the Legislature that a credential candidate enrolled in a credential preparation program receive reasonable time to complete the program without meeting new requirements, including, but not limited to, requirements added by statutes, regulations, or commission standards, after the candidate's enrollment in the program. Further, to ensure that all candidates for a credential receive reasonable information and advice as they proceed through their program, the Legislature finds and declares that it is incumbent upon credential preparation programs to inform candidates of new requirements and extension provisions available to eligible candidates.

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

- (1) "Enrolled" refers to an individual who, on or after January 1, 2002, continuously participates in and is working toward completing the requirements for a program that meets the minimum requirements for a

California preliminary multiple or single subject teaching credential as specified in Section 44259. Whether an individual is enrolled shall be subject to verification by the Commission on Teacher Credentialing.

(2) "Continuously enrolled" refers to an individual who has begun a teacher preparation program and does not have a break in that participation that exceeds a period of 18 months.

(c) The commission shall adopt regulations to provide a credential candidate enrolled in a commission-accredited preparation program, including, but not limited to, an internship program as defined in Article 7.5 (commencing with Section 44325) and Article 3 (commencing with Section 44450), a professional preparation program as defined in Article 7 (commencing with Section 44320), or an integrated program of professional preparation as defined in Section 44259.1 with a grace period to complete the program without meeting new requirements, including, but not limited to, requirements added by statutes, regulations, or commission standards, after the candidate's enrollment in the program. The commission shall also ensure through standards and accreditation procedures that credential preparation programs provide credential candidates with information about new requirements and extension provisions as outlined in this subdivision and subdivisions (d) and (e).

(1) The commission shall adopt regulations that provide a credential candidate enrolled in a commission-accredited preparation program time of not less than 24 months after enrollment in the program, during which time new or amended statutes, regulations, and commission standards that become effective and are imposed on credential candidates after the candidate's enrollment date shall not apply to that candidate.

(2) The commission shall allow a credential candidate an extension of time in addition to the time specified pursuant to paragraph (1) to complete a credential program under the statutes, regulations, and commission standards in place at the time of the candidate's enrollment if the candidate can demonstrate extenuating circumstances, including, but not limited to, personal or family illness, bereavement, or financial hardship and develops a plan, in consultation with the credential preparation program, for continued progress toward completion of the preparation program.

(d) The commission shall maintain a list of candidates who are allowed an extended time period to complete the program under the statutes, regulations, and commission standards in place at the time of the candidates' enrollment prior to the effective date of a new or amended statute, regulation, or standard. This list shall include the projected date of program completion for each candidate.

(e) (1) A credential candidate enrolled in an integrated program of professional preparation pursuant to subdivision (a) of Section 44259.1

is not subject to any new requirements added by statute, regulation, or commission standards if that candidate is continuously enrolled in the program, as defined in paragraph (2) of subdivision (b), and does not change the type of credential or program he or she is pursuing once enrolled.

(2) A credential candidate continuously enrolled in an integrated program of professional preparation pursuant to subdivision (a) of Section 44259.1 who has completed all requirements necessary to begin the student teaching component of his or her program shall be eligible to receive an extension of 12 months, if necessary, to complete the outstanding requirements that were in place when that credential candidate began the preparation program, and shall not be subject to any new requirements added by statute, regulation, or commission standards, once that candidate begins the student teaching portion of his or her program.

(3) This subdivision does not limit the ability of a candidate to seek additional time to complete a credential pursuant to paragraph (2) of subdivision (c).

(4) By June 30, 2004, the commission shall report to the education policy committees in each house of the Legislature on the success of the integrated program of professional development pursuant to Section 44259.1 toward preparing teacher candidates, including, but not limited to, the number of students admitted to the teacher education component in each program, the number of students who have completed all course requirements, including student teaching, and who have applied for a credential, the number of students applying for and receiving an extension pursuant to subdivision (e), and the information collected pursuant to subdivision (d).

(f) This section does not supersede subdivision (h) of Section 44259.

(g) A modification of a credentialing examination by the commission that is made as the result of a validity study or a passing standard study shall not be considered a new requirement for purposes of this section.

(h) If credential preparation coursework that a credential candidate has not yet taken is modified, the candidate shall take the modified coursework instead of the previously required coursework unless the modified coursework is not readily available, the modified coursework would result in an increased cost to the candidate, or completion of the modified coursework would delay the candidate's completion of the credential preparation program.

(i) Once a candidate has received a preliminary California teaching credential pursuant to Section 44259 and is employed as the teacher of record in a California public school, the candidate shall not be subject to any new requirements for completing the induction phase required to

obtain the professional clear teaching credential pursuant to Section 44279.4, for a period not to exceed the length of time provided for the preliminary teaching credential pursuant to Section 44251.

SEC. 26.5. Section 44258.9 of the Education Code is amended to read:

44258.9. (a) The Legislature finds that continued monitoring of teacher assignments by county superintendents of schools will ensure that the rate of teacher misassignment remains low. To the extent possible and with funds provided for that purpose, each county superintendent of schools shall perform the duties specified in subdivisions (b) and (c).

(b) (1) Each county superintendent of schools shall monitor and review school district certificated employee assignment practices in accordance with the following:

(A) Annually monitor and review schools and school districts that are likely to have problems with teacher misassignments and teacher vacancies, as defined in subparagraphs (A) and (B) of paragraph (5) of subdivision (b) of Section 33126, based on past experience or other available information.

(B) Annually monitor and review schools ranked in deciles 1 to 3, inclusive, of the 2003 base Academic Performance Index, as defined in subdivision (b) of Section 17592.70, if those schools are not currently under review through a state or federal intervention program. If a review completed pursuant to this subparagraph finds that a school has no teacher misassignments or teacher vacancies for two consecutive years, the next review of that school may be conducted according to the cycle specified in subparagraph (C), unless the school meets the criteria of subparagraph (A).

(C) All other schools on a four-year cycle.

(2) Each county superintendent of schools shall investigate school and district efforts to ensure that any credentialed teacher serving in an assignment requiring a certificate issued pursuant to Section 44253.3, 44253.4, or 44253.7 or training pursuant to Section 44253.10 completes the necessary requirements for these certificates or completes the required training.

(3) The Commission on Teacher Credentialing shall be responsible for the monitoring and review of those counties or cities and counties in which there is a single school district, including the Counties of Alpine, Amador, Del Norte, Mariposa, Plumas, and Sierra, and the City and County of San Francisco. All information related to the misassignment of certificated personnel and teacher vacancies shall be submitted to each affected district within 30 calendar days of the monitoring activity.

(c) County superintendents of schools shall submit an annual report to the Commission on Teacher Credentialing and the department

summarizing the results of all assignment monitoring and reviews. These reports shall include, but need not be limited to, the following:

(1) The numbers of teachers assigned and types of assignments made by the governing board of a school district under the authority of Sections 44256, 44258.2, and 44263.

(2) Information on actions taken by local committees on assignment, including the number of assignments authorized, subject areas into which committee-authorized teachers are assigned, and evidence of any departures from the implementation plans presented to the county superintendent by school districts.

(3) Information on each school district reviewed regarding misassignments of certificated personnel, including efforts to eliminate these misassignments.

(4) (A) Information on certificated employee assignment practices in schools ranked in deciles 1 to 3, inclusive, of the 2003 base Academic Performance Index, as defined in subdivision (b) of Section 17592.70, to ensure that, at a minimum, in any class in these schools in which 20 percent or more pupils are English learners the assigned teacher possesses a certificate issued pursuant to Section 44253.3 or 44253.4 or has completed training pursuant to Section 44253.10 or is otherwise authorized by statute.

(B) This paragraph shall not relieve a school district from compliance with state and federal law regarding teachers of English learners or be construed to alter the definition of "misassignment" in subparagraph (B) of paragraph (5) of subdivision (b) of Section 33126.

(5) After consultation with representatives of county superintendents of schools, other information as may be determined to be needed by the Commission on Teacher Credentialing.

(d) The Commission on Teacher Credentialing shall submit biennial reports to the Legislature concerning teacher assignments and misassignments which shall be based, in part, on the annual reports of the county superintendents of schools.

(e) (1) The Commission on Teacher Credentialing shall establish reasonable sanctions for the misassignment of credentialholders.

Prior to the implementation of regulations establishing sanctions, the Commission on Teacher Credentialing shall engage in a variety of activities designed to inform school administrators, teachers, and personnel within the offices of county superintendents of schools of the regulations and statutes affecting the assignment of certificated personnel. These activities shall include the preparation of instructive brochures and the holding of regional workshops.

(2) Commencing July 1, 1989, any certificated person who is required by an administrative superior to accept an assignment for which he or

she has no legal authorization shall, after exhausting any existing local remedies, notify the county superintendent of schools in writing of the illegal assignment. The county superintendent of schools shall, within 15 working days, advise the affected certificated person concerning the legality of his or her assignment. There shall be no adverse action taken against a certificated person who files a notification of misassignment with the county superintendent of schools. During the period of the misassignment, the certificated person who files a written notification with the county superintendent of schools shall be exempt from the provisions of Section 45034. If it is determined that a misassignment has taken place, any performance evaluation of the employee under Sections 44660 to 44664, inclusive, in any misassigned subject shall be nullified.

(3) The county superintendent of schools shall notify, through the office of the school district superintendent, any certificated school administrator responsible for the assignment of a certificated person to a position for which he or she has no legal authorization of the misassignment and shall advise him or her to correct the assignment within 30 calendar days. The county superintendent of schools shall notify the Commission on Teacher Credentialing of the misassignment if the certificated school administrator has not corrected the misassignment within 30 days of the initial notification, or if the certificated school administrator has not described, in writing, within the 30-day period, to the county superintendent of schools the extraordinary circumstances which make this correction impossible.

(4) The county superintendent of schools shall notify any superintendent of a school district in which 5 percent or more of all certificated teachers in the secondary schools are found to be misassigned of the misassignments and shall advise him or her to correct the misassignments within 120 calendar days. The county superintendent of schools shall notify the Commission on Teacher Credentialing of the misassignments if the school district superintendent has not corrected the misassignments within 120 days of the initial notification, or if the school district superintendent of schools has not described, in writing, within the 120-day period, to the county superintendent of schools the extraordinary circumstances which make this correction impossible.

(f) An applicant for a professional administrative service credential shall be required to demonstrate knowledge of existing credentialing laws, including knowledge of assignment authorizations.

(g) The Superintendent shall submit a summary of the reports submitted by county superintendents pursuant to subdivision (c) to the Legislature. The Legislature may hold, within a reasonable period after receipt of the summary, public hearings on pupil access to teachers and

to related statutory provisions. The Legislature may also assign one or more of the standing committees or a joint committee, to determine the following:

- (1) The effectiveness of the reviews required pursuant to this section.
- (2) The extent, if any, of vacancies and misassignments, as defined in subparagraphs (A) and (B) of paragraph (5) of subdivision (b) of Section 33126.
- (3) The need, if any, to assist schools ranked in deciles 1 to 3, inclusive, of the 2003 base Academic Performance Index, as defined in subdivision (b) of Section 17592.70, to eliminate vacancies and misassignments.

SEC. 27. Section 44265.6 is added to the Education Code, to read:

44265.6. (a) Upon the request of an employing school district, county office of education or state special school, the Commission on Teacher Credentialing shall determine specific requirements for and issue a one-year specialist instruction emergency permit, solely for the purpose of instructing deaf or hearing-impaired pupils, to any prelingually deaf candidate upon medical or other appropriate professional verifications.

(b) The applicant is exempted from the requirements in Section 44252 and subdivision (b) of Section 44830.

(c) "Prelingually deaf" means, for purposes of this section, as 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 emergency specialist instruction permit issued under this section authorizes the holder to teach deaf and hearing-impaired pupils who are enrolled in state special schools or in special classes for pupils with hearing impairments.

(e) A one-year specialist instruction emergency permit issued pursuant to subdivision (a) may be reissued at the request of the employing school district, county office of education or state special school in accordance with criteria determined by the Commission on Teacher Credentialing.

SEC. 28. Section 44664 of the Education Code is amended to read:

44664. (a) Evaluation and assessment of the performance of each certificated employee shall be made on a continuing basis as follows:

- (1) At least once each school year for probationary personnel.
- (2) At least every other year for personnel with permanent status.
- (3) At least every five years for personnel with permanent status who have been employed at least 10 years with the school district, are highly qualified, if those personnel occupy positions that are required to be filled by a highly qualified professional by the federal No Child Left Behind Act of 2001 (20 U.S.C. Sec. 6301, et seq.), as defined in 20 U.S.C. Sec. 7801, and whose previous evaluation rated the employee as

meeting or exceeding standards, if the evaluator and certificated employee being evaluated agree. The certificated employee or the evaluator may withdraw consent at any time.

(b) The evaluation shall include recommendations, if necessary, as to areas of improvement in the performance of the employee. If an employee is not performing his or her duties in a satisfactory manner according to the standards prescribed by the governing board, the employing authority shall notify the employee in writing of that fact and describe the unsatisfactory performance. The employing authority shall thereafter confer with the employee making specific recommendations as to areas of improvement in the employee's performance and endeavor to assist the employee in his or her performance. If any permanent certificated employee has received an unsatisfactory evaluation, the employing authority shall annually evaluate the employee until the employee achieves a positive evaluation or is separated from the district.

(c) Any evaluation performed pursuant to this article which contains an unsatisfactory rating of an employee's performance in the area of teaching methods or instruction may include the requirement that the certificated employee shall, as determined necessary by the employing authority, participate in a program designed to improve appropriate areas of the employee's performance and to further pupil achievement and the instructional objectives of the employing authority. If a district participates in the Peer Assistance and Review Program for Teachers established pursuant to Article 4.5 (commencing with Section 44500), any certificated employee who receives an unsatisfactory rating on an evaluation performed pursuant to this section shall participate in the Peer Assistance and Review Program for Teachers.

(d) Hourly and temporary hourly certificated employees, other than those employed in adult education classes who are excluded by the provisions of Section 44660, and substitute teachers may be excluded from the provisions of this section at the discretion of the governing board.

SEC. 29. Section 45037 of the Education Code is amended to read:

45037. (a) Except as provided in Section 45036, for the fiscal year 2001-02 and for any fiscal year thereafter in which a person renders service as a teacher in kindergarten or any of grades 1 to 12, inclusive, who does not have a valid certification document, the school district or county office of education in which the person is employed shall be assessed a penalty that shall be in lieu of any loss of funding that would otherwise result under Chapter 6.10 (commencing with Section 52120) of Part 28. The penalty shall be calculated as provided in subdivision (b) and withheld from state funding otherwise due to the district or county office of education.

(1) Notwithstanding Section 46300, the attendance of the noncertificated person's pupils during the period of service shall be included in the computation of average daily attendance.

(2) The noncertificated person's period of service shall not be excluded from the determination of eligibility for incentive funding for a longer instructional day or year, or both, pursuant to Article 8 (commencing with Section 46200) of Chapter 2 of Part 26.

(b) (1) For each person who rendered service in the employment of the district or county office of education as a teacher in kindergarten or any of grades 1 to 12, inclusive, during the fiscal year, add the total number of schooldays on which the person rendered any amount of the service.

(2) For each person who rendered service in the employment of the district or county office of education as a teacher in kindergarten or any of grades 1 to 12, inclusive, during the fiscal year, for a period of service during which the person did not have a valid certification document, add the number of schooldays on which the person rendered any amount of the service without a valid certification document.

(3) Divide the number determined in paragraph (2) by the number determined in paragraph (1) and carry the result to four decimal places.

(4) Multiply a school district's revenue limit entitlement for the fiscal year, calculated pursuant to Section 42238, or its funding amount calculated pursuant to Article 4 (commencing with Section 42280) of Chapter 7 of Part 24, as applicable, or a county office of education's funding for the fiscal year, for the program in which the noncertificated person rendered service by the number determined in paragraph (3).

(c) Beginning in 2002-03, if a county office of education releases a warrant in favor of a person for whom a period of school district service is included in the calculation set forth in paragraph (2) of subdivision (b), and the warrant is either compensation for employment as a teacher or for employment in some other capacity if the county office of education has direct knowledge or is in possession of information giving rise to a reasonable inference that the person is rendering service as a teacher, the county office shall be assessed a penalty. The penalty assessed to a county office for any fiscal year in which one or more district teachers did not have a valid certification document shall be equal to the lesser of three amounts as follows:

(1) Fifty percent of all penalties assessed for that fiscal year to all school districts in the county office's jurisdiction pursuant to subdivision (b).

(2) One-half percent of the total expenditures for that fiscal year from unrestricted resources, as defined in the California School Accounting Manual, in the county office's county school service fund, when two or

fewer districts in the county office's jurisdiction are subject to penalties pursuant to subdivision (b).

(3) One percent of the total expenditures for that fiscal year from unrestricted resources, as defined in the California School Accounting Manual, in the county office's county school service fund, when three or more districts in the county office's jurisdiction are subject to penalties pursuant to subdivision (b).

(d) Except as provided in Section 41344.1, nothing in this section may be waived in whole or in part.

SEC. 30. Section 48213 of the Education Code is repealed.

SEC. 31. Section 48213 is added to the Education Code, to read:

48213. If a pupil is excluded from attendance pursuant to Section 120230 of the Health and Safety Code or Section 49451 of this code, or if a principal or his or her designee determines that the continued presence of the child would constitute a clear and present danger to the life, safety, or health of a pupil or school personnel, the governing board is not required to send prior notice of the exclusion to the parent or guardian of the pupil. The governing board shall send a notice of the exclusion as soon as is reasonably possible after the exclusion.

SEC. 32. Section 48660.2 of the Education Code is amended to read:

48660.2. (a) Notwithstanding any other provision of law, and as a condition of receiving apportionments under this article, school districts operating one or more community day schools shall annually report to the Superintendent, on forms approved by the State Board of Education, the direct instructional costs and documented support costs of their community day schools, using definitions included in the California School Accounting Manual, Part I, as it read on July 1, 1997, except that districts may include in these reports the costs of rents and leases for facilities used by community day schools and maintenance and operations costs for facilities used by community day schools. Each school district that has received approval from the department to use the standardized account code structure may satisfy the requirement set forth in this subdivision by reporting the direct costs of the community day school program, and shall maintain documentation of all noninstructional costs charged to the community day school program.

(b) The Superintendent shall do each of the following:

(1) Multiply the total of all funds received by each school district on behalf of pupils while enrolled in community day schools by 0.9.

(2) Subtract the total of each school district's costs for community day schools, as determined pursuant to subdivision (a), from the amount determined pursuant to paragraph (1).

(3) If the amount determined pursuant to paragraph (2) for a school district is positive, the Superintendent shall subtract that amount from the school district's next apportionment.

(c) (1) For purposes of making the computation required by paragraph (1) of subdivision (b) for the 2004-05 fiscal year, the "total of all funds received" means the total of all funds received in the 2002-03 to 2004-05 fiscal years, inclusive.

(2) For purposes of making the computation required by paragraph (2) of subdivision (b) for the 2004-05 fiscal year, the "school district's costs" means the school district's costs incurred in the 2002-03 to 2004-05 fiscal years, inclusive.

SEC. 33. Section 48900.8 of the Education Code is amended to read:

48900.8. For purposes of notification to parents, and for the reporting of expulsion or suspension offenses to the department, each school district shall specifically identify, by offense committed, in all appropriate official records of a pupil each suspension or expulsion of that pupil for the commission of any of the offenses set forth in Section 48900, 48900.2, 48900.3, 48900.4, 48900.7, or 48915.

SEC. 34. Section 48980 of the Education Code is amended to read:

48980. (a) At the beginning of the first semester or quarter of the regular school term, the governing board of each school district shall notify the parent or guardian of a minor pupil regarding the right or responsibility of the parent or guardian under Sections 35291, 46014, 48205, 48207, 48208, 49403, 49423, 49451, 49472, and 51938 and Chapter 2.3 (commencing with Section 32255) of Part 19.

(b) The notification also shall advise the parent or guardian of the availability of individualized instruction as prescribed by Section 48206.3, and of the program prescribed by Article 9 (commencing with Section 49510) of Chapter 9.

(c) The notification shall also advise the parents and guardians of all pupils attending a school within the district of the schedule of minimum days and pupil-free staff development days, and if any minimum or pupil-free staff development days are scheduled thereafter, the governing board shall notify parents and guardians of the affected pupils as early as possible, but not later than one month before the scheduled minimum or pupil-free day.

(d) The notification also may advise the parent or guardian of the importance of investing for future college or university education for their children and of considering appropriate investment options including, but not limited to, United States Savings Bonds.

(e) Commencing with the 2000-01 school year, and each school year thereafter, the notification shall advise the parent or guardian of the pupil that, commencing with the 2003-04 school year, and each school year

thereafter, each pupil completing 12th grade will be required to successfully pass the high school exit examination administered pursuant to Chapter 8 (commencing with Section 60850) of Part 33. The notification shall include, at a minimum, the date of the examination, the requirements for passing the examination, and shall inform the parents and guardians regarding the consequences of not passing the examination and shall inform parents and guardians that passing the examination is a condition of graduation.

(f) Each school district that elects to provide a fingerprinting program pursuant to Article 10 (commencing with Section 32390) shall inform parents or guardians of the program as specified in Section 32390.

(g) The notification shall also include a copy of the district's written policy on sexual harassment established pursuant to Section 212.6, as it relates to pupils.

(h) The notification shall advise the parent or guardian of all existing statutory attendance options and local attendance options available in the school district. That notification shall include all options for meeting residency requirements for school attendance, programmatic options offered within the local attendance areas, and any special programmatic options available on both an interdistrict and intradistrict basis. That notification shall also include a description of all options, a description of the procedure for application for alternative attendance areas or programs, an application form from the district for requesting a change of attendance, and a description of the appeals process available, if any, for a parent or guardian denied a change of attendance. The notification shall also include an explanation of the existing statutory attendance options including, but not limited to, those available under Section 35160.5, Chapter 5 (commencing with Section 46600) of Part 26, subdivision (f) of Section 48204, and Article 1.5 (commencing with Section 48209) of Chapter 2 of Part 27. The department shall produce this portion of the notification and shall distribute it to all school districts.

(i) It is the intent of the Legislature that the governing board of each school district annually review the enrollment options available to the pupils within their districts and that the school districts strive to make available enrollment options that meet the diverse needs, potential, and interests of California's pupils.

(j) The notification shall advise the parent or guardian that no pupil may have his or her grade reduced or lose academic credit for any absence or absences excused pursuant to Section 48205 if missed assignments and tests that can reasonably be provided are satisfactorily completed within a reasonable period of time, and shall include the full text of Section 48205.

(k) The notification shall advise the parent or guardian of the availability of state funds to cover the costs of advanced placement examination fees pursuant to Section 52244.

SEC. 35. Section 49423 of the Education Code is amended to read:

49423. (a) Notwithstanding Section 49422, any pupil who is required to take, during the regular schoolday, medication prescribed for him or her by a physician or surgeon, may be assisted by the school nurse or other designated school personnel or may carry and self-administer prescription auto-injectable epinephrine if the school district receives the appropriate written statements identified in subdivision (b).

(b) (1) In order for a pupil to be assisted by a school nurse or other designated school personnel pursuant to subdivision (a), the school district shall obtain both a written statement from the physician detailing the name of the medication, method, amount, and time schedules by which the medication is to be taken and a written statement from the parent, foster parent, or guardian of the pupil indicating the desire that the school district assist the pupil in the matters set forth in the statement of the physician.

(2) In order for a pupil to carry and self-administer prescription auto-injectable epinephrine pursuant to subdivision (a), the school district shall obtain both a written statement from the physician or surgeon detailing the name of the medication, method, amount, and time schedules by which the medication is to be taken, and confirming that the pupil is able to self-administer auto-injectable epinephrine, and a written statement from the parent, foster parent, or guardian of the pupil consenting to the self-administration, providing a release for the school nurse or other designated school personnel to consult with the health care provider of the pupil regarding any questions that may arise with regard to the medication, and releasing the school district and school personnel from civil liability if the self-administering pupil suffers an adverse reaction as a result of self-administering medication pursuant to this paragraph.

(3) The written statements specified in this subdivision shall be provided at least annually and more frequently if the medication, dosage, frequency of administration, or reason for administration changes.

(c) A pupil may be subject to disciplinary action pursuant to Section 48900 if that pupil uses auto-injectable epinephrine in a manner other than as prescribed.

SEC. 36. Section 49423.1 of the Education Code is amended to read:

49423.1. (a) Notwithstanding Section 49422, any pupil who is required to take, during the regular schoolday, medication prescribed for him or her by a physician or surgeon, may be assisted by the school nurse or other designated school personnel or may carry and

self-administer inhaled asthma medication if the school district receives the appropriate written statements specified in subdivision (b).

(b) (1) In order for a pupil to be assisted by a school nurse or other designated school personnel pursuant to subdivision (a), the school district shall obtain both a written statement from the physician or surgeon detailing the name of the medication, method, amount, and time schedules by which the medication is to be taken and a written statement from the parent, foster parent, or guardian of the pupil requesting that the school district assist the pupil in the matters set forth in the statement of the physician or surgeon.

(2) In order for a pupil to carry and self-administer prescription inhaled asthma medication pursuant to subdivision (a), the school district shall obtain both a written statement from the physician or surgeon detailing the name of the medication, method, amount, and time schedules by which the medication is to be taken, and confirming that the pupil is able to self-administer inhaled asthma medication, and a written statement from the parent, foster parent, or guardian of the pupil consenting to the self-administration, providing a release for the school nurse or other designated school personnel to consult with the health care provider of the pupil regarding any questions that may arise with regard to the medication, and releasing the school district and school personnel from civil liability if the self-administering pupil suffers an adverse reaction by taking medication pursuant to this section.

(3) The written statements specified in this subdivision shall be provided at least annually and more frequently if the medication, dosage, frequency of administration, or reason for administration changes.

(c) A pupil may be subject to disciplinary action pursuant to Section 48900 if that pupil uses inhaled asthma medication in a manner other than as prescribed.

SEC. 37. Section 51226.1 of the Education Code is amended to read:

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

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

- (1) Business and industry.
- (2) Labor.
- (3) The California Community Colleges.
- (4) The University of California.

- (5) The California State University.
- (6) Classroom teachers.
- (7) School administrators.
- (8) Pupils.
- (9) Parents and guardians.
- (10) Representatives of the Legislature.
- (11) The department.
- (12) The Labor and Workforce Development Agency.

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

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

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

(f) Upon completion of the framework, the advisory group is encouraged to identify career technical education courses that meet state-adopted academic content standards and that satisfy high school graduation requirements and admissions requirements of the University of California and the California State University, and to determine the extent to which local educational agencies accept credit earned for the completion of those courses, in lieu of other courses of study.

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

SEC. 38. Section 52247 of the Education Code is repealed.

SEC. 39. Section 52515 of the Education Code is amended to read:
52515. State funds shall not be apportioned to a school district based on the attendance of students enrolled in adult schools, unless the courses have been approved by the department pursuant to Section 41976.

SEC. 40. Section 52520 of the Education Code is amended to read:
52520. (a) Every vocational or occupational training program for adults offered by any high school district or unified school district shall be reviewed every two years by the governing board to assure that each program does all of the following:

- (1) Meets a documented labor market demand.
- (2) Does not represent unnecessary duplication of other manpower training programs in the area.

(3) Is of demonstrated effectiveness as measured by the employment and completion success of its students.

(b) Any program that does not meet the requirements of subdivision (a) and the standards promulgated by the governing board shall be terminated within one year.

(c) The review process required by this section shall include the review and comments by the local workforce Investment board established pursuant to the Workforce Investment Act of 1998 (29 U.S.C. Sec. 2801 et seq.), and pursuant to (Division 8 (commencing with Section 15000) of the Unemployment Insurance Code), which review and comments shall occur prior to any decision by the appropriate governing body.

SEC. 41. Section 52570 of the Education Code is amended to read:

52570. The governing board of any school district maintaining secondary schools or the county superintendent of schools, shall have the power, with the approval of the Department of Education, to establish special classes for adults designed to serve the educational needs of adults with disabilities. These classes shall be directed to providing instruction in civic, vocational, literary, homemaking, technical, and general education and shall conform to standards of attendance, curriculum, and administration established by the department. Attendance of adults with disabilities in such classes established by the county superintendent of schools shall be included for purposes of apportionments to the county school service fund.

SEC. 42. Section 52571 of the Education Code is amended to read:

52571. Special classes for adults with disabilities may be conducted under the direction of the governing board of the school district in workshop and training facilities provided by nonprofit organizations, or in public school facilities. These facilities may include those where part-time paid work education and training is conducted and where less than the state minimum wage is paid.

SEC. 43. Section 52572 of the Education Code is amended to read:

52572. The governing board of any school district or the county superintendent of schools authorized by this article to establish special classes for adults designed to serve the educational needs of adults with disabilities may contract for the providing of those classes by any adjacent high school district or unified school district, subject to the approval of the Superintendent. For purposes of apportionments, the average daily attendance in classes conducted pursuant to the contract shall accrue to and be reported by the district in which the student resides. Any contract entered into pursuant to this section shall be for a term of not to exceed one year but may be renewed or revised and renewed annually.

SEC. 44. Section 54749 of the Education Code is amended to read:

54749. (a) For the 2000-01 fiscal year and each fiscal year thereafter, a school district or county superintendent of schools participating in Cal-SAFE is eligible for state funding from funds appropriated for services provided for the purposes of the program as follows:

(1) A support services allowance of two thousand two hundred thirty-seven dollars (\$2,237) for each unit of average daily attendance generated by each pupil who has completed the intake process pursuant to subdivision (a) of Section 54746 and is receiving services pursuant to subdivision (b) of Section 54746. This allowance shall be adjusted annually by the inflation factor set forth in subdivision (b) of Section 42238.1. In no event shall more than one support service allowance be generated by any pupil concurrently enrolled in more than one educational program.

(A) A support services allowance may not be claimed for units of average daily attendance reported pursuant to the following:

(i) Subdivision (b) of Section 1982 for pupils attending county community schools operated pursuant to Chapter 6.5 of Part 2 (commencing with Section 1980).

(ii) Pupils attending juvenile court schools operated pursuant to Article 2.5 (commencing with Section 48645) of Chapter 4 of Part 27.

(iii) Pupils attending community day schools operated pursuant to Article 3 (commencing with Section 48660) of Chapter 4 of Part 27.

(iv) Pupils attending a county operated Cal-SAFE program pursuant to this article whose attendance is reported pursuant to Section 2551.3.

(B) A support services allowance may not be used to supplant average daily attendance and revenue limit funding provided pursuant to paragraph (2) for the support of educational programs that Cal-SAFE program pupils attend.

(2) Average daily attendance and revenue limit funding for pupils receiving services in the Cal-SAFE program shall be computed pursuant to provisions and regulations applicable to the educational program or programs that each pupil attends, except as provided in paragraph (3).

(3) For attendance not claimed pursuant to paragraph (2), a county office of education may claim the statewide average revenue limit per unit of average daily attendance for high school districts, payable from Section A of the State School Fund, for the attendance of pupils receiving services in the Cal-SAFE program, provided that no other revenue limit funding is claimed for the same pupil and pupil attendance of no less than 240 minutes per day and is computed and maintained pursuant to Section 46300.

(4) Except as provided in subdivision (c) of Section 54749.5, operators of Cal-SAFE programs shall be reimbursed in accordance with the amount specified in subdivision (b) of Section 8265 and the amounts

specified in subdivisions (a) and (b) of Section 8265.5 for each child receiving services pursuant to the Cal-SAFE program who is the child of teen parents enrolled in the Cal-SAFE program. To be eligible for funding pursuant to this paragraph, the operational days of child care and development programs are only those necessary to provide child care services to children of pupils participating in Cal-SAFE.

