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CHAPTER 350

An act to amend Section 13007 of the Fish and Game Code, relating to sport fishing.

[Approved by Governor September 26, 2008. Filed with Secretary of State September 26, 2008.]

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

SECTION 1. Section 13007 of the Fish and Game Code is amended to read:

13007. (a) Notwithstanding Section 13001 and paragraph (1) of subdivision (a) of Section 13005, commencing July 1, 2006, 33 ⅓ percent of all sport fishing license fees collected pursuant to Article 3 (commencing with Section 7145) of Chapter 1 of Part 2 of Division 6, except license fees collected pursuant to Section 7149.8, 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 January 1, 2012, ensure that the numbers of native California trout, as defined in Section 7261, produced are sufficient to equal or exceed 25 percent of the numbers of trout produced by the state fish hatcheries to comply with paragraph (1). The native trout produced in accordance with this paragraph shall support department efforts to protect and restore cold water ecosystems, maintain biological diversity, and provide diverse angling opportunities. Coastal rainbow trout/steelhead produced for anadromous mitigation purposes shall be excluded from contributing to the native trout production goals required by this paragraph. Coastal rainbow trout/steelhead propagated for purposes other than anadromous mitigation and released into their source watersheds may be counted toward the 25 percent native trout production goal. Native trout produced shall be naturally indigenous stocks from their original source watersheds. Native trout produced may be released into watersheds other than their original source watershed only if the released trout will cause no harm to other native trout in their original watersheds. The department shall attain the 25 percent production goal according to the following schedule:

(A) By January 1, 2010, 15 percent and at least four species.

(B) By January 1, 2011, 20 percent and at least four species.

(C) By January 1, 2012, 25 percent and at least five species.

(4) The department may hire additional staff for state fish hatcheries, in order to comply with this subdivision.

(c) The department may allocate any funds under this section, not necessary to maintain the minimums specified in paragraphs (1) and (3) of subdivision (b), and after the expenditure in paragraph (2) of subdivision (b), to the Fish and Game Preservation Fund.

(d) The department may utilize federal funds to meet the funding formula specified in subdivision (a) if those funds are otherwise legally available for this purpose.

(e) 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.

(f) The department, by July 1, 2008, and annually thereafter, shall report to the fiscal and policy committees in the Legislature on the implementation of these provisions.

CHAPTER 351

An act to amend Sections 995.640 and 995.650 of the Code of Civil Procedure, and to amend Sections 1815, 12070, 12072, and 12921 of, and to repeal Sections 900.7, 12071, and 12073 of, the Insurance Code, relating to insurance.

[Approved by Governor September 26, 2008. Filed with Secretary of State September 26, 2008.]

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

SECTION 1. Section 995.640 of the Code of Civil Procedure is amended to read:

995.640. Upon review of the Internet Web site of the Department of Insurance, the county clerk of any county shall, upon request of any person, do any of the following:

(a) Issue a certificate stating whether a surety is admitted or if the certificate of authority of an admitted surety insurer issued by the Insurance Commissioner authorizing the insurer to transact surety insurance has been surrendered, revoked, canceled, annulled, or suspended, and, in the event that it has, whether renewed authority has been granted. The county clerk in issuing the certificate shall rely solely upon the information furnished by the Insurance Commissioner pursuant to Article 2 (commencing with Section 12070) of Chapter 1 of Part 4 of Division 2 of the Insurance Code.

(b) Issue a certificate stating whether a copy of the transcript or record of the unrevoked appointment, power of attorney, bylaws, or other instrument, duly certified by the proper authority and attested by the seal of an admitted surety insurer entitling or authorizing the person who executed a bond to do so for and on behalf of the insurer, is filed in the office of the clerk.

SEC. 2. Section 995.650 of the Code of Civil Procedure is amended to read:

995.650. If an objection is made to the sufficiency of an admitted surety insurer, the person making the objection shall attach to and incorporate in the objection one or both of the following:

(a) The certificate of the county clerk of the county in which the court is located stating that the insurer is not listed as an admitted surety insurer on the department's Internet Web site or that the certificate of authority of the insurer has been surrendered, revoked, canceled, annulled, or suspended and has not been renewed.

(b) An affidavit stating facts that establish the insufficiency of the insurer.

SEC. 3. Section 900.7 of the Insurance Code is repealed.

SEC. 4. Section 1815 of the Insurance Code is amended to read:

1815. The commissioner shall publish and maintain a list of the names of holders of bail agents' and bail permittees' licenses and their solicitors on the department's public Web site, together with their license numbers and any other information in respect to the persons as he or she considers advisable. He or she shall promptly upon termination, for any cause, of any license, update the department's public Web site.

SEC. 5. Section 12070 of the Insurance Code is amended to read:

12070. The commissioner shall publish and maintain a complete list of all admitted surety insurers on the department's public Web site. The list shall set forth all of the following:

(a) The full corporate name of the insurer.

(b) The name of the state or country under whose laws the insurer is organized.

(c) The date of the certificate of authority issued to the insurer to transact surety insurance in this state.

SEC. 6. Section 12071 of the Insurance Code is repealed.

SEC. 7. Section 12072 of the Insurance Code is amended to read:

12072. (a) Whenever the insurer's certificate of authority is surrendered, revoked, canceled, annulled, or suspended or whenever any such insurer, after such abrogation of its certificate again is admitted, the commissioner shall promptly update the list of admitted surety insurers on the department's public Web site to include the name of the insurer and the date of that abrogation of, or of renewal of, the certificate.

(b) The list of admitted surety insurers maintained on the department's public Web site may be used by county clerks and others to confirm the license status of surety insurers.

SEC. 8. Section 12073 of the Insurance Code is repealed.

SEC. 9. Section 12921 of the Insurance Code is amended to read:

12921. (a) The commissioner shall perform all duties imposed upon him or her by the provisions of this code and other laws regulating the

business of insurance in this state, and shall enforce the execution of those provisions and laws.

(b) In an administrative action to enforce the provisions of this code and other laws regulating the business of insurance in this state, any settlement is subject to all of the following:

(1) The commissioner may delegate the power to negotiate the terms and conditions of a settlement but the commissioner may not delegate the power to approve the settlement.

(2) Unless specifically provided for in a provision of this code, the commissioner may not agree to any of the following:

(A) That the respondent contribute, deposit, or transfer any moneys or other resources to a nonprofit entity.

(B) That a respondent contribute, deposit, or transfer any fine, penalty, assessment, cost, or fee except to the commissioner for deposit in the appropriate state fund pursuant to Section 12975.7.

(C) That the commissioner may or shall direct the transfer, distribution, or payment to another person or entity of any fine, penalty, assessment, cost, or fee.

(D) The use of the commissioner's name, likeness, or voice in any printed material or audio or visual medium, either for general distribution or for distribution to specific recipients.

(3) The commissioner may only agree to payment to those persons or entities to whom payment may be due because of the respondent's violation of a provision of this code or other law regulating the business of insurance in this state.

(4) A settlement may only include the sanctions provided by this code or other laws regulating the business of insurance in this state, except that the settlement may include attorney's fees, costs of the department in bringing the enforcement action, and future costs of the department to ensure compliance with the settlement agreement.

(c) Notwithstanding any other provision of law, the commissioner may accept documents submitted for filing or approval, process transactions, and maintain records in electronic form or as paper documents, and may adopt regulations to further this subdivision.

SEC. 10. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because this act provides for offsetting savings to local agencies or school districts that result in no net costs to the local agencies or school districts, within the meaning of Section 17556 of the Government Code.

CHAPTER 352

An act to amend Sections 3041 and 3152 of, and to add and repeal Section 3041.10 of, the Business and Professions Code, relating to optometry.

[Approved by Governor September 26, 2008. Filed with Secretary of State September 26, 2008.]

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

SECTION 1. Section 3041 of the Business and Professions Code is amended to read:

3041. (a) The practice of optometry includes the prevention and diagnosis of disorders and dysfunctions of the visual system, and the treatment and management of certain disorders and dysfunctions of the visual system, as well as the provision of rehabilitative optometric services, and is the doing of any or all of the following:

(1) The examination of the human eye or eyes, or its or their appendages, and the analysis of the human vision system, either subjectively or objectively.

(2) The determination of the powers or range of human vision and the accommodative and refractive states of the human eye or eyes, including the scope of its or their functions and general condition.

(3) The prescribing or directing the use of, or using, any optical device in connection with ocular exercises, visual training, vision training, or orthoptics.

(4) The prescribing of contact and spectacle lenses for, or the fitting or adaptation of contact and spectacle lenses to, the human eye, including lenses that may be classified as drugs or devices by any law of the United States or of this state.

(5) The use of topical pharmaceutical agents for the purpose of the examination of the human eye or eyes for any disease or pathological condition.

(b) (1) An optometrist who is certified to use therapeutic pharmaceutical agents, pursuant to Section 3041.3, may also diagnose and treat the human eye or eyes, or any of its appendages, for all of the following conditions:

(A) Through medical treatment, infections of the anterior segment and adnexa, excluding the lacrimal gland, the lacrimal drainage system, and the sclera in patients under 12 years of age.

(B) Ocular allergies of the anterior segment and adnexa.

(C) Ocular inflammation, nonsurgical in cause except when comanaged with the treating physician and surgeon, limited to inflammation resulting from traumatic iritis, peripheral corneal inflammatory keratitis, episcleritis, and unilateral nonrecurrent nongranulomatous idiopathic iritis in patients over 18 years of age. Unilateral nongranulomatous idiopathic iritis recurring within one year of the initial occurrence shall be referred to an ophthalmologist. An optometrist shall consult with an ophthalmologist or appropriate physician and surgeon if a patient has a recurrent case of episcleritis within one year of the initial occurrence. An optometrist shall consult with an ophthalmologist or appropriate physician and surgeon if a patient has a recurrent case of peripheral corneal inflammatory keratitis within one year of the initial occurrence.

(D) Traumatic or recurrent conjunctival or corneal abrasions and erosions.

(E) Corneal surface disease and dry eyes.

(F) Ocular pain, nonsurgical in cause except when comanaged with the treating physician and surgeon, associated with conditions optometrists are authorized to treat.

(G) Pursuant to subdivision (f), glaucoma in patients over 18 years of age, as described in subdivision (j).

(2) For purposes of this section, "treat" means the use of therapeutic pharmaceutical agents, as described in subdivision (c), and the procedures described in subdivision (e).

(c) In diagnosing and treating the conditions listed in subdivision (b), an optometrist certified to use therapeutic pharmaceutical agents pursuant to Section 3041.3 may use all of the following therapeutic pharmaceutical agents:

(1) Pharmaceutical agents as described in paragraph (5) of subdivision (a), as well as topical miotics.

(2) Topical lubricants.

(3) Antiallergy agents. In using topical steroid medication for the treatment of ocular allergies, an optometrist shall consult with an ophthalmologist if the patient's condition worsens 21 days after diagnosis.

(4) Topical and oral antiinflammatories. In using steroid medication for:

(A) Unilateral nonrecurrent nongranulomatous idiopathic iritis or episcleritis, an optometrist shall consult with an ophthalmologist or appropriate physician and surgeon if the patient's condition worsens 72 hours after the diagnosis, or if the patient's condition has not resolved three weeks after diagnosis. If the patient is still receiving medication for these conditions six weeks after diagnosis, the optometrist shall refer the patient to an ophthalmologist or appropriate physician and surgeon.

(B) Peripheral corneal inflammatory keratitis, excluding Moorens and Terriens diseases, an optometrist shall consult with an ophthalmologist or appropriate physician and surgeon if the patient's condition worsens 72 hours after diagnosis.

(C) Traumatic iritis, an optometrist shall consult with an ophthalmologist or appropriate physician and surgeon if the patient's condition worsens 72 hours after diagnosis and shall refer the patient to an ophthalmologist or appropriate physician and surgeon if the patient's condition has not resolved one week after diagnosis.

(5) Topical antibiotic agents.

(6) Topical hyperosmotics.

(7) Topical and oral antiglaucoma agents pursuant to the certification process defined in subdivision (f).

(A) The optometrist shall refer the patient to an ophthalmologist if requested by the patient or if angle closure glaucoma develops.

(B) If the glaucoma patient also has diabetes, the optometrist shall consult with the physician treating the patient's diabetes in developing the glaucoma treatment plan and shall inform the physician in writing of any changes in the patient's glaucoma medication.