(5) Notwithstanding paragraph (1), pupils for whom attendance is reported pursuant to subdivision (b) of Section 1982, pupils attending juvenile court schools, and pupils attending community day schools may complete the intake process for the Cal-SAFE program and, if the intake process is completed, shall receive services pursuant to subdivision (b) of Section 54746. The children of pupils receiving services in the Cal-SAFE program pursuant to subdivision (b) of Section 54746 and attending juvenile court schools, county community schools, or community day schools are eligible for funding pursuant to paragraph (4) and no other provisions of this section.

(b) Funds allocated pursuant to paragraph (1) of subdivision (a) shall be accounted for separately and shall be expended only to provide the supportive services enumerated in subdivision (b) of Section 54746, to provide in-service training as specified in subdivision (d) of Section 54746, and for the expenditures enumerated in subdivision (d) of this section.

(c) Funds allocated pursuant to paragraph (4) of subdivision (a) shall be accounted for separately and shall be expended only to provide developmentally appropriate child care and development services pursuant to subdivision (c) of Section 54746 and staff development of child development program staff pursuant to subdivision (d) of Section 54746 for children of teen parents enrolled in the Cal-SAFE program for the purpose of promoting the children's development comparable to age norms, access to health and preventive services, and enhanced school readiness.

(d) Funds generated pursuant to Section 2551.3, subdivision (b) of Section 54749.5, and this section shall be accounted for separately and shall be expended only to provide the services enumerated in Section 54746 and the following expenditures as defined by the California State School Accounting Manual:

- (1) Expenditures defined as direct costs of instructional programs.
- (2) Expenditures defined as documented direct support costs.
- (3) Expenditures defined as allocated direct support costs.
- (4) Expenditures for indirect charges.
- (5) Expenditures defined as facility costs, including the costs of renting, leasing, lease-purchase, remodeling, or improving buildings.

(e) Indirect costs may not exceed the lesser of the approved indirect cost rate or 10 percent.

(f) Expenditures that represent contract payments to community-based organizations and other governmental agencies pursuant to paragraph (10) of subdivision (b) of Section 54745 for the operation of a Cal-SAFE program shall be included in the Cal-SAFE program account.

(g) To the extent permitted by federal law, any funding made available to a school district or county superintendent of schools is subject to all of the following conditions:

(1) The program is open to all eligible pupils without regard to any pupil's religious beliefs or any other factor related to religion.

(2) No religious instruction is included in the program.

(3) The space where the program is operated is not used in any manner to foster religion during the time used for operation of the program.

(h) A school district or county superintendent of schools implementing a Cal-SAFE program may establish a claims process to recover federal funds available for any services provided that are Medi-Cal eligible.

(i) For purposes of serving pupils enrolled in the Cal-SAFE program in a summer school program or enrolled in a school program operating more than 180 days, eligibility for child care services pursuant to subdivision (c) of Section 54746 shall be determined by the parent's hours of enrollment and shall be for only those hours necessary to further the completion of the parent's educational program.

(j) To meet startup costs for the opening of child care and development sites, as defined in subdivision (ab) of Section 8208, and applicable regulations, a school district or county office of education may apply for a one-time 15-percent service level exemption within the amount appropriated in the annual Budget Act for the purposes of paragraph (4) of subdivision (a) for each site meeting the criteria set forth in subdivision (ab) of Section 8208. To the extent that Budget Act funding is insufficient to cover the full costs of Cal-SAFE child care, reimbursements to all participating programs shall be reduced on a pro rata basis. A school district or county office of education shall submit claims pursuant to this subdivision with other claims submitted pursuant to this section. Funding provided for startup costs shall be utilized for approvable startup costs enumerated in subdivision (a) of Section 8275.

(k) To meet costs for the renovation, repair, or improvement of an existing building to make the building suitable for licensure for child care and development services and for the purchase of new relocatable child care facilities for lease to school districts and contracting agencies that provide child care and development services, a school district or county office of education that provides child care pursuant to this article may apply for and receive funding pursuant to Section 8278.3.

(l) Notwithstanding any other provision of this article, the implementation of this article is contingent upon appropriations in the annual Budget Act for the purpose of its administration and evaluation by the department.

(m) Notwithstanding any other law, a charter school may apply for funding pursuant to this article and shall meet the requirements of this article to be eligible for funding pursuant to this section.

SEC. 45. 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.

(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. 46. Section 56362.7 of the Education Code is amended to read:

56362.7. (a) The Legislature recognizes the need for specially trained professionals to assess and serve pupils of limited English proficiency. This is particularly true of pupils with exceptional needs or pupils with suspected disabilities.

(b) The commission shall develop a bilingual-crosscultural certificate of assessment competence for those professionals who may participate in assessments for placements in special education programs. The certificate shall be issued to holders of appropriate credentials, certificates, or authorizations who demonstrate, by written and oral examination, all of the following:

(1) That the person is competent in both the oral and written skills of a language other than English.

(2) That the person has both the knowledge and understanding of the cultural and historical heritage of the limited-English-proficient individuals to be served.

(3) That the person has the ability to perform the assessment functions the candidate is certified or authorized to perform in English and in a language other than English.

(4) That the person has knowledge of the use of instruments and other assessment techniques appropriate to evaluate limited-English-proficient individuals with exceptional needs and ability to develop appropriate data, instructional strategies, individualized education programs, and evaluations.

(c) Certificates of bilingual-crosscultural competence for special education professionals who implement individual education plans requiring bilingual services shall be granted by the commission pursuant to Section 44253.7.

(d) It is not the intent of the Legislature in enacting this section that possession of any certificate established by this section be a state-mandated requirement for employment or continued employment. It is the intent that this is a matter for local educational agencies to determine.

SEC. 47. Section 56836.07 is added to the Education Code, to read:

56836.07. For the 2004-05 fiscal year and each fiscal year thereafter for which there is an appropriation in the annual Budget Act for this purpose, the Superintendent shall allocate funds per unit of average daily

attendance, as defined in Section 56836.06, reported for the special education local plan area to a special education local plan area for the purposes of Section 56331. For the 2004-05 fiscal year and each fiscal year thereafter for which there is an appropriation in the annual Budget Act for this purpose, the Superintendent shall determine a proportionate share, consistent with existing law, to the Los Angeles County Juvenile Court and Community School/Division of Alternative Education Special Education Local Plan Area based on the ratio of the amount per unit of average daily attendance determined pursuant to Section 56836.10 to the amount of the statewide target per unit of average daily attendance determined pursuant to Section 56836.11.

SEC. 48. Section 7572.5 of the Government Code is amended to read:

7572.5. (a) When an assessment is conducted pursuant to Article 2 (commencing with Section 56320) of Chapter 4 of Part 30 of Division 4 of the Education Code, which determines that a child is seriously emotionally disturbed, as defined in Section 300.7 of Title 34 of the Code of Federal Regulations, and any member of the individualized education program team recommends residential placement based on relevant assessment information, the individualized education program team shall be expanded to include a representative of the county mental health department.

(b) The expanded individualized education program team shall review the assessment and determine whether:

(1) The child's needs can reasonably be met through any combination of nonresidential services, preventing the need for out-of-home care.

(2) Residential care is necessary for the child to benefit from educational services.

(3) Residential services are available which address the needs identified in the assessment and which will ameliorate the conditions leading to the seriously emotionally disturbed designation.

(c) If the review required in subdivision (b) results in an individualized education program which calls for residential placement, the individualized education program shall include all the items outlined in Section 56345 of the Education Code, and shall also include:

(1) Designation of the county mental health department as lead case manager. Lead case management responsibility may be delegated to the county welfare department by agreement between the county welfare department and the designated mental health department. The mental health department shall retain financial responsibility for provision of case management services.

(2) Provision for a review of the case progress, the continuing need for out-of-home placement, the extent of compliance with the

individualized education program, and progress toward alleviating the need for out-of-home care, by the full individualized education program team at least every six months.

(3) Identification of an appropriate residential facility for placement with the assistance of the county welfare department as necessary.

SEC. 49. Chapter 1.2 (commencing with Section 628) of Title 15 of Part 1 of the Penal Code is repealed.

SEC. 50. Section 34501.5 of the Vehicle Code is amended to read:

34501.5. (a) The Department of the California Highway Patrol shall adopt reasonable rules and regulations which, in the judgment of the department, are designed to promote the safe operation of vehicles described in Sections 39830 and 82321 of the Education Code and Sections 545 and 34500 of this code. The Commissioner of the California Highway Patrol shall appoint a committee of 11 members to act in an advisory capacity when developing and adopting regulations affecting school pupil transportation buses and school pupil transportation operations. The advisory committee shall consist of 11 members appointed as follows:

- (1) One member of the State Department of Education.
- (2) One member of the Department of Motor Vehicles.
- (3) One member of the Department of the California Highway Patrol.
- (4) One member who is employed as a schoolbus driver.
- (5) One member of the Office of Traffic Safety in the Business, Transportation and Housing Agency.
- (6) Two members who are schoolbus contractors, one of whom shall be from an urban area of the state and one of whom shall be from a rural area of the state, as determined by the department.
- (7) Two members who are representatives of school districts, one of whom shall be from an urban area of the state and one of whom shall be from a rural area of the state, as determined by the department.
- (8) One professionally licensed member of the American Academy of Pediatrics.

(9) One member representing school pupil transportation operations other than schoolbus operations.

(b) The department shall cooperate and confer with the advisory committee appointed pursuant to this section prior to adopting rules or regulations affecting school pupil transportation buses and school pupil transportation operations.

SEC. 51. Section 11 of Chapter 14 of the Statutes of 2003 is amended to read:

Sec. 11. (a) Notwithstanding Sections 17456, 17457, 17462, and 17463 of the Education Code, or any other law, from June 1, 2003, to June 30, 2007, inclusive, the Oakland 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, 2003, to June 30, 2007, inclusive, the Oakland 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. 52. Item 6110-183-0890 of Section 2.00 of Chapter 208 of the Statutes of 2004 is amended to read:

6110-183-0890—For local assistance, Department of Education, Instructional Support--Safe and Drug Free Schools and Communities Act of 1994 (Public Law 103-382), payable from the Federal Trust Fund 52,939,000
Schedule:

(1) 20.10.045-Health and Physical
Education, Drug Free Schools 52,939,000

Provisions:

1. Local education agencies shall give priority in the expenditure of the funds appropriated by this item to create comprehensive drug and violence prevention programs that promote school safety, reduce the use of drugs, and create learning environments that are free of alcohol and guns and that support academic achievement for all pupils. In addition to preventing drug and alcohol use, prevention programs will respond to the crisis of violence in our schools by addressing the need to prevent serious crime, violence, and discipline problems. The Superintendent of Public Instruction shall (a) notify local education agencies of this policy, and (b) incorporate the policy into the department's compliance review procedures.
2. Of the funds appropriated in this item, \$1,526,000 is available for one-time grants for drug and violence prevention and intervention services for entitlements earned by a local educational agency in the 2003-04 fiscal year.

SEC. 53. Section 18 of Chapter 895 of the Statutes of 2004 is amended to read:

Sec. 18. (a) Notwithstanding any other law, the Commission on State Mandates shall, on or before December 31, 2005, for paragraphs (1) to (5), inclusive, and on or before January 31, 2006, for paragraph (6), reconsider its decision in 97-TC-21, relating to the School Accountability Report Card mandate, and its parameters and guidelines for calculating the state reimbursement for that mandate pursuant to Section 6 of Article XIII B of the California Constitution for each of the following statutes, particularly in light of federal and state statutes enacted and state court decisions rendered since these statutes were enacted:

- (1) Chapter 1463 of the Statutes of 1989.
- (2) Chapter 759 of the Statutes of 1992.
- (3) Chapter 1031 of the Statutes of 1993.
- (4) Chapter 824 of the Statutes of 1994.
- (5) Chapter 918 of the Statutes of 1997.
- (6) Chapter 912 of the Statutes of 1997.

(b) Notwithstanding any other provision of law, the decision of the Commission on State Mandates on its reconsiderations pursuant to subdivision (a) shall apply retroactively to January 1, 2005.

(c) Notwithstanding any other provision of law, the parameters and guidelines associated with the test claim of 97-TC-21 shall be adjusted to conform to the decision of the Commission on State Mandates on its reconsiderations.

SEC. 54. The sum of one hundred thirty thousand dollars (\$130,000) is hereby appropriated from the California Memorial Scholarship Fund to the Scholarshare Investment Board for the purposes of establishing individual scholarship accounts for eligible participants and for administrative costs of the board pursuant to Section 70010.7 of the Education Code, and shall be allocated as follows:

(a) One hundred thousand dollars (\$100,000) for local assistance for scholarship awards and shall be available for expenditure until June 30, 2006.

(b) Thirty thousand dollars (\$30,000) for state operations to support the administration of the California Memorial Scholarship Program and shall be available until June 30, 2031.

SEC. 54.5. Due to the unique circumstances concerning the Coachella Valley Unified School District, the Legislature finds and declares that a general statute cannot be made applicable within the meaning of Section 16 of Article IV of the Constitution. Therefore, Section 23.5 of this act is necessarily applicable only to the Coachella Valley Unified School District.

SEC. 55. With respect to Section 47 of this act, 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 Los Angeles County Juvenile Court and Community School/Division of Alternative Education Special Education Local Plan Area. The facts constituting the special circumstances are the larger pupil population and unique staffing and pupil needs.

SEC. 56. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because this act provides for offsetting savings to local agencies or school districts that result in no net costs to the local agencies or school districts, within the meaning of Section 17556 of the Government Code.

However, if the Commission on State Mandates determines that this act contains other costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.

SEC. 57. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to ensure that the educational programs affected by this act are properly implemented pursuant to the clarifying, technical, and other changes made by this act, it is necessary for this act to take effect immediately.

CHAPTER 678

An act to amend Section 41530 of the Education Code, relating to education finance.

[Approved by Governor October 7, 2005. Filed with
Secretary of State October 7, 2005.]

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

SECTION 1. Section 41530 of the Education Code is amended to read:

41530. (a) There is hereby established the professional development block grant. Commencing with the 2005–06 fiscal year, the Superintendent shall apportion block grant funds to a school district in the same relative statewide proportion that the school district received in the 2003–04 fiscal year for the programs listed in Section 41531.

(b) A school district may expend funds received pursuant to this article for any purpose authorized by the programs listed in Section 41531, as the statutes governing those programs read on January 1, 2004.

(c) For the purposes of this article, “school district” includes a county office of education if county offices of education are eligible to receive funds for the programs that are listed in Section 41531. The block grant of a county office of education shall be based only on those programs for which it was eligible to receive funds in the 2003–04 fiscal year.

CHAPTER 679

An act to add Section 11093.5 to the Government Code, relating to statistical districts.

[Approved by Governor October 7, 2005. Filed with
Secretary of State October 7, 2005.]

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

SECTION 1. Section 11093.5 is added to the Government Code, to read:

11093.5. (a) (1) The Employment Development Department shall, in the preparation and maintenance of any statistical analyses and data, by county, either by population, fiscal, or other bases, make a separate breakdown of the Antelope Valley using the boundaries described in subdivision (b). The statistical analyses and data shall include, but is not limited to, the following: wages, consumer price index, prevailing wage, unemployment, occupational wages, and median income.

(2) The Department of Finance shall, in the preparation and maintenance of any statistical analyses and data, by county, either by population, fiscal, or other bases, make a separate breakdown of the Antelope Valley using the boundaries described in subdivision (b). The department shall provide statistical analyses and data from any additional information it receives from the cities and counties that are affected by this section and the information it receives through the census.

(3) If the use of a tax area code is required in order to comply with paragraphs (1) and (2), an alternate method shall be used to determine the separate breakdown of the Antelope Valley. An alternate method shall include the sum of the taxable sales attributable to all of the incorporated cities in the Antelope Valley and the taxable sales attributable to the unincorporated areas of the Counties of Kern and Los Angeles that are part of the Antelope Valley.

(b) For purposes of this section, the Antelope Valley is the census tracts or ZIP Codes that are closely bounded by the base of the Tehachapi Mountains moving southwesterly to Interstate Highway 5, down the base of the San Gabriel Mountains moving southeasterly to the San Bernardino County line, follow the San Bernardino County line north, to the northern line of California City, then west to the base of the Tehachapi Mountains.

(c) The Legislature encourages the Counties of Kern and Los Angeles to voluntarily provide data for the purposes of this section.

CHAPTER 680

An act to add Section 87406.3 to the Government Code, relating to the Political Reform Act of 1974.

[Approved by Governor October 7, 2005. Filed with
Secretary of State October 7, 2005.]

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

SECTION 1. Section 87406.3 is added to the Government Code, to read:

87406.3. (a) A local elected official, chief administrative officer of a county, city manager, or general manager or chief administrator of a special district who held a position with a local government agency as defined in Section 82041 shall not, for a period of one year after leaving that office or employment, act as agent or attorney for, or otherwise represent, for compensation, any other person, by making any formal or informal appearance before, or by making any oral or written communication to, that local government agency, or any committee, subcommittee, or present member of that local government agency, or any officer or employee of the local government agency, if the appearance or communication is made for the purpose of influencing administrative or legislative action, or influencing any action or proceeding involving the issuance, amendment, awarding, or revocation of a permit, license, grant, or contract, or the sale or purchase of goods or property.

(b) Subdivision (a) shall not apply to any individual who is, at the time of the appearance or communication, a board member, officer, or employee of another local government agency or an employee or representative of a public agency and is appearing or communicating on behalf of that agency.

(c) Nothing in this section shall preclude a local government agency from adopting an ordinance or policy that restricts the appearance of a former local official before that local government agency if that ordinance or policy is more restrictive than subdivision (a).

(d) Notwithstanding Sections 82002 and 82037, the following definitions shall apply for purposes of this section only:

(1) "Administrative action" means the proposal, drafting, development, consideration, amendment, enactment, or defeat by any local government agency of any matter, including any rule, regulation, or other action in any regulatory proceeding, whether quasi-legislative or quasi-judicial. Administrative action does not include any action that is solely ministerial.

(2) "Legislative action" means the drafting, introduction, modification, enactment, defeat, approval, or veto of any ordinance, amendment, resolution, report, nomination, or other matter by the legislative body of a local government agency or by any committee or subcommittee thereof, or by a member or employee of the legislative body of the local government agency acting in his or her official capacity.

(e) This section shall become operative on July 1, 2006.

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

SEC. 3. The Legislature finds and declares that the provisions of this act further the purposes of the Political Reform Act of 1974 within the meaning of subdivision (a) of Section 81012 of the Government Code.

CHAPTER 681

An act to amend Section 12316 of the Penal Code, relating to ammunition.

[Approved by Governor October 7, 2005. Filed with
Secretary of State October 7, 2005.]

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

SECTION 1. Section 12316 of the Penal Code is amended to read:

12316. (a) (1) Any person, corporation, or dealer who does either of the following shall be punished by imprisonment in a county jail for a term not to exceed six months, or by a fine not to exceed one thousand dollars (\$1,000), or by both the imprisonment and fine:

(A) Sells any ammunition or reloaded ammunition to a person under 18 years of age.

(B) Sells any ammunition or reloaded ammunition designed and intended for use in a handgun to a person under 21 years of age. As used in this subparagraph, "ammunition" means handgun ammunition as defined in subdivision (a) of Section 12323. Where ammunition or reloaded ammunition may be used in both a rifle and a handgun, it may be sold to a person who is at least 18 years of age, but less than 21 years of age, if the vendor reasonably believes that the ammunition is being acquired for use in a rifle and not a handgun.

(2) Proof that a person, corporation, or dealer, or his or her agent or employee, demanded, was shown, and acted in reasonable reliance upon, bona fide evidence of majority and identity shall be a defense to any criminal prosecution under this subdivision. As used in this subdivision, "bona fide evidence of majority and identity" means a document issued by a federal, state, county, or municipal government, or subdivision or agency thereof, including, but not limited to, a motor vehicle operator's license, California state identification card, identification card issued to a member of the armed forces, or other form of identification that bears the name, date of birth, description, and picture of the person.

(b) (1) No person prohibited from owning or possessing a firearm under Section 12021 or 12021.1 of this code or Section 8100 or 8103 of the Welfare and Institutions Code shall own, possess, or have under his or her custody or control, any ammunition or reloaded ammunition.

(2) For purposes of this subdivision, "ammunition" shall include, but not be limited to, any bullet, cartridge, magazine, clip, speed loader, autoloader, or projectile capable of being fired from a firearm with a deadly consequence.

(3) A violation of this subdivision is punishable by imprisonment in a county jail not to exceed one year or in the state prison, by a fine not to exceed one thousand dollars (\$1,000), or by both the fine and imprisonment.

(c) Unless it is with the written permission of the school district superintendent, his or her designee, or equivalent school authority, no person shall carry ammunition or reloaded ammunition onto school grounds, except sworn law enforcement officers acting within the scope of their duties or persons exempted under subparagraph (A) of paragraph (1) of subdivision (a) of Section 12027. This subdivision shall not apply to a duly appointed peace officer as defined in Chapter 4.5 (commencing

with Section 830) of Title 3 of Part 2, a full-time paid peace officer of another state or the federal government who is carrying out official duties while in California, any person summoned by any of these officers to assist in making an arrest or preserving the peace while he or she is actually engaged in assisting the officer, a member of the military forces of this state or of the United States who is engaged in the performance of his or her duties, a person holding a valid license to carry the firearm pursuant to Article 3 (commencing with Section 12050) of Chapter 1 of Title 2 of Part 4, or an armored vehicle guard, who is engaged in the performance of his or her duties, as defined in subdivision (e) of Section 7521 of the Business and Professions Code. A violation of this subdivision is punishable by imprisonment in a county jail for a term not to exceed six months, a fine not to exceed one thousand dollars (\$1,000), or both the imprisonment and fine.

(d) (1) A violation of paragraph (1) of subdivision (b) is justifiable where all of the following conditions are met:

(A) The person found the ammunition or reloaded ammunition or took the ammunition or reloaded ammunition from a person who was committing a crime against him or her.

(B) The person possessed the ammunition or reloaded ammunition no longer than was necessary to deliver or transport the ammunition or reloaded ammunition to a law enforcement agency for that agency's disposition according to law.

(C) The person is prohibited from possessing any ammunition or reloaded ammunition solely because that person is prohibited from owning or possessing a firearm only by virtue of Section 12021.

(2) Upon the trial for violating paragraph (1) of subdivision (b), the trier of fact shall determine whether the defendant is subject to the exemption created by this subdivision.

(3) The defendant has the burden of proving by a preponderance of the evidence that he or she is subject to the exemption provided by this subdivision.

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 682

An act to add Chapter 2.995 (commencing with Section 7286.90) to Part 1.7 of Division 2 of the Revenue and Taxation Code, relating to taxation.

[Approved by Governor October 7, 2005. Filed with
Secretary of State October 7, 2005.]

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

SECTION 1. Chapter 2.995 (commencing with Section 7286.90) is added to Part 1.7 of Division 2 of the Revenue and Taxation Code, to read:

CHAPTER 2.995. SAN MATEO COUNTY TRANSACTIONS AND USE TAX
FOR PARKS AND RECREATION PURPOSES

7286.90. (a) In addition to the tax levied pursuant to Part 1.5 (commencing with Section 7200) and any other tax authorized by this part, the Board of Supervisors of the County of San Mateo may impose a transactions and use tax in lieu of, and not in addition to, a tax imposed under Section 7285.5 for the purposes described in paragraph (4), by the adoption of an ordinance in accordance with this part if all of the following conditions are met:

(1) The ordinance imposing the tax is approved by a two-thirds vote of all members of the board of supervisors and is subsequently submitted to and approved by the voters of the county by a two-thirds vote of those voters voting on the ordinance in accordance with Article 3.7 (commencing with Section 53720) of Chapter 4 of Part 1 of Division 2 of Title 5 of the Government Code.

(2) The ordinance includes an expenditure plan describing the purposes for which the revenues from the tax may be expended, consistent with the purposes described in paragraph (4). The plan may provide for distribution of revenues to cities and special districts within the county for implementation of the plan.

(3) The tax is imposed at a rate of 0.125 or 0.25 percent for a specified period of time.

(4) The revenues collected from the tax are used only for park and recreation acquisition, improvements, maintenance, programs, and operations within the incorporated and unincorporated areas of the county.

(5) The transactions and use tax conforms to Part 1.6 (commencing with Section 7251).

(b) Notwithstanding paragraph (3) of subdivision (a), the Board of Supervisors of the County of San Mateo may impose a transactions and use tax in any succeeding period if all of the conditions specified in subdivision (a) are met for that succeeding period.

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 fiscal pressures being experienced by the County of San Mateo in providing essential park and recreation services.

CHAPTER 683

An act to amend Section 12133 of the Penal Code, relating to unsafe handguns.

[Approved by Governor October 7, 2005. Filed with
Secretary of State October 7, 2005.]

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

SECTION 1. Section 12133 of the Penal Code is amended to read:
12133. (a) The provisions of this chapter shall not apply to a single-action revolver that has at least a 5-cartridge capacity with a barrel length of not less than three inches, and meets any of the following specifications:

(1) Was originally manufactured prior to 1900 and is a curio or relic, as defined in Section 478.11 of Title 27 of the Code of Federal Regulations.

(2) Has an overall length measured parallel to the barrel of at least 7½ inches when the handle, frame or receiver, and barrel are assembled.

(3) Has an overall length measured parallel to the barrel of at least 7½ inches when the handle, frame or receiver, and barrel are assembled and that is currently approved for importation into the United States pursuant to the provisions of paragraph (3) of subsection (d) of Section 925 of Title 18 of the United States Code.

(b) The provisions of this chapter shall not apply to a single-shot pistol with a barrel length of not less than six inches and that has an

overall length of at least 10½ inches when the handle, frame or receiver, and barrel are assembled.

CHAPTER 684

An act to amend Sections 309.7 and 7661 of the Public Utilities Code, relating to railroads.

[Approved by Governor October 7, 2005. Filed with
Secretary of State October 7, 2005.]

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

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

(a) The transportation of hazardous materials by railroads through urban areas in California poses a potential danger that warrants heightened care by railroads and by the state, to prevent accidents and spills.

(b) Recent accidents in other states involving the release of toxic substances in lethal amounts, resulting in widespread injury and death, illustrate the need for reassessment by both state and federal authorities of equipment and facility standards, inspection and maintenance programs, and enforcement procedures.

SEC. 2. Section 309.7 of the Public Utilities Code is amended to read:

309.7. (a) The division of the commission responsible for consumer protection and safety shall be responsible for inspection, surveillance, and investigation of the rights-of-way, facilities, equipment, and operations of railroads and public mass transit guideways, and for enforcing state and federal laws, regulations, orders, and directives relating to transportation of persons or commodities, or both, of any nature or description by rail. The consumer protection and safety division shall advise the commission on all matters relating to rail safety, and shall propose to the commission rules, regulations, orders, and other measures necessary to reduce the dangers caused by unsafe conditions on the railroads of the state. The delegation of enforcement responsibility to the consumer protection and safety division shall not diminish the power of other agencies of state government to enforce laws relating to employee or environmental safety, pollution prevention, or public health and safety.

(b) In performing its duties, the consumer protection and safety division shall exercise all powers of investigation granted to the commission, including rights to enter upon land or facilities, inspect books and records, and compel testimony. The commission shall employ sufficient federally certified inspectors to ensure at the time of inspection that railroad locomotives and equipment and facilities located in class I railroad yards in California are inspected not less frequently than every 180 days, and all main and branch line tracks are inspected not less frequently than every 12 months. In performing its duties, the safety division shall consult with representatives of railroad corporations, labor organizations representing railroad employees, and the Federal Railroad Administration.

(c) The general counsel shall assign to the consumer protection and safety division the personnel and attorneys necessary to fully utilize the powers granted to the commission by any state law, and by any federal law relating to rail transportation, including, but not limited to, the Federal Rail Safety Act (45 U.S.C. Sec. 421m, et seq.), to enforce safety laws, rules, regulations, and orders, and to collect fines and penalties resulting from the violation of any safety rule or regulation.

(d) The activities of the consumer protection and safety division that relate to safe operation of common carriers by rail, other than those relating to grade crossing protection, shall also be supported by the fees paid by railroad corporations, if any, pursuant to Sections 421 to 424, inclusive. The activities of the consumer protection and safety division that relate to grade crossing protection shall be supported by funds appropriated therefor from the State Highway Account in the State Transportation Fund. On or before November 30 of each year, the commission shall report to the Legislature on the activities of the safety division, and shall fully document in the report all expenditures of those funds in the audit report provided in subdivision (f) of Section 421.

SEC. 3. Section 7661 of the Public Utilities Code is amended 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 the approval of, 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).

(c) The notification required pursuant to subdivision (b) shall include the following information, whether or not an accident or spill occurs:

- (1) The information required by subdivision (c) of Section 7673.
- (2) In the event of a runaway train, a train list.
- (3) In the event of an uncontrolled train movement or uncontrolled movement of railcars, a track list or other inventory document if available.

(d) The consumer protection and safety division shall investigate any incident that results in a notification required pursuant to subdivision (b), and shall report its findings concerning the cause or causes to the commission. The commission shall include the division's report in its report to the Legislature pursuant to Section 7711.

CHAPTER 685

An act to add Section 110827 to the Health and Safety Code, relating to organic products.

[Approved by Governor October 7, 2005. Filed with
Secretary of State October 7, 2005.]

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

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

(a) It is the Legislature's intent in enacting this act to prevent consumers from being misled by the organic label on certain fish and seafood.

(b) There are currently no standards in place for what organic seafood must mean and, at this time, any seafood can be claimed as organic. This is a serious deviation from what consumers expect from other organic food that meets strict federal standards for organic production and is verified by an organic certifier. In fact, seafood contaminated with mercury and polychlorinated biphenyls and labeled with Proposition 65 warnings regarding chemicals known to the state to cause cancer or reproductive toxicity can also carry the organic label.

(c) While the United States Department of Agriculture is in the process of establishing organic standards for seafood, the federal department has refused to prohibit the organic label on fish.

(d) This act will protect organic farmers, certifiers, and consumers by prohibiting substandard organic food from being sold in the marketplace.

SEC. 2. Section 110827 is added to the Health and Safety Code, to read:

110827. No aquaculture, fish, or seafood product, including, but not limited to, farmed and wild caught species, shall be labeled or represented as “organic” until formal organic certification standards have been developed and implemented by the United States Department of Agriculture’s National Organic Program or the California Department of Food and Agriculture.

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 686

An act to add and repeal Article 10 (commencing with Section 11364) of Chapter 3.5 of Division 3 of Title 2 of, and to add and repeal Chapter 22.5 (commencing with Section 7528) of Division 7 of Title 1 of, the Government Code, relating to state government operations.

[Approved by Governor October 7, 2005. Filed with
Secretary of State October 7, 2005.]

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

SECTION 1. This act shall be known and may be cited as the Government Modernization, Efficiency, Accountability, and Transparency Act of 2005.

SEC. 2. Chapter 22.5 (commencing with Section 7528) is added to Division 7 of Title 1 of the Government Code, to read:

CHAPTER 22.5. CALIFORNIA TAXPAYERS' RIGHT TO CUSTOMER
SERVICE

7528. (a) In addition to any other requirement, every state agency, as defined in Section 11000, that issues permits or licenses or accepts applications, proposals, bids, or similar requests shall post on a Web site, no later than January 1, 2007, "customer service" links to the following information:

(1) A link entitled "frequently asked questions" that answers questions about how to obtain a permit or license or have an application granted and how to appeal the denial of a permit, license, or application.