(8) Nonprescription medications used for the rational treatment of an ocular disorder.

(9) Oral antihistamines.

(10) Prescription oral nonsteroidal antiinflammatory agents.

(11) Oral antibiotics for medical treatment of ocular disease.

(A) If the patient has been diagnosed with a central corneal ulcer and the central corneal ulcer has not improved 48 hours after diagnosis, the optometrist shall refer the patient to an ophthalmologist.

(B) If the patient has been diagnosed with preseptal cellulitis or dacryocystitis and the condition has not improved 48 hours after diagnosis, the optometrist shall refer the patient to an ophthalmologist.

(12) Topical and oral antiviral medication for the medical treatment of the following: herpes simplex viral keratitis, herpes simplex viral conjunctivitis, and periocular herpes simplex viral dermatitis; and varicella zoster viral keratitis, varicella zoster viral conjunctivitis, and periocular varicella zoster viral dermatitis.

(A) If the patient has been diagnosed with herpes simplex keratitis or varicella zoster viral keratitis and the patient's condition has not improved seven days after diagnosis, the optometrist shall refer the patient to an ophthalmologist. If a patient's condition has not resolved three weeks after diagnosis, the optometrist shall refer the patient to an ophthalmologist.

(B) If the patient has been diagnosed with herpes simplex viral conjunctivitis, herpes simplex viral dermatitis, varicella zoster viral

conjunctivitis, or varicella zoster viral dermatitis, and if the patient's condition worsens seven days after diagnosis, the optometrist shall consult with an ophthalmologist. If the patient's condition has not resolved three weeks after diagnosis, the optometrist shall refer the patient to an ophthalmologist.

(13) Oral analgesics that are not controlled substances.

(14) Codeine with compounds and hydrocodone with compounds as listed in the California Uniform Controlled Substances Act (Section 11000 of the Health and Safety Code et seq.) and the United States Uniform Controlled Substances Act (21 U.S.C. Sec. 801 et seq.). The use of these agents shall be limited to three days, with a referral to an ophthalmologist if the pain persists.

(d) In any case where this chapter requires that an optometrist consult with an ophthalmologist, the optometrist shall maintain a written record in the patient's file of the information provided to the ophthalmologist, the ophthalmologist's response and any other relevant information. Upon the consulting ophthalmologist's request and with the patient's consent, the optometrist shall furnish a copy of the record to the ophthalmologist.

(e) An optometrist who is certified to use therapeutic pharmaceutical agents pursuant to Section 3041.3 may also perform all of the following:

(1) Corneal scraping with cultures.

(2) Debridement of corneal epithelia.

(3) Mechanical epilation.

(4) Venipuncture for testing patients suspected of having diabetes.

(5) Suture removal, with prior consultation with the treating physician and surgeon.

(6) Treatment or removal of sebaceous cysts by expression.

(7) Administration of oral fluorescein to patients suspected as having diabetic retinopathy.

(8) Use of an auto-injector to counter anaphylaxis.

(9) Ordering of smears, cultures, sensitivities, complete blood count, mycobacterial culture, acid fast stain, urinalysis, and X-rays necessary for the diagnosis of conditions or diseases of the eye or adnexa. An optometrist may order other types of images subject to prior consultation with an ophthalmologist or appropriate physician and surgeon.

(10) Punctal occlusion by plugs, excluding laser, diathermy, cryotherapy, or other means constituting surgery as defined in this chapter.

(11) The prescription of therapeutic contact lenses, including lenses or devices that incorporate a medication or therapy the optometrist is certified to prescribe or provide.

(12) Removal of foreign bodies from the cornea, eyelid, and conjunctiva with any appropriate instrument other than a scalpel or

needle. Corneal foreign bodies shall be nonperforating, be no deeper than the midstroma, and require no surgical repair upon removal.

(13) For patients over 12 years of age, lacrimal irrigation and dilation, excluding probing of the nasal lacrimal tract. The board shall certify any optometrist who graduated from an accredited school of optometry before May 1, 2000, to perform this procedure after submitting proof of satisfactory completion of 10 procedures under the supervision of an ophthalmologist as confirmed by the ophthalmologist. Any optometrist who graduated from an accredited school of optometry on or after May 1, 2000, shall be exempt from the certification requirement contained in this paragraph.

(f) The board shall grant a certificate to an optometrist certified pursuant to Section 3041.3 for the treatment of glaucoma, as described in subdivision (j), in patients over 18 years of age after the optometrist meets the following applicable requirements:

(1) For licensees who graduated from an accredited school of optometry on or after May 1, 2008, submission of proof of graduation from that institution.

(2) For licensees who were certified to treat glaucoma under this section prior to January 1, 2009, submission of proof of completion of that certification program.

(3) For licensees who have substantially completed the certification requirements pursuant to this section in effect between January 1, 2001, and December 31, 2008, submission of proof of completion of those requirements on or before December 31, 2009. "Substantially completed" means both of the following:

(A) Satisfactory completion of a didactic course of not less than 24 hours in the diagnosis, pharmacological, and other treatment and management of glaucoma.

(B) Treatment of 50 glaucoma patients with a collaborating ophthalmologist for a period of two years for each patient that will conclude on or before December 31, 2009.

(4) For licensees who completed a didactic course of not less than 24 hours in the diagnosis, pharmacological, and other treatment and management of glaucoma, submission of proof of satisfactory completion of the case management requirements for certification established by the board pursuant to Section 3014.10.

(5) For licensees who graduated from an accredited school of optometry on or before May 1, 2008, and not described in paragraph (2), (3), or (4), submission of proof of satisfactory completion of the requirements for certification established by the board pursuant to Section 3014.10.

(g) Other than for prescription ophthalmic devices described in subdivision (b) of Section 2541, any dispensing of a therapeutic pharmaceutical agent by an optometrist shall be without charge.

(h) The practice of optometry does not include performing surgery. "Surgery" means any procedure in which human tissue is cut, altered, or otherwise infiltrated by mechanical or laser means. "Surgery" does not include those procedures specified in subdivision (e). Nothing in this section shall limit an optometrist's authority to utilize diagnostic laser and ultrasound technology within his or her scope of practice.

(i) An optometrist licensed under this chapter is subject to the provisions of Section 2290.5 for purposes of practicing telemedicine.

(j) For purposes of this chapter, "glaucoma" means either of the following:

(1) All primary open-angle glaucoma.

(2) Exfoliation and pigmentary glaucoma.

(k) In an emergency, an optometrist shall stabilize, if possible, and immediately refer any patient who has an acute attack of angle closure to an ophthalmologist.

SEC. 2. Section 3041.10 is added to the Business and Professions Code, to read:

3041.10. (a) The Legislature hereby finds and declares that it is necessary to ensure that the public is adequately protected during the transition to full certification for all licensed optometrists who desire to treat and manage glaucoma patients.

(b) The board shall appoint a Glaucoma Diagnosis and Treatment Advisory Committee as soon as practicable after January 1, 2009. The committee shall consist of six members currently licensed and in active practice in their professions in California, with the following qualifications:

(1) Two members shall be optometrists who were certified by the board to treat glaucoma pursuant to the provisions of subdivision (f) of Section 3041, as that provision read on January 1, 2001, and who are actively managing glaucoma patients in full-time practice.

(2) One member shall be a glaucoma-certified optometrist currently active in educating optometric students in glaucoma.

(3) One member shall be a physician and surgeon board-certified in ophthalmology with a specialty or subspecialty in glaucoma who is currently active in educating optometric students in glaucoma.

(4) Two members shall be physicians and surgeons board-certified in ophthalmology who treat glaucoma patients.

(c) The board shall appoint the members of the committee from a list provided by the following organizations:

(1) For the optometrists' appointments, the California Optometric Association.

(2) For the physician and surgeons' appointments, the California Medical Association and the California Academy of Eye Physicians and Surgeons.

(d) The committee shall establish requirements for glaucoma certification, as authorized by Section 3041, by recommending both of the following:

(1) An appropriate curriculum for case management of patients diagnosed with glaucoma for applicants for certification described in paragraph (4) of subdivision (f) of Section 3041.

(2) An appropriate combined curriculum of didactic instruction in the diagnostic, pharmacological, and other treatment and management of glaucoma, and case management of patients diagnosed with glaucoma, for certification described in paragraph (5) of subdivision (f) of Section 3041.

In developing its findings, the committee shall presume that licensees who apply for glaucoma certification and who graduated from an accredited school of optometry on or after May 1, 2008, possess sufficient didactic and case management training in the treatment and management of patients diagnosed with glaucoma to be certified. After reviewing training programs for representative graduates, the committee in its discretion may recommend additional glaucoma training to the Office of Examination Resources pursuant to subdivision (f) to be completed before a license renewal application from any licensee described in this subdivision is approved.

(e) The committee shall meet at such times and places as determined by the board and shall not meet initially until all six members are appointed. Committee meetings shall be public and a quorum shall consist of four members in attendance at any properly noticed meeting.

(f) (1) The committee shall submit its final recommendations to the Office of Examination Resources of the department on or before April 1, 2009. The office shall examine the committee's recommended curriculum requirements to determine whether they will do the following:

(A) Adequately protect glaucoma patients.

(B) Ensure that defined applicant optometrists will be certified to treat glaucoma on an appropriate and timely basis.

(C) Be consistent with the department's and board's examination validation for licensure and occupational analyses policies adopted pursuant to subdivision (b) of Section 139.

(2) The office shall present its findings and any modifications necessary to meet the requirements of paragraph (1) to the board on or before July 1, 2009. The board shall adopt the findings of the office and

shall implement certification requirements pursuant to this section on or before January 1, 2010.

(g) 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 3152 of the Business and Professions Code is amended to read:

3152. The amount of fees and penalties prescribed by this chapter shall be established by the board in amounts not greater than those specified in the following schedule:

(a) The fee for applicants applying for a license shall not exceed two hundred seventy-five dollars ($275).

(b) The fee for renewal of an optometric license shall not exceed five hundred dollars ($500).

(c) The annual fee for the renewal of a branch office license shall not exceed seventy-five dollars ($75).

(d) The fee for a branch office license shall not exceed seventy-five dollars ($75).

(e) The penalty for failure to pay the annual fee for renewal of a branch office license shall not exceed twenty-five dollars ($25).

(f) The fee for issuance of a license or upon change of name authorized by law of a person holding a license under this chapter shall not exceed twenty-five dollars ($25).

(g) The delinquency fee for renewal of an optometric license shall not exceed fifty dollars ($50).

(h) The application fee for a certificate to treat lacrimal irrigation and dilation shall not exceed fifty dollars ($50).

(i) The application fee for a certificate to treat glaucoma shall not exceed fifty dollars ($50).

(j) The fee for approval of a continuing education course shall not exceed one hundred dollars ($100).

(k) The fee for issuance of a statement of licensure shall not exceed forty dollars ($40).

(*l*) The fee for biennial renewal of a statement of licensure shall not exceed forty dollars ($40).

(m) The delinquency fee for renewal of a statement of licensure shall not exceed twenty dollars ($20).

(n) The application fee for a fictitious name permit shall not exceed fifty dollars ($50).

(o) The renewal fee for a fictitious name permit shall not exceed fifty dollars ($50).

(p) The delinquency fee for renewal of a fictitious name permit shall not exceed twenty-five dollars ($25).

CHAPTER 353

An act to amend, repeal, and add Sections 18546, 18990, 18992, and 19889.3 of, and to add Section 20037.13 to, the Government Code, relating to public employment.

[Approved by Governor September 26, 2008. Filed with Secretary of State September 26, 2008.]

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

SECTION 1. Section 18546 of the Government Code is amended to read:

18546. (a) "Career executive" means an employee appointed from an employment list established for the express purpose of providing a list of persons with permanent status or who previously had permanent status in the civil service, or those persons who either, for two or more consecutive years, have been employed by the Legislature, as described in Section 18990, or have held nonelected exempt positions in the executive branch, as described in Section 18992, who are available for career executive assignments, in which selection, classification, salary, tenure, and other conditions of employment may be varied from those prevailing under Chapters 3 (commencing with Section 18800) through 7 (commencing with Section 19570) for other employees in the state civil service.

(b) This section shall remain in effect only until January 1, 2013, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2013, deletes or extends that date.