(2) A link for forms and applications and appeal-related documents that are available in a format that permits them to be downloaded and printed from the state agency's Web site.

(3) A link with instructions on how individuals may file complaints, including via electronic means, related to issues under the jurisdiction of the state agency.

(b) Nothing in this chapter shall affect the discretion of a state agency to post on the Internet information in addition to what is required to be disclosed by this chapter.

(c) The requirements of this chapter only apply to state agencies that otherwise have an Internet Web site and are in addition to any other information that is otherwise required by law.

7528.1. This chapter shall remain in effect only until January 1, 2012, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2012, deletes or extends that date.

SEC. 3. Article 10 (commencing with Section 11364) is added to Chapter 3.5 of Division 3 of Title 2 of the Government Code, to read:

Article 10. California Taxpayers' Right to Self-Governance and
Participation

11364. (a) In addition to any other requirement, every state agency, as defined in Section 11000, shall post on its homepage of its Web site, no later than January 1, 2007, a link entitled "Decisions Pending and Opportunities for Public Participation" where the link contains all of the following information:

(1) All applicable bulletins and notices required pursuant to this chapter.

(2) Notices of all public meetings and agendas. This information shall be posted in compliance with the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Division 3 of Title 2), the Bagley-Keene Open Meeting Act (Article 9 (commencing with Section

11120) of Division 3 of Title 2) or other applicable provisions of law, but no later than 10 days before the meeting where the regulatory action is on the agenda.

(3) Instructions on how the public may submit written comments or otherwise participate in administrative procedures, meetings, and hearings with a link entitled "How to Participate."

(4) A link to the text of all regulations and statutes related to current bulletins and notices entitled "Laws and Regulations Relevant to Current Public Proceedings." This requirement can be met by a link to another Web site containing the proposed regulation or statute.

(5) A link that provides an opportunity for the public to comment on draft regulations pursuant to this chapter through electronic mail or by facsimile entitled "Submit Your Comments on Draft Regulations Here."

(b) Every state agency shall, to the extent practicable and can be done utilizing existing resources, have hearings on proposed regulations televised over the Internet via a Web cast or other technology.

(c) (1) The requirements of this article only apply to state agencies that otherwise have an Internet Web site and are in addition to any other information that is otherwise required by law.

(2) Nothing in this article shall affect the discretion of a state governmental entity to do either of the following:

(A) Post on its Web site or the Internet information in addition to what is required to be disclosed by this article.

(B) Post accurate, useful, and explanatory plain language information.

11365. This article shall remain in effect only until January 1, 2012, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2012, deletes or extends that date.

CHAPTER 687

An act to amend Section 12878.1 of the Water Code, relating to water.

[Approved by Governor October 7, 2005. Filed with
Secretary of State October 7, 2005.]

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

SECTION 1. Section 12878.1 of the Water Code is amended to read:

12878.1. (a) Whenever the department finds that a unit of a project is not being operated or maintained in accordance with the standards established by federal regulations or whenever the governing body of a local agency obligated to operate and maintain that unit by resolution

duly adopted and filed with the department declares that it no longer desires to operate and maintain the unit, the department shall prepare a statement to that effect specifying in detail the particular items of work necessary to be done in order to comply with the standards of the federal government together with an estimate of the cost thereof for the current fiscal year and for the ensuing fiscal year.

(b) Subject to subdivision (c), but notwithstanding any other provision of law, the board or the department is not required to proceed in accordance with subdivision (a) or with the formation of a maintenance area under this chapter if neither the board nor the department has given the nonfederal assurances to the United States required for the project. If neither the board nor the department has given the nonfederal assurances to the United States required for the project, the board or department may elect to proceed with the formation if it determines that the formation of a maintenance area is in the best interest of the state.

(c) (1) Subdivision (b) does not apply to any project for which an application for the formation of a maintenance area under this chapter has been submitted to the department by a local agency on or before July 1, 2003.

(2) Subject to paragraph (3), the department or the board shall proceed in accordance with subdivision (a) and with the formation of a maintenance area in accordance with this chapter for any project described in paragraph (1).

(3) Before the department or the board forms a maintenance area pursuant to this subdivision, the local agency shall enter into an agreement with the department pursuant to which the local agency agrees to indemnify and hold and save harmless the state, its officers, agents, and employees for any and all liability for damages that may arise out of the planning, design, construction, operation, maintenance, repair, or rehabilitation of the project, or the dissolution or modification of the maintenance area formed pursuant to this subdivision.

CHAPTER 688

An act relating to resources, and making an appropriation therefor.

[Approved by Governor October 7, 2005. Filed with
Secretary of State October 7, 2005.]

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

SECTION. 1. The sum of two million sixteen thousand dollars (\$2,016,000) is hereby appropriated from the River Protection Subaccount, established pursuant to Section 79100 of the Water Code in the Watershed Protection Account, to the Secretary of the Resources Agency for the Maywood Riverfront Park grant. Of this amount, sixteen thousand dollars (\$16,000) shall be allocated to the Secretary of the Resources Agency to administer the grant.

SEC. 2. The Legislature finds and declares that the appropriation made in Section 1 provides funding for construction costs associated with the completion of the Maywood Riverfront Park, as defined in the existing river parkway grant approved by the Resources Agency, including costs incurred prior to the availability of this appropriation.

CHAPTER 689

An act to add Sections 13007 and 13008 to the Fish and Game Code, relating to sport fishing.

[Approved by Governor October 7, 2005. Filed with
Secretary of State October 7, 2005.]

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

SECTION 1. Section 13007 is added to the Fish and Game Code, to read:

13007. (a) Notwithstanding Section 13001 and paragraph (1) of subdivision (a) of Section 13005, commencing July 1, 2006, 33 $\frac{1}{3}$ percent of all sport fishing license fees, except license fees collected pursuant to Section 7149.8 collected pursuant to Article 3 (commencing with Section 7145) of Chapter 1 of Part 2 of Division 6 shall be deposited into the Hatchery and Inland Fisheries Fund, which is hereby established in the State Treasury. Moneys in the fund may be expended, upon appropriation by the Legislature, to support programs of the Department of Fish and Game related to the management, maintenance, and capital improvement of California's fish hatcheries, the Heritage and Wild Trout Program, and enforcement activities related thereto, and to support other activities eligible to be funded from revenue generated by sport fishing license fees.

(b) The sport fishing license fees collected and subject to appropriation pursuant to subdivision (a) shall be used for the following purposes:

(1) For the department's attainment of the following production goals for state hatcheries, based on the sales of the following types of sport fishing licenses: resident; lifetime; nonresident year; nonresident, 10-day; 2-day; 1-day; and reduced fee.

(A) By July 1, 2007, a minimum of 2.25 pounds of released trout per sport fishing license sold in 2006, 1.75 pounds of which must be of catchable size or larger.

(B) By July 1, 2008, a minimum of 2.5 pounds of released trout per sport fishing license sold in 2007, 2.0 pounds of which must be of catchable size or larger.

(C) By July 1, 2009, and thereafter, a minimum of 2.75 pounds of released trout per sport fishing license sold in 2008, 2.25 pounds of which must be of catchable size or larger.

(D) The department shall attain these goals in compliance with Fish and Game Commission trout policies concerning catchable-sized trout stocking.

(2) To the Heritage and Wild Trout Program, two million dollars (\$2,000,000), which shall be used for permanent positions and seasonal aides in each region of the state as necessary, and other activities necessary to the program.

(A) The funds allocated pursuant to this paragraph shall be used to fund seven new positions for the Heritage and Wild Trout Program.

(B) In addition to the seven new positions specified in subparagraph (A), the department may hire seasonal aides in each region of the state to assist with the operations of the Heritage and Wild Trout Program.

(3) The department shall, by July 1, 2011, ensure that 25 percent of the fish produced by state fish hatcheries are used for the purpose of initiating and managing the restoration of naturally indigenous stocks of trout to their original California source watersheds. This paragraph shall not be construed to prohibit the department from using surplus fish in waters outside of their original California source watersheds. All trout restored pursuant to this paragraph shall be native California trout, as defined in Section 7261. The department shall attain the 25 percent restoration goal of this paragraph according to the following schedule:

(A) By July 1, 2009, 15 percent and at least 4 species, not including the coastal rainbow trout/steelhead.

(B) By July 1, 2010, 20 percent and at least 4 species, not including the coastal rainbow trout/steelhead.

(C) By July 1, 2011, and thereafter, 25 percent and at least 5 species, not including the coastal rainbow trout/steelhead.

(4) The department may hire additional staff for state fish hatcheries, in order to comply with the requirements of this subdivision.

(c) The department may allocate any funds under this section, not necessary to maintain the minimums specified in subparagraphs (1) and (3) of subdivision (b), and after the expenditure in subparagraph (2) of subdivision (b), to the Fish and Game Preservation Fund. The department may utilize federal funds to meet the minimums specified in this subdivision.

(d) A portion of the moneys subject to appropriation pursuant to subdivision (a) may be used for the purpose of obtaining scientifically valid genetic determinations of California native trout stocks, consistent with Theme 1 in the executive summary of the department's Strategic Plan for Trout Management, published November 2003.

(e) The department, by July 1, 2008, and biennially thereafter, shall report back to the fiscal and policy committees in the Legislature on the implementation of these provisions.

CHAPTER 690

An act to amend Section 12280 of the Penal Code, relating to assault weapons.

[Approved by Governor October 7, 2005. Filed with
Secretary of State October 7, 2005.]

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

SECTION 1. Section 12280 of the Penal Code is amended to read:

12280. (a) (1) Any person who, within this state, manufactures or causes to be manufactured, distributes, transports, or imports into the state, keeps for sale, or offers or exposes for sale, or who gives or lends any assault weapon or any .50 BMG rifle, except as provided by this chapter, is guilty of a felony, and upon conviction shall be punished by imprisonment in the state prison for four, six, or eight years.

(2) In addition and consecutive to the punishment imposed under paragraph (1), any person who transfers, lends, sells, or gives any assault weapon or any .50 BMG rifle to a minor in violation of paragraph (1) shall receive an enhancement of one year.

(3) Except in the case of a first violation involving not more than two firearms as provided in subdivisions (b) and (c), for purposes of this section, if more than one assault weapon or .50 BMG rifle is involved in any violation of this section, there shall be a distinct and separate offense for each.

(b) Any person who, within this state, possesses any assault weapon, except as provided in this chapter, is punishable by imprisonment in a county jail for a period not exceeding one year, or by imprisonment in the state prison. However, a first violation of these provisions is punishable by a fine not exceeding five hundred dollars (\$500), if the person was found in possession of no more than two firearms in compliance with subdivision (c) of Section 12285 and the person meets all of the following conditions:

(1) The person proves that he or she lawfully possessed the assault weapon prior to the date it was defined an assault weapon pursuant to Section 12276, 12276.1, or 12276.5.

(2) The person has not previously been convicted of a violation of this section.

(3) The person was found to be in possession of the assault weapon within one year following the end of the one-year registration period established pursuant to subdivision (a) of Section 12285.

(4) The person relinquished the firearm pursuant to Section 12288, in which case the assault weapon shall be destroyed pursuant to Section 12028.

(c) Any person who, within this state, possesses any .50 BMG rifle, except as provided in this chapter, is punishable by a fine of one thousand dollars (\$1,000), imprisonment in a county jail for a period not to exceed one year, or by both that fine and imprisonment. However, a first violation of these provisions is punishable by a fine not exceeding five hundred dollars (\$500), if the person was found in possession of no more than two firearms in compliance with subdivision (a) of Section 12285 and the person meets the conditions set forth in paragraphs (1), (2), and (3):

(1) The person proves that he or she lawfully possessed the .50 BMG rifle prior to January 1, 2005.

(2) The person has not previously been convicted of a violation of this section.

(3) The person was found to be in possession of the .50 BMG rifle within one year following the end of the .50 BMG rifle registration period established pursuant to subdivision (a) of Section 12285.

(4) Firearms seized pursuant to this subdivision from persons who meet all of the conditions set forth in paragraphs (1), (2), and (3) shall be returned unless the court finds in the interest of public safety, after notice and hearing, that the .50 BMG rifle should be destroyed pursuant to Section 12028. Firearms seized from persons who do not meet the conditions set forth in paragraphs (1), (2), and (3) shall be destroyed pursuant to Section 12028.

(d) Notwithstanding Section 654 or any other provision of law, any person who commits another crime while violating this section may receive an additional, consecutive punishment of one year for violating this section in addition and consecutive to the punishment, including enhancements, which is prescribed for the other crime.

(e) Subdivisions (a), (b), and (c) shall not apply to the sale to, purchase by, importation of, or possession of assault weapons or a .50 BMG rifle by the Department of Justice, police departments, sheriffs' offices, marshals' offices, the Youth and Adult Corrections Agency, the Department of the California Highway Patrol, district attorneys' offices, Department of Fish and Game, Department of Parks and Recreation, or the military or naval forces of this state or of the United States, or any federal law enforcement agency for use in the discharge of their official duties.

(f) (1) Subdivisions (b) and (c) shall not prohibit the possession or use of assault weapons or a .50 BMG rifle by sworn peace officer members of those agencies specified in subdivision (e) for law enforcement purposes, whether on or off duty.

(2) Subdivisions (a), (b), and (c) shall not prohibit the delivery, transfer, or sale of an assault weapon or a .50 BMG rifle to, or the possession of an assault weapon or a .50 BMG rifle by, a sworn peace officer member of an agency specified in subdivision (e), provided that the peace officer is authorized by his or her employer to possess or receive the assault weapon or the .50 BMG rifle. Required authorization is defined as verifiable written certification from the head of the agency, identifying the recipient or possessor of the assault weapon as a peace officer and authorizing him or her to receive or possess the specific assault weapon. For this exemption to apply, in the case of a peace officer who possesses or receives the assault weapon prior to January 1, 2002, the officer shall register the assault weapon pursuant to Section 12285 on or before April 1, 2002; in the case of a peace officer who possesses or receives the assault weapon on or after January 1, 2002, the officer shall register the assault weapon pursuant to Section 12285 not later than 90 days after possession or receipt. In the case of a peace officer who possesses or receives a .50 BMG rifle on or before January 1, 2005, the officer shall register the .50 BMG rifle on or before April 30, 2006. In the case of a peace officer who possesses or receives a .50 BMG rifle after January 1, 2005, the officer shall register the .50 BMG rifle not later than one year after possession or receipt. The peace officer must include with the registration, a copy of the authorization required pursuant to this paragraph.

(3) Nothing in this section shall be construed to limit or prohibit the delivery, transfer, or sale of an assault weapon or a .50 BMG rifle to, or

the possession of an assault weapon or a .50 BMG rifle by, a member of a federal law enforcement agency provided that person is authorized by the employing agency to possess the assault weapon or .50 BMG rifle.

(g) Subdivision (b) shall not apply to the possession of an assault weapon during the 90-day period immediately after the date it was specified as an assault weapon pursuant to Section 12276.5, or during the one-year period after the date it was defined as an assault weapon pursuant to Section 12276.1, if all of the following are applicable:

(1) The person is eligible under this chapter to register the particular assault weapon.

(2) The person lawfully possessed the particular assault weapon prior to the date it was specified as an assault weapon pursuant to Section 12276.5, or prior to the date it was defined as an assault weapon pursuant to Section 12276.1.

(3) The person is otherwise in compliance with this chapter.

(h) Subdivisions (a), (b), and (c) shall not apply to the manufacture by persons who are issued permits pursuant to Section 12287 of assault weapons or .50 BMG rifles for sale to the following:

(1) Exempt entities listed in subdivision (e).

(2) Entities and persons who have been issued permits pursuant to Section 12286 or 12287.

(3) Entities outside the state who have, in effect, a federal firearms dealer's license solely for the purpose of distribution to an entity listed in paragraphs (4) to (6), inclusive.

(4) Federal military and law enforcement agencies.

(5) Law enforcement and military agencies of other states.

(6) Foreign governments and agencies approved by the United States State Department.

(i) Subdivision (a) shall not apply to a person who is the executor or administrator of an estate that includes an assault weapon or a .50 BMG rifle registered under Section 12285 or that was possessed pursuant to paragraph (1) of subdivision (f) which is disposed of as authorized by the probate court, if the disposition is otherwise permitted by this chapter.

(j) Subdivisions (b) and (c) shall not apply to a person who is the executor or administrator of an estate that includes an assault weapon or a .50 BMG rifle registered under Section 12285 or that was possessed pursuant to paragraph (1) of subdivision (f) if the assault weapon or .50 BMG rifle is possessed at a place set forth in paragraph (1) of subdivision (c) of Section 12285 or as authorized by the probate court.

(k) Subdivision (a) shall not apply to:

(1) A person who lawfully possesses and has registered an assault weapon or .50 BMG rifle pursuant to this chapter who lends that assault weapon or .50 BMG rifle to another if all the following apply:

(A) The person to whom the assault weapon or .50 BMG rifle is lent is 18 years of age or over and is not in a class of persons prohibited from possessing firearms by virtue of Section 12021 or 12021.1 of this code or Section 8100 or 8103 of the Welfare and Institutions Code.

(B) The person to whom the assault weapon or .50 BMG rifle is lent remains in the presence of the registered possessor of the assault weapon or .50 BMG rifle.

(C) The assault weapon or .50 BMG rifle is possessed at any of the following locations:

(i) While on a target range that holds a regulatory or business license for the purpose of practicing shooting at that target range.

(ii) While on the premises of a target range of a public or private club or organization organized for the purpose of practicing shooting at targets.

(iii) While attending any exhibition, display, or educational project that is about firearms and that is sponsored by, conducted under the auspices of, or approved by a law enforcement agency or a nationally or state recognized entity that fosters proficiency in, or promotes education about, firearms.

(2) The return of an assault weapon or .50 BMG rifle to the registered possessor, or the lawful possessor, which is lent by the same pursuant to paragraph (1).

(l) Subdivisions (b) and (c) shall not apply to the possession of an assault weapon or .50 BMG rifle by a person to whom an assault weapon or .50 BMG rifle is lent pursuant to subdivision (k).

(m) Subdivisions (a), (b), and (c) shall not apply to the possession and importation of an assault weapon or a .50 BMG rifle into this state by a nonresident if all of the following conditions are met:

(1) The person is attending or going directly to or coming directly from an organized competitive match or league competition that involves the use of an assault weapon or a .50 BMG rifle.

(2) The competition or match is conducted on the premises of one of the following:

(A) A target range that holds a regulatory or business license for the purpose of practicing shooting at that target range.

(B) A target range of a public or private club or organization that is organized for the purpose of practicing shooting at targets.

(3) The match or competition is sponsored by, conducted under the auspices of, or approved by, a law enforcement agency or a nationally or state recognized entity that fosters proficiency in, or promotes education about, firearms.

(4) The assault weapon or .50 BMG rifle is transported in accordance with Section 12026.1 or 12026.2.

(5) The person is 18 years of age or over and is not in a class of persons prohibited from possessing firearms by virtue of Section 12021 or 12021.1 of this code or Section 8100 or 8103 of the Welfare and Institutions Code.

(n) Subdivisions, (b) and (c) shall not apply to any of the following persons:

(1) A person acting in accordance with Section 12286 or 12287.

(2) A person who has a permit to possess an assault weapon or a .50 BMG rifle issued pursuant to Section 12286 or 12287 when he or she is acting in accordance with Section 12285, 12286, or 12287.

(o) Subdivisions (a), (b), and (c) shall not apply to any of the following persons:

(1) A person acting in accordance with Section 12285.

(2) A person acting in accordance with Section 12286, 12287, or 12290.

(p) Subdivisions (b) and (c) shall not apply to the registered owner of an assault weapon or a .50 BMG rifle possessing that firearm in accordance with subdivision (c) of Section 12285.

(q) Subdivision (a) shall not apply to the importation into this state of an assault weapon or a .50 BMG rifle by the registered owner of that assault weapon or a .50 BMG rifle, if it is in accordance with the provisions of subdivision (c) of Section 12285.

(r) Subdivision (a) shall not apply during the first 180 days of the 2005 calendar year to the importation into this state of a .50 BMG rifle by a person who lawfully possessed that .50 BMG rifle in this state prior to January 1, 2005.

(s) Subdivision (c) shall not apply to the possession of a .50 BMG rifle that is not defined or specified as an assault weapon pursuant to this chapter, by any person prior to May 1, 2006 if all of the following are applicable:

(1) The person is eligible under this chapter to register that .50 BMG rifle.

(2) The person lawfully possessed the .50 BMG rifle prior to January 1, 2005.

(3) The person is otherwise in compliance with this chapter.

(t) Subdivisions (a), (b) and (c) shall not apply to the sale of assault weapons or .50 BMG rifles by persons who are issued permits pursuant to Section 12287 to any of the following:

(1) Exempt entities listed in subdivision (e).

(2) Entities and persons who have been issued permits pursuant to Section 12286 or 12287.

(3) Federal military and law enforcement agencies.
(4) Law enforcement and military agencies of other states.
(5) Foreign governments and agencies approved by the United States State Department.

(6) Officers described in subdivision (f) who are authorized to possess assault weapons or .50 BMG rifles pursuant to subdivision (f).

(u) As used in this chapter, the date a firearm is an assault weapon is the earliest of the following:

(1) The effective date of an amendment to Section 12276 that adds the designation of the specified firearm.

(2) The effective date of the list promulgated pursuant to Section 12276.5 that adds or changes the designation of the specified firearm.

(3) The operative date of Section 12276.1, as specified in subdivision (d) of that section.

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

CHAPTER 691

An act to amend Sections 17024.5, 17052.6, 17072, 17077, 17085, 17131, 17132.5, 17140, 17140.3, 17144, 17152, 17220, 17250, 17250.5, 17255, 17256, 17279.4, 17501, 17551, 17731, 17733, 18571, 18572, 18628, 18633, 18648, 19008, 19041.5, 19116, 19164, 19166, 19173, 19177, 19179, 19182, 19184, 23051.5, 23701s, 23701w, 23703.5, 23705, 23711, 23712, 24306, 24349, 24356, 24369.4, 24407, 24601, 24654, 24661.5, 24872, 24949.1, and 24949.3 of, to amend and repeal Sections 17204, 19772, 19774, and 19777 of, to add Sections 17131.4, 17131.5, 17131.6, 17139.6, 17201.4, 17201.5, 17201.6, 17204.7, 17215.1, 17215.4, 17681.6, 17734.6, 17760, 18035.6, 18036.6, 18181, 19136.12, 19164.5, 24355.3, 24355.4, 24406.6, 24661.6, 24694, and 24831.6 to, to add and repeal Sections 17053.62, 17255.5, 23662, and 24356.4 of, to repeal Sections 17131.8, 17136.5, 17137, 17144.5, 17160.5, 17202.5, 17205, 19773, and 24356.5 of, and to repeal and amend Section 19559 of, the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

[Approved by Governor October 7, 2005. Filed with
Secretary of State October 7, 2005.]

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

SECTION 1. Section 17024.5 of the Revenue and Taxation Code is amended to read:

17024.5. (a) (1) Unless otherwise specifically provided, the terms “Internal Revenue Code,” “Internal Revenue Code of 1954,” or “Internal Revenue Code of 1986,” for purposes of this part, mean Title 26 of the United States Code, including all amendments thereto as enacted on the specified date for the applicable taxable year as follows:

Taxable Year	Specified Date of Internal Revenue Code Sections
(A) For taxable years beginning on or after January 1, 1983, and on or before December 31, 1983.....	January 15, 1983
(B) For taxable years beginning on or after January 1, 1984, and on or before December 31, 1984.....	January 1, 1984
(C) For taxable years beginning on or after January 1, 1985, and on or before December 31, 1985.....	January 1, 1985
(D) For taxable years beginning on or after January 1, 1986, and on or before December 31, 1986.....	January 1, 1986
(E) For taxable years beginning on or after January 1, 1987, and on or before December 31, 1988.....	January 1, 1987
(F) For taxable years beginning on or after January 1, 1989, and on or before December 31, 1989.....	January 1, 1989
(G) For taxable years beginning on or after January 1, 1990, and on or before December 31, 1990.....	January 1, 1990
(H) For taxable years beginning on or after January 1, 1991, and on or before December 31, 1991.....	January 1, 1991
(I) For taxable years beginning on or after January 1, 1992, and on or before December 31, 1992.....	January 1, 1992

- (J) For taxable years beginning on or after
January 1, 1993, and on or before December
31, 1996..... January 1, 1993
- (K) For taxable years beginning on or after
January 1, 1997, and on or before December
31, 1997 January 1, 1997
- (L) For taxable years beginning on or after
January 1, 1998, and on or before December
31, 2001 January 1, 1998
- (M) For taxable years beginning on or after
January 1, 2002, and on or before December 31,
2004..... January 1, 2001
- (N) For taxable years beginning on or after
January 1, 2005..... January 1, 2005

(2) (A) Unless otherwise specifically provided, for federal laws enacted on or after January 1, 1987, and on or before the specified date for the taxable year, uncodified provisions that relate to provisions of the Internal Revenue Code that are incorporated for purposes of this part shall be applicable to the same taxable years as the incorporated provisions.

(B) In the case where Section 901 of the Economic Growth and Tax Relief Act of 2001 (Public Law 107-16) applies to any provision of the Internal Revenue Code that is incorporated for purposes of this part, Section 901 of the Economic Growth and Tax Relief Act of 2001 shall apply for purposes of this part in the same manner and to the same taxable years as it applies for federal income tax purposes.

(3) Subtitle G (Tax Technical Corrections) and Part I of Subtitle H (Repeal of Expired or Obsolete Provisions) of the Revenue Reconciliation Act of 1990 (Public Law 101-508) modified numerous provisions of the Internal Revenue Code and provisions of prior federal acts, some of which are incorporated by reference into this part. Unless otherwise provided, the provisions described in the preceding sentence, to the extent that they modify provisions that are incorporated into this part, are declaratory of existing law and shall be applied in the same manner and for the same periods as specified in the Revenue Reconciliation Act of 1990.

(b) Unless otherwise specifically provided, when applying any provision of the Internal Revenue Code for purposes of this part, a reference to any of the following is not applicable for purposes of this part:

(1) Except as provided in Chapter 4.5 (commencing with Section 23800) of Part 11 of Division 2, an electing small business corporation, as defined in Section 1361(b) of the Internal Revenue Code.

(2) Domestic international sales corporations (DISC), as defined in Section 992(a) of the Internal Revenue Code.

(3) A personal holding company, as defined in Section 542 of the Internal Revenue Code.

(4) A foreign personal holding company, as defined in Section 552 of the Internal Revenue Code.

(5) A foreign investment company, as defined in Section 1246(b) of the Internal Revenue Code.

(6) A foreign trust, as defined in Section 679 of the Internal Revenue Code.

(7) Foreign income taxes and foreign income tax credits.

(8) Section 911 of the Internal Revenue Code, relating to United States citizens living abroad.

(9) A foreign corporation, except that Section 367 of the Internal Revenue Code shall be applicable.

(10) Federal tax credits and carryovers of federal tax credits.

(11) Nonresident aliens.

(12) Deduction for personal exemptions, as provided in Section 151 of the Internal Revenue Code.

(13) The tax on generation-skipping transfers imposed by Section 2601 of the Internal Revenue Code.

(14) The tax, relating to estates, imposed by Section 2001 or 2101 of the Internal Revenue Code.

(c) (1) The provisions contained in Sections 41 to 44, inclusive, and Section 172 of the Tax Reform Act of 1984 (Public Law 98-369), relating to treatment of debt instruments, is not applicable for taxable years beginning before January 1, 1987.

(2) The provisions contained in Public Law 99-121, relating to the treatment of debt instruments, is not applicable for taxable years beginning before January 1, 1987.

(3) For each taxable year beginning on or after January 1, 1987, the provisions referred to by paragraphs (1) and (2) shall be applicable for purposes of this part in the same manner and with respect to the same obligations as the federal provisions, except as otherwise provided in this part.

(d) When applying the Internal Revenue Code for purposes of this part, regulations promulgated in final form or issued as temporary regulations by "the secretary" shall be applicable as regulations under this part to the extent that they do not conflict with this part or with regulations issued by the Franchise Tax Board.

(e) Whenever this part allows a taxpayer to make an election, the following rules shall apply:

(1) A proper election filed with the Internal Revenue Service in accordance with the Internal Revenue Code or regulations issued by “the secretary” shall be deemed to be a proper election for purposes of this part, unless otherwise provided in this part or in regulations issued by the Franchise Tax Board.

(2) A copy of that election shall be furnished to the Franchise Tax Board upon request.

(3) (A) Except as provided in subparagraph (B), in order to obtain treatment other than that elected for federal purposes, a separate election shall be filed at the time and in the manner required by the Franchise Tax Board.

(B) (i) If a taxpayer makes a proper election for federal income tax purposes prior to the time that taxpayer becomes subject to the tax imposed under this part or Part 11 (commencing with Section 23001), that taxpayer is deemed to have made the same election for purposes of the tax imposed by this part, Part 10.2 (commencing with Section 18401), and Part 11 (commencing with Section 23001), as applicable, and that taxpayer may not make a separate election for California tax purposes unless that separate election is expressly authorized by this part, Part 10.2 (commencing with Section 18401), or Part 11 (commencing with Section 23001), or by regulations issued by the Franchise Tax Board.

(ii) If a taxpayer has not made a proper election for federal income tax purposes prior to the time that taxpayer becomes subject to tax under this part or Part 11 (commencing with Section 23001), that taxpayer may not make a separate California election for purposes of this part, Part 10.2 (commencing with Section 18401), or Part 11 (commencing with Section 23001), unless that separate election is expressly authorized by this part, Part 10.2 (commencing with Section 18401), or Part 11 (commencing with Section 23001), or by regulations issued by the Franchise Tax Board.

(iii) This subparagraph applies only to the extent that the provisions of the Internal Revenue Code or the regulation issued by “the secretary” authorizing an election for federal income tax purposes apply for purposes of this part, Part 10.2 (commencing with Section 18401) or Part 11 (commencing with Section 23001).

(f) Whenever this part allows or requires a taxpayer to file an application or seek consent, the rules set forth in subdivision (e) shall be applicable with respect to that application or consent.

(g) When applying the Internal Revenue Code for purposes of determining the statute of limitations under this part, any reference to a

period of three years shall be modified to read four years for purposes of this part.

(h) When applying, for purposes of this part, any section of the Internal Revenue Code or any applicable regulation thereunder, all of the following shall apply:

(1) References to “adjusted gross income” shall mean the amount computed in accordance with Section 17072, except as provided in paragraph (2).

(2) References to “adjusted gross income” for purposes of computing limitations based upon adjusted gross income, shall mean the amount required to be shown as adjusted gross income on the federal tax return for the same taxable year.

(3) Any reference to “subtitle” or “chapter” shall mean this part.

(4) The provisions of Section 7806 of the Internal Revenue Code, relating to construction of title, shall apply.

(5) Any provision of the Internal Revenue Code that becomes operative on or after the specified date for that taxable year shall become operative on the same date for purposes of this part.

(6) Any provision of the Internal Revenue Code that becomes inoperative on or after the specified date for that taxable year shall become inoperative on the same date for purposes of this part.

(7) Due account shall be made for differences in federal and state terminology, effective dates, substitution of “Franchise Tax Board” for “secretary” when appropriate, and other obvious differences.

(i) Any reference to a specific provision of the Internal Revenue Code shall include modifications of that provision, if any, in this part.

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, 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:

	The percentage of credit is:
If the adjusted gross income is:	
\$40,000 or less.....	63%
Over \$40,000 but not over \$70,000.....	53%
Over \$70,000 but not over \$100,000.....	42%

If the adjusted gross income is:	The percentage of credit is:
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, as follows:

(1) Employment-related expenses, within the meaning of Section 21 of the Internal Revenue Code, shall be limited to expenses for household services and care provided in this state.

(2) Earned income, within the meaning of Section 21(d) of the Internal Revenue Code, shall be limited to earned income subject to tax under this part. For purposes of this paragraph, compensation received by a member of the armed forces for active services as a member of the armed forces, other than pensions or retired pay, shall be considered earned income subject to tax under this part, whether or not the member is domiciled in 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 17053.62 is added to the Revenue and Taxation Code, to read:

17053.62. (a) For each taxable year beginning on or after July 1, 2005, and before January 1, 2018, there shall be allowed as an environmental tax credit against the "net tax," as defined by Section 17039, an amount equal to five cents (\$0.05) for each gallon of ultra low sulfur diesel fuel produced during the taxable year by a small refiner at any facility located in this state.

(b) The aggregate credit determined under subdivision (a) for any taxable year with respect to any facility shall not exceed 25 percent of the qualified capital costs incurred by the small refiner with respect to that facility, reduced by the aggregate credits determined under this section for all prior taxable years with respect to that facility.

(c) For purposes of this section:

(1) "Small refiner" means any refiner who owns or operates a refinery in California that:

(A) Has and at all times had since January 1, 1978, a crude oil capacity of not more than 55,000 barrels per stream day.

(B) Has not been at any time since September 1, 1988, owned or controlled by any refiner that at the same time owned or controlled refineries in California with a total combined crude oil capacity of more than 55,000 barrels per stream day.

(C) Has not been at any time since September 1, 1988, owned or controlled by any refiner that at the same time owned or controlled refineries in the United States with a total combined crude oil capacity of more than 137,500 barrels per stream day.

(2) (A) "Qualified capital costs" means, with respect to any facility, those costs paid or incurred during the applicable period for items certified by the California Air Resources Board (CARB) under subparagraph (B) for compliance with the applicable EPA or CARB regulations with respect to that facility, including, but not limited to, expenditures for the construction of new process operation units or the

dismantling and reconstruction of existing process units to be used in the production of ultra low sulfur diesel fuel, associated adjacent or offsite equipment (including tankage, catalyst, and power supply), engineering, construction period interest, site work, and permitting.

(B) (i) Before claiming a credit under this section, a small refiner shall request from the California Air Resources Board a certification that both of the following are true:

(I) That the items for which qualified capital costs were paid or incurred are for compliance with the applicable EPA or CARB regulations described in subparagraph (A).

(II) That the items for which qualified capital costs were paid or incurred have been placed in service by the small refiner.

(ii) The request described in clause (i) shall be in a form and contain sufficient information to allow the California Air Resources Board to determine that the items that are requested to be certified were placed in service for compliance with applicable EPA and CARB regulations, which information shall include the date on which the items were placed in service.

(C) The California Air Resources Board shall make a determination regarding a request described in subparagraph (B) on or before 60 days after the request is submitted. If the board does not make a determination within this time period, the certification will be deemed to be granted.

(D) If certification from the Secretary of the Treasury of the United States, after consultation with the Administrator of the Environmental Protection Agency, that the taxpayer's qualified capital costs with respect to a facility are, or will result, in compliance with applicable EPA regulations, has been received, then the taxpayer shall be allowed the credit without obtaining certification from the CARB, unless CARB demonstrates that the fuel produced does not meet CARB regulations.

(3) "Facility" means a small refiner's petroleum refinery located in the State of California that has incurred qualified capital costs to produce ultra low sulfur diesel fuel.

(4) "Applicable EPA regulations" means the Highway Diesel Fuel Sulfur Control Requirements of the Environmental Protection Agency.

(5) "Applicable CARB regulations" means the Vehicular Diesel Fuel Sulfur. Control Requirements of the California Air Resources Board (CARB) under Section 2281 of Article 2 of Chapter 5 of Division 3 of Title 13 of the California Code of Regulations.

(6) "Applicable period" means, with respect to any facility, the period beginning on January 1, 2004, and ending on May 31, 2007.

(7) "Ultra low sulfur diesel fuel" means both of the following:

(A) Diesel fuel with a sulfur content of 15 parts per million or less.

(B) (i) Subject to clause (ii), either of the following:

(I) Vehicular diesel fuel produced and sold by a small refiner on or after June 1, 2006.

(II) Vehicular diesel fuel produced and sold by the small refiner before June 1, 2006, that the small refiner specifically identifies and supports through internal test reports as meeting applicable CARB regulations.

(ii) For purposes of this section, it is rebuttably presumed that the fuel described in clause (i) is ultra low sulfur diesel fuel. The California Air Resources Board may rebut this presumption by demonstrating that the fuel does not comply with applicable CARB regulations.

(8) "Barrels per stream day" means the maximum number of barrels of input that a distillation facility can process within a 24-hour period when running at full capacity under optimal crude and product slate conditions with no allowance for downtime.

(d) For purposes of this section, if a credit is determined under this section for any expenditure with respect to any property, the increase in basis of that property that would (but for this subdivision) result from that expenditure shall be reduced by the amount of the credit so determined.

(e) No deduction shall be allowed for that portion of the expenses otherwise allowable as a deduction for the taxable year that is equal to the amount of the credit determined for the taxable year under this section.

(f) In the case where the credit allowed by this section exceeds the "net tax," the excess may be carried over to reduce the "net tax" in the following year, and the 10 succeeding years if necessary, until the credit is exhausted.

(g) If a small refiner that claims a credit under this section sells, transfers, or otherwise disposes of, either directly or indirectly, a facility within five years of the taxable year during which it first claimed the credit, there shall be added to the "net tax" of the small refiner during the taxable year of sale, transfer, or disposition an amount equal to the total credit claimed multiplied by a fraction, the numerator of which is the remaining term of five years and the denominator of which is 5.

(h) This section is repealed on January 1, 2018.

SEC. 4. Section 17072 of the Revenue and Taxation Code is amended to read:

17072. (a) Section 62 of the Internal Revenue Code, relating to adjusted gross income defined, shall apply, except as otherwise provided.

(b) Section 62(a)(2)(D) of the Internal Revenue Code, relating to certain expenses of elementary and secondary school teachers, shall not apply.

SEC. 5. Section 17077 of the Revenue and Taxation Code is amended to read:

17077. Section 68 of the Internal Revenue Code, relating to overall limitation on itemized deductions, shall apply, except as otherwise provided.

(a) “Six percent” shall be substituted for “3 percent” in Section 68(a)(1) of the Internal Revenue Code.

(b) Section 68(b)(1) of the Internal Revenue Code shall not apply and in lieu thereof the term “applicable amount” in each place it appears in Section 68(a) of the Internal Revenue Code means one hundred thousand dollars (\$100,000) in the case of a single individual or a married individual filing a separate return, one hundred fifty thousand dollars (\$150,000) in the case of a head of household, and two hundred thousand dollars (\$200,000) in the case of a surviving spouse or a husband and wife filing a joint return.

(c) Section 68(b)(2) of the Internal Revenue Code, relating to inflation adjustments, shall not apply. However, for any taxable year beginning on or after January 1, 1992, the applicable amounts specified in subdivision (b) shall be recomputed annually in the same manner as the recomputation of income tax brackets under subdivision (h) of Section 17041.

(d) Section 68(f) of the Internal Revenue Code, relating to phaseout of limitation, shall not apply.

(e) Section 68(g) of the Internal Revenue Code, relating to termination, shall not apply.

SEC. 6. Section 17085 of the Revenue and Taxation Code is amended to read:

17085. Section 72 of the Internal Revenue Code, relating to annuities and certain proceeds of life insurance contracts, is modified as follows:

(a) The amendments and transitional rules made by Public Law 99-514 shall be applicable to this part for the same transactions and the same years as they are applicable for federal purposes, except that the repeal of Section 72(d) of the Internal Revenue Code, relating to repeal of special rule for employees’ annuities, shall apply only to the following:

(1) Any individual whose annuity starting date is after December 31, 1986.

(2) At the election of the taxpayer, any individual whose annuity starting date is after July 1, 1986, and before January 1, 1987.

(b) The amount of a distribution from an individual retirement account or annuity or employee trust or employee annuity that is includable in gross income for federal purposes shall be reduced for purposes of this part by the lesser of either of the following:

(1) An amount equal to the amount includable in federal gross income for the taxable year.

(2) An amount equal to the basis in the account or annuity allowed by Section 17507 (relating to individual retirement accounts and simplified employee pensions), the increased basis allowed by Sections 17504 and 17506 (relating to plans of self-employed individuals), the increased basis allowed by Section 17501, or the increased basis allowed by Section 17551 that is remaining after adjustment for reductions in gross income under this provision in prior taxable years.

(c) (1) Except as provided in paragraph (2), the amount of the penalty imposed under this part shall be computed in accordance with Sections 72(m), (q), (t), and (v) of the Internal Revenue Code using a rate of 2½ percent, in lieu of the rate provided in those sections.

(2) In the case where Section 72(t)(6) of the Internal Revenue Code, relating to special rules for simple retirement accounts, applies, the rate in paragraph (1) shall be 6 percent in lieu of the 2½ percent rate specified therein.

(d) Section 72(f)(2) of the Internal Revenue Code, relating to special rules for computing employees' contributions, shall be applicable without applying the exceptions which immediately follow that paragraph.

SEC. 7. Section 17131 of the Revenue and Taxation Code is amended to read:

17131. Part III of Subchapter B of Chapter 1 of Subtitle A of the Internal Revenue Code, relating to items that are specifically excluded from gross income, shall apply, except as otherwise provided.

SEC. 7.5. Section 17131.4 is added to the Revenue and Taxation Code, to read:

17131.4. Section 106(d) of the Internal Revenue Code, relating to contributions to health savings accounts, shall not apply.

SEC. 7.6. Section 17131.5 is added to the Revenue and Taxation Code, to read:

17131.5. Section 125(d)(2)(D) of the Internal Revenue Code, relating to the exception for health savings accounts, shall not apply.

SEC. 8. Section 17131.6 is added to the Revenue and Taxation Code, to read:

17131.6. Section 107 of the Internal Revenue Code is modified by substituting in paragraph (2) the phrase "the rental allowance paid to him or her as part of his or her compensation, to the extent used by him or her to rent or provide a home" in lieu of the phrase "the rental allowance paid to him as part of his compensation, to the extent used by him to rent or provide a home and to the extent such allowance does not exceed the fair rental value of the home, including furnishings and appurtenances such as a garage, plus the cost of utilities" contained therein.

SEC. 9. Section 17131.8 of the Revenue and Taxation Code is repealed.

SEC. 10. Section 17132.5 of the Revenue and Taxation Code is amended to read:

17132.5. Section 101 of the Internal Revenue Code, relating to certain death benefits, is modified as follows:

(a) Section 101(h) of the Internal Revenue Code, relating to survivor benefits attributable to service by a public safety officer who is killed in the line of duty, is modified to apply to amounts received in taxable years beginning after December 31, 1996, with respect to individuals dying after December 31, 1996.

(b) (1) Section 101 of the Internal Revenue Code, as modified by subdivision (a) is modified to additionally provide that Section 101(h) of the Internal Revenue Code shall not apply to survivor benefits attributable to service by a public safety officer who is killed in the line of duty with respect to deaths occurring before December 31, 1996, that would otherwise be eligible for exclusion pursuant to Section 101(h) of the Internal Revenue Code, as modified by Public Law 107-15.

(2) The amendments made to this section by the act adding this subdivision shall apply to amounts paid after December 31, 2001, with respect to deaths occurring on or before December 31, 1996.

(c) (1) Section 101 of the Internal Revenue Code, as modified by subdivision (b), is modified to additionally provide that Section 101(i) of the Internal Revenue Code shall apply to any astronaut whose death occurs in the line of duty.

(2) The amendments made to this section by the act adding this subdivision shall apply to amounts received in taxable years beginning after December 31, 2002, with respect to deaths occurring after that date.

SEC. 10.5. Section 17136.5 of the Revenue and Taxation Code is repealed.

SEC. 11. Section 17137 of the Revenue and Taxation Code is repealed.

SEC. 12. Section 17139.6 is added to the Revenue and Taxation Code, to read:

17139.6. Section 139A of the Internal Revenue Code, relating to federal subsidies for prescription drug plans, shall not apply.

SEC. 13. Section 17140 of the Revenue and Taxation Code is amended to read:

17140. (a) For purposes of this section, the following terms have the following meanings as provided in the Golden State Scholarshare Trust Act (Article 19 (commencing with Section 69980) of Chapter 2 of Part 42 of the Education Code):

(1) "Beneficiary" has the meaning set forth in subdivision (c) of Section 69980 of the Education Code.

(2) "Benefit" has the meaning set forth in subdivision (d) of Section 69980 of the Education Code.

(3) "Participant" has the meaning set forth in subdivision (h) of Section 69980 of the Education Code.

(4) "Participation agreement" has the meaning set forth in subdivision (i) of Section 69980 of the Education Code.

(5) "Scholarshare trust" has the meaning set forth in subdivision (f) of Section 69980 of the Education Code.

(b) For taxable years beginning on or after January 1, 1998, and before January 1, 2002, except as otherwise provided in subdivision (c), gross income of a beneficiary or a participant does not include any of the following:

(1) Any distribution or earnings under a Scholarshare trust participation agreement, as provided in Article 19 (commencing with Section 69980) of Chapter 2 of Part 42 of the Education Code.

(2) Any contribution to the Scholarshare trust on behalf of a beneficiary shall not be includable as gross income of that beneficiary.

(c) For taxable years beginning on or after January 1, 1998, and before January 1, 2002:

(1) Any distribution under a Scholarshare trust participation agreement shall be includable in the gross income of the distributee in the manner as provided under Section 72 of the Internal Revenue Code, as modified by Section 17085, to the extent not excluded from gross income under this part. For purposes of applying Section 72 of the Internal Revenue Code, the following apply:

(A) All Scholarshare trust accounts of which an individual is a beneficiary shall be treated as one account, except as otherwise provided.

(B) All distributions during a taxable year shall be treated as one distribution.

(C) The value of the participation agreement, income on the participation agreement, and investment in the participation agreement shall be computed as of the close of the calendar year in which the taxable year begins.

(2) A contribution by a for-profit or nonprofit entity, or by a state or local government agency, for the benefit of an owner or employee of that entity or a beneficiary whom the owner or employee has the power to designate, including the owner or employee's minor children, shall be included in the gross income of that owner or employee in the year the contribution is made.

(3) For purposes of this subdivision, "distribution" includes any benefit furnished to a beneficiary under a participation agreement, as provided

in Article 19 (commencing with Section 69980) of Chapter 2 of Part 42 of the Education Code.

(4) (A) Paragraph (1) shall not apply to that portion of any distribution that, within 60 days of distribution, is transferred to the credit of another beneficiary under the Scholarshare trust who is a “member of the family,” as that term is used in Section 529(e)(2) of the Internal Revenue Code, as amended by Section 211 of the Taxpayer Relief Act of 1997 (P.L. 105-34), of the former beneficiary of that Scholarshare trust.

(B) Any change in the beneficiary of an interest in the Scholarshare trust shall not be treated as a distribution for purposes of paragraph (1) if the new beneficiary is a “member of the family,” as that term is used in Section 529(e)(2) of the Internal Revenue Code, as amended by Section 211 of the Taxpayer Relief Act of 1997 (P.L. 105-34), of the former beneficiary of that Scholarshare trust.

(d) For taxable years beginning on or after January 1, 2002, Sections 529(c) and 529(e) of the Internal Revenue Code, relating to tax treatment of designated beneficiaries and contributors and to other definitions and special rules, respectively, shall apply, except as otherwise provided in Part 11 (commencing with Section 23001) and this part.

SEC. 14. Section 17140.3 of the Revenue and Taxation Code is amended to read:

17140.3. Section 529 of the Internal Revenue Code, relating to qualified state tuition programs, shall apply, except as otherwise provided.

(a) Section 529 (a) of the Internal Revenue Code is modified as follows:

(1) By substituting the phrase “under this part and Part 11 (commencing with Section 23001)” in lieu of the phrase “under this subtitle.”

(2) By substituting “Article 2 (commencing with Section 23731)” in lieu of “Section 511.”

(b) A copy of the report required to be filed with the Secretary of the Treasury under Section 529(d) of the Internal Revenue Code shall be filed with the Franchise Tax Board at the same time and in the same manner as specified in that section.

SEC. 15. Section 17144 of the Revenue and Taxation Code is amended to read:

17144. (a) Section 108(b)(2)(B) of the Internal Revenue Code, relating to general business credit, is modified by substituting “this part” in lieu of “Section 38 (relating to general business credit).”

(b) Section 108(b)(2)(G) of the Internal Revenue Code, relating to foreign tax credit carryovers, shall not apply.

(c) Section 108(b)(3)(B) of the Internal Revenue Code, relating to credit carryover reduction, is modified by substituting “11.1 cents” in

lieu of “33 ⅓ cents” in each place in which it appears. In the case where more than one credit is allowable under this part, the credits shall be reduced on a pro rata basis.

(d) Section 108(g)(3)(B) of the Internal Revenue Code, relating to adjusted tax attributes, is modified by substituting “(\$9)” in lieu of “(\$3).”

(e) (1) If a taxpayer makes an election for federal income tax purposes under Section 108(c) of the Internal Revenue Code, relating to treatment of discharge of qualified real property business indebtedness, a separate election shall not be allowed under paragraph (3) of subdivision (e) of Section 17024.5 and the federal election shall be binding for purposes of this part.

(2) If a taxpayer has not made an election for federal income tax purposes under Section 108(c) of the Internal Revenue Code, relating to treatment of discharge of qualified real property business indebtedness, then the taxpayer shall not be allowed to make that election for purposes of this part.

SEC. 16. Section 17144.5 of the Revenue and Taxation Code is repealed.

SEC. 17. Section 17152 of the Revenue and Taxation Code is amended to read:

17152. Section 121 of the Internal Revenue Code, relating to exclusion of gain from sale of principal residence, is modified as follows:

(a) The two-year period in Section 121(a) of the Internal Revenue Code shall be reduced by the period of the taxpayer’s service, not to exceed 18 months, in the Peace Corps during the five-year period ending on the date of the sale or exchange.

(b) If the taxpayer is prohibited from filing a joint return pursuant to Section 18521, Section 121(b)(2)(A) of the Internal Revenue Code shall nevertheless be treated as being satisfied if the taxpayer files a joint return for federal income tax purposes for the same taxable year. However, in no instance shall the total amount excludable from gross income under Section 121(a) of the Internal Revenue Code with respect to any sale or exchange exceed the maximum amount allowed by Section 121(b) of the Internal Revenue Code.

(c) (1) If a taxpayer has, at any time, made an election for federal purposes under Section 121(f) of the Internal Revenue Code not to have Section 121 of the Internal Revenue Code apply to a sale or exchange, Section 121 of the Internal Revenue Code shall not apply to that sale or exchange for state purposes, a separate election for state purposes shall not be allowed under paragraph (3) of subdivision (e) of Section 17024.5, the federal election shall be binding for purposes of this part, and that election shall be treated as an election to include in gross income for purposes of this part all the gain from the sale or exchange of that

property, including that amount which, but for that election, would have been excluded from income under Section 121(a) of the Internal Revenue Code for state purposes.

(2) If a taxpayer fails to make an election for federal purposes under Section 121(f) of the Internal Revenue Code to not have Section 121 of the Internal Revenue Code apply to a sale or exchange, no election under Section 121(f) of the Internal Revenue Code shall be allowed for state purposes, Section 121 of the Internal Revenue Code shall apply to that sale or exchange for state purposes, and a separate election for state purposes shall not be allowed under paragraph (3) of subdivision (e) of Section 17024.5.

(d) (1) If a taxpayer has, at any time, made an election for federal purposes under Section 312(d)(2) of the Taxpayer Relief Act of 1997 (Public Law 105-34), relating to sales before date of enactment, or Section 312(d)(4) of that act, relating to binding contracts, to not have the amendments made by Section 312 of the Taxpayer Relief Act of 1997 (Public Law 105-34) apply to a sale or exchange, the amendments made by the act adding this subdivision shall not apply to that sale or exchange, Sections 1, 4, and 6 of Chapter 610 of the Statutes of 1997 shall not apply to that sale or exchange, a separate election for state purposes shall not be allowed under paragraph (3) of subdivision (e) of Section 17024.5, and the federal election shall be binding for purposes of this part.

(2) If a taxpayer fails to make an election for federal purposes under Section 312(d)(2) of the Taxpayer Relief Act of 1997 (Public Law 105-34), relating to sales before date of enactment, or Section 312(d)(4) of that act, relating to binding contracts, to not have the amendments made by Section 312 of the Taxpayer Relief Act of 1997 (Public Law 105-34) apply to a sale or exchange, an election under Section 312(d)(2) of the Taxpayer Relief Act of 1997 (Public Law 105-34), relating to sales before date of enactment, or Section 312(d)(4) of that act, relating to binding contracts, shall not be allowed for state purposes, the amendments made by the act adding this subdivision shall apply to that sale or exchange, Sections 1, 4, and 6 of Chapter 610 of the Statutes of 1997 shall apply to that sale or exchange, and a separate election for state purposes shall not be allowed under paragraph (3) of subdivision (e) of Section 17024.5.

(e) (1) If a taxpayer has, at any time, made or revoked an election for federal purposes under Section 121(d)(9) of the Internal Revenue Code to suspend the running of the five-year period described in Sections 121(a), 121(c)(1)(B), and 121(d)(7) of the Internal Revenue Code, that election or revocation of election to suspend the five-year period under Section 121(d)(9) of the Internal Revenue Code shall be applicable for

state purposes, a separate election or revocation of election for purposes of Section 121(d)(9) of the Internal Revenue Code may not be allowed under paragraph (3) of subdivision (e) of Section 17024.5, and the federal election or revocation of election shall be binding for purposes of this part.

(2) If a taxpayer fails to make an election for federal purposes under Section 121(d)(9) of the Internal Revenue Code to suspend the running of the five-year period described in Sections 121(a), 121(c)(1)(B), and 121(d)(7) of the Internal Revenue Code, that five-year period may not be suspended under Section 121(d)(9) of the Internal Revenue Code for state purposes, and a separate election for state purposes shall not be allowed under paragraph (3) of subdivision (e) of Section 17024.5.

(f) Section 121(d)(10) of the Internal Revenue Code, relating to property acquired from a decedent, shall not apply.

SEC. 18. Section 17160.5 of the Revenue and Taxation Code is repealed.

SEC. 19. Section 17201.4 is added to the Revenue and Taxation Code, to read:

17201.4. Section 179B of the Internal Revenue Code, relating to deductions for capital costs incurred in complying with Environmental Protection Agency sulfur regulations, shall not apply.

SEC. 20. Section 17201.5 is added to the Revenue and Taxation Code, to read:

17201.5. Section 181 of the Internal Revenue Code, relating to treatment of certain qualified film and television productions, shall not apply.

SEC. 21. Section 17201.6 is added to the Revenue and Taxation Code, to read:

17201.6. Section 199 of the Internal Revenue Code, relating to income attributable to domestic production activities, shall not apply.

SEC. 22. Section 17202.5 of the Revenue and Taxation Code is repealed.

SEC. 23. Section 17204 of the Revenue and Taxation Code is amended to read:

17204. (a) Section 221 of the Internal Revenue Code, relating to interest on education loans, is modified to additionally provide that a deduction shall be allowed under this section only with respect to interest paid on any qualified education loan during the first 60 months, whether or not consecutive, in which interest payments are required. For purposes of this subdivision, any loan and period shall be determined in the form and manner prescribed in forms and instructions by the Franchise Tax Board in the case of multiple loans that are refinanced by, or serviced as, a single loan and in the case of loans incurred before January 1, 2005.

(b) (1) Section 221(b)(2)(B)(i)(I) of the Internal Revenue Code is modified by substituting the phrase “\$40,000 (\$60,000 in the case of a joint return)” in lieu of the phrase “\$50,000 (\$100,000 in the case of a joint return)” contained therein.

(2) Section 221(b)(2)(B)(ii) of the Internal Revenue Code is modified by substituting the phrase “\$15,000” in lieu of the phrase “\$15,000 (\$30,000 in the case of a joint return)” contained therein.

(3) Section 221(f)(1) of the Internal Revenue Code is modified by substituting the phrase “\$40,000 and \$60,000 amounts” in lieu of the phrase “\$50,000 and \$100,000 amounts” contained therein.

(c) This section shall apply to taxable years beginning on and after January 1, 2005, and before January 1, 2006. This section shall remain in effect only until January 1, 2006, and as of that date is repealed.

SEC. 24. Section 17204.7 is added to the Revenue and Taxation Code, to read:

17204.7. Section 222 of the Internal Revenue Code, relating to qualified tuition and related expenses, shall not apply.

SEC. 25. Section 17205 of the Revenue and Taxation Code, as added by Section 14 of Chapter 34 of the Statutes of 2002, is repealed.

SEC. 26. Section 17205 of the Revenue and Taxation Code, as added by Section 14 of Chapter 35 of the Statutes of 2002, is repealed.

SEC. 26.5. Section 17215.1 is added to the Revenue and Taxation Code, to read:

17215.1. Section 220(f)(5) of the Internal Revenue Code, relating to rollover contributions, shall not apply.

SEC. 26.6. Section 17215.4 is added to the Revenue and Taxation Code, to read:

17215.4. Section 223 of the Internal Revenue Code, relating to health savings accounts, shall not apply.

SEC. 27. Section 17220 of the Revenue and Taxation Code is amended to read:

17220. (a) Section 164(a)(3) of the Internal Revenue Code, relating to the deductibility of state, local, and foreign income, war profits, and excess profits taxes, shall not apply.

(b) Section 164(b)(5) of the Internal Revenue Code, relating to general sales taxes, shall not apply.

(c) In addition to the provisions of Section 164(c) of the Internal Revenue Code, relating to deduction denied in case of certain taxes, no deduction shall be allowed for any tax imposed under Chapter 10.5 (commencing with Section 17935), Chapter 10.6 (commencing with Section 17941), or Chapter 10.7 (commencing with Section 17951) of this part or under Part 11 (commencing with Section 23001).

SEC. 28. Section 17250 of the Revenue and Taxation Code is amended to read:

17250. (a) Section 168 of the Internal Revenue Code is modified as follows:

(1) Any reference to “tax imposed by this chapter” in Section 168 of the Internal Revenue Code means “net tax,” as defined in Section 17039.

(2) (A) Section 168(e)(3) is modified to provide that any grapevine, replaced in a vineyard in California in any taxable year beginning on or after January 1, 1992, as a direct result of a phylloxera infestation in that vineyard, or replaced in a vineyard in California in any taxable year beginning on or after January 1, 1997, as a direct result of Pierce’s disease in that vineyard, shall be “five-year property,” rather than “10-year property.”

(B) Section 168(g)(3) of the Internal Revenue Code is modified to provide that any grapevine, replaced in a vineyard in California in any taxable year beginning on or after January 1, 1992, as a direct result of a phylloxera infestation in that vineyard, or replaced in a vineyard in California in any taxable year beginning on or after January 1, 1997, as a direct result of Pierce’s disease in that vineyard, shall have a class life of 10 years.

(C) Every taxpayer claiming a depreciation deduction with respect to grapevines as described in this paragraph shall obtain a written certification from an independent state-certified integrated pest management adviser, or a state agricultural commissioner or adviser, that specifies that the replanting was necessary to restore a vineyard infested with phylloxera or Pierce’s disease. The taxpayer shall retain the certification for future audit purposes.

(3) Section 168(j) of the Internal Revenue Code, relating to property on Indian reservations, shall not apply.

(4) Section 168(k) of the Internal Revenue Code, relating to special allowance for certain property acquired after September 10, 2001, and before January 1, 2005, shall not apply.

(5) Sections 168(b)(3)(G) and 168(b)(3)(H) of the Internal Revenue Code, relating to property to which the straight line method applies, shall not apply.

(6) Sections 168(e)(3)(E)(iv) and 168(e)(3)(E)(v) of the Internal Revenue Code, relating to 15-year property, shall not apply.

(7) Sections 168(e)(6) and 168(e)(7) of the Internal Revenue Code, relating to qualified leasehold improvement property and to qualified restaurant property, respectively, shall not apply.

(b) Section 169 of the Internal Revenue Code, relating to amortization of pollution control facilities, is modified as follows:

(1) The deduction allowed by Section 169 of the Internal Revenue Code shall be allowed only with respect to facilities located in this state.

(2) The “state certifying authority,” as defined in Section 169(d)(2) of the Internal Revenue Code, means the State Air Resources Board, in the case of air pollution, and the State Water Resources Control Board, in the case of water pollution.

SEC. 29. Section 17250.5 of the Revenue and Taxation Code is amended to read:

17250.5. Section 167(g) of the Internal Revenue Code, relating to depreciation under income forecast method, shall be modified as follows:

(a) Section 167(g)(2)(C) of the Internal Revenue Code is modified by substituting “Section 19521” in lieu of “Section 460(b)(7)” of the Internal Revenue Code.

(b) Section 167(g)(5)(D) of the Internal Revenue Code is modified by substituting “Part 10.2 (commencing with Section 18401) (other than Section 19136)” in lieu of “Subtitle F (other than Sections 6654 and 6655).”

(c) Section 167(g)(5)(E) of the Internal Revenue Code, relating to treatment of distribution costs, shall not apply.

(d) Section 167(g)(7) of the Internal Revenue Code, relating to treatment of participations and residuals, shall not apply.

SEC. 30. Section 17255 of the Revenue and Taxation Code is amended to read:

17255. (a) Section 179(b)(1) of the Internal Revenue Code, relating to dollar limitation, shall not apply and in lieu thereof, the aggregate cost which may be taken into account under Section 179(a) of the Internal Revenue Code for any taxable year shall not exceed twenty-five thousand dollars (\$25,000).

(b) Section 179(b)(2) of the Internal Revenue Code, relating to reduction in limitation, shall not apply and in lieu thereof, the limitation under subdivision (a) for any taxable year shall be reduced, but not to below zero, by the amount by which the cost of Section 179 property, as defined in Section 179(d)(1) of the Internal Revenue Code, except as otherwise provided, placed in service during the taxable year exceeds two hundred thousand dollars (\$200,000).

(c) Section 179 of the Internal Revenue Code is modified to provide that the “aggregate amount disallowed” referred to in Section 179(b)(3)(B) of the Internal Revenue Code shall be computed under this part as it read on the date the property generating the amount disallowed was placed in service.

(d) Section 179(b)(5) of the Internal Revenue Code, relating to inflation adjustments, shall not apply.

(e) The last sentence in Section 179(c)(2) of the Internal Revenue Code, relating to election irrevocable, shall not apply.

(f) Section 179(d)(1)(A)(ii) of the Internal Revenue Code, relating to computer software, shall not apply.

SEC. 31. Section 17255.5 is added to the Revenue and Taxation Code, to read:

17255.5. (a) For any taxable year which includes part of the “applicable period” as defined in paragraph (6) of subdivision (c) of Section 17053.62, a small refiner (as defined in Section 17053.62) may elect to treat 75 percent of qualified capital costs (as defined in paragraph (2) of subdivision (c) of Section 17053.62) paid or incurred by the taxpayer during the taxable year as expenses that are not chargeable to capital account. Any cost so treated shall be allowed as a deduction for the taxable year in which paid or incurred.

(b) (1) For purposes of this part, the basis of any property shall be reduced by the portion of the cost of that property taken into account under subdivision (a).