SEC. 2. Section 18546 is added to the Government Code, to read:

18546. (a) "Career executive" means an employee appointed from an employment list established for the express purpose of providing a list of persons with permanent status in the civil service who are available for career executive assignments, in which selection, classification, salary, tenure, and other conditions of employment may be varied from those prevailing under Chapter 3 (commencing with Section 18800) to Chapter 7 (commencing with Section 19570), inclusive, for other employees in the state civil service.

(b) This section shall become operative on January 1, 2013.

SEC. 3. Section 18990 of the Government Code is amended to read:

18990. (a) Notwithstanding any other provision of law or rule, persons employed by the Legislature for two or more consecutive years shall be eligible to apply for promotional civil service examinations, including examinations for career executive assignments, for which they meet the minimum qualifications as prescribed by the class specification. Persons receiving passing scores shall have their names placed on promotional lists resulting from these examinations or otherwise gain eligibility for appointment. In evaluating minimum qualifications, related legislative experience shall be considered state civil service experience in a class deemed comparable by the State Personnel Board, based on the duties and responsibilities assigned.

(b) In cases where promotional examinations are given by more than one department for the same classification, the employee shall select one department in which to compete. Once this selection is made, it cannot be changed for the duration of the promotional list established from the examination in which the employee participated. Employees may transfer list eligibility between departments in the same manner as provided for civil service employees.

(c) Employees who meet the requirements of this section, are employed by the Legislature, and who resign or are released from service, shall be eligible to take promotional civil service examinations for one year following their resignation or release in accordance with subdivisions (a) and (b).

(d) Employees who meet the requirements of this section, are employed by the Legislature, and who resign or are released from service, shall be eligible to take examinations for career executive assignments indefinitely following their resignation or release in accordance with subdivisions (a) and (b).

(e) Employees who meet the requirements of this section, are employed by the office of the Auditor General or the office of the Legislative Analyst as of January 1, 1992, and who resign or are released from service due to a force reduction of the Legislature before January 1, 1994, shall be eligible to take promotional civil service examinations, including career executive assignments, for three years following their resignation or release in accordance with subdivisions (a) and (b).

(f) An employee who establishes eligibility on a promotional civil service list, either pursuant to subdivision (c) or (e) or prior to having resigned or having been released in a manner to which subdivision (c) or (e) would apply, shall maintain that eligibility for the duration of that particular list.

(g) This section shall remain in effect only until January 1, 2013, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2013, deletes or extends that date.

SEC. 4. Section 18990 is added to the Government Code, to read:

18990. (a) Notwithstanding any other provision of law or rule, persons employed by the Legislature for two or more consecutive years shall be eligible to apply for promotional civil service examinations, including examinations for career executive assignments, for which they meet the minimum qualifications as prescribed by the class specification. Persons receiving passing scores shall have their names placed on promotional lists resulting from these examinations or otherwise gain eligibility for appointment. In evaluating minimum qualifications, related legislative experience shall be considered state civil service experience in a class deemed comparable by the State Personnel Board, based on the duties and responsibilities assigned.

(b) In cases where promotional examinations are given by more than one department for the same classification, the employee shall select one department in which to compete. Once this selection is made, it cannot be changed for the duration of the promotional list established from the examination in which the employee participated. Employees may transfer list eligibility between departments in the same manner as provided for civil service employees.

(c) Employees who meet the requirements of this section, are employed by the Legislature, and who resign or are released from service, shall be eligible to take promotional civil service examinations, including examinations for career executive assignments, for one year following their resignation or release in accordance with subdivisions (a) and (b).

(d) Employees who meet the requirements of this section, are employed by the office of the Auditor General or the office of the Legislative Analyst as of January 1, 1992, and who resign or are released from service due to a force reduction of the Legislature before January 1, 1994, shall be eligible to take promotional civil service examinations, including career executive assignments, for three years following their resignation or release in accordance with subdivisions (a) and (b).

(e) An employee who establishes eligibility on a promotional civil service list, either pursuant to subdivision (c) or (d) or prior to having resigned or having been released in a manner to which subdivision (c) or (d) would apply, shall maintain that eligibility for the duration of that particular list.

(f) This section shall become operative on January 1, 2013.

SEC. 5. Section 18992 of the Government Code is amended to read:

18992. (a) Notwithstanding any other provision of law or rule, persons holding, for two or more consecutive years, nonelected exempt positions in the executive branch of government as defined in subdivisions (c), (e), (f), (g), (i), and (m) of Section 4 of Article VII of the Constitution and excluding those positions for which the salaries are

set by statute, shall be eligible to apply for promotional civil service examinations, including, but not limited to, examinations for career executive assignments for which they meet the minimum qualifications as prescribed by the class specification. Persons receiving passing scores shall have their names placed on promotional lists resulting from these examinations or otherwise gain eligibility for appointment. In evaluating minimum qualifications, related exempt experience shall be considered state civil service experience in a class deemed comparable by the State Personnel Board, based on the duties and responsibilities assigned.

(b) In cases where promotional examinations are given by more than one department for the same classification, the employee shall select one department in which to compete. Once this selection is made, it cannot be changed for the duration of the promotional list established from the examination in which the employee participated. Employees may transfer list eligibility between departments in the same manner as provided for civil service employees.

(c) Employees who meet the requirements of this section and who resign or are released from exempt employment of the executive branch of government shall be eligible to take promotional civil service examinations for one year following their resignation or release in accordance with subdivisions (a) and (b).

(d) Employees who meet the requirements of this section and who resign or are released from exempt employment of the executive branch of government shall be eligible to take examinations for career executive assignments indefinitely following their resignation or release in accordance with subdivisions (a) and (b).

(e) An employee who establishes eligibility on a promotional civil service list, either pursuant to subdivision (c) or prior to having resigned or having been released in a manner to which subdivision (c) would apply, shall maintain that eligibility for the duration of that particular list.

(f) This section shall remain in effect only until January 1, 2013, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2013, deletes or extends that date.

SEC. 6. Section 18992 is added to the Government Code, to read:

18992. (a) Notwithstanding any other provision of law or rule, persons holding, for two or more consecutive years, nonelected exempt positions in the executive branch of government as defined in subdivisions (c), (e), (f), (g), (i), and (m) of Section 4 of Article VII of the Constitution and excluding those positions for which the salaries are set by statute, shall be eligible to apply for promotional civil service examinations, including, but not limited to, examinations for career executive assignments for which they meet the minimum qualifications

as prescribed by the class specification. Persons receiving passing scores shall have their names placed on promotional lists resulting from these examinations or otherwise gain eligibility for appointment. In evaluating minimum qualifications, related exempt experience shall be considered state civil service experience in a class deemed comparable by the State Personnel Board, based on the duties and responsibilities assigned.

(b) In cases where promotional examinations are given by more than one department for the same classification, the employee shall select one department in which to compete. Once this selection is made, it cannot be changed for the duration of the promotional list established from the examination in which the employee participated. Employees may transfer list eligibility between departments in the same manner as provided for civil service employees.

(c) Employees who meet the requirements of this section and who resign or are released from exempt employment of the executive branch of government shall be eligible to take promotional civil service examinations, including examinations for career executive assignments, for one year following their resignation or release in accordance with subdivisions (a) and (b).

(d) An employee who establishes eligibility on a promotional civil service list, either pursuant to subdivision (c) or prior to having resigned or having been released in a manner to which subdivision (c) would apply, shall maintain that eligibility for the duration of that particular list.

(e) This section shall become operative on January 1, 2013.

SEC. 7. Section 19889.3 of the Government Code is amended to read:

19889.3. (a) Eligibility for appointment to positions in the career executive assignment category shall be established as a result of competitive examination of the following persons who meet such minimum qualifications as the State Personnel Board may determine are requisite to the performance of high administrative and policy influencing functions:

(1) Persons with permanent status, or who previously had permanent status, in the civil service.

(2) Persons employed by the Legislature for two or more consecutive years, as described in Section 18990.

(3) Persons holding, for two or more consecutive years, nonelected exempt positions in the executive branch, as described in Section 18992.

(b) No person employed in a career executive assignment shall be deemed to acquire as a result of such service any rights to or status in positions governed by the provisions of this part relating to the civil

service other than the category of career executive assignment, except as provided by State Personnel Board rule.

(c) The State Personnel Board shall provide by rule that an employee shall, if he or she so desires, at the termination of his or her appointment to a career executive assignment, be reinstated to a civil service position that is (1) not a career executive assignment and (2) that is at least at the same salary level as the last position that he or she held as a permanent or probationary employee. If the employee has completed a minimum of five years of state service, he or she may return to a position that is (1) at substantially the same salary level as the last position in which he or she had permanent or probationary status or (2) at a salary level that is at least two steps lower than that of the career executive position from which the employee is being terminated.

(d) A state entity that employs a person described in subdivision (a) in a career executive assignment shall notify the Controller of this person's employment status and the Controller shall forward this information to the board.

(e) For the purpose of this section, "employee" means a permanent employee, or an employee serving under another appointment who previously had permanent status and who, since such permanent status, has had no break in the continuity of his or her state service.

(f) This section shall remain in effect only until January 1, 2013, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2013, deletes or extends that date.

SEC. 8. Section 19889.3 is added to the Government Code, to read:

19889.3. (a) Eligibility for appointment to positions in the career executive assignment category shall be established as a result of competitive examination of persons with permanent status in the civil service who meet such minimum qualifications as the State Personnel Board may determine are requisite to the performance of high administrative and policy influencing functions.

(b) No person employed in a career executive assignment shall be deemed to acquire as a result of such service any rights to or status in positions governed by the provisions of this part relating to the civil service other than the category of career executive assignment, except as provided by State Personnel Board rule.

(c) The State Personnel Board shall provide by rule that an employee shall, if he or she so desires, at the termination of his or her appointment to a career executive assignment, be reinstated to a civil service position that is (1) not a career executive assignment and (2) that is at least at the same salary level as the last position that he or she held as a permanent or probationary employee. If the employee has completed a minimum of five years of state service, he or she may return to a position that is

(1) at substantially the same salary level as the last position in which he or she had permanent or probationary status or (2) at a salary level that is at least two steps lower than that of the career executive position from which the employee is being terminated.

(d) For the purpose of this section "employee" means a permanent employee, or an employee serving under another appointment who previously had permanent status and who, since such permanent status, has had no break in the continuity of his or her state service.

(e) This section shall become operative on January 1, 2013.

SEC. 9. Section 20037.13 is added to the Government Code, to read:

20037.13. (a) Notwithstanding Sections 20035 and 20037, for the purposes of determining any pension or benefit with respect to benefits based on service with the state, "final compensation" means the highest annual compensation that was earnable by the state member during the consecutive 36-month period of employment immediately preceding the effective date of his or her retirement or the date of his or her last separation from state service or during any other period of 36 consecutive months during his or her membership in this system that the member designates on the application for retirement.

(b) This section shall only apply to a member appointed to a career executive assignment, as defined in Section 18546, who at the time of appointment meets one or more of the following criteria:

(1) He or she previously had, but does not currently have, permanent status in the civil service.

(2) He or she is a person described in Section 18990 who was not, within the past 12 months, employed by the Legislature for two or more consecutive years.

(3) He or she is a person described in Sections 18992 who was not, within the past 12 months, holding a nonelected exempt position in the executive branch.

(c) A state entity that employs a person described in subdivision (b) in a career executive assignment shall notify the Controller of this person's employment status and the Controller shall forward this information to the system.

SEC. 10. The State Personnel Board shall report to the Legislature by January 1, 2012, a summary of career executive assignment hires made of the following persons:

(a) Persons who previously had permanent status in the civil service.

(b) Persons described in Section 18990 of the Government Code who were not, within the past 12 months, employed by the Legislature for two or more consecutive years.

(c) Persons described in Section 18992 of the Government Code who were not, within the past 12 months, holding a nonelected exempt position in the executive branch.

CHAPTER 354

An act to add and repeal Article 17 (commencing with Section 18881) of Chapter 3 of Part 10.2 of Division 2 of the Revenue and Taxation Code, relating to amyotrophic lateral sclerosis (ALS).

[Approved by Governor September 26, 2008. Filed with Secretary of State September 26, 2008.]

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

SECTION 1. Article 17 (commencing with Section 18881) is added to Chapter 3 of Part 10.2 of Division 2 of the Revenue and Taxation Code, to read:

Article 17. ALS/Lou Gehrig's Disease Research Fund

18881. The Legislature finds and declares all of the following:

(a) Amyotrophic lateral sclerosis (ALS), more commonly known as Lou Gehrig's disease, is a degenerative disease of the motor nerves that causes progressive weakness of all voluntary muscles. People with ALS become unable to move, swallow, speak, and breathe without assistance, usually remaining fully aware of what is happening to them and their families.

(b) ALS is a fatal disease. There is no cure and only one drug therapy, which allows the patient a month or two more of life. Most ALS patients die within two to five years of symptom onset. Every 90 minutes someone is diagnosed with ALS and every 90 minutes someone dies of the disease. ALS knows no racial, ethnic, or socioeconomic boundaries, often striking people at midlife and at the height of family and financial responsibilities.

(c) The devastating physical, emotional, and financial effects caused by the progression of ALS and the 24-hour, seven-day-a-week caregiving required impact not only the patient, but the entire family. ALS is a family disease and the need for research is dire.

(d) It is the intent of the Legislature, in enacting this article, to establish a systematic program to conduct research regarding the cause, cure, and prevention of ALS. The outcome of this research may have direct effects and consequences on the development of a comprehensive

system that may identify the cause, cure, and prevention of ALS, as well as improving the screening, diagnosis, and treatment of victims of ALS. This program shall award grants to eligible physicians, hospitals, laboratories, educational institutions, and other organizations and persons for the purpose of enabling organizations and persons to conduct research.

18882. (a) Any individual may designate on the tax return that a contribution in excess of the tax liability, if any, be made to the ALS/Lou Gehrig's Disease Research Fund, which is established by Section 18883.

(b) The contributions shall be in full dollar amounts and may be made individually by each signatory on a joint return.

(c) A designation under subdivision (a) shall be made for any taxable year on the initial return for that taxable year, and once made shall be irrevocable. In the event that payment and credits reported on the return, together with any other credits associated with the individual's account, do not exceed the individual's liability, the return shall be treated as though no designation has been made.

(d) When another voluntary contribution designation is removed from the tax return, the Franchise Tax Board shall revise the forms of the return to include a space labeled the "ALS/Lou Gehrig's Disease Research Fund" to allow for the designation permitted under subdivision (a). The forms 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 conduct research relating to the cure, screening, and treatment of ALS.

(e) It is the intent of the Legislature that the ALS/Lou Gehrig's Disease Research Fund be placed on the tax return as soon as space is available.

(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).

18883. There is hereby established in the State Treasury the ALS/Lou Gehrig's Disease Research Fund to receive contributions made pursuant to Section 18882. 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 18882 to be transferred to the ALS/Lou Gehrig's Disease Research Fund. The Controller shall transfer from the Personal Income Tax Fund to the ALS/Lou Gehrig's Disease Research Fund an amount not in excess of the sum of the amounts designated by individuals pursuant to Section 18882 for payment into that fund.

18884. All money transferred to the ALS/Lou Gehrig's Disease Research Fund, upon appropriation by the Legislature, shall be allocated as follows:

(a) To the Franchise Tax Board and the Controller only 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 Public Health, for allocation to The Amyotrophic Lateral Sclerosis Association, an organization exempt from taxation under Section 501(c)(3) of the Internal Revenue Code, to provide research grants to develop and advance the understanding, techniques, and modalities effective in the prevention, treatment, and cure of ALS.

(2) Funds made available pursuant to this article shall not be used for any other purpose than to provide grants as prescribed by this subdivision. Funds made available pursuant to this subdivision shall not be used by The Amyotrophic Lateral Sclerosis Association for administrative purposes, to reimburse their costs associated with administering grants, to further their programs, or for any purpose relating to their own operations.

18885. For the purpose of this article, "research" shall include, but not be limited to, clinical trials, as well as expenditures to develop and advance the understanding, techniques, and modalities effective in the prevention, cure, screening, and treatment of ALS.

18886. (a) Unless repealed earlier pursuant to subdivision (b), this article shall remain in effect only until January 1, 2013, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 2013, deletes or extends that date.

(b) (1) By September 1 of the first calendar year that the ALS/Lou Gehrig's Disease Research Fund appears on the tax return, and by September 1 of each subsequent calendar year, the Franchise Tax Board shall do all of the following:

(A) Determine the minimum contribution amount required to be received during the next calendar year for the fund to appear on the tax return for the taxable year that includes the next calendar year.

(B) Provide written notification to the State Department of Public Health of the amount determined in subparagraph (A).

(C) Determine whether the amount of contributions estimated to be received during the calendar year will equal or exceed the minimum contribution amount determined by the Franchise Tax Board for the calendar year pursuant to subparagraph (A). The Franchise Tax Board shall estimate the amount of contributions to be received by using the actual amounts received and an estimate of the contributions that will be received by the end of that calendar year.

(2) If the Franchise Tax Board determines that the amount of contributions estimated to be received during a calendar year will not at least equal the minimum contribution amount for the calendar year, this

article is repealed with respect to taxable years beginning on or after January 1 of that calendar year.

(3) For purposes of this section, "minimum contribution amount" for a calendar year means two hundred fifty thousand dollars ($250,000) for the second calendar year that the ALS/Lou Gehrig's Disease Research Fund appears on the tax return, or the minimum contribution amount adjusted pursuant to subdivision (c).

(c) For each calendar year beginning with the third calendar year that the ALS/Lou Gehrig's Disease Research Fund appears on the tax return, the Franchise Tax Board shall adjust, on or before September 1 of that calendar year, the minimum contribution amount specified in subdivision (b) as follows:

(1) The minimum contribution amount for the calendar year shall be an amount equal to the product of the minimum contribution amount for the prior calendar year 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.

CHAPTER 355

An act to add Section 8686.6 to the Government Code, relating to disaster assistance.

[Approved by Governor September 26, 2008. Filed with Secretary of State September 26, 2008.]

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

SECTION 1. Section 8686.6 is added to the Government Code, to read:

8686.6. (a) Notwithstanding subdivision (a) of Section 8686, the state share shall be up to 100 percent of total state eligible costs connected with the wildfires that occurred in southern California commencing on

or about October 20, 2007, as specified in agreements between the state and the United States for federal financial assistance.

(b) For the disaster that the Legislature has designated in subdivision (a), the state shall assume the increased share specified in subdivision (a) if the Federal Emergency Management Agency or another applicable federal agency has approved the federal share of costs.

(c) 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. This act shall only become effective if SB 1764 of the 2007–08 Regular Session is enacted.

CHAPTER 356

An act to amend Section 211 of the Revenue and Taxation Code, relating to disaster relief, to take effect immediately, tax levy.

[Approved by Governor September 26, 2008. Filed with Secretary of State September 26, 2008.]

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

SECTION 1. Section 211 of the Revenue and Taxation Code is amended to read:

211. (a) (1) The exemption of fruit- and nut-bearing trees until four years after the season in which they were planted in orchard form and grapevines until three years after the season in which they were planted in vineyard form is as specified in subdivision (i) of Section 3 of Article XIII of the California Constitution.

(2) For purposes of exemption pursuant to this subdivision, any fruit- or nut-bearing tree, or any grapevine, severely damaged during the exemption period by the December 1990 freeze so as to require pruning to the trunk or bud union to establish a new shoot as a replacement for the damaged tree or grapevine, shall be considered a new planting in orchard or vineyard form.

(3) For purposes of exemption pursuant to this subdivision, any fruit- or nut-bearing tree severely damaged during the exemption period by the December 1998 freeze or the January 2007 freeze so as to require pruning to the trunk or bud union to establish a new shoot as a replacement for the damaged tree shall be considered a new planting in orchard form.

(4) For purposes of exemption pursuant to this subdivision, any fruit- or nut-bearing tree, or any grapevine, severely damaged during the exemption period by the extremely strong and damaging winds that commenced on October 20, 2007, that were the subject of the Governor's November 2, 2007, proclamation of a state of emergency so as to require pruning to the trunk or bud union to establish a new shoot as a replacement for the damaged tree or grapevine, shall be considered a new planting in orchard form.

(5) For purposes of exemption pursuant to this subdivision, any fruit- or nut-bearing tree, or any grapevine, severely damaged during the exemption period by the wildfires that commenced on October 21, 2007, that were the subject of the Governor's October 21, 2007, proclamation of a state of emergency so as to require pruning to the trunk or bud union to establish a new shoot as a replacement for the damaged tree or grapevine, shall be considered a new planting in orchard form.

(b) The exemption of timber is as specified in subdivision (j) of Section 3 of Article XIII of the California Constitution and Section 436.

SEC. 2. Notwithstanding Section 2229 of the Revenue and Taxation Code, no appropriation is made by this act and the state shall not reimburse any local agency for any property tax revenues lost by it pursuant to this act.

SEC. 3. This act provides for a tax levy within the meaning of Article IV of the Constitution and shall go into immediate effect.

CHAPTER 357

An act to add Section 136.6 to the Streets and Highways Code, relating to public contracts.

[Approved by Governor September 26, 2008. Filed with Secretary of State September 26, 2008.]

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

SECTION 1. Section 136.6 is added to the Streets and Highways Code, to read:

136.6. (a) The department may enter into contracts not exceeding twenty-five thousand dollars ($25,000) for the leasing and renting of operated heavy highway equipment for state highway maintenance purposes, which contracts are not subject to the State Contract Act pursuant to subdivision (a) of Section 136.5, and the department is not required to comply with the procedures described in subdivision (a) of

that section relative to those contracts. Contracts exceeding twenty-five thousand dollars ($25,000) for the leasing and renting of operated heavy highway equipment for state highway maintenance purposes shall be subject to the procedures described in subdivision (a) of Section 136.5.

(b) For purposes of this section, "operated heavy highway equipment" shall mean bulldozers, grinders, loaders, pavers, oilers, rollers, excavators, truck tractors and trailers, fork lifts, personnel lifts, sweepers, and water tankers that include within the leasing or rental costs the cost of the qualified operator of the equipment.

(c) This section shall not apply to contracts for the leasing or renting of operated heavy highway equipment for emergency work, which are governed by subdivision (b) of Section 136.5. This section shall not apply to the leasing or renting of operated heavy highway equipment to be utilized for new highway construction.

CHAPTER 358

An act to amend Section 6254 of the Government Code, and to amend Section 293 of, and to amend, renumber, and add Section 236.2 of, the Penal Code, relating to human trafficking.

[Approved by Governor September 27, 2008. Filed with Secretary of State September 27, 2008.]

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

SECTION 1. The Legislature hereby finds and declares:

(a) Human trafficking, also called trafficking in persons, is modern-day slavery that comes in many forms and is relatively ignored despite its effects on the world in pandemic proportions. Men, women, and children are trafficked into forced labor and commercial sexual exploitation.

(b) According to the Trafficking in Persons Report (TIP Report, 2005) published by the United States government's Office to Monitor and Combat Trafficking in Persons, approximately 600,000 to 800,000 persons are trafficked across international borders each year with up to 12.3 million in bondage at any given moment. The report also estimates that about 80 percent of these persons are women and girls, and 50 percent are under 18 years of age.

(c) Those numbers, however, do not include the millions of people that are trafficked within their own national borders. When the numbers of those being trafficked both internationally and intranationally are combined, the number of victims can go up to four million. Somewhere

between 17,500 and 50,000 women and children are trafficked into the United States annually, mainly for the purposes of sexual exploitation.

(d) Sex trafficking is highly profitable and makes up to an excess of 12 billion dollars annually.

(e) Trafficking into the United States is an acknowledged problem, but often ignored is the fact that trafficking also occurs domestically within the United States borders. Many girls are trafficked into Mexico from other countries, including the United States, where they are prepared for sex work in the United States. When the victims are considered "ready," they are smuggled across the United States-Mexican border, where they can earn their traffickers tens of thousands of dollars per week.

(f) One victim interviewed by Landesman in the New York Times (2004) said she was born in the United States and sold to a trafficker when she was four years old. She was transported to different locations all over the United States and back and forth across the United States-Mexican border. Her customers included businessmen, police, and even a child psychologist.

(g) Experiences like those make it even more difficult for victims to seek or find help; when a person is being exploited by those who are supposed to help him or her, there is no one to whom he or she can turn for safety.

(h) State and local governments must become actively involved in combating trafficking. At this time, many perpetrators get off with no or minimal penalties, which are less harsh than those inflicted on drug offenders.