(2) For purposes of Section 1245 of the Internal Revenue Code, and corresponding section of this part, the amount of the deduction allowable under subdivision (a) with respect to any property which is of a character subject to the allowance for depreciation shall be treated as a deduction allowed for depreciation under Section 167 of the Internal Revenue Code, or the corresponding section of this part.

(c) This section shall remain in effect only until January 1, 2009, and as of that date is repealed.

SEC. 32. Section 17256 of the Revenue and Taxation Code is amended to read:

17256. Section 179A of the Internal Revenue Code, relating to deduction for clean-fuel vehicles and certain refueling property, shall not apply.

SEC. 33. Section 17279.4 of the Revenue and Taxation Code is amended to read:

17279.4. Section 198 of the Internal Revenue Code, relating to expensing of environmental remediation costs, is modified as follows:

(a) For expenditures paid or incurred before January 1, 2004, all of the following shall apply:

(1) If a taxpayer has, at any time, made an election for federal purposes under Section 198(a) of the Internal Revenue Code to have Section 198 of the Internal Revenue Code apply to a qualified environmental remediation expenditure, Section 198 of the Internal Revenue Code shall apply to that qualified environmental remediation expenditure for state purposes, a separate election for state purposes shall not be allowed

under paragraph (3) of subdivision (e) of Section 17024.5, and the federal election shall be binding for purposes of this part.

(2) If a taxpayer fails to make an election for federal purposes under Section 198(a) of the Internal Revenue Code to have Section 198 of the Internal Revenue Code apply to a qualified environmental remediation expenditure, an election under Section 198(a) of the Internal Revenue Code shall not be allowed for state purposes, Section 198 of the Internal Revenue Code shall not apply to that qualified environmental remediation expenditure for state purposes, and a separate election for state purposes shall not be allowed under paragraph (3) of subdivision (e) of Section 17024.5.

(b) No inference as to the proper treatment for purposes of this part of qualified environmental remediation expenditures paid or incurred in taxable years beginning before January 1, 1998, shall be made.

(c) Section 198(h) of the Internal Revenue Code, relating to termination, shall not apply.

(d) Section 198 of the Internal Revenue Code, relating to expensing of environmental remediation costs, shall not apply to expenditures paid or incurred after December 31, 2003.

SEC. 34. Section 17501 of the Revenue and Taxation Code is amended to read:

17501. (a) Subchapter D of Chapter 1 of Subtitle A of the Internal Revenue Code, relating to deferred compensation, shall apply, except as otherwise provided.

(b) Notwithstanding the specified date contained in paragraph (1) of subdivision (a) of Section 17024.5, Part I of Subchapter D of Chapter 1 of Subtitle A of the Internal Revenue Code, relating to pension, profitsharing, stock bonus plans, etc., shall apply, except as otherwise provided, without regard to taxable year to the same extent as applicable for federal income tax purposes.

(c) The maximum amount of elective deferrals (as defined in Section 402(g)(3)) for the taxable year that may be excluded from gross income under Section 402(g) of the Internal Revenue Code, as applicable for state purposes, shall not exceed the amount of elective deferrals that may be excluded from gross income under Section 402(g) of the Internal Revenue Code, as amended by Title VI of the Economic Growth and Tax Relief Reconciliation Act of 2001 (Public Law 107-16) and Section 411 of the Job Creation and Worker Assistance Act of 2002 (Public Law 107-147), including additional elective deferrals under Section 414(v) of the Internal Revenue Code, as added by Title VI of the Economic Growth and Tax Relief Reconciliation Act of 2001 (Public Law 107-16) and as amended by Section 411 of the Job Creation and Worker Assistance Act of 2002 (Public Law 107-147).

(d) (1) For taxable years beginning on or after January 1, 2002, the basis of any person in the plan, account, or annuity shall be increased by the amount of elective deferrals not excluded as a result of the application of subdivision (c).

(2) Any basis described in paragraph (1) shall be recovered in the manner specified in Section 17085.

(e) Notwithstanding the limitations provided in subdivision (c), any income attributable to elective deferrals in taxable years beginning on or after January 1, 2002, in conformance with Part I of Subchapter D of Chapter 1 of Subtitle A of the Internal Revenue Code, as applicable for federal and state purposes, shall not be includable in the gross income of the individual for whose benefit the plan or account was established until distributed pursuant to the plan or by operation of law.

SEC. 35. Section 17551 of the Revenue and Taxation Code is amended to read:

17551. (a) Subchapter E of Chapter 1 of Subtitle A of the Internal Revenue Code, relating to accounting periods and methods of accounting, shall apply, except as otherwise provided.

(b) Section 444(c)(1) of the Internal Revenue Code, relating to effect of election, shall not apply.

(c) (1) Notwithstanding the specified date contained in paragraph (1) of subdivision (a) of Section 17024.5, Section 457 of the Internal Revenue Code, relating to deferred compensation plans of state and local governments and tax-exempt organizations, shall apply, except as otherwise provided, without regard to taxable year to the same extent as applicable for federal income tax purposes.

(2) The maximum deferred compensation for the taxable year that may be excluded from gross income under Section 457 of the Internal Revenue Code, as applicable for state purposes, shall not exceed the amount of deferred compensation that may be excluded from gross income under Section 457 of the Internal Revenue Code, as amended by Title VI of the Economic Growth and Tax Relief Reconciliation Act of 2001 (Public Law 107-16) and as amended by Section 411 of the Job Creation and Worker Assistance Act of 2002 (Public Law 107-147), including additional elective deferrals under Section 414(v) of the Internal Revenue Code, as added by Title VI of the Economic Growth and Tax Relief Reconciliation Act of 2001 (Public Law 107-16) and Section 411 of the Job Creation and Worker Assistance Act of 2002 (Public Law 107-147).

(d) (1) For taxable years beginning on or after January 1, 2002, the basis of any person in the plan shall be increased by the amount of compensation not allowed to be excluded under subdivision (a).

(2) Any basis described in paragraph (1) shall be recovered in the manner specified in Section 17085.

(e) Notwithstanding the limitations provided in subdivision (a), any income attributable to compensation deferred in a plan in taxable years beginning on or after January 1, 2002, in conformance with Section 457 of the Internal Revenue Code, as applicable for federal and state purposes, shall not be includable in the gross income of the individual for whose benefit the plan was established until distributed pursuant to the provisions of the plan or by operation of law.

(f) Section 451(i) of the Internal Revenue Code, relating to special rule for sales or dispositions to implement Federal Energy Regulatory Commission or state electric restructuring policy, shall not apply.

SEC. 36. Section 17681.6 is added to the Revenue and Taxation Code, to read:

17681.6. Section 613A(c)(6)(H) of the Internal Revenue Code, relating to temporary suspension of taxable income limit with respect to marginal production, shall not apply.

SEC. 37. Section 17731 of the Revenue and Taxation Code is amended to read:

17731. (a) Subchapter J of Chapter 1 of Subtitle A of the Internal Revenue Code, relating to estates, trusts, beneficiaries, and decedents, shall apply, except as otherwise provided.

(b) Section 692(d)(2) of the Internal Revenue Code, relating to the ten thousand-dollar (\$10,000) minimum benefit, does not apply.

SEC. 37.5. Section 17733 of the Revenue and Taxation Code is amended to read:

17733. (a) An estate shall be allowed a credit of ten dollars (\$10) against the tax imposed under Section 17041, less any amounts imposed under paragraph (1) of subdivision (d) or paragraph (1) of subdivision (e), or both, of Section 17560.

(b) (1) Except as provided in paragraph (2), a trust shall be allowed a credit of one dollar (\$1) against the tax imposed under Section 17041, less any amounts imposed under paragraph (1) of subdivision (d) or paragraph (1) of subdivision (e), or both, of Section 17560.

(2) (A) A disability trust, as defined in Section 642(b)(2)(C) of the Internal Revenue Code, shall be allowed a credit in an amount equal to the personal exemption credit authorized for a single individual pursuant to subdivision (a) of Section 17054.

(B) The credit authorized by subparagraph (A) shall be subject to the credit reduction provisions of Section 17054.1. For purposes of making the adjustments required by Section 17054.1, the adjusted gross income of the disability trust shall be computed in accordance with Section 67(e)

of the Internal Revenue Code, relating to determination of adjusted gross income in case of estates and trusts.

(C) This paragraph applies to taxable years beginning on or after January 1, 2004.

(c) The credits allowed by this section shall be in lieu of the credits allowed under Section 17054 (relating to credit for personal exemption).

SEC. 37.6. Section 17734.6 is added to the Revenue and Taxation Code, to read:

17734.6. Section 646 of the Internal Revenue Code, relating to tax treatment of electing Alaska Native Settlement Trusts, shall not apply.

SEC. 38. Section 17760 is added to the Revenue and Taxation Code, to read:

17760. Section 684 of the Internal Revenue Code, relating to recognition of gain on certain transfers to certain foreign trusts and estates, shall not apply.

SEC. 39. Section 18035.6 is added to the Revenue and Taxation Code, to read:

18035.6. Section 1014 of the Internal Revenue Code, relating to basis of property acquired from a decedent, is modified to provide that Section 1014(f) of the Internal Revenue Code, relating to termination date, shall not apply.

SEC. 40. Section 18036.6 is added to the Revenue and Taxation Code, to read:

18036.6. Section 1022 of the Internal Revenue Code, relating to treatment of property acquired from a decedent dying after December 31, 2009, shall not apply.

SEC. 40.5. Section 18181 is added to the Revenue and Taxation Code, to read:

18181. Part VI of Subchapter P of Chapter 1 of Subtitle A of the Internal Revenue Code, relating to treatment of certain passive foreign investment companies, shall not apply.

SEC. 41. Section 18571 of the Revenue and Taxation Code is amended to read:

18571. (a) The provisions of Section 7508 of the Internal Revenue Code, relating to time for performing certain acts postponed by reason of service in a combat zone or contingency operation, shall apply except as otherwise provided.

(b) Section 7508(e)(1) of the Internal Revenue Code, relating to tax in jeopardy, etc., is modified to refer to jeopardy assessments and liens authorized under this part, in lieu of the references to Section 6851 and Chapter 70 or 71 of the Internal Revenue Code.

(c) Notwithstanding Section 17034, this section shall be operative without regard to taxable years and shall be operative with respect to

any actions specified in Section 18570 that are required or permitted to be taken on or after August 2, 1990.

SEC. 42. Section 18572 of the Revenue and Taxation Code is amended to read:

18572. Section 7508A of the Internal Revenue Code, relating to postponement of certain tax-related deadlines, shall apply, except as otherwise provided.

SEC. 42.5. Section 18628 of the Revenue and Taxation Code is amended to read:

18628. (a) Section 6111 of the Internal Revenue Code, relating to disclosure of reportable transactions, applies, except as otherwise provided.

(b) (1) Except as provided in subdivision (e), a material advisor is required to send a duplicate of the federal return, if applicable, or the same information required to be provided on the federal reportable transactions return for California reportable transactions to the Franchise Tax Board not later than the date specified by the Franchise Tax Board or the Secretary of the Treasury.

(2) (A) The information provided to the Franchise Tax Board pursuant to paragraph (1) shall also include any other information required by a Franchise Tax Board Notice.

(B) Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code does not apply to any additional information requested under this section.

(c) Section 6111 of the Internal Revenue Code is modified by substituting the phrase "Secretary or the Franchise Tax Board" for the word "Secretary" in each place it appears.

(d) The reportable transactions return requirements of this section shall apply to any material advisor with respect to any reportable transaction, as defined in Section 6707A(c) of the Internal Revenue Code with respect to a material advisor that satisfies any of the following conditions:

- (1) Is organized in this state.
- (2) Is doing business in this state.
- (3) Derives income from sources in this state.
- (4) Provides any material aid, assistance, or advice with respect to organizing, managing, promoting, selling, implementing, insuring, or carrying out any reportable transaction with respect to a taxpayer that meets any of the following requirements:

(A) Is organized in this state.

(B) Does business in this state.

(C) Derives income from sources in this state.

(e) In addition to the requirements set forth in subdivision (a), for any transactions entered into on or after February 28, 2000, that become listed transactions (as defined under Section 6707A(c)(2) of the Internal Revenue Code) at any time, a return for those transactions shall be required to be filed with the Franchise Tax Board by the later of:

- (1) Sixty days after entering into the transaction.
- (2) Sixty days after the transaction becomes a listed transaction.
- (3) Sixty days after the effective date of the act amending this section.

(f) In addition to the requirements set forth in subdivisions (a) and (e), for any transactions entered into on or after September 2, 2003, that are specifically identified by the Franchise Tax Board for California income or franchise tax purposes (under the authority of paragraph (4) of subdivision (a) of Section 18407) as a "listed transaction" at any time, a return for those transactions shall be required to be filed with the Franchise Tax Board by the later of:

- (1) Sixty days after entering into the transaction.
- (2) Sixty days after the transaction becomes a listed transaction.
- (3) Sixty days after the effective date of the act amending this section.

SEC. 43. Section 18633 of the Revenue and Taxation Code is amended to read:

18633. (a) (1) Every partnership, on or before the 15th day of the fourth month following the close of its taxable year, shall make a return for that taxable year, stating specifically the items of gross income and the deductions allowed by Part 10 (commencing with Section 17001). Except as otherwise provided in Section 18621.5, the return shall include the names, addresses, and taxpayer identification numbers of the persons, whether residents or nonresidents, who would be entitled to share in the net income if distributed and the amount of the distributive share of each person. The return shall contain or be verified by a written declaration that it is made under penalty of perjury, signed by one of the partners.

(2) In addition to returns required by paragraph (1), every limited partnership subject to the tax imposed by subdivision (b) of Section 17935, on or before the 15th day of the fourth month following the close of its taxable year, shall make a return for that taxable year, containing the information identified in paragraph (1). In the case of a limited partnership not doing business in this state, the Franchise Tax Board shall prescribe the manner and extent to which the information identified in paragraph (1) shall be included with the return required by this paragraph.

(b) Each partnership required to file a return under subdivision (a) for any taxable year shall (on or before the day on which the return for that taxable year was required to be filed) furnish to each person who is a partner or who holds an interest in that partnership as a nominee for

another person at any time during that taxable year a copy of the information required to be shown on that return as may be required by regulations.

(c) Any person who holds an interest in a partnership as a nominee for another person shall do both of the following:

(1) Furnish to the partnership, in the manner prescribed by the Franchise Tax Board, the name, address, and taxpayer identification number of that other person, and any other information for that taxable year as the Franchise Tax Board may by form and regulation prescribe.

(2) Furnish to that other person, in the manner prescribed by the Franchise Tax Board, the information provided by that partnership under subdivision (b).

(d) The provisions of Section 6031(d) of the Internal Revenue Code, relating to the separate statement of items of unrelated business taxable income, shall apply.

(e) The provisions of Section 6031(f) of the Internal Revenue Code, relating to electing investment partnerships, shall apply, except as otherwise provided.

SEC. 43.5. Section 18648 of the Revenue and Taxation Code is amended to read:

18648. (a) Section 6112 of the Internal Revenue Code, relating to material advisors of reportable transactions that must keep lists of advisees, applies except as otherwise provided.

(b) Section 6112 of the Internal Revenue Code is modified by substituting the phrase "Secretary or the Franchise Tax Board" for the word "Secretary" each place it appears.

(c) The requirement to maintain lists under this section shall apply to any material advisor, as defined in Section 6111 of the Internal Revenue Code, with respect to any reportable transaction, as defined in Section 6707A(c) of the Internal Revenue Code and regardless of whether a return is required to be filed under Section 18628 with respect to that reportable transaction and with respect to a material advisor that satisfies any of the following conditions:

- (1) Is organized in this state.
- (2) Is doing business in this state.
- (3) Derives income from sources in this state.
- (4) Provides any material aid, assistance, or advice with respect to organizing, managing, promoting, selling, implementing, insuring, or carrying out any reportable transaction with respect to a taxpayer that meets any of the following conditions:

- (A) Is organized in this state.
- (B) Does business in this state.
- (C) Derives income from sources in this state.

(d) (1) In addition to any regulation issued under Section 6112 of the Internal Revenue Code, the list required to be maintained by this section for listed transactions, as defined in Section 6707A(c)(2) of the Internal Revenue Code, shall be maintained in the form and manner prescribed by the Franchise Tax Board.

(2) Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code does not apply to any requirement prescribed by the Franchise Tax Board under this section.

(3) For transactions entered into on or after February 28, 2000, that become listed transactions (as defined under Section 6707A(c)(2) of the Internal Revenue Code) at any time, the lists shall be provided to the Franchise Tax Board by the later of:

(A) Sixty days after entering into the transaction.

(B) Sixty days after the transaction becomes a listed transaction.

(4) For transactions entered into on or after September 2, 2003, that are specifically identified by the Franchise Tax Board for California income or franchise tax purposes (under the authority of paragraph (4) of subdivision (a) of Section 18407) as a "listed transaction" at any time, the list shall be provided to the Franchise Tax Board by the later of:

(A) Sixty days after entering into the transaction.

(B) Sixty days after the transaction becomes a listed transaction.

SEC. 44. Section 19008 of the Revenue and Taxation Code is amended to read:

19008. (a) The Franchise Tax Board may, in cases of financial hardship, as determined by the Franchise Tax Board, allow an individual or fiduciary to enter into installment payment agreements with the Franchise Tax Board to make payments on taxes due, plus applicable interest and penalties over the life of the installment period. Failure by an individual or fiduciary to comply fully with the terms of the installment payment agreement shall render the agreement null and void, unless the Franchise Tax Board determines that the failure was due to a reasonable cause, and the total amount of tax, interest, and all penalties shall be immediately due and payable.

(b) In the case of a liability for tax of an individual under Part 10 (commencing with Section 17001) or this part, the Franchise Tax Board shall enter into an agreement to accept the full payment of the tax in installments if, as of the date the individual offers to enter into the agreement, all of the following apply:

(1) The aggregate amount of the liability (determined without regard to interest, penalties, additions to the tax and additional amounts) does not exceed ten thousand dollars (\$10,000).

(2) The taxpayer (and, if the liability relates to a joint return, the taxpayer's spouse) has not during any of the preceding five taxable years done any of the following:

(A) Failed to file any return of tax imposed under Part 10 (commencing with Section 17001) or this part.

(B) Failed to pay any tax required to be shown on the return.

(C) Entered into an installment agreement under this section for payment of any tax imposed by Part 10 (commencing with Section 17001) or this part.

(3) The Franchise Tax Board determines that the taxpayer is financially unable to pay the liability in full when due (and the taxpayer submits any information as the Franchise Tax Board may require to make this determination).

(4) The agreement requires full payment of the liability within three years.

(5) The taxpayer agrees to comply with the provisions of this part and Part 10 (commencing with Section 17001) for the period the agreement is in effect.

(c) Except in any case where the Franchise Tax Board finds collection of the tax to which an installment payment agreement relates to be in jeopardy, or there is a mutual consent to terminate, alter, or modify the agreement, the agreement shall not be considered null and void, or otherwise terminated, unless both of the following occur:

(1) A notice of termination is provided to the individual or fiduciary not later than 30 days before the date of termination.

(2) The notice includes an explanation of why the Franchise Tax Board intends to terminate the agreement.

(d) No levy may be issued on the property or rights to property of any person with respect to any unpaid tax:

(1) During the period that an offer by the taxpayer for an installment agreement under this section for payment of the unpaid tax is pending with the Franchise Tax Board.

(2) If the offer is rejected by the Franchise Tax Board, during the 30 days thereafter (and, if a request for review of the rejection is filed within the 30 days, during the period that the review is pending).

(3) During the period that the installment agreement for payment of the unpaid tax is in effect.

(4) If the agreement is terminated by the Franchise Tax Board, during the 30 days thereafter (and, if a request for review of the termination is filed within the 30 days, during the period that the review is pending).

(5) This subdivision shall not apply with respect to any of the following:

(A) Any unpaid tax if either of the following occurs:

(i) The taxpayer files a written notice with the Franchise Tax Board that waives the restriction imposed by this subdivision on levy with respect to the tax.

(ii) The Franchise Tax Board finds that the collection of that tax is in jeopardy.

(B) Any levy that was first issued before the date that the applicable proceeding under this subdivision commenced.

(C) At the discretion of the Franchise Tax Board, any unpaid tax for which the taxpayer makes an offer of an installment agreement subsequent to a rejection of an offer of an installment agreement with respect to that unpaid tax (or to any review thereof).

(D) The period of limitation under Section 19371 shall be suspended for the period during which the Franchise Tax Board is prohibited under this subdivision from making a levy.

(e) The Taxpayers' Rights Advocate shall establish procedures for an independent departmental administrative review for the rejection of the offer of an installment payment and for installment payment agreements that are rendered null and void, or otherwise terminated under this section, for individuals or fiduciaries who request that review. This administrative review shall not be subject to Chapter 4.5 (commencing with Section 11400) of Part 1 of Division 3 of the Government Code. Unless review is requested by the taxpayer within 30 days of the date of rejection of the offer of an installment agreement or termination of the installment agreement, this administrative review shall not stay collection of the tax to which the installment payment agreement relates.

(f) In the case of an agreement for partial payment of a tax liability entered into by the Franchise Tax Board pursuant to subdivision (a), the Franchise Tax Board shall review the agreement at least once every two years.

(g) The amendments made by the act adding this subdivision are operative for any proposed installment agreement submitted after the effective date of that act.

SEC. 45. Section 19041.5 of the Revenue and Taxation Code is amended to read:

19041.5. (a) Notwithstanding any other provision of this part, Part 10 (commencing with Section 17001), or Part 11 (commencing with Section 23001), the provisions of Section 6603 of the Internal Revenue Code, relating to deposits made to suspend the running of interest on potential underpayments, shall apply, except as otherwise provided. A deposit shall not be considered a payment of tax for purposes of filing a claim for refund pursuant to Section 19306, converting an administrative action to an action on a claim pursuant to Section 19335,

or filing an action pursuant to Section 19384, until either of the following occurs:

(1) The taxpayer provides a written statement to the Franchise Tax Board specifying that the deposit shall be a payment of tax for purposes of Section 19306, 19335, or 19384.

(2) The deposit is used to pay a final tax liability.

(b) Section 6603(d) of the Internal Revenue Code is modified to substitute the phrase “notice of proposed deficiency assessment under Article 3 of Chapter 4 of this part” for “30-day letter” in each place that the phrase “30-day letter” appears.

(c) In the case of any amount held by the Franchise Tax Board as a deposit in the nature of a cash bond pursuant to the provisions of this section prior to the amendments made by the act adding this subdivision, the date that the taxpayer identifies that amount as a deposit made pursuant to this section, as amended by the act adding this subdivision, shall be treated as the date that the amount is deposited for purposes of this section, as amended by the act adding this subdivision.

SEC. 46. Section 19116 of the Revenue and Taxation Code is amended to read:

19116. (a) In the case of an individual who files a return of tax imposed under Part 10 (commencing with Section 17001) for a taxable year on or before the due date for the return, including extensions, if the Franchise Tax Board does not provide a notice to the taxpayer specifically stating the taxpayer’s liability and the basis of the liability before the close of the notification period, the Franchise Tax Board shall suspend the imposition of any interest, penalty, addition to tax, or additional amount with respect to any failure relating to the return which is computed by reference to the period of time the failure continues to exist and which is properly allocable to the suspension period.

(b) For purposes of this section:

(1) Except as provided in subdivision (e), “notification period” means the 18-month period beginning on the later of either of the following:

(A) The date on which the return is filed.

(B) The due date of the return without regard to extensions.

(2) “Suspension period” means the period beginning on the day after the close of the notification period and ending on the date which is 15 days after the date on which notice described in subdivision (a) is provided by the Franchise Tax Board.

(c) This section shall be applied separately with respect to each item or adjustment.

(d) This section shall not apply to any of the following:

(1) Any penalty imposed by Section 19131.

(2) Any penalty imposed by Section 19132.

(3) Any interest, penalty, addition to tax, or additional amount involving fraud.

(4) Any interest, penalty, addition to tax, or additional amount with respect to any tax liability shown on the return.

(5) Any criminal penalty.

(6) Any interest, penalty, addition to tax, or additional amount with respect to any gross misstatement.

(7) Any interest, penalty, addition to tax, or additional amount relating to any reportable transaction with respect to which the requirements of Section 6664(d)(2)(A) of the Internal Revenue Code are not met, and any listed transaction, as defined in Section 6707A(c) of the Internal Revenue Code.

(e) For taxpayers required by subdivision (a) of Section 18622 to report a change or correction by the Commissioner of Internal Revenue or other officer of the United States or other competent authority the following rules shall apply:

(1) The notification period under subdivision (a) shall be either of the following:

(A) One year from the date the notice required by Section 18622 is filed with the Franchise Tax Board by the taxpayer or the Internal Revenue Service, if the taxpayer or the Internal Revenue Service reports that change or correction within six months after the final federal determination.

(B) Two years from the date when the notice required by Section 18622 is filed with the Franchise Tax Board by the taxpayer or the Internal Revenue Service, if after the six-month period required in Section 18622, a taxpayer or the Internal Revenue Service reports a change or correction.

(2) The suspension period under subdivision (a) shall mean the period beginning on the day after the close of the notification period under paragraph (1) and ending on the date which is 15 days after the date on which notice described in subdivision (a) is provided by the Franchise Tax Board.

(f) For notices sent after January 1, 2004, this section does not apply to taxpayers with taxable income greater than two hundred thousand dollars (\$200,000) that have been contacted by the Franchise Tax Board regarding the use of a potentially abusive tax shelter (within the meaning of Section 19777).

(g) This section shall apply to taxable years ending after October 10, 1999.

(h) The amendments made to this section by the act adding this subdivision shall apply to notices sent after January 1, 2005.

SEC. 47. Section 19136.12 is added to the Revenue and Taxation Code, to read:

19136.12. (a) No addition to tax shall be made pursuant to Section 19136 for any period before the date prescribed under Section 18566 for the filing of the return for the 2005 taxable year, with respect to any underpayment of an installment for the 2005 taxable year, to the extent that the underpayment was created or increased by any provision of the act adding this section.

(b) No addition to tax shall be made pursuant to Section 18601 for the filing of the return for the 2005 taxable year, with respect to any underpayment of an installment for the 2005 taxable year, to the extent that the underpayment was created or increased by any provision of the act adding this section.

(c) The Franchise Tax Board shall implement this section in a reasonable manner.

SEC. 47.1. Section 19164 of the Revenue and Taxation Code is amended to read:

19164. (a) (1) (A) An accuracy-related penalty shall be imposed under this part and shall be determined in accordance with Section 6662 of the Internal Revenue Code, relating to imposition of accuracy-related penalty on underpayments, except as otherwise provided.

(B) (i) Except for understatements relating to reportable transactions to which Section 19164.5 applies, in the case of any proposed deficiency assessment issued after the last date of the amnesty period specified in Chapter 9.1 (commencing with Section 19730) for any taxable year beginning prior to January 1, 2003, the penalty specified in Section 6662(a) of the Internal Revenue Code shall be computed by substituting "40 percent" for "20 percent."

(ii) Clause (i) shall not apply to any taxable year of a taxpayer beginning prior to January 1, 2003, if, as of the start date of the amnesty program period specified in Section 19731, the taxpayer is then under audit by the Franchise Tax Board, or the taxpayer has filed a protest under Section 19041, or the taxpayer has filed an appeal under Section 19045, or the taxpayer is engaged in settlement negotiations under Section 19442, or the taxpayer has a pending judicial proceeding in any court of this state or in any federal court relating to the tax liability of the taxpayer for that taxable year.

(2) With respect to corporations, this subdivision shall apply to all of the following:

(A) All taxable years beginning on or after January 1, 1990.

(B) Any other taxable year for which an assessment is made after July 16, 1991.

(C) For purposes of this section, references in Section 6662(e) of the Internal Revenue Code and the regulations thereunder, relating to treatment of an affiliated group that files a consolidated federal return, are modified to apply to those entities required to be included in a combined report under Section 25101 or 25110. For these purposes, entities included in a combined report pursuant to paragraph (4) or (6) of subdivision (a) of Section 25110 shall be considered only to the extent required to be included in the combined report.

(3) Section 6662(d)(1)(B) of the Internal Revenue Code is modified to provide that in the case of a corporation, other than an “S” corporation, there is a substantial understatement of tax for any taxable year if the amount of the understatement for the taxable year exceeds the lesser of:

(A) Ten percent of the tax required to be shown on the return for the taxable year (or, if greater, two thousand five hundred dollars (\$2,500)).

(B) Five million dollars (\$5,000,000).

(4) Section 6662(d)(2)(A) of the Internal Revenue Code is modified to additionally provide that the excess determined under Section 6662(d)(2)(A) of the Internal Revenue Code shall be determined without regard to items to which Section 19164.5 applies and without regard to items with respect to which a penalty is imposed by Section 19774.

(b) For purposes of Section 6662(d) of the Internal Revenue Code, Section 6664 of the Internal Revenue Code, Section 6694(a)(1) of the Internal Revenue Code, and this part, the Franchise Tax Board may prescribe a list of positions for which the Franchise Tax Board believes there is not substantial authority or there is no reasonable belief that the tax treatment is more likely than not the proper tax treatment. That list (and any revisions thereof) shall be published through the use of Franchise Tax Board Notices or other published positions. In addition, the “listed transactions” identified and published pursuant to the preceding sentence shall be published on the Web site of the Franchise Tax Board.

(c) A fraud penalty shall be imposed under this part and shall be determined in accordance with Section 6663 of the Internal Revenue Code, relating to imposition of fraud penalty, except as otherwise provided.

(d) Section 6664 of the Internal Revenue Code, relating to definitions and special rules, shall apply, except as otherwise provided.

SEC. 47.2. Section 19164.5 is added to the Revenue and Taxation Code, to read:

19164.5. (a) A reportable transaction accuracy-related penalty shall be imposed under this part and shall be determined in accordance with Section 6662A of the Internal Revenue Code, relating to the imposition

of an accuracy-related penalty on understatements with respect to reportable transactions, except as otherwise provided.

(b) (1) The reportable transaction understatement, as determined under Section 6662A(b) of the Internal Revenue Code, is modified to not include amounts to which the penalty of Section 19774 is imposed.

(2) Section 6662A(b)(1)(A)(ii) of the Internal Revenue Code is modified to substitute the phrase “Sections 17041, 23151, 23181, or 23501” for “section 1 (section 11 in the case of a taxpayer which is a corporation).”

(3) Section 6662A(b)(1)(B) of the Internal Revenue Code is modified to substitute the phrase “Part 10 (commencing with Section 17001) or Part 11 (commencing with Section 23001)” for “subtitle A.”

(4) Section 6662A(b)(2)(B) of the Internal Revenue Code is modified to substitute the phrase “income or franchise tax” for “Federal income tax.”

(5) Section 6662A(e)(1) of the Internal Revenue Code is modified to additionally provide that the amount of the understatement is increased by noneconomic transaction understatements, as defined in Section 19774.

(c) Section 6662A(e)(2) of the Internal Revenue Code is modified to additionally provide that Section 6662A of the Internal Revenue Code does not apply to amounts to which a penalty is imposed under Section 19774.

(d) The provisions of subdivision (f) of Section 19772, relating to the rescission of the penalty by the Chief Counsel, shall apply to any penalty imposed by this section.

SEC. 47.3. Section 19166 of the Revenue and Taxation Code is amended to read:

19166. (a) A penalty shall be imposed for understatement of any taxpayer’s liability by a tax return preparer and shall be determined in accordance with Section 6694 of the Internal Revenue Code, except as otherwise provided.

(b) (1) For taxpayers that have a reportable transaction, as defined in Section 6707A(c)(1) of the Internal Revenue Code, with respect to which the requirements of Section 6664(d)(2)(A) of the Internal Revenue Code are not met, any listed transaction, as defined in Section 6707A(c)(2) of the Internal Revenue Code, or a gross misstatement within the meaning of Section 6404(g)(2)(D) of the Internal Revenue Code, Section 6694(a) of the Internal Revenue Code is modified to substitute “one thousand dollars (\$1,000)” for “two hundred fifty dollars (\$250).”

(2) Section 6694(a)(1) of the Internal Revenue Code is modified to substitute the phrase “reasonable belief that the tax treatment in that

position was more likely than not the proper treatment” instead of the phrase “realistic possibility of being sustained on its merits” contained therein.

(3) Section 6694(a)(3) of the Internal Revenue Code is modified to substitute the phrase “or there was no reasonable basis for the tax treatment of that position” instead of the phrase “or was frivolous” contained therein.

(c) Section 6694(b) of the Internal Revenue Code is modified to substitute “\$5,000” for “\$1,000.”

(d) Section 6694(c) of the Internal Revenue Code shall not apply and, in lieu thereof, the following shall apply:

(1) If, within 30 days after the day on which notice and demand of any penalty under Section 6694(a) or 6694(b) of the Internal Revenue Code is made against any person who is an income tax return preparer, that person pays an amount which is not less than 15 percent of the amount of that penalty and files a claim for refund of the amount so paid, no levy or proceeding in court for the collection of the remainder of that penalty shall be made, begun, or prosecuted until the final resolution of a proceeding begun as provided in paragraph (2). Notwithstanding Section 19381, the beginning of that proceeding or levy during the time that prohibition is in force may be enjoined in a proceeding in the superior court.

(2) If, within 30 days after the day on which a claim for refund of any partial payment of any penalty under Section 6694(a) or 6694(b) of the Internal Revenue Code is denied (or, if earlier, within 30 days after the expiration of six months after the day on which the claim for refund has been filed), the income tax return preparer fails to begin a proceeding in the superior court for the determination of his or her liability for that penalty, paragraph (1) shall cease to apply with respect to that penalty, effective on the day following the close of the applicable 30-day period referred to in this subdivision.

(3) The running of the period of limitations provided in Section 19371 on the collection by levy or by a proceeding in court in respect of any penalty described in paragraph (1) shall be suspended for the period during which the Franchise Tax Board is prohibited from collecting by levy or a proceeding in court.

SEC. 47.4. Section 19173 of the Revenue and Taxation Code is amended to read:

19173. (a) A penalty shall be imposed under this part for failure to maintain lists of advisees with respect to reportable transactions and shall be determined in accordance with Section 6708 of the Internal Revenue Code, except as otherwise provided.

(b) If a material advisor fails to meet the requirements of subdivision (d) of Section 18648 with respect to a listed transaction, as defined in Section 6707A(c)(2) of the Internal Revenue Code, an additional penalty shall be imposed equal to the greater of:

- (1) One hundred thousand dollars (\$100,000).
- (2) Fifty percent of the gross income that the material advisor derived from that activity.

(c) A penalty imposed under this section does not apply if it is shown that the additional information required under paragraph (1) of subdivision (d) of Section 18648 was not identified in a Franchise Tax Board notice issued prior to the date the transaction or shelter was entered into.

(d) The penalty imposed by subdivision (a) shall be assessed against the person required to maintain or provide a list under Section 18648. The penalty may be assessed at any time during the period ending eight years after the failure has occurred.

(e) (1) The Chief Counsel of the Franchise Tax Board may rescind all or any portion of any penalty imposed by this section with respect to a list required to be maintained or provided under Section 18648, if all of the following apply:

(A) The violation is with respect to a reportable transaction, other than a listed transaction, as defined in Section 6707A(c)(2) of the Internal Revenue Code.

(B) The person on whom the penalty is imposed has a history of complying with the requirements of this part and Part 10 (commencing with Section 17001) or Part 11 (commencing with Section 23001).

(C) It is shown that the violation is due to an unintentional mistake of fact.

(D) Imposing the penalty would be against equity and good conscience.

(E) Rescinding the penalty would promote compliance with the requirements of this part and Part 10 (commencing with Section 17001) or Part 11 (commencing with Section 23001) and effective tax administration.

(2) The exercise of authority under paragraph (1) shall be at the sole discretion of the Chief Counsel of the Franchise Tax Board and may not be delegated.

(3) Notwithstanding any other law or rule of law, any determination under this subdivision may not be reviewed in any administrative or judicial proceeding.

(f) Article 3 (commencing with Section 19031) of this chapter (relating to deficiency assessments) shall not apply with respect to the assessment or collection of any penalty imposed by subdivision (a).

(g) The penalty imposed by this section is in addition to any penalty imposed under Part 10 (commencing with Section 17001), Part 11 (commencing with Section 23001), or this part.

SEC. 47.5. Section 19177 of the Revenue and Taxation Code is amended to read:

19177. A penalty shall be imposed for promoting abusive tax shelters and shall be determined in accordance with the provisions of Section 6700 of the Internal Revenue Code, except as otherwise provided.

SEC. 47.6. Section 19179 of the Revenue and Taxation Code is amended to read:

19179. A penalty shall be imposed for filing a frivolous return and shall be determined in accordance with Section 6702 of the Internal Revenue Code, except as otherwise provided.

(a) Section 6702 of the Internal Revenue Code shall be applied to returns required to be filed under this part.

(b) For taxpayers that have a reportable transaction, as defined in Section 6707A(c)(1) of the Internal Revenue Code with respect to which the requirements of Section 6664(d)(2)(A) of the Internal Revenue Code are not met, any listed transaction, as defined in Section 6707A(c)(2) of the Internal Revenue Code, or a gross misstatement within the meaning of Section 6404(g)(2)(D) of the Internal Revenue Code, Section 6702(a) of the Internal Revenue Code is modified as follows:

(1) By substituting “\$5,000” instead of “\$500.”

(2) By substituting the term “person” instead of the term “individual” in each place that it appears.

(3) By substituting “tax imposed under Part 10 (commencing with Section 17001), Part 11 (commencing with Section 23001), or this part” instead of the phrase “tax imposed by subtitle A” contained therein.

(4) By substituting the phrase “is based on” instead of the phrase “is due to” contained therein.

(5) By substituting the phrase “frivolous or is based on a position that the Franchise Tax Board has identified as frivolous under subdivision (c) of Section 19179” instead of the term “frivolous” contained therein.

(6) By substituting the phrase “reflects a desire to delay or impede the administration of federal income tax laws as determined by the Secretary of the Treasury or the administration of the tax imposed under Part 10 (commencing with Section 17001), Part 11 (commencing with Section 23001), or this part as determined by the Franchise Tax Board” instead of the phrase “a desire (which appears on the purported return) to delay or impede the administration of Federal income tax laws” contained therein.

(c) (1) The Franchise Tax Board shall prescribe (and periodically revise) a list of positions which the Secretary of the Treasury for federal

income tax purposes or the Franchise Tax Board has identified as being frivolous for purposes of this section.

(2) Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code does not apply to any standard, criterion, procedure, determination, rule, notice, or guideline established or prescribed by the Franchise Tax Board pursuant to paragraph (1).

(d) (1) Except as provided in paragraph (3), any person who submits a specified frivolous submission shall pay a penalty of five thousand dollars (\$5,000).

(2) For purposes of this section, all of the following shall apply:

(A) The phrase “specified frivolous submission” means a specified submission if any portion of that submission meets any of the following conditions:

(i) Is based on a position which the Franchise Tax Board has identified as frivolous under subdivision (c).

(ii) Reflects a desire to delay or impede the administration of federal income tax laws as determined by the Secretary of the Treasury or the administration of the tax imposed under Part 10 (commencing with Section 17001), Part 11 (commencing with Section 23001), or this part as determined by the Franchise Tax Board.

(B) The phrase “specified submission” means any of the following:

(i) A protest under Section 19041.

(ii) A request for a hearing under Section 19044.

(iii) An application under any of the following sections:

(I) Section 19008 (relating to agreements for payment of tax liability in installments).

(II) Section 19443 (relating to compromises).

(III) Section 21004 (relating to actions of the Taxpayers’ Rights Advocate).

(3) If the Franchise Tax Board provides a person with notice that a submission is a specified frivolous submission and the person withdraws that submission within 30 days after the notice, the penalty imposed under paragraph (1) does not apply with respect to that submission.

(e) (1) The Chief Counsel of the Franchise Tax Board may rescind all or any portion of any penalty imposed by this section if both of the following apply:

(A) Imposing the penalty would be against equity and good conscience.

(B) Rescinding the penalty would promote compliance with the requirements of this part and Part 10 (commencing with Section 17001) or Part 11 (commencing with Section 23001) and effective tax administration.

(2) The exercise of authority under paragraph (1) shall be at the sole discretion of the Chief Counsel of the Franchise Tax Board and may not be delegated.

(3) Notwithstanding any other law or rule of law, any determination under this subdivision may not be reviewed in any administrative or judicial proceeding.

(f) The penalties imposed by this section shall be in addition to any other penalty provided by law.

SEC. 47.7. Section 19182 of the Revenue and Taxation Code is amended to read:

19182. (a) A penalty shall be imposed for failure to furnish information pursuant to Section 18628 and shall be determined in accordance with Section 6707 of the Internal Revenue Code, relating to failure to furnish information regarding reportable transactions, except as otherwise provided.

(b) Article 3 (commencing with Section 19031) of this chapter (relating to deficiency assessments) does not apply in respect of the assessment or collection of any penalty imposed under this section.

(c) A penalty under this section does not apply if it is shown that the additional information required under paragraph (2) of subdivision (d) of Section 18628 was not identified in a Franchise Tax Board notice issued prior to the date the transaction or shelter was entered into.

(d) The provisions of subdivision (e) of Section 19173, relating to the rescission of the penalty by the Chief Counsel of the Franchise Tax Board, shall apply to any penalty imposed by this section.

SEC. 48. Section 19184 of the Revenue and Taxation Code is amended to read:

19184. (a) A penalty of fifty dollars (\$50) shall be imposed for each failure, unless it is shown that the failure is due to reasonable cause, by any person required to file who fails to file a report at the time and in the manner required by any of the following provisions:

(1) Subdivision (c) of Section 17507, relating to individual retirement accounts.

(2) Section 220(h) of the Internal Revenue Code, relating to medical savings accounts for taxable years beginning on or after January 1, 1997.

(3) Subdivision (b) of Section 17140.3 or subdivision (b) of Section 23711 relating to qualified tuition programs.

(4) Subdivision (e) of Section 23712, relating to Coverdell education savings accounts.

(b) (1) Any individual who:

(A) Is required to furnish information under Section 17508 as to the amount designated nondeductible contributions made for any taxable year, and

(B) Overstates the amount of those contributions made for that taxable year, shall pay a penalty of one hundred dollars (\$100) for each overstatement unless it is shown that the overstatement is due to reasonable cause.

(2) Any individual who fails to file a form required to be filed by the Franchise Tax Board under Section 17508 shall pay a penalty of fifty dollars (\$50) for each failure unless it is shown that the failure is due to reasonable cause.

(c) Article 3 (commencing with Section 19031) of this chapter (relating to deficiency assessments) shall not apply in respect of the assessment or collection of any penalty imposed under this section.

SEC. 49. Section 19559 of the Revenue and Taxation Code, as added by Section 7 of Chapter 690 of the Statutes of 2002, is repealed.

SEC. 50. Section 19559 of the Revenue and Taxation Code, as added by Section 16 of Chapter 807 of the Statutes of 2002, is amended to read:

19559. (a) (1) The Franchise Tax Board may disclose returns and return information to federal agencies on the same terms and to the same extent as returns and return information may be disclosed by the Secretary of the Treasury under paragraph (3)(C) or paragraph (7) of Section 6103(i) of the Internal Revenue Code.

(2) Notwithstanding paragraph (1), the Franchise Tax Board may not disclose any return or return information under this section if the Franchise Tax Board determines, in the manner specified by the Franchise Tax Board, that this disclosure would identify a confidential informant or seriously impair a civil or criminal tax investigation.

(b) This section shall apply to disclosures made on or after January 23, 2002, except that no disclosures may be made under this section after December 31, 2005.

SEC. 50.1. Section 19772 of the Revenue and Taxation Code, as added by Section 13 of Chapter 656 of the Statutes of 2003, is amended to read:

19772. (a) Section 6707A of the Internal Revenue Code, relating to penalty for failure to include reportable transactions information with a return, shall apply, except as otherwise provided.

(b) The penalty amounts in Section 6707A(b) of the Internal Revenue Code shall not apply, and in lieu thereof, the following shall apply:

(1) Except as provided in paragraph (2), the amount of the penalty shall be fifteen thousand dollars (\$15,000).

(2) The amount of the penalty with respect to a listed transaction shall be thirty thousand dollars (\$30,000).

(c) (1) Section 6707A(c)(1) of the Internal Revenue Code is modified to include reportable transactions within the meaning of paragraph (3) of subdivision (a) of Section 18407.

(2) Section 6707A(c)(2) of the Internal Revenue Code is modified to include listed transactions within the meaning of paragraph (4) of subdivision (a) of Section 18407.

(d) The penalty under this section only applies to taxpayers with taxable income greater than two hundred thousand dollars (\$200,000).

(e) Section 6707A(e) of the Internal Revenue Code, relating to a penalty reported to the Securities and Exchange Commission, shall not apply.

(f) Section 6707A(d) of the Internal Revenue Code, relating to the authority to rescind a penalty, shall not apply, and in lieu thereof, the following shall apply:

(1) The Chief Counsel of the Franchise Tax Board may rescind all or any portion of any penalty imposed by this section with respect to any violation if all of the following apply:

(A) The violation is with respect to a reportable transaction other than a listed transaction.

(B) The person on whom the penalty is imposed has a history of complying with the requirements of this part and Part 10 (commencing with Section 17001) or Part 11 (commencing with Section 23001).

(C) It is shown that the violation is due to an unintentional mistake of fact.

(D) Imposing the penalty would be against equity and good conscience.

(E) Rescinding the penalty would promote compliance with the requirements of this part and Part 10 (commencing with Section 17001) or Part 11 (commencing with Section 23001) and effective tax administration.

(2) The exercise of authority under paragraph (1) shall be at the sole discretion of the Chief Counsel of the Franchise Tax Board and may not be delegated.

(3) Notwithstanding any other law or rule of law, any determination under this subdivision may not be reviewed in any administrative or judicial proceeding.

(g) Article 3 (commencing with Section 19031) of Chapter 4 (relating to deficiency assessments) shall not apply with respect to the assessment or collection of any penalty imposed under this section.

(h) The penalty imposed by this section is in addition to any penalty imposed under Part 10 (commencing with Section 17001), Part 11 (commencing with Section 23001), or this part.

SEC. 50.2. Section 19772 of the Revenue and Taxation Code, as added by Section 13 of Chapter 654 of the Statutes of 2003, is repealed.

SEC. 50.3. Section 19773 of the Revenue and Taxation Code, as added by Section 13 of Chapter 656 of the Statutes of 2003, is repealed.

SEC. 50.4. Section 19773 of the Revenue and Taxation Code, as added by Section 13 of Chapter 654 of the Statutes of 2003, is repealed.

SEC. 50.5. Section 19774 of the Revenue and Taxation Code, as added by Section 13 of Chapter 656 of the Statutes of 2003, is amended to read:

19774. (a) If a taxpayer has a noneconomic substance transaction understatement for any taxable year, there shall be added to the tax an amount equal to 40 percent of the amount of that understatement.

(b) (1) Subdivision (a) shall be applied by substituting “20 percent” for “40 percent” with respect to the portion of any noneconomic substance transaction understatement with respect to which the relevant facts affecting the tax treatment of the item are adequately disclosed in the return or a statement attached to the return.

(2) For taxable years beginning before January 1, 2003, “adequately disclosed” includes the disclosure of the tax shelter identification number on the taxpayer’s return as required by subdivision (c) of Section 18628, as applicable for the year in which the transaction was entered into.

(c) For purposes of this section:

(1) The term “noneconomic substance transaction understatement” means any amount which would be an understatement under Section 6662A(b) of the Internal Revenue Code, as modified by subdivision (b) of Section 19164.5 if Section 6662A(b) of the Internal Revenue Code were applied by taking into account items attributable to noneconomic substance transactions rather than items to which Section 6662A(b) applies.

(2) A “noneconomic substance transaction” includes the disallowance of any loss, deduction or credit, or addition to income attributable to a determination that the disallowance or addition is attributable to a transaction or arrangement that lacks economic substance including a transaction or arrangement in which an entity is disregarded as lacking economic substance. A transaction shall be treated as lacking economic substance if the taxpayer does not have a valid nontax California business purpose for entering into the transaction.

(d) (1) If the notice of proposed assessment of additional tax has been sent with respect to a penalty to which this section applies, only the Chief Counsel of the Franchise Tax Board may compromise all or any portion of that penalty.

(2) The exercise of authority under paragraph (1) shall be at the sole discretion of the Chief Counsel of the Franchise Tax Board and may not be delegated.

(3) Notwithstanding any other law or rule of law, any determination under this subdivision may not be reviewed in any administrative or judicial proceeding.

SEC. 50.6. Section 19774 of the Revenue and Taxation Code, as added by Section 13 of Chapter 654 of the Statutes of 2003, is repealed.

SEC. 50.7. Section 19777 of the Revenue and Taxation Code, as amended by Section 331 of Chapter 183 of the Statutes of 2004, is amended to read:

19777. (a) If a taxpayer has been contacted by the Franchise Tax Board regarding a reportable transaction, as defined in Section 6707A(c)(1) of the Internal Revenue Code with respect to which the requirements of Section 6664(d)(2)(A) of the Internal Revenue Code are not met, any listed transaction, as defined in Section 6707A(c)(2) of the Internal Revenue Code, or a gross misstatement within the meaning of Section 6404(g)(2)(D) of the Internal Revenue Code, and has a deficiency, there shall be added to the tax an amount equal to 100 percent of the interest payable under Section 19101 for the period beginning on the last date prescribed by law for the payment of that tax (determined without regard to extensions) and ending on the date the notice of proposed assessment is mailed.

(b) The penalty imposed by this section is in addition to any other penalty imposed under Part 10 (commencing with Section 17001), Part 11 (commencing with Section 23001), or this part.

SEC. 50.8. Section 19777 of the Revenue and Taxation Code, as amended by Section 330 of Chapter 183 of the Statutes of 2004, is repealed.

SEC. 51. Section 23051.5 of the Revenue and Taxation Code is amended to read:

23051.5. (a) (1) Unless otherwise specifically provided, the terms "Internal Revenue Code," "Internal Revenue Code of 1954," or "Internal Revenue Code of 1986," for purposes of this part, mean Title 26 of the United States Code, including all amendments thereto, as enacted on the specified date for the applicable taxable year as defined in paragraph (1) of subdivision (a) of Section 17024.5.

(2) (A) Unless otherwise specifically provided, for federal laws enacted on or after January 1, 1987, and on or before the specified date for the taxable year, uncodified provisions that relate to provisions of the Internal Revenue Code that are incorporated for purposes of this part, shall be applicable to the same taxable years as the incorporated provisions.

(B) In the case where Section 901 of the Economic Growth and Tax Relief Act of 2001 (Public Law 107-16) applies to any provision of the Internal Revenue Code that is incorporated for purposes of this part, Section 901 of the Economic Growth and Tax Relief Act of 2001 (Public Law 107-16) shall apply for purposes of this part in the same manner

and to the same taxable years as it applies for federal income tax purposes.

(3) Subtitle G (Tax Technical Corrections) and Part I of Subtitle H (Repeal of Expired or Obsolete Provisions) of the Revenue Reconciliation Act of 1990 (Public Law 101-508) modified numerous provisions of the Internal Revenue Code and provisions of prior federal acts, some of which are incorporated by reference into this part. Unless otherwise provided, the provisions described in the preceding sentence, to the extent that they modify provisions that are incorporated into this part, are declaratory of existing law and shall be applied in the same manner and for the same periods as specified in the Revenue Reconciliation Act of 1990.

(b) Unless otherwise specifically provided, when applying the Internal Revenue Code for purposes of this part, a reference to any of the following is not applicable for purposes of this part:

(1) Domestic International Sales Corporations (DISC), as defined in Section 992(a) of the Internal Revenue Code.

(2) Foreign Sales Corporations (FSC), as defined in Section 922(a) of the Internal Revenue Code.

(3) A personal holding company, as defined in Section 542 of the Internal Revenue Code.

(4) A foreign personal holding company, as defined in Section 552 of the Internal Revenue Code.

(5) A foreign investment company, as defined in Section 1246(b) of the Internal Revenue Code.

(6) A foreign trust as defined in Section 679 of the Internal Revenue Code.

(7) Foreign income taxes and foreign income tax credits.

(8) Federal tax credits and carryovers of federal tax credits.

(c) (1) The provisions contained in Sections 41 to 44, inclusive, and Section 172 of the Tax Reform Act of 1984 (Public Law 98-369), relating to treatment of debt instruments, is not applicable for taxable years beginning before January 1, 1987.

(2) The provisions contained in Public Law 99-121, relating to the treatment of debt instruments, is not applicable for taxable years beginning before January 1, 1987.

(3) For taxable years beginning on and after January 1, 1987, the provisions referred to by paragraphs (1) and (2) shall be applicable for purposes of this part in the same manner and with respect to the same obligations as the federal provisions, except as otherwise provided in this part.

(d) When applying the Internal Revenue Code for purposes of this part, regulations promulgated in final form or issued as temporary

regulations by “the secretary” shall be applicable as regulations issued under this part to the extent that they do not conflict with this part or with regulations issued by the Franchise Tax Board.

(e) Whenever this part allows a taxpayer to make an election, the following rules shall apply:

(1) A proper election filed with the Internal Revenue Service in accordance with the Internal Revenue Code or regulations issued by “the secretary” shall be deemed to be a proper election for purposes of this part, unless otherwise expressly provided in this part or in regulations issued by the Franchise Tax Board.

(2) A copy of that election shall be furnished to the Franchise Tax Board upon request.

(3) (A) Except as provided in subparagraph (B), in order to obtain treatment other than that elected for federal purposes, a separate election shall be filed with the Franchise Tax Board at the time and in the manner that may be required by the Franchise Tax Board.

(B) (i) If a taxpayer makes a proper election for federal income tax purposes prior to the time that taxpayer becomes subject to the tax imposed under this part or Part 10 (commencing with Section 17001), that taxpayer is deemed to have made the same election for purposes of the tax imposed by this part, Part 10 (commencing with Section 17001), and Part 10.2 (commencing with Section 18401), as applicable, and that taxpayer may not make a separate election for California tax purposes unless that separate election is expressly authorized by this part, Part 10 (commencing with Section 17001), or Part 10.2 (commencing with Section 18401), or by regulations issued by the Franchise Tax Board.

(ii) If a taxpayer has not made a proper election for federal income tax purposes prior to the time that taxpayer becomes subject to tax under this part or Part 10 (commencing with Section 17001), that taxpayer may not make a separate California election for purposes of this part, Part 10 (commencing with Section 17001), or Part 10.2 (commencing with Section 18401), unless that separate election is expressly authorized by this part, Part 10 (commencing with Section 17001), Part 10.2 (commencing with Section 18401), or by regulations issued by the Franchise Tax Board.

(iii) This subparagraph applies only to the extent that the provisions of the Internal Revenue Code or regulations issued by “the secretary” authorizing an election for federal income tax purposes apply for purposes of this part, Part 10 (commencing with Section 17001), or Part 10.2 (commencing with Section 18401).

(f) Whenever this part allows or requires a taxpayer to file an application or seek consent, the rules set forth in subdivision (e) shall apply to that application or consent.

(g) When applying the Internal Revenue Code for purposes of determining the statute of limitations under this part, any reference to a period of three years shall be modified to read four years for purposes of this part.

(h) When applying, for purposes of this part, any section of the Internal Revenue Code or any applicable regulation thereunder, all of the following shall apply:

(1) For purposes of Chapter 2 (commencing with Section 23101), Chapter 2.5 (commencing with Section 23400), and Chapter 3 (commencing with Section 23501), the term “taxable income” shall mean “net income.”

(2) For purposes of Article 2 (commencing with Section 23731) of Chapter 4, the term “taxable income” shall mean “unrelated business taxable income,” as defined by Section 23732.

(3) Any reference to “subtitle,” “Chapter 1,” or “chapter” shall mean this part.

(4) The provisions of Section 7806 of the Internal Revenue Code, relating to construction of title, shall apply.

(5) Any provision of the Internal Revenue Code that becomes operative on or after the specified date for that taxable year shall become operative on the same date for purposes of this part.

(6) Any provision of the Internal Revenue Code that becomes inoperative on or after the specified date for that taxable year shall become inoperative on the same date for purposes of this part.

(7) Due account shall be made for differences in federal and state terminology, effective dates, substitution of “Franchise Tax Board” for “secretary” when appropriate, and other obvious differences.

(8) Any provision of the Internal Revenue Code that refers to a “corporation” shall, when applicable for purposes of this part, include a “bank,” as defined by Section 23039.

(i) Any reference to a specific provision of the Internal Revenue Code shall include modifications of that provision, if any, in this part.

SEC. 52. Section 23662 is added to the Revenue and Taxation Code, to read:

23662. (a) For each taxable year beginning on or after July 1, 2005, and before January 1, 2018, there shall be allowed as an environmental tax credit against the “tax,” as defined by Section 23036, an amount equal to five cents (\$0.05) for each gallon of ultra low sulfur diesel fuel produced during the taxable year by a small refiner at any facility located in this state.

(b) The aggregate credit determined under subdivision (a) for any taxable year with respect to any facility shall not exceed 25 percent of the qualified capital costs incurred by the small refiner with respect to

that facility, reduced by the aggregate credits determined under this section for all prior taxable years with respect to that facility.

(c) For purposes of this section:

(1) "Small refiner" means any refiner who owns or operates a refinery in California that:

(A) Has and at all times had since January 1, 1978, a crude oil capacity of not more than 55,000 barrels per stream day.

(B) Has not been at any time since September 1, 1988, owned or controlled by any refiner that at the same time owned or controlled refineries in California with a total combined crude oil capacity of more than 55,000 barrels per stream day.

(C) Has not been at any time since September 1, 1988, owned or controlled by any refiner that at the same time owned or controlled refineries in the United States with a total combined crude oil capacity of more than 137,500 barrels per stream day.

(2) (A) "Qualified capital costs" means, with respect to any facility, those costs paid or incurred during the applicable period for items certified by the California Air Resources Board (CARB) under subparagraph (B) for compliance with the applicable EPA or CARB regulations with respect to that facility, including, but not limited to, expenditures for the construction of new process operation units or the dismantling and reconstruction of existing process units to be used in the production of ultra low sulfur diesel fuel, associated adjacent or offsite equipment (including tankage, catalyst, and power supply), engineering, construction period interest, site work, and permitting.

(B) (i) Before claiming a credit under this section, a small refiner shall request from the California Air Resources Board a certification that both of the following are true:

(I) That the items for which qualified capital costs were paid or incurred are for compliance with the applicable EPA or CARB regulations described in subparagraph (A).

(II) That the items for which qualified capital costs were paid or incurred have been placed in service by the small refiner.

(ii) The request described in clause (i) shall be in a form and contain sufficient information to allow the California Air Resources Board to determine that the items that are requested to be certified were placed in service for compliance with applicable EPA and CARB regulations, which information shall include the date on which the items were placed in service.

(C) The California Air Resources Board shall make a determination regarding a request described in subparagraph (B) on or before 60 days after the request is submitted. If the board does not make a determination within this time period, the certification will be deemed to be granted.

(D) If certification from the Secretary of the Treasury of the United States, after consultation with the Administrator of the Environmental Protection Agency, that the taxpayer's qualified capital costs with respect to a facility are, or will result, in compliance with applicable EPA regulations, has been received, then the taxpayer shall be allowed the credit without obtaining certification from the CARB, unless CARB demonstrates that the fuel produced does not meet CARB regulations.

(3) "Facility" means a small refiner's petroleum refinery located in the State of California that has incurred qualified capital costs to produce ultra low sulfur diesel fuel.

(4) "Applicable EPA regulations" means the Highway Diesel Fuel Sulfur Control Requirements of the Environmental Protection Agency.

(5) "Applicable CARB regulations" means the Vehicular Diesel Fuel Sulfur Control Requirements of the California Air Resources Board (CARB) under Section 2281 of Article 2 of Chapter 5 of Division 3 of Title 13 of the California Code of Regulations.

(6) "Applicable period" means, with respect to any facility, the period beginning on January 1, 2004, and ending on May 31, 2007.

(7) "Ultra low sulfur diesel fuel" means both of the following:

(A) Diesel fuel with a sulfur content of 15 parts per million or less.

(B) (i) Subject to clause (ii), either of the following:

(I) Vehicular diesel fuel produced and sold by a small refiner on or after June 1, 2006.

(II) Vehicular diesel fuel produced and sold by the small refiner before June 1, 2006, that the small refiner specifically identifies and supports through internal test reports as meeting applicable CARB regulations.

(ii) For purposes of this section, it is rebuttably presumed that the fuel described in clause (i) is ultra low sulfur diesel fuel. The California Air Resources Board may rebut this presumption by demonstrating that the fuel does not comply with applicable CARB regulations.

(8) "Barrels per stream day" means the maximum number of barrels of input that a distillation facility can process within a 24-hour period when running at full capacity under optimal crude and product slate conditions with no allowance for downtime.

(d) For purposes of this section, if a credit is determined under this section for any expenditure with respect to any property, the increase in basis of that property that would (but for this subdivision) result from that expenditure shall be reduced by the amount of the credit so determined.

(e) No deduction shall be allowed for that portion of the expenses otherwise allowable as a deduction for the taxable year which is equal to the amount of the credit determined for the taxable year under this section.

(f) In the case where the credit allowed by this section exceeds the “tax,” the excess may be carried over to reduce the “tax” in the following year, and the 10 succeeding years if necessary, until the credit is exhausted.

(g) If a small refiner that claims a credit under this section sells, transfers, or otherwise disposes of, either directly or indirectly, a facility within five years of the taxable year during which it first claimed the credit, there shall be added to the “tax” of the small refiner during the taxable year of sale, transfer, or disposition an amount equal to the total credit claimed multiplied by a fraction, the numerator of which is the remaining term of five years and the denominator of which is 5.

(h) This section shall remain in effect only until January 1, 2018, and as of that date is repealed.

SEC. 53. Section 23701s of the Revenue and Taxation Code is amended to read:

23701s. (a) An employee-funded pension trust described in Section 501(c)(18) of the Internal Revenue Code, except as otherwise provided.

(b) The last sentence in Section 501(c)(18) of the Internal Revenue Code, relating to excess contributions under Section 4979, shall not apply.

SEC. 54. Section 23701w of the Revenue and Taxation Code is amended to read:

23701w. A veteran’s organization, as defined by Section 501(c)(19) of the Internal Revenue Code.

SEC. 55. Section 23703.5 of the Revenue and Taxation Code is amended to read:

23703.5. Section 501(p) of the Internal Revenue Code, relating to suspension of tax-exempt status of terrorist organizations, shall apply, except as otherwise provided:

(a) References to Section 501(a) of the Internal Revenue Code shall be modified to refer to Section 23701.

(b) Section 501(p)(4) of the Internal Revenue Code is modified by substituting the phrase “under Part 10 (commencing with Section 17001) and this part” for the phrase “under any provision of this title, including Sections 170, 545(b)(2), 556(b)(2), 642(c), 2055, 2106(a)(2), and 2522” contained therein.