(i) Law enforcement personnel, social workers, and legal personnel must be trained to understand trafficking in persons, recognize victim profiles, and appreciate the special circumstances and needs of victims. If the people in the community are trained to recognize instances of trafficking and are better equipped to rescue victims and prosecute traffickers, human trafficking could be slowly reduced because each trafficker prosecuted could help save thousands of future victims.

SEC. 2. 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, if 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. However, 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 reflects 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, 236.1, 261, 261.5, 262, 264, 264.1, 265, 266, 266a, 266b, 266c, 266e, 266f, 266j, 267, 269, 273a, 273d, 273.5, 285, 286, 288, 288a, 288.2, 288.3 (as added by Chapter 337 of the Statutes of 2006), 288.3 (as added by Section 6 of Proposition 83 of the November 7, 2006, statewide general election), 288.5, 288.7, 289, 422.6, 422.7, 422.75, 646.9, or 647.6 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 in any of the sections of the Penal Code set forth in this subdivision 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. However, the address of the victim of any crime defined by Section 220, 236.1, 261, 261.5, 262, 264, 264.1, 265, 266, 266a, 266b, 266c, 266e, 266f, 266j, 267, 269, 273a, 273d, 273.5, 285, 286, 288, 288a, 288.2, 288.3 (as added by Chapter 337 of the Statutes of 2006), 288.3 (as added by Section 6 of Proposition 83 of the November 7, 2006, statewide general election), 288.5, 288.7, 289, 422.6, 422.7, 422.75, 646.9, or 647.6 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 Division 14 of Title 3 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. However, 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, 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. If 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 Care 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 Part 2 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 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 Managed Risk Medical Insurance Board 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 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 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 their effective dates.

(B) If a contract 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 contracts or amendments to the contracts are open to inspection pursuant to paragraph (3).

(w) (1) Records of the Managed Risk Medical Insurance Board related to activities governed by Chapter 8 (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 8 (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 contracts or amendments to the contracts are 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 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 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 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 their effective dates.

(B) If 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, 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, 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.

(ab) 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.

(ac) 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 (29 U.S.C. Sec. 158).

SEC. 2.1. 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, if 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. However, 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 reflects 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, 236.1, 261, 261.5, 262, 264, 264.1, 265, 266, 266a, 266b, 266c, 266e, 266f, 266j, 267, 269, 273a, 273d, 273.5, 285, 286, 288, 288a, 288.2, 288.3 (as added by Chapter 337 of the Statutes of 2006), 288.3 (as added by Section 6 of Proposition 83 of the November 7, 2006, statewide general election), 288.5, 288.7, 289, 422.6, 422.7, 422.75, 646.9, or 647.6 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 in any of the sections of the Penal Code set forth in this subdivision 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. However, the address of the victim of any crime defined by Section 220, 236.1, 261, 261.5, 262, 264, 264.1, 265, 266, 266a, 266b, 266c, 266e, 266f, 266j, 267, 269, 273a, 273d, 273.5, 285, 286, 288, 288a, 288.2, 288.3 (as added by Chapter 337 of the Statutes of 2006), 288.3 (as added by Section 6 of Proposition 83 of the November 7, 2006, statewide general election), 288.5, 288.7, 289, 422.6, 422.7, 422.75, 646.9, or 647.6 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 Division 14 of Title 3 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. However, 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, 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. If 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 Care 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 Part 2 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 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 Managed Risk Medical Insurance Board 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 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 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 their effective dates.

(B) If a contract 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 contracts or amendments to the contracts are open to inspection pursuant to paragraph (3).

(w) (1) Records of the Managed Risk Medical Insurance Board related to activities governed by Chapter 8 (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 8 (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 contracts or amendments to the contracts are 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 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 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 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 their effective dates.

(B) If 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, 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, 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.

(ab) 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.

(ac) 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.

(ad) The following records of the State Compensation Insurance Fund:

(1) Records related to claims pursuant to Chapter 1 (commencing with Section 3200) of Division 4 of the Labor Code, to the extent that confidential medical information or other individually identifiable information would be disclosed.

(2) Records related to the discussions, communications, or any other portion of the negotiations with entities contracting or seeking to contract with the fund, and any related deliberations.

(3) Records related to the impressions, opinions, recommendations, meeting minutes of meetings or sessions that are lawfully closed to the public, research, work product, theories, or strategy of the fund or its staff, on the development of rates, contracting strategy, underwriting, or competitive strategy pursuant to the powers granted to the fund in Chapter 4 (commencing with Section 11770) of Part 3 of Division 2 of the Insurance Code.

(4) Records obtained to provide workers' compensation insurance under Chapter 4 (commencing with Section 11770) of Part 3 of Division 2 of the Insurance Code, including, but not limited to, any medical claims information, policyholder information provided that nothing in this paragraph shall be interpreted to prevent an insurance agent or broker from obtaining proprietary information or other information authorized by law to be obtained by the agent or broker, and information on rates, pricing, and claims handling received from brokers.

(5) (A) Records that are trade secrets pursuant to Section 6276.44, or Article 11 (commencing with Section 1060) of Chapter 4 of Division 8 of the Evidence Code, including without limitation, instructions, advice, or training provided by the State Compensation Insurance Fund to its board members, officers, and employees regarding the fund's special investigation unit, internal audit unit, and informational security, marketing, rating, pricing, underwriting, claims handling, audits, and collections.

(B) Notwithstanding subparagraph (A), the portions of records containing trade secrets shall be available for review by the Joint Legislative Audit Committee, the Bureau of State Audits, Division of Workers' Compensation, and the Department of Insurance to ensure compliance with applicable law.

(6) (A) Internal audits containing proprietary information and the following records that are related to an internal audit:

(i) Personal papers and correspondence of any person providing assistance to the fund when that person has requested in writing that his or her papers and correspondence be kept private and confidential. Those papers and correspondence shall become public records if the written request is withdrawn, or upon order of the fund.

(ii) Papers, correspondence, memoranda, or any substantive information pertaining to any audit not completed or an internal audit that contains proprietary information.

(B) Notwithstanding subparagraph (A), the portions of records containing proprietary information, or any information specified in subparagraph (A) shall be available for review by the Joint Legislative Audit Committee, the Bureau of State Audits, Division of Workers' Compensation, and the Department of Insurance to ensure compliance with applicable law.

(7) (A) Except as provided in subparagraph (C), contracts entered into pursuant to Chapter 4 (commencing with Section 11770) of Part 3 of Division 2 of the Insurance Code shall be open to inspection one year after the contract has been fully executed.

(B) If a contract entered into pursuant to Chapter 4 (commencing with Section 11770) of Part 3 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.

(C) 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.

(D) 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 this paragraph.

(E) Nothing in this paragraph is intended to apply to documents related to contracts with public entities that are not otherwise expressly confidential as to that public entity.

(F) For purposes of this paragraph, "fully executed" means the point in time when all of the necessary parties to the contract have signed the contract.

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 (29 U.S.C. Sec. 158).

SEC. 2.2. 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, if 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, the California Emergency Management Agency, 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. However, 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 reflects 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, 236.1, 261, 261.5, 262, 264, 264.1, 265, 266, 266a, 266b, 266c, 266e, 266f, 266j, 267, 269, 273a, 273d, 273.5, 285, 286, 288, 288a, 288.2, 288.3 (as added by Chapter 337 of the Statutes of 2006), 288.3 (as added by Section 6 of Proposition 83 of the November 7, 2006, statewide general election), 288.5, 288.7, 289, 422.6, 422.7, 422.75, 646.9, or 647.6 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 in any of the

sections of the Penal Code set forth in this subdivision 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. However, the address of the victim of any crime defined by Section 220, 236.1, 261, 261.5, 262, 264, 264.1, 265, 266, 266a, 266b, 266c, 266e, 266f, 266j, 267, 269, 273a, 273d, 273.5, 285, 286, 288, 288a, 288.2, 288.3 (as added by Chapter 337 of the Statutes of 2006), 288.3 (as added by Section 6 of Proposition 83 of the November 7, 2006, statewide general election), 288.5, 288.7, 289, 422.6, 422.7, 422.75, 646.9, or 647.6 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 Division 14 of Title 3 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. However, 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, 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. If 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 Care 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 Part 2 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 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 Managed Risk Medical Insurance Board 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 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 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 their effective dates.

(B) If a contract 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 contracts or amendments to the contracts are open to inspection pursuant to paragraph (3).

(w) (1) Records of the Managed Risk Medical Insurance Board related to activities governed by Chapter 8 (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 8 (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 contracts or amendments to the contracts are 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 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 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 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 their effective dates.

(B) If 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, 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, 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.

(ab) Critical infrastructure information, as defined in Section 131(3) of Title 6 of the United States Code, that is voluntarily submitted to the California Emergency Management Agency 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.

(ac) 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 (29 U.S.C. Sec. 158).

SEC. 2.3. 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, if 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, the California Emergency Management Agency, 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. However, 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 reflects 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, 236.1, 261, 261.5, 262, 264, 264.1, 265, 266, 266a, 266b, 266c, 266e, 266f, 266j, 267, 269, 273a, 273d, 273.5, 285, 286, 288, 288a,

288.2, 288.3 (as added by Chapter 337 of the Statutes of 2006), 288.3 (as added by Section 6 of Proposition 83 of the November 7, 2006, statewide general election), 288.5, 288.7, 289, 422.6, 422.7, 422.75, 646.9, or 647.6 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 in any of the sections of the Penal Code set forth in this subdivision 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. However, the address of the victim of any crime defined by Section 220, 236.1, 261, 261.5, 262, 264, 264.1, 265, 266, 266a, 266b, 266c, 266e, 266f, 266j, 267, 269, 273a, 273d, 273.5, 285, 286, 288, 288a, 288.2, 288.3 (as added by Chapter 337 of the Statutes of 2006), 288.3 (as added by Section 6 of Proposition 83 of the November 7, 2006, statewide general election), 288.5, 288.7, 289, 422.6, 422.7, 422.75, 646.9, or 647.6 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 Division 14 of Title 3 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. However, 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, 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. If 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 Care 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 Part 2 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 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 Managed Risk Medical Insurance Board 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 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 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 their effective dates.

(B) If a contract 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 contracts or amendments to the contracts are open to inspection pursuant to paragraph (3).

(w) (1) Records of the Managed Risk Medical Insurance Board related to activities governed by Chapter 8 (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 8 (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 contracts or amendments to the contracts are 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 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 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 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 their effective dates.

(B) If 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, 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, 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.

(ab) Critical infrastructure information, as defined in Section 131(3) of Title 6 of the United States Code, that is voluntarily submitted to the California Emergency Management Agency 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.

(ac) 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.

(ad) The following records of the State Compensation Insurance Fund:

(1) Records related to claims pursuant to Chapter 1 (commencing with Section 3200) of Division 4 of the Labor Code, to the extent that confidential medical information or other individually identifiable information would be disclosed.

(2) Records related to the discussions, communications, or any other portion of the negotiations with entities contracting or seeking to contract with the fund, and any related deliberations.

(3) Records related to the impressions, opinions, recommendations, meeting minutes of meetings or sessions that are lawfully closed to the public, research, work product, theories, or strategy of the fund or its staff, on the development of rates, contracting strategy, underwriting, or competitive strategy pursuant to the powers granted to the fund in Chapter 4 (commencing with Section 11770) of Part 3 of Division 2 of the Insurance Code.

(4) Records obtained to provide workers' compensation insurance under Chapter 4 (commencing with Section 11770) of Part 3 of Division 2 of the Insurance Code, including, but not limited to, any medical claims information, policyholder information provided that nothing in this paragraph shall be interpreted to prevent an insurance agent or broker from obtaining proprietary information or other information authorized by law to be obtained by the agent or broker, and information on rates, pricing, and claims handling received from brokers.

(5) (A) Records that are trade secrets pursuant to Section 6276.44, or Article 11 (commencing with Section 1060) of Chapter 4 of Division 8 of the Evidence Code, including without limitation, instructions, advice, or training provided by the State Compensation Insurance Fund to its board members, officers, and employees regarding the fund's special investigation unit, internal audit unit, and informational security, marketing, rating, pricing, underwriting, claims handling, audits, and collections.

(B) Notwithstanding subparagraph (A), the portions of records containing trade secrets shall be available for review by the Joint Legislative Audit Committee, the Bureau of State Audits, Division of Workers' Compensation, and the Department of Insurance to ensure compliance with applicable law.

(6) (A) Internal audits containing proprietary information and the following records that are related to an internal audit:

(i) Personal papers and correspondence of any person providing assistance to the fund when that person has requested in writing that his or her papers and correspondence be kept private and confidential. Those papers and correspondence shall become public records if the written request is withdrawn, or upon order of the fund.

(ii) Papers, correspondence, memoranda, or any substantive information pertaining to any audit not completed or an internal audit that contains proprietary information.

(B) Notwithstanding subparagraph (A), the portions of records containing proprietary information, or any information specified in subparagraph (A) shall be available for review by the Joint Legislative Audit Committee, the Bureau of State Audits, Division of Workers' Compensation, and the Department of Insurance to ensure compliance with applicable law.

(7) (A) Except as provided in subparagraph (C), contracts entered into pursuant to Chapter 4 (commencing with Section 11770) of Part 3 of Division 2 of the Insurance Code shall be open to inspection one year after the contract has been fully executed.

(B) If a contract entered into pursuant to Chapter 4 (commencing with Section 11770) of Part 3 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.

(C) 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.

(D) 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 this paragraph.

(E) Nothing in this paragraph is intended to apply to documents related to contracts with public entities that are not otherwise expressly confidential as to that public entity.

(F) For purposes of this paragraph, "fully executed" means the point in time when all of the necessary parties to the contract have signed the contract.

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 (29 U.S.C. Sec. 158).

SEC. 3. Section 236.2 of the Penal Code is amended and renumbered to read:

236.5. (a) Within 15 business days of the first encounter with a victim of human trafficking, as defined by Section 236.1, law enforcement agencies shall provide brief letters that satisfy the following Law Enforcement Agency (LEA) endorsement regulations as found in paragraph (1) of subdivision (f) of Section 214.11 of Title 8 of the Code of Federal Regulations.

(b) The LEA must be submitted on Supplement B, Declaration of Law Enforcement Officer for Victim of Trafficking in Persons, of Form I-914. The LEA endorsement must be filled out completely in accordance with the instructions contained on the form and must attach the results of any name or database inquiry performed. In order to provide persuasive evidence, the LEA endorsement must contain a description of the victimization upon which the application is based, including the dates the trafficking in persons and victimization occurred, and be signed by a supervising official responsible for the investigation or prosecution of trafficking in persons. The LEA endorsement must address whether the victim had been recruited, harbored, transported, provided, or obtained specifically for either labor or services, or for the purposes of a commercial sex act.

(c) Where state law enforcement agencies find the grant of a LEA endorsement to be inappropriate for a victim of trafficking in persons, the agency shall within 15 days provide the victim with a letter explaining the grounds of the denial of the LEA. The victim may submit additional evidence to the law enforcement agency, which must reconsider the denial of the LEA within one week of the receipt of additional evidence.

SEC. 4. Section 236.2 is added to the Penal Code, to read:

236.2. Law enforcement agencies shall use due diligence to identify all victims of human trafficking, regardless of the citizenship of the person. When a peace officer comes into contact with a person who has been deprived of his or her personal liberty, a person suspected of violating subdivision (a) or (b) of Section 647, or a victim of a crime of domestic violence or rape, the peace officer shall consider whether the following indicators of human trafficking are present:

(a) Signs of trauma, fatigue, injury, or other evidence of poor care.

(b) The person is withdrawn, afraid to talk, or his or her communication is censored by another person.

(c) The person does not have freedom of movement.

(d) The person lives and works in one place.

(e) The person owes a debt to his or her employer.

(f) Security measures are used to control who has contact with the person.

(g) The person does not have control over his or her own government-issued identification or over his or her worker immigration documents.

SEC. 5. Section 293 of the Penal Code is amended to read:

293. (a) Any employee of a law enforcement agency who personally receives a report from any person, alleging that the person making the report has been the victim of a sex offense, or was forced to commit an act of prostitution because he or she is the victim of human trafficking, as defined in Section 236.1, shall inform that person that his or her name will become a matter of public record unless he or she requests that it not become a matter of public record, pursuant to Section 6254 of the Government Code.

(b) Any written report of an alleged sex offense shall indicate that the alleged victim has been properly informed pursuant to subdivision (a) and shall memorialize his or her response.

(c) No law enforcement agency shall disclose to any person, except the prosecutor, parole officers of the Department of Corrections and Rehabilitation, hearing officers of the parole authority, probation officers of county probation departments, or other persons or public agencies where authorized or required by law, the address of a person who alleges to be the victim of a sex offense or who was forced to commit an act of prostitution because he or she is the victim of human trafficking, as defined in Section 236.1.

(d) No law enforcement agency shall disclose to any person, except the prosecutor, parole officers of the Department of Corrections and Rehabilitation, hearing officers of the parole authority, probation offices of county probation departments, or other persons or public agencies where authorized or required by law, the name of a person who alleges to be the victim of a sex offense or who was forced to commit an act of prostitution because he or she is the victim of human trafficking, as defined in Section 236.1, if that person has elected to exercise his or her right pursuant to this section and Section 6254 of the Government Code.

(e) For purposes of this section, sex offense means any crime listed in paragraph (2) of subdivision (f) of Section 6254 of the Government Code.

(f) Parole officers of the Department of Corrections and Rehabilitation and hearing officers of the parole authority, and probation officers of county probation departments, shall be entitled to receive information pursuant to subdivisions (c) and (d) only if the person to whom the information pertains alleges that he or she is the victim of a sex offense

or was forced to commit an act of prostitution because he or she is the victim of human trafficking, as defined in Section 236.1, the alleged perpetrator of which is a parolee who is alleged to have committed the offense while on parole, or in the case of a county probation officer, the person who is alleged to have committed the offense is a probationer or is under investigation by a county probation department pursuant to Section 1203.

SEC. 5.5. Section 293 of the Penal Code is amended to read:

293. (a) Any employee of a law enforcement agency who personally receives a report from any person, alleging that the person making the report has been the victim of a sex offense, or was forced to commit an act of prostitution because he or she is the victim of human trafficking, as defined in Section 236.1, shall inform that person that his or her name will become a matter of public record unless he or she requests that it not become a matter of public record, pursuant to Section 6254 of the Government Code.

(b) Any written report of an alleged sex offense shall indicate that the alleged victim has been properly informed pursuant to subdivision (a) and shall memorialize his or her response.

(c) No law enforcement agency shall disclose to any person, except the prosecutor, parole officers of the Department of Corrections and Rehabilitation, hearing officers of the parole authority, probation officers of county probation departments, or other persons or public agencies where authorized or required by law, the address of a person who alleges to be the victim of a sex offense or who was forced to commit an act of prostitution because he or she is the victim of human trafficking, as defined in Section 236.1.

(d) No law enforcement agency shall disclose to any person, except the prosecutor, parole officers of the Department of Corrections and Rehabilitation, hearing officers of the parole authority, probation officers of county probation departments, or other persons or public agencies where authorized or required by law, the name of a person who alleges to be the victim of a sex offense or who was forced to commit an act of prostitution because he or she is the victim of human trafficking, as defined in Section 236.1, if that person has elected to exercise his or her right pursuant to this section and Section 6254 of the Government Code.

(e) For purposes of this section, sex offense means any crime listed in paragraph (2) of subdivision (f) of Section 6254 of the Government Code.

(f) Parole officers of the Department of Corrections and Rehabilitation and hearing officers of the parole authority, and probation officers of county probation departments, shall be entitled to receive information pursuant to subdivisions (c) and (d) only if the person to whom the

information pertains alleges that he or she is the victim of a sex offense or was forced to commit an act of prostitution because he or she is the victim of human trafficking, as defined in Section 236.1, the alleged perpetrator of which is a parolee who is alleged to have committed the offense while on parole, or in the case of a county probation officer, the person who is alleged to have committed the offense is a probationer or is under investigation by a county probation department.

SEC. 6. (a) Section 2.1 of this bill incorporates amendments to Section 6254 of the Government Code proposed by both this bill and SB 1145. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2009, (2) each bill amends Section 6254 of the Government Code, and (3) AB 38 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after SB 1145, in which case Section 6254 of the Government Code, as amended by Section 1 of SB 1145, shall remain operative only until the operative date of this bill, at which time Section 2.1 of this bill shall become operative, and Sections 2, 2.2, and 2.3 shall not become operative.

(b) Section 2.2 of this bill incorporates amendments to Section 6254 of the Government Code proposed by both this bill and AB 38. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2009, (2) each bill amends Section 6254 of the Government Code, (3) SB 1145 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after AB 38 in which case Sections 2, 2.1, and 2.3 of this bill shall not become operative.

(c) Section 2.3 of this bill incorporates amendments to Section 6254 of the Government Code proposed by this bill, SB 1145, and AB 38. It shall only become operative if (1) all three bills are enacted and become effective on or before January 1, 2009, (2) all three bills amend Section 6254 of the Government Code, and (3) this bill is enacted after SB 1145 and AB 38, in which case Section 6254 of the Government Code, as amended by Section 1 of SB 1145, shall remain operative only until the operative date of this bill, at which time Section 2.3 of this bill shall become operative, and Sections 2, 2.1, and 2.2 of this bill shall not become operative.

SEC. 7. Section 5.5 of this bill incorporates amendments to Section 293 of the Penal Code proposed by this bill and AB 3038. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2009, (2) each bill amends Section 293 of the Penal Code, and (3) this bill is enacted after AB 3038, in which case Section 293 of the Penal Code, as amended by AB 3038, 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.

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 359

An act to add and repeal Chapter 4.3 (commencing with Section 18259) of Part 6 of Division 9 of the Welfare and Institutions Code, relating to sexually exploited minors.

[Approved by Governor September 27, 2008. Filed with Secretary of State September 27, 2008.]

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

SECTION 1. It is the intent of the Legislature to encourage the development of a comprehensive, multidisciplinary model reflecting the best practices for the response of law enforcement and the criminal and juvenile justice systems to identify and assess commercially sexually exploited children who have been arrested or detained by local law enforcement.

SEC. 2. Chapter 4.3 (commencing with Section 18259) is added to Part 6 of Division 9 of the Welfare and Institutions Code, to read:

CHAPTER 4.3. SEXUALLY EXPLOITED MINORS PILOT PROJECT

18259. (a) The County of Alameda, contingent upon local funding, may establish a pilot project consistent with this chapter to develop a comprehensive, replicative, multidisciplinary model to address the needs and effective treatment of commercially sexually exploited minors who have been arrested or detained by local law enforcement for a violation of subdivision (a) or (b) of Section 647 or subdivision (a) of Section 653.22 of the Penal Code.

(b) The District Attorney of the County of Alameda, in collaboration with county and community-based agencies, may develop, as a component of the pilot project described in this chapter, protocols for identifying and assessing minors, upon arrest or detention by law enforcement, who may be victims of commercial sexual exploitation.

(c) The District Attorney of the County of Alameda, in collaboration with county and community-based agencies that serve commercially sexually exploited minors, may develop, as a component of the pilot project described in this chapter, a diversion program reflecting the best practices to address the needs and requirements of arrested or detained minors who have been determined to be victims of commercial sexual exploitation.

(d) The District Attorney of the County of Alameda, in collaboration with county and community-based agencies, may form, as a component of the pilot project described in this chapter, a multidisciplinary team including, but not limited to, city police departments, the county sheriff's department, the public defender's office, the probation department, child protection services, and community-based organizations that work with or advocate for commercially sexually exploited minors, to do both of the following:

(1) Develop a training curriculum reflecting the best practices for identifying and assessing minors who may be victims of commercial sexual exploitation.

(2) Offer and provide this training curriculum through multidisciplinary teams to law enforcement, child protective services, and others who are required to respond to arrested or detained minors who may be victims of commercial sexual exploitation.

18259.3. For purposes of this chapter, "commercially sexually exploited minor" means a person under 18 years of age who has been abused in the manner described in paragraph (2) of subdivision (c) of Section 11165.1 of the Penal Code, and who has been detained for a violation of the law or placed in civil protective custody on a safety hold based only on a violation of subdivision (a) or (b) of Section 647 or subdivision (a) of Section 653.22 of the Penal Code.

18259.5. 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.

CHAPTER 360

An act to amend Sections 1765.150 and 1765.155 of the Health and Safety Code, relating to mobile health care units.

[Approved by Governor September 27, 2008. Filed with Secretary of State September 27, 2008.]