(c) This section shall apply only during the period described in Section 501(p)(3) of the Internal Revenue Code that the federal tax exemption of the organization described in Section 501(p)(2) of the Internal Revenue Code is suspended for federal income tax purposes under Section 501(p)(1) of the Internal Revenue Code.

(d) Section 501(p)(5) of the Internal Revenue Code shall not apply and in lieu thereof, notwithstanding any other provision of law, no

organization or other person may challenge a suspension under this section, a designation or identification described in Section 501(p)(2) of the Internal Revenue Code, the period of suspension described in Section 501(p)(3) of the Internal Revenue Code, or a denial of a deduction under Section 501(p)(4) of the Internal Revenue Code as modified in subdivision (b) in any administrative or judicial proceeding relating to the California tax liability of the organization or other person.

(e) (1) Credit or refund (with interest) with respect to an overpayment shall be made if all of the following apply with respect to that overpayment:

(A) The tax exemption of any organization described in Section 501(p)(2) of the Internal Revenue Code is suspended under this section.

(B) Each designation and identification described in Section 501(p)(2) of the Internal Revenue Code which has been made with respect to that organization is determined to be erroneous under Section 501(p)(6) of the Internal Revenue Code for federal income tax purposes.

(C) The erroneous designations and identifications result in an overpayment of income tax for any taxable year by that organization.

(2) If the credit or refund of any overpayment of tax described in subparagraph (C) of paragraph (1) is prevented at any time by the operation of any law or rule of law (including res judicata), the credit or refund may nevertheless be allowed or made if the claim therefor is filed before the close of the one-year period beginning on the date of the last determination described in subparagraph (B) of paragraph (1).

(f) This section shall apply to designations made before, on, or after November 11, 2003.

SEC. 56. Section 23705 of the Revenue and Taxation Code is amended to read:

23705. (a) (1) An organization described in Section 23701i (voluntary employee's beneficiary associations) or 23701q (qualified group legal service plans) which is part of a plan of an employer shall not be exempt from tax under Section 23701, unless that plan meets the requirements of Section 505(b) of the Internal Revenue Code.

(2) Paragraph (1) shall not apply to any organization described in Section 505(a)(2) of the Internal Revenue Code.

(b) A copy of any notice filed with the Secretary of the Treasury, pursuant to Section 505(c) of the Internal Revenue Code, relating to application for tax-exempt status, shall be filed at the same time and in the same manner with the Franchise Tax Board.

SEC. 57. Section 23711 of the Revenue and Taxation Code is amended to read:

23711. Section 529 of the Internal Revenue Code, relating to qualified state tuition programs, shall apply, except as otherwise provided.

(a) Section 529(a) of the Internal Revenue Code is modified as follows:

(1) By substituting the phrase “under Part 10 (commencing with Section 17001) and this part” in lieu of the phrase “under this subtitle.”

(2) By substituting “Article 2 (commencing with Section 23731)” in lieu of “section 511.”

(b) A copy of the report required to be filed with the Secretary of the Treasury under Section 529(d) of the Internal Revenue Code shall be filed with the Franchise Tax Board at the same time and in the same manner as specified in that section.

SEC. 58. Section 23712 of the Revenue and Taxation Code is amended to read:

23712. Section 530 of the Internal Revenue Code, relating to Coverdell education savings accounts, shall apply, except as otherwise provided.

(a) Section 530(a) of the Internal Revenue Code is modified as follows:

(1) By substituting the phrase “under Part 10 (commencing with Section 17001) and this part” in lieu of the phrase “under this subtitle.”

(2) By substituting “Article 2 (commencing with Section 23731)” in lieu of “section 511.”

(b) For taxable years beginning before January 1, 2002, Section 530(b)(1) of the Internal Revenue Code, relating to the definition of education savings account, is modified to additionally require that upon the date that the designated beneficiary becomes 30 years of age, any balance to the credit of the beneficiary shall be distributed within 30 days after the date the beneficiary becomes 30 years of age to that beneficiary.

(c) Section 530(d) of the Internal Revenue Code is modified as follows:

(1) By substituting the phrase “under Part 10 (commencing with Section 17001) in the manner as provided in Section 72(b) of the Internal Revenue Code, as modified by Part 10” in lieu of the phrase “in the manner as provided in Section 72(b)” in Section 530(d)(1) of the Internal Revenue Code.

(2) (A) By substituting the phrase “tax imposed by Part 10 (commencing with Section 17001)” in lieu of the phrase “tax imposed by this chapter” in Section 530(d)(4)(A) of the Internal Revenue Code.

(B) By substituting the phrase “increased by 2½ percent” in lieu of the phrase “increased by 10 percent” in Section 530(d)(4)(A) of the Internal Revenue Code.

(C) By substituting the phrase “shall be included in the contributor’s gross income under Part 10 (commencing with Section 17001) or this

part” in lieu of the phrase “shall be included in gross income” in Section 530(d)(4)(C) of the Internal Revenue Code.

(D) For taxable years beginning before January 1, 2005:

(i) By additionally providing that Section 530(d)(4)(A) of the Internal Revenue Code, relating to additional tax for distributions not used for educational purposes, shall not apply if the payment or distribution is made on account of the attendance of the designated beneficiary at the United States Military Academy, the United States Naval Academy, the United States Air Force Academy, the United States Coast Guard Academy, or the United States Merchant Marine Academy, to the extent that the amount of the payment or distribution does not exceed the costs of advanced education (as defined by Section 2005(e)(3) of Title 10 of the United States Code, as in effect on November 11, 2003) attributable to that attendance.

(ii) The amendments made to this section by Section 12 of Chapter 552 of the Statutes of 2004 shall apply to taxable years beginning after December 31, 2002.

(d) For purposes of Part 10 (commencing with Section 17001) and this part, in the case of a custodial account treated as a trust by reason of Section 530(g) of the Internal Revenue Code, the custodian of that account shall be treated as the trustee thereof.

(e) A copy of the report, which is required to be filed with the Secretary of the Treasury under Section 530(h) of the Internal Revenue Code, shall be filed with the Franchise Tax Board at the same time and in the same manner as specified in that section.

SEC. 59. Section 24306 of the Revenue and Taxation Code is amended to read:

24306. (a) For purposes of this section, the following terms have the following meanings, as provided in the Golden State Scholarshare Trust Act (Article 19 (commencing with Section 69980) of Chapter 2 of Part 42 of the Education Code):

(1) “Beneficiary” has the meaning set forth in subdivision (c) of Section 69980 of the Education Code.

(2) “Benefit” has the meaning set forth in subdivision (d) of Section 69980 of the Education Code.

(3) “Participant” has the meaning set forth in subdivision (h) of Section 69980 of the Education Code.

(4) “Participation agreement” has the meaning set forth in subdivision (i) of Section 69980 of the Education Code.

(5) “Scholarshare trust” has the meaning set forth in subdivision (f) of Section 69980 of the Education Code.

(b) For taxable years beginning on or after January 1, 1998, and before January 1, 2002, except as otherwise provided in subdivision (c), gross income of a participant shall not include any of the following:

(1) Any earnings under a Scholarshare trust, or a participation agreement, as provided in Article 19 (commencing with Section 69980) of Chapter 2 of Part 42 of the Education Code.

(2) Contributions to the Scholarshare trust on behalf of a beneficiary shall not be includable as gross income of that beneficiary.

(c) For taxable years beginning on or after January 1, 1998, and before January 1, 2002:

(1) Any distribution under a Scholarshare trust participation agreement shall be includable in the gross income of the distributee in the manner as provided under Section 72 of the Internal Revenue Code, as modified by Section 24272.2, to the extent not excluded from gross income under any other provision of this part. For purposes of applying Section 72 of the Internal Revenue Code, the following apply:

(A) All Scholarshare trust accounts of which an individual is a beneficiary shall be treated as one account, except as otherwise provided.

(B) All distributions during a taxable year shall be treated as one distribution.

(C) The value of the participation agreement, income on the participation agreement, and investment in the participation agreement shall be computed as of the close of the calendar year in which the taxable year begins.

(2) A contribution by a for-profit or nonprofit entity, or by a state or local government agency, for the benefit of an owner or employee of that entity or a beneficiary whom the owner or employee has the power to designate, including the owner or employee's minor children, shall be included in the gross income of that owner or employee in the year the contribution is made.

(3) For purposes of this subdivision, "distribution" includes any benefit furnished to a beneficiary under a participation agreement, as provided in Article 19 (commencing with Section 69980) of Chapter 2 of Part 42 of the Education Code.

(4) (A) Paragraph (1) shall not apply to that portion of any distribution that, within 60 days of distribution, is transferred to the credit of another beneficiary under the Scholarshare trust who is a "member of the family," as that term is used in Section 529(e)(2) of the Internal Revenue Code, as amended by Section 211 of the Taxpayer Relief Act of 1997 (Public Law 105-34), of the former beneficiary of that Scholarshare trust.

(B) Any change in the beneficiary of an interest in the Scholarshare trust shall not be treated as a distribution for purposes of paragraph (1) if the new beneficiary is a "member of the family," as that term is used

in Section 2032A(e)(2) of the Internal Revenue Code, of the former beneficiary of that Scholarshare trust.

(d) For taxable years beginning on or after January 1, 2002, Sections 529(c) and 529(e) of the Internal Revenue Code shall apply except as otherwise provided in Part 10 (commencing with Section 17001) and this part.

SEC. 60. Section 24349 of the Revenue and Taxation Code is amended to read:

24349. (a) There shall be allowed as a depreciation deduction a reasonable allowance for the exhaustion, wear and tear (including a reasonable allowance for obsolescence)—

- (1) Of property used in the trade or business; or
- (2) Of property held for the production of income.

(b) Except as otherwise provided in subdivision (c), for taxable years ending after December 31, 1958, the term “reasonable allowance” as used in subdivision (a) shall include, but shall not be limited to, an allowance computed in accordance with regulations prescribed by the Franchise Tax Board, under any of the following methods:

- (1) The straight-line method.
- (2) The declining balance method, using a rate not exceeding twice the rate that would have been used had the annual allowance been computed under the method described in paragraph (1).
- (3) The sum of the years-digits method.
- (4) Any other consistent method productive of an annual allowance that, when added to all allowances for the period commencing with the taxpayer’s use of the property and including the taxable year, does not, during the first two-thirds of the useful life of the property, exceed the total of those allowances that would have been used had those allowances been computed under the method described in paragraph (2).

Nothing in this subdivision shall be construed to limit or reduce an allowance otherwise allowable under subdivision (a).

(c) Any grapevine replaced in a vineyard in California in a taxable year beginning on or after January 1, 1992, as a direct result of a phylloxera infestation in that vineyard, and any grapevine replaced in a vineyard in California in a taxable year beginning on or after January 1, 1997, as a direct result of Pierce’s disease in that vineyard, shall have a useful life of five years, except that it shall have a class life of 10 years for purposes of depreciation under Section 168(g)(2) of the Internal Revenue Code where the taxpayer has made an election under Section 263A(d)(3) of the Internal Revenue Code not to capitalize costs of the infested vineyard. Every taxpayer claiming a deduction under this section with respect to a grapevine as described in this subdivision shall obtain a written certification from an independent state-certified integrated pest

management adviser, or a state agricultural commissioner or adviser, that specifies that the replanting was necessary to restore a vineyard infested with phylloxera or Pierce's disease. The taxpayer shall retain the certification for future audit purposes.

(d) For purposes of this part, the deduction for property leased to governments and other tax-exempt entities, as defined in Section 168(h) of the Internal Revenue Code, shall be limited to the amount determined under Section 168(g) of the Internal Revenue Code, relating to alternative depreciation system for certain property.

(e) (1) In the case of any building erected or improvements made on leased property, if the building or improvement is property to which this section applies, the depreciation deduction shall be determined under the provisions of this section.

(2) An improvement shall be treated for purposes of determining gain or loss under this part as disposed of by the lessor when so disposed of or abandoned if both of the following occur:

(A) The improvement is made by the lessor of leased property for the lessee of that property.

(B) The improvement is irrevocably disposed of or abandoned by the lessor at the termination of the lease by the lessee.

This subdivision shall not apply to any property to which Section 168 of the Internal Revenue Code does not apply for federal purposes by reason of Section 168(f) of the Internal Revenue Code. Any election made under Section 168(f)(1) of the Internal Revenue Code for federal purposes with respect to that property shall be treated as a binding election for state purposes under this subdivision with respect to that same property and no separate election under subdivision (e) of Section 23051.5 with respect to that property shall be allowed.

(3) (A) In determining a lease term, both of the following shall apply:

(i) There shall be taken into account options to renew.

(ii) Two or more successive leases which are part of the same transaction (or a series of related transactions) with respect to the same or substantially similar property shall be treated as one lease.

(B) For purposes of clause (i) of subparagraph (A), in the case of nonresidential real property or residential rental property, there shall not be taken into account any option to renew at fair market value determined at the time of renewal.

(f) (1) Section 167(g) of the Internal Revenue Code, relating to depreciation under income forecast method, shall apply except as otherwise provided.

(2) Section 167(g)(2)(C) of the Internal Revenue Code is modified by substituting "Section 19521" in lieu of "Section 460(b)(7)" of the Internal Revenue Code.

(3) Section 167(g)(5)(D) of the Internal Revenue Code is modified by substituting “Part 10.2 (commencing with Section 18401) (other than Article 2 (commencing with Section 19021) and Sections 19142 to 19150, inclusive)” in lieu of “Subtitle F (other than Sections 6654 and 6655).”

(4) Section 167(g)(5)(E) of the Internal Revenue Code, relating to treatment of distribution costs, shall not apply.

(5) Section 167(g)(7) of the Internal Revenue Code, relating to treatment of participations and residuals, shall not apply.

SEC. 61. Section 24355.3 is added to the Revenue and Taxation Code, to read:

24355.3. For purposes of computing the depreciation deduction pursuant to Section 24349, the useful life of any motor sports entertainment complex, as defined in Section 168(i)(15) of the Internal Revenue Code, shall be seven years.

SEC. 61.5. Section 24355.4 is added to the Revenue and Taxation Code, to read:

24355.4. For purposes of computing the depreciation deduction pursuant to Section 24349, the useful life of any Alaska natural gas pipeline, as defined in Section 168(i)(16) of the Internal Revenue Code, shall be seven years.

SEC. 61.7. Section 24356 of the Revenue and Taxation Code is amended to read:

24356. (a) (1) In the case of Section 24356 property, the term “reasonable allowance” as used in subdivision (a) of Section 24349, may, at the election of the taxpayer, include an allowance, for the first taxable year for which a deduction is allowable under Sections 24349 through 24354 to the taxpayer with respect to such property, of 20 percent of the cost of that property.

(2) If in any one taxable year the cost of Section 24349 property with respect to which the taxpayer may elect an allowance under paragraph (1) for that taxable year exceeds ten thousand dollars (\$10,000), then paragraph (1) shall apply with respect to those items selected by the taxpayer, but only to the extent of an aggregate cost of ten thousand dollars (\$10,000).

(b) (1) In lieu of subdivision (a), Section 179 of the Internal Revenue Code, relating to the election to expense certain depreciable business assets, shall apply, except as otherwise provided.

(2) Section 179(b)(1) of the Internal Revenue Code, relating to the dollar limitation, shall not apply and in lieu thereof, the aggregate cost that may be taken into account under Section 179(a) of the Internal Revenue Code, for any taxable year, shall not exceed twenty-five thousand dollars (\$25,000).

(3) Section 179(b)(2) of the Internal Revenue Code, relating to the reduction in the dollar limitation, shall not apply and in lieu thereof, the limitation under paragraph (2), for any taxable year, shall be reduced, but not below zero, by the amount by which the cost of Section 179 property, as defined in Section 179(d)(1) of the Internal Revenue Code, except as otherwise provided, that is placed in service during the taxable year, exceeds two hundred thousand dollars (\$200,000).

(4) Section 179 of the Internal Revenue Code is modified to provide that the “aggregate amount disallowed” referred to in Section 179(b)(3)(B) of the Internal Revenue Code shall be computed under this part as that section read on the date the property generating the amount disallowed was placed in service.

(5) Section 179(b)(5) of the Internal Revenue Code, relating to inflation adjustments, shall not apply.

(6) The last sentence in Section 179(c)(2) of the Internal Revenue Code, relating to irrevocable elections, shall not apply.

(7) Section 179(d)(1)(A)(ii) of the Internal Revenue Code, relating to computer software, shall not apply.

(c) (1) The election under this section for any taxable year shall be made within the time prescribed by law (including extensions thereof) for filing the return for such taxable year. The election shall be made in such manner as the Franchise Tax Board may by regulations prescribe.

(2) Any election made under this section may not be revoked except with the consent of the Franchise Tax Board.

(d) (1) For purposes of this section, the term “Section 24356 property” means tangible personal property—

(A) Of a character subject to the allowance for depreciation under Sections 24349 through 24354,

(B) Acquired by purchase after December 31, 1958, for use in a trade or business, and

(C) With a useful life (determined at the time of such acquisition) of six years or more.

(2) For purposes of paragraph (1), the term “purchase” means any acquisition of property, but only if—

(A) The property is not acquired from a person whose relationship to the person acquiring it would result in the disallowance of losses under Section 24427 (but, in applying Section 267 of the Internal Revenue Code, relating to losses, expenses, and interest with respect to transactions between related taxpayers, for purposes of this section, Section 267(c)(4) of the Internal Revenue Code shall be treated as providing that the family of an individual shall include only his or her spouse, ancestors, and lineal descendants);

(B) The property is not acquired by one member of an affiliated group from another member of the same affiliated group, and

(C) The basis of the property in the hands of the person acquiring it is not determined in whole or in part by reference to the adjusted basis of that property in the hands of the person from whom acquired.

(3) For purposes of this section, the cost of property does not include so much of the basis of such property as is determined by reference to the basis of other property held at any time by the person acquiring that property.

(4) For purposes of subdivision (a) and subdivision (b) of this section—

(A) All members of an affiliated group shall be treated as one taxpayer, and

(B) The Franchise Tax Board shall apportion the dollar limitation contained in subdivision (a) or subdivision (b) among the members of the affiliated group in the manner as it shall by regulations prescribe.

(5) For purposes of paragraphs (2) and (4), the term “affiliated group” has the meaning assigned to it by Section 1504 of the Internal Revenue Code, except that, for those purposes, the phrase “more than 50 percent” shall be substituted for the phrase “at least 80 percent” each place it appears in Section 1504(a) of the Internal Revenue Code.

(6) In applying Section 24353, the adjustment under paragraph (1) of subdivision (b) of Section 24916, resulting by reason of an election made under this section with respect to any Section 24356 property, shall be made before any other deduction allowed by subdivision (a) of Section 24349 is computed.

(e) The Franchise Tax Board shall prescribe those regulations as may be necessary to carry out the purposes of this section.

SEC. 62. Section 24356.4 is added to the Revenue and Taxation Code, to read:

24356.4. (a) For any taxable year, which includes part of the “applicable period,” as defined in paragraph (6) of subdivision (c) of Section 23662, a small refiner (as defined in Section 23662) may elect to treat 75 percent of qualified capital costs (as defined in paragraph (2) of subdivision (c) of Section 23662) paid or incurred by the taxpayer during the taxable year as expenses that are not chargeable to a capital account. Any cost so treated shall be allowed as a deduction for the taxable year in which paid or incurred.

(b) (1) For purposes of this part, the basis of any property shall be reduced by the portion of the cost of that property taken into account under subdivision (a).

(2) For purposes of Section 1245 of the Internal Revenue Code, and corresponding section of this part, the amount of the deduction allowable

under subdivision (a) with respect to any property which is of a character subject to the allowance for depreciation shall be treated as a deduction allowed for depreciation under Section 167 of the Internal Revenue Code, or the corresponding section of this part.

(c) This section is repealed on January 1, 2009.

SEC. 63. Section 24356.5 of the Revenue and Taxation Code is repealed.

SEC. 64. Section 24369.4 of the Revenue and Taxation Code is amended to read:

24369.4. (a) Section 198 of the Internal Revenue Code, relating to expensing of environmental remediation costs, shall apply, except as otherwise provided.

(b) Section 198(b)(2) is modified to refer to Sections 24349 to 24355, inclusive, in lieu of Section 167 of the Internal Revenue Code.

(c) Section 198(f) is modified to refer to Section 24442 in lieu of Section 280B of the Internal Revenue Code.

(d) For expenditures paid or incurred before January 1, 2004, each of the following shall apply:

(1) If a taxpayer has, at any time, made an election for federal purposes under Section 198(a) of the Internal Revenue Code to have Section 198 of the Internal Revenue Code apply to a qualified environmental remediation expenditure, Section 198 of the Internal Revenue Code shall apply to that qualified environmental remediation expenditure for state purposes, a separate election for state purposes shall not be allowed under paragraph (3) of subdivision (e) of Section 23051.5, and the federal election shall be binding for purposes of this part.

(2) If a taxpayer fails to make an election for federal purposes under Section 198(a) of the Internal Revenue Code to have Section 198 of the Internal Revenue Code apply to a qualified environmental remediation expenditure, an election under Section 198(a) of the Internal Revenue Code shall not be allowed for state purposes, Section 198 of the Internal Revenue Code shall not apply to that qualified environmental remediation expenditure for state purposes, and a separate election for state purposes shall not be allowed under paragraph (3) of subdivision (e) of Section 23051.5.

(e) No inference as to the proper treatment for purposes of this part of qualified environmental remediation expenditures for periods before the enactment of this section shall be made.

(f) Section 198(h) of the Internal Revenue Code, relating to termination, shall not apply.

(g) Section 198 of the Internal Revenue Code, relating to expensing of environmental remediation costs, shall not apply to expenditures paid or incurred after December 31, 2003.

SEC. 65. Section 24406.6 is added to the Revenue and Taxation Code, to read:

24406.6. For purposes of Section 24373.5, and Sections 24404 to 24406.5, inclusive, net earnings shall not be reduced by amounts paid during the year as dividends on capital stock or other proprietary capital interests of the organization to the extent that the articles of incorporation, bylaws of the organization, or other contract with patrons provide that those dividends are in addition to amounts otherwise payable to patrons that are derived from business done for or with patrons during the taxable year.

SEC. 66. Section 24407 of the Revenue and Taxation Code is amended to read:

24407. (a) The organizational expenditures of a corporation may, at the election of the corporation (made in accordance with regulations prescribed by the Franchise Tax Board), be treated as deferred expenses. In computing net income, the deferred expenses remaining, if any, after the application of subdivision (b) shall be allowed as a deduction ratably over that period of not less than 180 months as may be selected by the corporation (beginning with the month in which the corporation begins business).

(b) (1) The corporation shall be allowed a deduction for the deferred expenses under subdivision (a) in an amount equal to the lesser of either of the following:

(A) The amount of organizational expenditures of the taxpayer that are treated as deferred expenses under subdivision (a).

(B) Five thousand dollars (\$5,000), reduced, but not below zero, by an amount equal to the excess of the amount of the taxpayer's organizational expenditures treated as deferred expenses under subdivision (a) over fifty thousand dollars (\$50,000).

(2) The deduction under paragraph (1) shall be allowed in the taxable year in which the first month of the period specified in subdivision (a) occurs.

(c) The amendments made to this section by the act adding this subdivision shall apply to amounts paid or incurred on or after January 1, 2005.

SEC. 67. Section 24601 of the Revenue and Taxation Code is amended to read:

24601. (a) Subchapter D of Chapter 1 of Subtitle A of the Internal Revenue Code, relating to deferred compensation, etc., shall apply, except as otherwise provided.

(b) Notwithstanding the date specified in paragraph (1) of subdivision (a) of Section 23051.5, Part I of Subchapter D of Chapter 1 of Subtitle A of the Internal Revenue Code, relating to pension, profitsharing, stock

bonus plans, etc., shall apply, except as otherwise provided, without regard to taxable year to the same extent as applicable for federal income tax purposes.

SEC. 68. Section 24654 of the Revenue and Taxation Code is amended to read:

24654. (a) Section 448 of the Internal Revenue Code, relating to limitation on use of cash method of accounting, shall apply, except as otherwise provided.

(b) For purposes of applying Section 448 of the Internal Revenue Code, Sections 801(d)(2), 801(d)(3), and 801(d)(5) of the Tax Reform Act of 1986 (Public Law 99-514), as modified by Section 1008(a) of Public Law 100-647, shall apply to each taxable year beginning on or after January 1, 1987.

SEC. 69. Section 24661.5 of the Revenue and Taxation Code is amended to read:

24661.5. Section 451(e)(3) of the Internal Revenue Code, relating to special election rule, is modified by substituting the phrase “subdivision (b) of Section 24949.1” in lieu of the phrase “section 1033(e)(2)” contained therein.

SEC. 70. Section 24661.6 is added to the Revenue and Taxation Code, to read:

24661.6. Section 451(i) of the Internal Revenue Code, relating to special rule for sales or dispositions to implement Federal Energy Regulatory Commission or state electric restructuring policy, shall not apply.

SEC. 71. Section 24694 is added to the Revenue and Taxation Code, to read:

24694. Section 470 of the Internal Revenue Code, relating to limitation on deductions allocable to property used by governments or other tax-exempt entities, shall apply, except as otherwise provided.

SEC. 72. Section 24831.6 is added to the Revenue and Taxation Code, to read:

24831.6. Section 613A(c)(6)(H) of the Internal Revenue Code, relating to temporary suspension of taxable income limit with respect to marginal production, shall not apply.

SEC. 73. Section 24872 of the Revenue and Taxation Code is amended to read:

24872. (a) A real estate investment trust shall be deemed to have satisfied the distribution requirements of Section 857(a)(1) of the Internal Revenue Code for purposes of this part if it satisfies the distribution requirements of Section 857(a)(1) of the Internal Revenue Code for federal purposes.

(b) (1) Section 857(b)(1) of the Internal Revenue Code, relating to imposition of tax on real estate investment trusts, shall not apply.

(2) Every real estate investment trust shall be subject to the taxes imposed under Chapter 2 (commencing with Section 23101) and Chapter 3 (commencing with Section 23501), except that its “net income” shall be equal to its “real estate investment trust income,” as defined in subdivision (c).

(c) “Real estate investment trust income” means real estate investment company taxable income, as defined in Section 857(b)(2) of the Internal Revenue Code, modified as follows:

(1) In lieu of Section 857(b)(2)(A) of the Internal Revenue Code, relating to special deductions for corporations, no deduction shall be allowed under Section 24402.

(2) Section 857(b)(2)(D) of the Internal Revenue Code, relating to an exclusion for an amount equal to the net income from foreclosure property, shall not apply.

(3) Section 857(b)(2)(E) of the Internal Revenue Code, relating to a deduction for an amount equal to the tax imposed in the case of failure to meet certain requirements for the taxable year, shall not apply.

(4) Section 857(b)(2)(F) of the Internal Revenue Code, relating to an exclusion for an amount equal to any net income derived from prohibited transactions, shall not apply.

(d) Section 857(b)(3) of the Internal Revenue Code, relating to an alternative tax in case of capital gains, shall not apply.

(e) Section 857(b)(4)(A) of the Internal Revenue Code, relating to the imposition of tax on income from foreclosure property, shall not apply.

(f) Section 857(b)(5) of the Internal Revenue Code, relating to the imposition of tax in case of failure to meet certain requirements, shall not apply.

(g) Section 857(b)(6)(A) of the Internal Revenue Code, relating to the imposition of tax on income from prohibited transactions, shall not apply.

(h) Section 857(b)(7) of the Internal Revenue Code, relating to income from redetermined rents, redetermined deductions, and excess interest, shall not apply.

(i) Section 857(c) of the Internal Revenue Code, relating to restrictions applicable to dividends received from real estate investment trusts, is modified to refer to Sections 24402, 24406, 24410, and 25106, in lieu of Section 243 of the Internal Revenue Code.

(j) The amendments to this section by Chapter 878 of the Statutes of 1993 are clarifications of legislative intent and shall apply to taxable years beginning on or after January 1, 1987.

SEC. 74. Section 24949.1 of the Revenue and Taxation Code is amended to read:

24949.1. (a) For purposes of this part, the sale or exchange of livestock (other than poultry) held by a taxpayer for draft, breeding, or dairy purposes in excess of the number the taxpayer would sell if he or she followed his or her usual business practices shall be treated as an involuntary conversion to which Sections 24943 to 24949, inclusive, apply if the livestock are sold or exchanged by the taxpayer solely on account of drought, flood, or other weather-related conditions.

(b) (1) In the case of drought, flood, or other weather-related conditions described in subdivision (a) that result in the area being designated as eligible for assistance by the federal government, subdivision (b) of Section 24944 shall be applied with respect to any converted property by substituting “four years” for “two years.”

(2) The Franchise Tax Board may extend the period for replacement under Sections 24943 to 24949, inclusive (after the application of paragraph (1)), for the additional time as the Franchise Tax Board determines appropriate if the weather-related conditions that resulted in the application of paragraph (1) continue for more than three years.

SEC. 75. Section 24949.3 of the Revenue and Taxation Code is amended to read:

24949.3. For purposes of Sections 24943 through 24946, if, because of drought, flood, other weather-related conditions, or soil contamination or other environmental contamination, it is not feasible for the taxpayer to reinvest the proceeds from compulsorily or involuntarily converted livestock in property similar or related in use to the livestock so converted, other property (including real property in the case of soil contamination or other environmental contamination) used for farming purposes shall be treated as property similar or related in service or use to the livestock so converted.

SEC. 76. Sections 411 to 418, inclusive, of the Job Creation and Worker Assistance Act of 2002 (Subtitle B of Title IV of Public Law 107-147) and Sections 401 to 408, inclusive, of the Working Families Tax Relief Act of 2004 (Public Law 108-311) enacted numerous technical corrections to provisions of the Internal Revenue Code, including technical corrections relating to the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (Public Law 108-173), the Jobs and Growth Tax Relief Reconciliation Act of 2003 (Public Law 108-27), the Job Creation and Worker Assistance Act of 2002 (Public Law 107-147), the Economic Growth and Tax Relief Reconciliation Act of 2001 (Public Law 107-16), the Community Renewal Tax Relief Act of 2000 as part of the Consolidated Appropriations Act, 2001 (Public Law 106-554), the Tax Relief Extension Act of 1999 as part of the Ticket

to Work and Work Incentives Improvement Act of 1999 (Public Law 106-170), the Taxpayer Relief Act of 1997 (Public Law 105-34), the Balanced Budget Act of 1997 (Public Law 105-33), and the Small Business Job Protection Act of 1996 (Public Law 104-188), some of which are incorporated by reference into Part 10 (commencing with Section 17001), Part 10.2 (commencing with Section 18401), and Part 11 (commencing with Section 23001) of Division 2 of the Revenue and Taxation Code. Unless otherwise specifically provided, the technical corrections described in the preceding sentence, to the extent that they correct provisions that are incorporated by specific reference into the Revenue and Taxation Code, are declaratory of existing law and shall be applied in the same manner and for the same periods as specified in the Job Creation and Worker Assistance Act of 2002 (Subtitle B of Title IV of Public Law 107-147) and the Working Families Tax Relief Act of 2004 (Public Law 108-311), or if later, the specified date of incorporation.

SEC. 77. Section 44 of this bill incorporates amendments to Section 19008 of the Revenue and Taxation Code proposed by this bill and SB 157. It shall not become operative if (1) both bills are enacted and become effective on or before January 1, 2006, (2) each bill amends Section 19008 of the Revenue and Taxation Code, and (3) this bill is enacted after SB 157.

SEC. 78. This act provides for a tax levy within the meaning of Article IV of the Constitution and shall go into immediate effect.

CHAPTER 692

An act to amend Section 11364.7 of, and to add Chapter 18 (commencing with Section 121349) to Part 4 of Division 105 of, the Health and Safety Code, relating to clean needle and syringe exchange.

[Approved by Governor October 7, 2005. Filed with
Secretary of State October 7, 2005.]

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

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

(a) The rapidly spreading acquired immunodeficiency syndrome (AIDS) epidemic, and the more recent spread of blood-borne hepatitis, pose an unprecedented public health crisis in California, and threaten, in one way or another, the life and health of every Californian.

(b) Injection drug users are the second largest group at risk of becoming infected with the human immunodeficiency virus (HIV) and developing AIDS, and they are the primary source of heterosexual, female, and perinatal transmission in California, the United States, and Europe.

(c) According to the Office of AIDS, injection drug use has emerged as one of the most prevalent risk factors for new AIDS cases in California.

(d) Studies indicate that the lack of sterile needles available on the streets, and the existence of laws restricting needle availability promote needle sharing, and consequently the spread of HIV among injection drug users. The sharing of contaminated needles is the primary means of HIV transmission within the injection drug user population.

(e) Most injection drug users use a variety of drugs, mainly heroin, cocaine, and amphetamines. Because amphetamine- and cocaine-injecting drug users inject more frequently than heroin users, their risk for HIV infection is higher.

SEC. 2. Section 11364.7 of the Health and Safety Code is amended to read:

11364.7. (a) Except as authorized by law, any person who delivers, furnishes, or transfers, possesses with intent to deliver, furnish, or transfer, or manufactures with the intent to deliver, furnish, or transfer, drug paraphernalia, knowing, or under circumstances where one reasonably should know, that it will be used to plant, propagate, cultivate, grow, harvest, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale, or otherwise introduce into the human body a controlled substance, except as provided in subdivision (b), in violation of this division, is guilty of a misdemeanor.

No public entity, its agents, or employees shall be subject to criminal prosecution for distribution of hypodermic needles or syringes to participants in clean needle and syringe exchange projects authorized by the public entity pursuant to Chapter 18 (commencing with Section 121349) of Part 4 of Division 105.

(b) Except as authorized by law, any person who manufactures with intent to deliver, furnish, or transfer drug paraphernalia knowing, or under circumstances where one reasonably should know, that it will be used to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale, or otherwise introduce into the human body cocaine, cocaine base, heroin, phencyclidine, or methamphetamine in violation of this division shall be punished by

imprisonment in a county jail for not more than one year, or in the state prison.

(c) Except as authorized by law, any person, 18 years of age or over, who violates subdivision (a) by delivering, furnishing, or transferring drug paraphernalia to a person under 18 years of age who is at least three years his or her junior, or who, upon the grounds of a public or private elementary, vocational, junior high, or high school, possesses a hypodermic needle, as defined in paragraph (7) of subdivision (a) of Section 11014.5, with the intent to deliver, furnish, or transfer the hypodermic needle, knowing, or under circumstances where one reasonably should know, that it will be used by a person under 18 years of age to inject into the human body a controlled substance, is guilty of a misdemeanor and shall be punished by imprisonment in a county jail for not more than one year, by a fine of not more than one thousand dollars (\$1,000), or by both that imprisonment and fine.

(d) The violation, or the causing or the permitting of a violation, of subdivision (a), (b), or (c) by a holder of a business or liquor license issued by a city, county, or city and county, or by the State of California, and in the course of the licensee's business shall be grounds for the revocation of that license.

(e) All drug paraphernalia defined in Section 11014.5 is subject to forfeiture and may be seized by any peace officer pursuant to Section 11471.

(f) If any provision of this section or the application thereof to any person or circumstance is held invalid, it is the intent of the Legislature that the invalidity shall not affect other provisions or applications of this section which can be given effect without the invalid provision or application and to this end the provisions of this section are severable.

SEC. 3. Chapter 18 (commencing with Section 121349) is added to Part 4 of Division 105 of the Health and Safety Code, to read:

CHAPTER 18. CLEAN NEEDLE AND SYRINGE EXCHANGE PROGRAM

121349. (a) The Legislature finds and declares that scientific data from needle exchange programs in the United States and in Europe have shown that the exchange of used hypodermic needles and syringes for clean hypodermic needles and syringes does not increase drug use in the population, can serve as an important bridge to treatment and recovery from drug abuse, and can curtail the spread of human immunodeficiency virus (HIV) infection among the intravenous drug user population.

(b) In order to attempt to reduce the spread of HIV infection and blood-borne hepatitis among the intravenous drug user population within California, the Legislature hereby authorizes a clean needle and syringe

exchange project pursuant to this chapter in any city and county, county, or city upon the action of a county board of supervisors and the local health officer or health commission of that county, or upon the action of the city council, the mayor, and the local health officer of a city with a health department, or upon the action of the city council and the mayor of a city without a health department.

(c) The authorization provided under this section shall only be for a clean needle and syringe exchange project as described in Section 121349.1

121349.1. A city and county, or a county, or a city with or without a health department, that acts to authorize a clean needle and syringe exchange project pursuant to this chapter shall, in consultation with the State Department of Health Services, authorize the exchange of clean hypodermic needles and syringes, as recommended by the United States Secretary of Health and Human Services, subject to the availability of funding, as part of a network of comprehensive services, including treatment services, to combat the spread of HIV and blood-borne hepatitis infection among injection drug users. Providers participating in an exchange project authorized by the county, city, or city and county pursuant to this chapter shall not be subject to criminal prosecution for possession of needles or syringes during participation in an exchange project.

121349.2. Local government, local public health officials, and law enforcement shall be given the opportunity to comment on syringe exchange programs on an annual basis. The public shall be given the opportunity to provide input to local leaders to ensure that any potential adverse impacts on the public welfare of syringe exchange programs are addressed and mitigated.

121349.3. The health officer of the participating jurisdiction shall present annually at an open meeting of the board of supervisors or city council a report detailing the status of syringe exchange programs including, but not limited to, relevant statistics on blood-borne infections associated with needle sharing activity. Law enforcement, administrators of alcohol and drug treatment programs, other stakeholders, and the public shall be afforded ample opportunity to comment at this annual meeting. The notice to the public shall be sufficient to assure adequate participation in the meeting by the public. This meeting shall be noticed in accordance with all state and local open meeting laws and ordinances, and as local officials deem appropriate.

CHAPTER 693

An act to add Division 12.3 (commencing with Section 16000) to the Public Resources Code, relating to recycled concrete.

[Approved by Governor October 7, 2005. Filed with
Secretary of State October 7, 2005.]

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

SECTION 1. Division 12.3 (commencing with Section 16000) is added to the Public Resources Code, to read:

DIVISION 12.3. RECYCLED CONCRETE

16000. The Legislature finds and declares all of the following:

(a) Facilitating the recycling of natural resources is in the best interest of the state.

(b) This division is intended to encourage the use of recycled concrete as provided in this division.

16001. For the purposes of this division, “recycled concrete” means reclaimed concrete material used in concrete mixtures in accordance with the “Greenbook Standard Specifications for Public Works” 2003 edition, or the most current revision of those requirements. “Recycled concrete” includes mix designs or aggregate gradations that are in accordance with specifications of the American Concrete Institute (ACI), the American Society of Testing and Materials (ASTM), the International Building Code (IBC), the International Residential Code (IRC), the Uniform Building Code (UBC), or Caltrans Standard Specifications. However, reclaimed concrete material that is in compliance with ASTM-94 specifications is exempt from this division.

16002. (a) Recycled concrete materials may be used if a user has been fully informed that the concrete may contain recycled concrete materials.

(b) For the purposes of this section, “fully informed” means informed of the potential use of recycled materials in a concrete product prior to or at the time of ordering, either orally or in writing, and informed by the delivery receipt as to the recycled ingredients at delivery acceptance.

16003. No recycled concrete shall be offered, provided, or sold to the Department of Transportation or the Department of General Services for any use, including, but not limited to, any project under its affiliation, contract authority, or oversight responsibility unless specifically requested and approved by the department.

16004. Nothing in this division shall supersede the requirements of the Uniform Building Code or other provisions of law.

CHAPTER 694

An act to amend Section 19961 of, and to add Section 19961.05 to, the Business and Professions Code, relating to gambling.

[Approved by Governor October 7, 2005. Filed with
Secretary of State October 7, 2005.]

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

SECTION 1. Section 19961 of the Business and Professions Code is amended to read:

19961. (a) (1) Except as provided in paragraph (2), on or after the effective date of this chapter, any amendment to any ordinance that would result in an expansion of gambling in the city, county, or city and county, shall not be valid unless the amendment is submitted for approval to the voters of the city, county, or city and county, and is approved by a majority of the electors voting thereon.

(2) Notwithstanding paragraph (1) and Section 19962, an ordinance may be amended without the approval of the electors after the effective date of this chapter to expand gambling by a change that results in an increase of less than 25 percent with respect to any of the matters set forth in paragraphs (1), (2), (3), (5), and (6) of subdivision (b). Thereafter, any additional expansion shall be approved by a majority of the electors voting thereon.

(b) For the purposes of this section, “expansion of gambling” means, when compared to that authorized on January 1, 1996, or under an ordinance adopted pursuant to subdivision (a) of Section 19960, whichever is the lesser number, a change that results in any of the following:

(1) An increase of 25 percent or more in the number of gambling tables in the city, county, or city and county.

(2) An increase of 25 percent or more in the number of licensed card rooms in the city, county, or city and county.

(3) An increase of 25 percent or more in the number of gambling tables that may be operated in a gambling establishment in the city, county, or city and county.

(4) The authorization of any additional form of gambling, other than card games, that may be legally played in this state, to be played at a gambling establishment in the city, county, or city and county.

(5) An increase of 25 percent or more in the hours of operation of a gambling establishment in the city, county, or city and county.

(6) An increase of 25 percent or more in the maximum amount permitted to be wagered in a game.

(c) The measure to expand gambling shall appear on the ballot in substantially the following form:

“Shall gambling be expanded in ____ beyond that operated or authorized on January 1, 1996, by ____ (describe expansion)? Yes ____ No ____.”

(d) The authorization of subdivision (c) is subject to Sections 19962 and 19963 until those sections are repealed.

(e) Increasing the number of games offered in a gambling establishment does not constitute an expansion of gambling pursuant to this section.

(f) No city, county, or city and county shall amend its ordinance in a cumulative manner to increase gambling by more than 25 percent for the factors listed in subdivision (b), when compared to that authorized on January 1, 1996, without conducting an election pursuant to Section 19961.

SEC. 2. Section 19961.05 is added to the Business and Professions Code, to read:

19961.05. Notwithstanding Sections 19961 and 19962, a city, county, or city and county may amend an ordinance to increase the number of gambling tables by two, or 24.99 percent, whichever is greater, compared to the ordinance that was in effect on January 1, 1996.

CHAPTER 695

An act to add and repeal Chapter 2 (commencing with Section 42100) of Part 3 of Division 30 of the Public Resources Code, and to repeal Section 80 of Chapter 74 of the Statutes of 2005, relating to metal plating facilities, and making an appropriation therefor.

[Approved by Governor October 7, 2005. Filed with
Secretary of State October 7, 2005.]

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) Metal plating facilities are primarily engaged in all types of electroplating, plating, anodizing, coloring, and finishing of metals and formed products. Facilities conducting metal plating activities include small, low-volume operations as well as large, high-volume production lines.

(2) The metal plating industry provides significant support to the manufacturing sector, particularly in the automotive, electronics, machine equipment, and defense areas.

(3) According to the Department of Toxic Substances Control, there are approximately 875 metal plating facilities in the State of California, 67 percent of which are located in the five-county Los Angeles area, the largest concentration of metal platers anywhere in the United States. There are also large numbers of metal platers located in the San Francisco Bay Area, San Diego County, and Central Valley regions of the state.

(4) The metal plating process impacts the environment in a very intensive manner. The process involves the use of toxic materials, and generates significant amounts of solid and hazardous waste that affect the air, water, and soil. In particular, hexavalent chromium, a chemical compound intrinsic to the chrome plating process, is a known human carcinogen and a potent toxic air contaminant.

(5) Metal plating operations are regulated by various federal, state, and local agencies, including the United States Environmental Protection Agency, the State Air Resources Board, the State Water Resources Control Board, the Department of Toxic Substances Control, California regional water quality control boards, local air quality management districts and air pollution control districts, as well as certified unified program agencies (CUPAs), and municipal waste water treatment agencies.

(6) A number of technical assistance programs have been developed to assist the industry in meeting new or exceeding existing environmental regulations, or both, including the Department of Toxic Substances Control's Metal Finishing Recognition and Compliance Assistance Program. Specifically, this "model shop" program will provide pollution prevention training and technical assistance to metal platers in southern California.

(7) New standards for the industry are under development by the State Air Resources Board and the federal Occupational Safety and Health Administration. These standards may require existing chrome plating facilities to purchase new environmental control equipment in order to maintain compliance status.

(8) The vast majority of metal platers in California are small businesses, and the metal plating industry's limited ability to access capital to invest in environmental improvements has been identified by

the United States Environmental Protection Agency as one of the industry's biggest obstacles in meeting and exceeding current environmental requirements.

(b) The Legislature hereby further declares that it is in the best interest of the people of California to address the environmental issues posed by the metal plating industry in order to preserve its economic vitality. Specifically, funds should be provided to support environmental compliance, pollution prevention, and emission reduction measures.

SEC. 2. Chapter 2 (commencing with Section 42100) is added to Part 3 of Division 30 of the Public Resources Code, to read:

CHAPTER 2. METAL PLATING FACILITIES

42100. For purposes of this chapter, the following definitions apply:

(a) "Agency" means the Business, Transportation and Housing Agency.

(b) "Air board" means the State Air Resources Board.

(c) "Applicant" means a small business that is a chrome plating business that produces hazardous waste and applies for financial assistance pursuant to this chapter to reduce the generation of hazardous waste.

(d) "Chrome plating" has the same meaning as "decorative chromium electroplating" as defined in the regulations specifying a hexavalent chromium toxic control measure for chrome plating adopted by the air board and contained in Section 93102 of Title 17 of the California Code of Regulations.

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

(f) "Emission reduction" has the same meaning as "airborne toxic risk reduction measure," as defined in subdivisions (a) and (b) of Section 44390 of the Health and Safety Code.

(g) "Financial company" is defined pursuant to Section 14010 of the Corporations Code.

(h) "Financial Development Corporation (FDC)" means a corporation formed under the California Small Business Financial Development Corporations Law (Ch. 1 (commencing with Sec. 14000) Pt. 5, Div. 3, Corp. C.).

(i) "Green business program" means a program coordinated by a local, state, or federal agency for the purposes of assisting and recognizing businesses that are in compliance with all environmental laws and regulations, and taking additional steps to conserve natural resources and prevent pollution.

(j) “Metal plating facility” means an establishment primarily engaged in all types of electroplating, plating, anodizing, coloring, and finishing of metals and formed products for the trade.

(k) “Model Shop Program” means the voluntary pollution prevention program developed by the Department of Toxic Substances Control with assistance from the Los Angeles City Bureau of Sanitation, Sanitation Districts of Los Angeles County, and the Metal Finishing Association of Southern California, to assist the metal plating industry in identifying possible sources of pollution and developing alternative business practices in order to run cleaner, safer shops.

(l) “National Metal Finishing Strategic Goal Program” means the voluntary program established through a partnership between the United States Environmental Protection Agency and the metal finishing industry that encourages companies to move beyond environmental compliance by offering participants incentives, resources, and means for removing regulatory and policy barriers as they work to achieve specific environmental goals.

(m) “Pollution prevention” means the same as source reduction, as defined by subdivision (e) of Section 25244.14 of the Health and Safety Code.

(n) “Sensitive receptor” means a school, general acute care hospital, long-term health care facility, and child day care facility. For purposes of this subdivision, “general acute care hospital” has the meaning provided by subdivision (a) of Section 1250 of the Health and Safety Code, “long-term health care facility” has the meaning provided by subdivision (a) of Section 1418 of the Health and Safety Code, and “child day care facility” has the meaning provided by Section 1596.750 of the Health and Safety Code.

(o) “Water board” means the State Water Resources Control Board.

42101. (a) The agency shall work with the department, the air board, and the water board to develop a loan guarantee program, through its existing relationship with the Financial Development Corporations (FDCs) located throughout the state, to assist chrome plating facilities in purchasing high performance environmental control equipment or technologies that will enable that facility to meet new or exceed existing regulatory requirements, or both, and implement additional pollution prevention opportunities.

(b) In establishing the loan guarantee program pursuant to subdivision (a), the agency shall make every effort to integrate and leverage existing financing mechanisms for this new program, including the Treasurer’s California Pollution Control Financing Authority California Capital Access Program (CalCAP), and the California Infrastructure and Economic Development Bank’s (I-Bank) Revenue Bond program.

42101.1. The agency shall only make loan guarantees available to applicants that meet all of the following eligibility requirements:

(a) The applicant is a small business, as defined in subdivision (d) of Section 14837 of the Government Code.

(b) The applicant owns or operates a chrome plating facility.

(c) The applicant satisfies one of the following conditions:

(1) Has completed or is currently participating in the Model Shop Program for chrome platers.

(2) Has completed or is currently participating in the National Metal Finishing Strategic Goals Program.

(3) Is participating in a green business program whose goals are consistent with the pollution prevention and natural resource conservation elements of the Model Shop Program.

(4) Is certified as a green business whose goals are consistent with the pollution prevention and natural resource conservation elements of the Model Shop Program.

(d) Funds are not obtainable, upon reasonable terms, from financial companies, without a loan guarantee.

(e) The applicant demonstrates that the facility meets new or exceeds existing regulatory requirements, or both, has no pending local, state, or federal enforcement or correction actions, and is participating in or has completed additional pollution prevention activities.

42101.2. (a) The maximum amount the agency may guarantee for one applicant is one hundred thousand dollars (\$100,000).

(b) All other terms and conditions are defined pursuant to Article 9 (commencing with Section 14070) of Chapter 1 of Part 5 of the Corporations Code.

42101.3. The agency shall carry out all of the requirements of this chapter and shall consult with the California Environmental Protection Agency, local environmental regulatory agencies, and other interested parties, as needed.

42102.4. (a) Notwithstanding Section 16305.7 of the Government Code, all interest or other increments resulting from the investment of the moneys in the Chrome Plating Pollution Prevention Fund pursuant to Article 4 (commencing with Section 16470) of Chapter 3 of Part 2 of Division 4 of Title 2 of the Government Code shall be deposited in the fund.

(b) The money in the fund shall be expended by the agency, upon appropriation by the Legislature, to make loan guarantees, to support the Model Shop Program pursuant to this chapter, and to pay for administrative costs associated with the implementation of this chapter. No more than 5 percent of moneys deposited into the fund may be used for administrative purposes.

(c) Loan guarantees shall be secured by a reserve of at least 25 percent.

42102.7. (a) On January 1, 2006, all moneys remaining in the Hazardous Waste Reduction Loan Account, created pursuant to Section 14096 of the Corporations Code, are hereby transferred to the Chrome Plating Pollution Prevention Fund created pursuant to Section 42102, and are hereby appropriated from that fund to the agency for expenditure pursuant to this chapter. Those moneys are subject to all encumbrances on those moneys made prior to January 1, 2005, and to all legal restrictions on their use other than by state statute.

(b) All moneys paid on or after January 1, 2006, to the Hazardous Waste Reduction Loan Account, for a loan issued pursuant to former Article 13 (commencing with Section 14095) of Chapter 1 of Part 5 of Division 3 of Title 1 of the Corporations Code, shall be transferred to the Chrome Plating Pollution Prevention Fund, and shall be subject to this chapter.

42103. The agency, in collaboration with the air board, water board,, the department, and the FDCs, shall prepare and adopt criteria and procedures for evaluating applications for loan guarantees awarded pursuant to this chapter, as well as establish the appropriate requirements to determine that the equipment proposed to be purchased assists the small business in meeting new or exceeding existing applicable environmental standards. In developing these criteria, the agency shall specifically consider proximity of the facility to sensitive receptors and residences and coordinate with existing enforcement activities.

42104. The department shall establish the Model Shop Program in northern California by replicating the existing Chrome Plating Model Shop Pilot Program, which is currently available only to southern California chrome plating facilities. In selecting participants for inclusion in the Model Shop Program, the department shall specifically consider proximity of the facility to sensitive receptors and residences and coordinate with existing enforcement activities.

42104.1. Not more than two hundred thousand dollars (\$200,000) of the funds deposited in the Chrome Plating Pollution Prevention Fund may be used for administration and support of the Model Shop Program.

42105. On or before January 1, 2007, and every odd-numbered year thereafter, the agency shall prepare a report concerning the performance of the loan guarantee program established by this chapter, including the number and size of loan guarantees made, statewide distribution of applicants, level of participation and performance of each of the FDCs, characteristics of recipients, and the amount of money spent on administering the program. This report shall be posted on the agency's Internet Web site and notification provided to the appropriate fiscal and policy committees of the Legislature, and, upon request, to individual

Members of the Legislature. The department shall provide, as a supplement to this report, an evaluation of the Model Shop Program , including recommendations for its improvement and expansion, as well as coordination with existing enforcement activities.

42106. The agency in consultation with the air board, water board and the department, may adopt regulations to implement this chapter. The agency may adopt emergency regulations to implement the loan guarantee program in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, and for the purposes of that chapter, including Section 11346.1 of the Government Code, the adoption of these regulations is an emergency and shall be considered by the Office of Administrative Law as necessary for the immediate preservation of the public peace, health, and safety, and general welfare. Notwithstanding Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, an emergency regulation adopted by the board pursuant to this section shall be filed with, but not repealed by, the Office of Administrative Law, and shall remain in effect until revised by the agency.

42107. (a) This chapter shall remain in effect only until January 1, 2012, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 2012, deletes or extends that date.

(b) All unencumbered moneys in the Chrome Plating Pollution Prevention Fund on January 1, 2012, shall be transferred to the General Fund.

(c) The repeal of this chapter does not terminate any of the following rights, obligations, or authorities, or any provision necessary to carry out these rights, obligations, and authorities:

(1) The repayment of loans, outstanding as of January 1, 2012, due and payable to the relevant financial company.

(2) The resolution of any cost recovery action.

SEC. 3. Section 80 of Chapter 74 of the Statutes of 2005 is repealed.

CHAPTER 696

An act to amend Section 14035.55 of the Government Code, relating to transportation.

[Approved by Governor October 7, 2005. Filed with
Secretary of State October 7, 2005.]

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

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

(a) In 2005, the Monterey Peninsula experienced a drastic cut in public transit and intercity bus service to and from San Jose and Santa Clara County, as follows:

(1) Greyhound terminated intercity bus service to the Monterey Peninsula on April 3, 2005.

(2) Amtrak terminated Thruway bus service to the Monterey Peninsula on June 6, 2005.

(3) Monterey-Salinas Transit terminated its Line 25 transit service between Monterey and Gilroy on July 30, 2005.

(b) The termination of these services severely limits the ability of Monterey Peninsula residents to access the Capitol Corridor train service between San Jose, Sacramento, and other points.

(c) The Department of Transportation or its successor has the authority and is encouraged to coordinate Amtrak services and services of passenger motor carriers to the extent permitted by federal law.

(d) A contract between the department and Monterey-Salinas Transit to provide service along this corridor should only be sought if there is no other viable alternative to providing service within existing law.

SEC. 2. Section 14035.55 of the Government Code is amended to read:

14035.55. (a) The Legislature finds and declares all of the following:

(1) Intercity passenger bus service provided by intercity bus companies on a regular-route basis is the only public mass transportation service in the state to provide surface transportation without public subsidy.

(2) The long-term maintenance of private sector intercity passenger service is of vital importance to the state.

(3) Intercity bus companies serve many communities throughout California, providing a network of connection points without equal by any other mode of public or private transportation.

(b) To the extent permitted by federal law, the department shall encourage Amtrak and motor carriers of passengers to do both of the following:

(1) Combine or package their respective services and facilities to the public as a means of improving services to the public.

(2) Coordinate schedules, routes, rates, reservations, and ticketing to provide for enhanced intermodal surface transportation.

(c) Except as authorized under subdivisions (e) and (f), the department may provide funding to Amtrak for the purpose of entering into a contract with a motor carrier of passengers for the intercity transportation of

passengers by motor carrier over regular routes only if all of the following conditions are met:

(1) The motor carrier is not a public recipient of governmental assistance, as defined in Section 13902(b)(8)(A) of Title 49 of the United States Code, other than a recipient of funds under Section 5311(f) of that title and code. This paragraph does not apply if a local public motor carrier proposes to serve passengers only within its service area.

(2) Service is provided only for passengers on trips where the passengers have had prior movement by rail or will have subsequent movement by rail, evidenced by a combination rail and bus one-way or roundtrip ticket.

(3) Vehicles of the motor carrier, when used to transport passengers pursuant to paragraph (2), are used exclusively for that purpose.

(4) The motor carrier is registered with the United States Department of Transportation (DOT) and operates in compliance with the federal motor carrier safety regulations, and provides service that is accessible to persons with disabilities in compliance with applicable DOT regulations pertaining to Amtrak services, in accordance with the federal Americans with Disabilities Act of 1990 (Public Law 101-336).

(d) The department shall incorporate the conditions specified in subdivision (c) into state-supported passenger rail feeder bus service agreements between Amtrak and motor carriers of passengers. The bus service agreements shall also provide that a breach of those conditions shall be grounds for termination of the agreements.

(e) Notwithstanding subdivisions (c) and (d), the department may provide funding to Amtrak for the purpose of entering into a contract with a motor carrier of passengers to transport Amtrak passengers on buses operated on a route, if the buses are operated by the motor carrier as part of a regularly scheduled, daily bus service that has been operating consecutively without an Amtrak contract for 12 months immediately prior to contracting with Amtrak.

(f) Notwithstanding subdivisions (c) and (d), or any other provision of law, the department may enter into a contract, either directly with a public motor carrier in the County of Monterey, or indirectly with that carrier through a contract with Amtrak, to provide mixed-mode feeder bus service on the San Jose-Gilroy-Monterey route. The contract with a public motor carrier may only be entered into if the department determines that there is no private motor carrier providing scheduled bus service on the San Jose-Gilroy-Monterey route. However, the contract shall be terminated, within 120 days' notice to the public motor carrier, if a private motor carrier again operates a scheduled service on the San Jose-Gilroy-Monterey route.

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

(1) “Amtrak” means the National Railroad Passenger Corporation.

(2) “Department” means the Department of Transportation or the department’s successor with respect to providing funds to subsidize Amtrak service.

(3) “Motor carrier of passengers” means a person or entity providing motor vehicle transportation of passengers for compensation.

(4) “Mixed-mode feeder bus service” means bus service carrying both passengers connecting to or from a rail service and passengers only using the bus service.

CHAPTER 697

An act to add and repeal Article 13.52 (commencing with Section 18847) of Chapter 3 of Part 10.2 of Division 2 of the Revenue and Taxation Code, relating to taxation.

[Approved by Governor October 7, 2005. Filed with
Secretary of State October 7, 2005.]

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

SECTION 1. Article 13.52 (commencing with Section 18847) is added to Chapter 3 of Part 10.2 of Division 2 of the Revenue and Taxation Code, to read:

Article 13.52. California Colorectal Cancer Prevention Fund

18847. (a) An individual may designate on the tax return that a contribution in excess of the tax liability, if any, be made to the California Colorectal Cancer Prevention Fund established by Section 18847.1. That designation is to be used as a voluntary contribution on the tax return.

(b) The contributions shall be in full dollar amounts and may be made individually by each signatory on a joint return.

(c) A designation shall be made for any taxable year on the initial return for that taxable year and once made is irrevocable. If payments and credits reported on the return, together with any other credits associated with the taxpayer’s account, do not exceed the taxpayer’s liability, the return shall be treated as though no designation has been made. If no designee is specified, the contribution shall be transferred to the General Fund after reimbursement of the direct actual costs of the

Franchise Tax Board for the collection and administration of funds under this article.

(d) If an individual designates a contribution to more than one account or fund listed on the tax return, and the amount available is insufficient to satisfy the total amount designated, the contribution shall be allocated among the designees on a pro rata basis.

(e) When another voluntary contribution designation is removed from the tax return, the Franchise Tax Board shall revise the form of the return to include a space labeled the "California Colorectal Cancer Prevention Fund" to allow for the designation permitted. The form shall also include in the instructions information that the contribution may be in the amount of one dollar (\$1) or more and that the contribution shall be used to prevent colorectal cancer.

(f) A deduction shall be allowed under Article 6 (commencing with Section 17201) of Chapter 3 of Part 10 for any contribution made pursuant to subdivision (a).

18847.1. There is hereby established in the State Treasury the California Colorectal Cancer Prevention Fund to receive contributions made pursuant to Section 18847. The Franchise Tax Board shall notify the Controller of both the amount of money paid by taxpayers in excess of their tax liability and the amount of refund money that taxpayers have designated pursuant to Section 18847 to be transferred to the California Colorectal Cancer Prevention Fund. The Controller shall transfer from the Personal Income Tax Fund to the California Colorectal Cancer Prevention Fund an amount not in excess of the sum of the amounts designated by individuals pursuant to Section 18847 for payment into that fund.

18847.2. All moneys transferred to the California Colorectal Cancer Prevention Fund, upon appropriation by the Legislature, shall be allocated as follows:

(a) To the Franchise Tax Board and the Controller for reimbursement of all costs incurred by the Franchise Tax Board and the Controller in connection with their duties under this article.

(b) (1) To the State Department of Health Services for making grants to foundations that qualify as exempt organizations under Section 501(c)(3) of the Internal Revenue Code and whose mission is the prevention and early detection of colorectal cancer.

(2) Grants shall contribute toward the expansion of community-based colorectal cancer education and culturally sensitive and appropriate prevention activities targeted toward communities that are disproportionately at risk or afflicted by colorectal cancer.

(3) No funds shall be released by the State Department of Health Services until a grantee demonstrates project readiness to the department's satisfaction.

18847.3. (a) Except as otherwise provided in subdivision (b), this article shall remain in effect only until January 1 of the fifth taxable year following the first appearance of the California Colorectal Cancer Prevention Fund on the tax return, and as of that date is repealed, unless a later enacted statute, that is enacted before the applicable date, deletes or extends that date.

(b) If, in the second calendar year after the first taxable year the California Colorectal Cancer Fund appears on the tax return, the Franchise Tax Board estimates by September 1, that contributions described in this article made on returns filed in that calendar year will be less than two hundred fifty thousand dollars (\$250,000), or the adjusted amount specified in subdivision (c) for subsequent taxable years, as may be applicable, then this article is repealed with respect to taxable years beginning on or after January 1 of that calendar year. The Franchise Tax Board shall estimate the annual contribution amount by September 1 of each year using the actual amounts known to be contributed and an estimate of the remaining year's contribution.

(c) For each calendar year, beginning with the third calendar year that the California Colorectal Cancer Prevention Fund appears on the tax return, the Franchise Tax Board shall adjust, on or before September 1 of that calendar year, the minimum estimated contribution amount specified in subdivision (b) as follows:

(1) The minimum estimated contribution amount for the calendar year shall be an amount equal to the product of the minimum estimated contribution amount for the prior September 1, multiplied by the inflation factor adjustment as specified in paragraph (2) of subdivision (h) of Section 17041, rounded off to the nearest dollar.

(2) The inflation factor adjustment used for the calendar year shall be based on the figures for the percentage change in the California Consumer Price Index received on or before August 1 of the calendar year pursuant to paragraph (1) of subdivision (h) of Section 17041.

(d) Notwithstanding the repeal of this article, any contribution amounts designated pursuant to this article prior to its repeal shall continue to be transferred and disbursed in accordance with this article as in effect immediately prior to that repeal.