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

SECTION 1. Section 1765.150 of the Health and Safety Code is amended to read:

1765.150. (a) The mobile unit shall be of sufficient size and shall be arranged in a manner that is appropriate for the provision of those health care services that it is licensed to provide.

(b) The mobile unit shall be equipped with appropriate utilities for the comfort and safety of patients. The Office of Statewide Health Planning and Development shall review and approve hospital-provided utility connections for mobile units that require utility hookups with general acute care hospitals.

(c) The mobile unit shall be maintained in good repair and in a clean and sanitary manner.

(d) All proposed modifications to previously approved services and procedures shall be reviewed and approved by the state department before they are implemented. Modifications to the mobile service unit shall be approved by the Department of Housing and Community Development pursuant to Section 18029.

(e) The licensee shall report to the department the location of the site at least 24 hours prior to the operation of a mobile unit at any site for the first time.

(f) Notification required by subdivision (e) shall be waived when the mobile unit operates at any site for the first time at the request of federal, state, or local authorities for the purposes of responding to state or locally declared emergencies as defined in subdivisions (a), (b), and (c) of Section 8558 of the Government Code, federally declared emergencies, and declared public health emergencies as defined in Section 101080 for the duration of the emergency.

SEC. 2. Section 1765.155 of the Health and Safety Code is amended to read:

1765.155. (a) The licensed parent facility or clinic shall be responsible for obtaining approvals for the site or sites of the mobile unit as required by the local planning, zoning, and fire authorities.

(b) The mobile unit shall be situated for safe and comfortable patient access. The mobile unit shall comply with all local parking laws. Any parking restrictions developed by a parent facility or clinic for mobile units shall be strictly enforced by the parent facility or clinic.

(c) The parent facility or clinic shall ensure that there is sufficient lighting around the perimeter of the site from which the mobile unit provides any services.

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CHAPTER 361

An act to amend Section 8596 of the Government Code, relating to emergency services.

[Approved by Governor September 27, 2008. Filed with Secretary of State September 27, 2008.]

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

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

(a) Individuals fleeing a disaster or coping with emergency circumstances commonly lose access to their personal documents and identification, and replacing them during a disaster or emergency can be burdensome, if not impossible, especially for vulnerable populations, such as low-income individuals, seniors, or persons with disabilities.

(b) During a disaster, it is critical that all evacuees and other victims have access to timely and effective assistance to alleviate their suffering and meet their basic needs.

SEC. 2. Section 8596 of the Government Code is amended to read:

8596. (a) Each department, division, bureau, board, commission, officer, and employee of this state shall render all possible assistance to the Governor and to the Director of the Office of Emergency Services in carrying out the provisions of this chapter.

(b) In providing such assistance, state agencies shall cooperate to the fullest possible extent with each other and with political subdivisions, relief agencies, and the American National Red Cross, but nothing contained in this chapter shall be construed to limit or in any way affect the responsibilities of the American National Red Cross under the federal act approved January 5, 1905 (33 Stat. 599), as amended.

(c) Entities providing disaster-related services and assistance shall strive to ensure that all victims receive the assistance that they need and for which they are eligible. Public employees shall assist evacuees and other individuals in securing disaster-related assistance and services without eliciting any information or document that is not strictly necessary to determine eligibility under state and federal laws. Nothing in this subdivision shall prevent public employees from taking reasonable steps to protect the health or safety of evacuees and other individuals during an emergency.

(d) State personnel, equipment, and facilities may be used to clear and dispose of debris on private property only after the Governor finds: (1) that such use is for a state purpose; (2) that such use is in the public

interest, serving the general welfare of the state; and (3) that such personnel, equipment, and facilities are already in the emergency area.

CHAPTER 362

An act to amend Section 8690.6 of the Government Code, relating to disaster assistance, and making an appropriation therefor.

[Approved by Governor September 27, 2008. Filed with Secretary of State September 27, 2008.]

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 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 shall be authorized only for needs that are a direct consequence of the proclaimed emergency if 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) Notwithstanding any other provision of law, no funds in the Disaster Response-Emergency Operations Account shall be expended for conditions in the state's prisons, medical facilities, or youth correctional facilities resulting solely from the action or inaction of the Department of Corrections and Rehabilitation in administering those facilities.

(i) This section shall remain in effect only until January 1, 2014, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2014, deletes or extends that date.

CHAPTER 363

An act to add Sections 8588.2 and 8657.5 to the Government Code, and to amend Section 1799.100 of the Health and Safety Code, relating to the Office of Emergency Services.

[Approved by Governor September 27, 2008. Filed with Secretary of State September 27, 2008.]

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

SECTION 1. Section 8588.2 is added to the Government Code, to read:

8588.2. (a) The Office of Emergency Services may establish a statewide registry of private businesses and nonprofit organizations that are interested in donating services, goods, labor, equipment, resources, or dispensaries or other facilities to further the purposes of Section 8588.1.

(b) If the Office of Emergency Services establishes a statewide registry pursuant to subdivision (a), the office shall create and implement protocols and procedures for inclusion onto the statewide registry that do, but are not limited to, all of the following:

(1) Establish eligibility requirements for a private business or nonprofit organization to be included on the statewide registry.

(2) Require the services, goods, labor, equipment, resources, or dispensaries or other facilities donated by a private business or nonprofit organization included on the statewide registry to be provided at no cost to state governmental entities or the victims of emergencies and disasters.

(3) Require the services, goods, labor, equipment, resources, or dispensaries or other facilities donated by a private business or nonprofit organization included on the statewide registry to be safely collected, maintained, and managed.

(4) Require that federal, state, and local governmental entities and nonprofit organizations that are engaged in assisting communities prepare for, respond to, or recover from emergencies and disasters have access to the statewide registry.

(c) A private business or nonprofit organization included on the statewide registry shall reasonably determine all of the following:

(1) Donated services, goods, labor, equipment, resources, or dispensaries or other facilities comply with all applicable federal and state safety laws and licensing requirements.

(2) Donated services, goods, labor, equipment, resources, or dispensaries or other facilities have not been altered, misbranded, or stored under conditions contrary to the standards set forth under federal or state laws or by the product manufacturer.

(3) Donated medicine shall be unopened, in tamper-resistant packaging or modified unit dose containers that meet United States Pharmacopeia standards, and show lot numbers and expiration dates. Medicine that does not meet these standards shall not be donated.

SEC. 2. Section 8657.5 is added to the Government Code, to read:

8657.5. (a) (1) A private business included on the statewide registry pursuant to Section 8588.2 that voluntarily and without expectation and

receipt of compensation donates services, goods, labor, equipment, resources, or dispensaries or other facilities, in compliance with Section 8588.2, during a declared state of war, state of emergency, or state of local emergency shall not be civilly liable for a death, injury, illness, or other damage to a person or property caused by the private business's donation of services, goods, labor, equipment, resources, or dispensaries or other facilities.

(2) A private business included on the statewide registry that voluntarily and without expectation and receipt of compensation donates services, goods, labor, equipment, resources, or dispensaries or other facilities, in compliance with Section 8588.2, during an emergency medical services training program conducted by the Office of Emergency Services and a city, a county, or a city and county shall not be civilly liable for damages alleged to have resulted from those training programs, as described in Section 1799.100 of the Health and Safety Code.

(b) (1) A nonprofit organization included on the statewide registry pursuant to Section 8588.2 that voluntarily and without expectation and receipt of compensation from victims of emergencies and disasters donates services, goods, labor, equipment, resources, or dispensaries or other facilities, in compliance with Section 8588.2, during a declared state of war, state of emergency, or state of local emergency shall not be civilly liable for a death, injury, illness, or other damage to a person or property caused by the nonprofit organization's donation of services, goods, labor, equipment, resources, or dispensaries or other facilities.

(2) A nonprofit organization included on the statewide registry that voluntarily and without expectation and receipt of compensation donates services, goods, labor, equipment, resources, or dispensaries or other facilities, in compliance with Section 8588.2, during an emergency medical services training program conducted by the Office of Emergency Services and a city, a county, or a city and county, shall not be civilly liable for damages alleged to have resulted from those training programs, as described in Section 1799.100 of the Health and Safety Code.

(c) A private business or nonprofit organization that discriminates against a victim of an emergency or disaster based on a protected classification under federal or state law shall not be entitled to the protections in subdivision (a) or (b).

(d) This section shall not relieve a private business or nonprofit organization from liability caused by its grossly negligent act or omission, or willful or wanton misconduct.

SEC. 3. Section 1799.100 of the Health and Safety Code is amended to read:

1799.100. In order to encourage local agencies and other organizations to train people in emergency medical services, no local

agency, entity of state or local government, private business or nonprofit organization included on the statewide registry that voluntarily and without expectation and receipt of compensation donates services, goods, labor, equipment, resources, or dispensaries or other facilities, in compliance with Section 8588.2 of the Government Code, or other public or private organization which sponsors, authorizes, supports, finances, or supervises the training of people, or certifies those people, excluding physicians and surgeons, registered nurses, and licensed vocational nurses, as defined, in emergency medical services, shall be liable for any civil damages alleged to result from those training programs.

SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

CHAPTER 364

An act to amend Section 8589.13 of the Government Code, relating to emergency services.

[Approved by Governor September 27, 2008. Filed with Secretary of State September 27, 2008.]

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

SECTION 1. Section 8589.13 of the Government Code is amended to read:

8589.13. (a) The office shall give first priority for the sale of new or used firefighting apparatus and equipment to a local agency that serves a rural area, and is authorized to contract with a local agency that serves a rural area for this purpose. The office shall give second priority for the sale of new or used firefighting apparatus and equipment to any local agency. If after reasonable efforts by the office to sell new or used firefighting apparatus and equipment to any local agency, and not less than 90 days after providing notice to these local agencies, the office may sell any remaining firefighting apparatus and equipment to public agencies outside of California, the federal government, and Indian tribes, subject to any applicable federal requirements.

(b) If a contract for the sale of new or used firefighting apparatus and equipment under subdivision (a) provides for the local agency to pay the sale price in more than one installment, the local agency shall pay interest at a rate specified in the contract, which shall not exceed 1 percent less than the rate earned by the Pooled Money Investment Board, and the term of a contract shall not exceed five years.

(c) If a contract for the sale of new or used firefighting apparatus and equipment under subdivision (a) provides for a local agency to obtain a loan from another source, the office may insure the other loan.

CHAPTER 365

An act to amend Sections 4527 and 4716 of the Public Resources Code, relating to public resources.

[Approved by Governor September 27, 2008. Filed with Secretary of State September 27, 2008.]

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

SECTION 1. Section 4527 of the Public Resources Code is amended to read:

4527. (a) (1) "Timber operations" means the cutting or removal, or both, of timber or other solid wood forest products, including Christmas trees, from timberlands for commercial purposes, together with all the incidental work, including, but not limited to, construction and maintenance of roads, fuelbreaks, firebreaks, stream crossings, landings, skid trails, and beds for the falling of trees, fire hazard abatement, and site preparation that involves disturbance of soil or burning of vegetation following timber harvesting activities conducted after January 1, 1988, but excluding preparatory work such as treemarking, surveying, or roadflagging.

(2) "Commercial purposes" includes (A) the cutting or removal of trees that are processed into logs, lumber, or other wood products and offered for sale, barter, exchange, or trade, or (B) the cutting or removal of trees or other forest products during the conversion of timberlands to land uses other than the growing of timber that are subject to Section 4621, including, but not limited to, residential or commercial developments, production of other agricultural crops, recreational developments, ski developments, water development projects, and transportation projects.

(b) For purposes of this section, the removal of trees less than 16 inches in diameter at breast height from a firebreak or fuelbreak does not constitute "timber operations" if the removal meets all of the following criteria:

(1) It is located within 500 feet of the boundary of an urban wild land interface community at high risk of wildfire, as defined on pages 752, et seq. of Number 3 of Volume 66 (January 4, 2001) of the Federal Register, as that definition may be amended from time to time. For purposes of this paragraph, "urban wildland interface community at high risk of wildfire" means an area having one or more structures for every five acres.

(2) It is part of a community wildfire protection plan approved by the department or part of a department fire plan.

(3) The trees to be removed will not be processed into logs or lumber.

(4) The work to be conducted is under a firebreak or fuelbreak project that has been subject to a project-based review pursuant to a negative declaration, mitigated negative declaration, or environmental impact report in compliance with the California Environmental Quality Act (Division 13 (commencing with Section 21000)). For projects to be conducted on forested landscapes, as defined in Section 754, the project and the project-based review shall be prepared by or in consultation with a registered professional forester.

(5) The removal of surface and ladder fuels is consistent with paragraph (9) of subdivision (k) of Section 4584.

SEC. 2. Section 4716 of the Public Resources Code is amended to read:

4716. (a) Whenever the director determines that there exists an area that is infested or infected with insect pests or plant diseases injurious to timber or forest growth and that the infestation or infection is of such a character as to be a menace to the timber or timberlands of adjacent owners, the director, with the approval of the board, may declare the existence of a zone of infestation or infection, and describe and fix its boundaries.

(b) If the director declares the existence of a zone of infestation or infection pursuant to subdivision (a), the department or its agents may go upon state and private lands within the zone of infestation or infection and shall cause the infestation or infection to be eradicated or controlled in a manner that is approved by the board.

(c) (1) Within a zone of infestation or infection, the department may remove live vegetation directly adjacent to dead or dying vegetation that is substantially at risk of infestation or infection.

(2) The department may also remove soil that harbors or could reasonably harbor insects or pathogens injurious to timber or forest

growth, and that have the potential to facilitate the spread of insects or pathogens to live trees or could substantially increase the risk of subsequent infestations or infections.

CHAPTER 366

An act to amend Sections 51175, 51177, 51178, 51182, 51183, and 51189 of the Government Code, and to amend Sections 4202 and 4291 of the Public Resources Code, relating to public resources.

[Approved by Governor September 27, 2008. Filed with Secretary of State September 27, 2008.]

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

SECTION 1. Section 51175 of the Government Code is amended to read:

51175. The Legislature hereby finds and declares as follows:

(a) Wildfires are extremely costly, not only to property owners and residents, but also to local agencies. Wildfires pose a serious threat to the preservation of the public peace, health, or safety. The wildfire front is not the only source of risk since embers, or firebrands, travel far beyond the area impacted by the front and pose a risk of ignition to a structure or fuel on a site for a longer time. Since fires ignore civil boundaries, it is necessary that cities, counties, special districts, state agencies, and federal agencies work together to bring raging fires under control. Preventive measures are therefore needed to ensure the preservation of the public peace, health, or safety.

(b) The prevention of wildland fires is not a municipal affair, as that term is used in Section 5 of Article XI of the California Constitution, but is instead, a matter of statewide concern. It is the intent of the Legislature that this chapter apply to all local agencies, including, but not limited to, charter cities, charter counties, and charter cities and counties. This subdivision shall not limit the authority of a local agency to impose more restrictive fire and public safety requirements, as otherwise authorized by law.

(c) It is not the intent of the Legislature in enacting this chapter to limit or restrict the authority of a local agency to impose more restrictive fire and public safety requirements, as otherwise authorized by law.

SEC. 2. Section 51177 of the Government Code is amended to read:

51177. As used in this chapter:

(a) "Defensible space" means the area adjacent to a structure or dwelling where wildfire prevention or protection practices are implemented to provide defense from an approaching wildfire or to minimize the spread of a structure fire to wildlands or surrounding areas.

(b) "Director" means the Director of Forestry and Fire Protection.

(c) "Fuel" means any combustible material, especially petroleum-based products and wildland fuels.

(d) "Fuel management" means the act or practice of controlling flammability and reducing resistance to control of fuels through mechanical, chemical, biological, or manual means or by fire, in support of land management objectives.

(e) "Local agency" means a city, county, city and county, or district responsible for fire protection within a very high fire hazard severity zone.

(f) "Single specimen tree" means any live tree that stands alone in the landscape so as to be clear of buildings, structures, combustible vegetation, or other trees, and that does not form a means of rapidly transmitting fire from the vegetation to an occupied dwelling or structure or from an occupied dwelling or structure to vegetation.

(g) "State responsibility areas" means those areas identified pursuant to Section 4102 of the Public Resources Code.

(h) "Vegetation" means all plants, including trees, shrubs, grass, and perennial or annual plants.

(i) "Very high fire hazard severity zone" means an area designated by the director pursuant to Section 51178 that is not a state responsibility area.

(j) "Wildfire" means an unplanned, unwanted wildland fire, including unauthorized human-caused fires, escaped wildland fire use events, escaped prescribed fire projects, and all other wildland fires where the objective is to extinguish the fire.

SEC. 3. Section 51178 of the Government Code is amended to read:

51178. The director shall identify areas in the state as very high fire hazard severity zones based on consistent statewide criteria and based on the severity of fire hazard that is expected to prevail in those areas. Very high fire hazard severity zones shall be based on fuel loading, slope, fire weather, and other relevant factors including areas where Santa Ana, Mono, and Diablo winds have been identified by the Department of Forestry and Fire Protection as a major cause of wildfire spread.

SEC. 4. Section 51182 of the Government Code is amended to read:

51182. (a) A person who owns, leases, controls, operates, or maintains an occupied dwelling or occupied structure in, upon, or adjoining any mountainous area, forest-covered land, brush-covered

land, grass-covered land, or any land that is covered with flammable material, which area or land is within a very high fire hazard severity zone designated by the local agency pursuant to Section 51179, shall at all times do all of the following:

(1) Maintain defensible space no greater than 100 feet from each side of the structure, but not beyond the property line unless allowed by state law, local ordinance, or regulation and as provided in paragraph (2). The amount of fuel modification necessary shall take into account the flammability of the structure as affected by building material, building standards, location, and type of vegetation. Fuels shall be maintained in a condition so that a wildfire burning under average weather conditions would be unlikely to ignite the structure. This paragraph does not apply to single specimens of trees or other vegetation that are well-pruned and maintained so as to effectively manage fuels and not form a means of rapidly transmitting fire from other nearby vegetation to a structure or from a structure to other nearby vegetation. The intensity of fuels management may vary within the 100-foot perimeter of the structure, the most intense being within the first 30 feet around the structure. Consistent with fuels management objectives, steps should be taken to minimize erosion.

(2) A greater distance than that required under paragraph (1) may be required by state law, local ordinance, rule, or regulation. Clearance beyond the property line may only be required if the state law, local ordinance, rule, or regulation includes findings that such a clearing is necessary to significantly reduce the risk of transmission of flame or heat sufficient to ignite the structure, and there is no other feasible mitigation measure possible to reduce the risk of ignition or spread of wildfire to the structure. Clearance on adjacent property shall only be conducted following written consent by the adjacent landowner.

(3) An insurance company that insures an occupied dwelling or occupied structure may require a greater distance than that required under paragraph (1) if a fire expert, designated by the fire chief or fire official from the authority having jurisdiction, provides findings that such a clearing is necessary to significantly reduce the risk of transmission of flame or heat sufficient to ignite the structure, and there is no other feasible mitigation measure possible to reduce the risk of ignition or spread of wildfire to the structure. The greater distance may not be beyond the property line unless allowed by state law, local ordinance, rule, or regulation.

(4) Remove that portion of any tree that extends within 10 feet of the outlet of any chimney or stovepipe.

(5) Maintain any tree, shrub, or other plant adjacent to or overhanging any building free of dead or dying wood.

(6) Maintain the roof of any structure free of leaves, needles, or other vegetative materials.

(7) Prior to constructing a new dwelling or structure that will be occupied or rebuilding an occupied dwelling or occupied structure damaged by a fire in that zone, the construction or rebuilding of which requires a building permit, the owner shall obtain a certification from the local building official that the dwelling or structure, as proposed to be built, complies with all applicable state and local building standards, including those described in subdivision (b) of Section 51189, and shall provide a copy of the certification, upon request, to the insurer providing course of construction insurance coverage for the building or structure. Upon completion of the construction or rebuilding, the owner shall obtain from the local building official, a copy of the final inspection report that demonstrates that the dwelling or structure was constructed in compliance with all applicable state and local building standards, including those described in subdivision (b) of Section 51189, and shall provide a copy of the report, upon request, to the property insurance carrier that insures the dwelling or structure.

(b) A person is not required under this section to manage fuels on land if that person does not have the legal right to manage fuels, nor is a person required to enter upon or to alter property that is owned by any other person without the consent of the owner of the property.

(c) The Department of Forestry and Fire Protection shall develop, periodically update, and post on its Internet Web site a guidance document on fuels management pursuant to this chapter. Guidance shall include, but not be limited to, regionally appropriate vegetation management suggestions that preserve and restore native species, minimize erosion, minimize water consumption, and permit trees near homes for shade, aesthetics, and habitat; and suggestions to minimize or eliminate the risk of flammability of nonvegetative sources of combustion such as woodpiles, propane tanks, wood decks, and outdoor lawn furniture.

SEC. 5. Section 51183 of the Government Code is amended to read:

51183. (a) The local agency may exempt from the standards set forth in Section 51182 structures with exteriors constructed entirely of nonflammable materials, or conditioned upon the contents and composition of the structure, and may vary the requirements respecting the management of fuels surrounding the structures in those cases. This subdivision does not authorize a local agency to vary a requirement that is a building standard subject to Section 18930 of the Health and Safety Code, except as otherwise authorized by law.

(b) An exemption or variance under subdivision (a) shall not apply unless and until the occupant of the structure, or if there is no occupant,

then the owner of the structure, files with the local agency a written consent to the inspection of the interior and contents of the structure to ascertain whether Section 51182 is complied with at all times.

SEC. 6. Section 51189 of the Government Code is amended to read:

51189. (a) The Legislature finds and declares that site and structure defensibility is essential to reduce the risk of structure ignition as well as for effective fire suppression by firefighters. This need to establish defensibility extends beyond the site fuel management practices required by this chapter, and includes, but is not limited to, measures that increase the likelihood of a structure to withstand ignition, such as building design and construction requirements that use fire resistant building materials, and provide standards for reducing fire risks on structure projections, including, but not limited to, porches, decks, balconies and eaves, and structure openings, including, but not limited to, attic, foundation, and eave vents, doors, and windows.

(b) No later than January 1, 2005, the State Fire Marshal, in consultation with the Director of Forestry and Fire Protection and the Director of Housing and Community Development, shall, pursuant to Section 18930 of the Health and Safety Code, recommend building standards that provide for comprehensive site and structure fire risk reduction to protect structures from fires spreading from adjacent structures or vegetation and to protect vegetation from fires spreading from adjacent structures.

SEC. 7. Section 4202 of the Public Resources Code is amended to read:

4202. The director shall classify lands within state responsibility areas into fire hazard severity zones. Each zone shall embrace relatively homogeneous lands and shall be based on fuel loading, slope, fire weather, and other relevant factors present, including areas where winds have been identified by the department as a major cause of wildfire spread.

SEC. 8. Section 4291 of the Public Resources Code is amended to read:

4291. (a) A person who owns, leases, controls, operates, or maintains a building or structure in, upon, or adjoining a mountainous area, forest-covered lands, brush-covered lands, grass-covered lands, or land that is covered with flammable material, shall at all times do all of the following:

(1) Maintain defensible space no greater than 100 feet from each side of the structure, but not beyond the property line unless allowed by state law, local ordinance, or regulation and as provided in paragraph (2). The amount of fuel modification necessary shall take into account the flammability of the structure as affected by building material, building

standards, location, and type of vegetation. Fuels shall be maintained in a condition so that a wildfire burning under average weather conditions would be unlikely to ignite the structure. This paragraph does not apply to single specimens of trees or other vegetation that are well-pruned and maintained so as to effectively manage fuels and not form a means of rapidly transmitting fire from other nearby vegetation to a structure or from a structure to other nearby vegetation. The intensity of fuels management may vary within the 100-foot perimeter of the structure, the most intense being within the first 30 feet around the structure. Consistent with fuels management objectives, steps should be taken to minimize erosion.

(2) A greater distance than that required under paragraph (1) may be required by state law, local ordinance, rule, or regulation. Clearance beyond the property line may only be required if the state law, local ordinance, rule, or regulation includes findings that such a clearing is necessary to significantly reduce the risk of transmission of flame or heat sufficient to ignite the structure, and there is no other feasible mitigation measure possible to reduce the risk of ignition or spread of wildfire to the structure. Clearance on adjacent property shall only be conducted following written consent by the adjacent landowner.

(3) An insurance company that insures an occupied dwelling or occupied structure may require a greater distance than that required under paragraph (1) if a fire expert, designated by the director, provides findings that such a clearing is necessary to significantly reduce the risk of transmission of flame or heat sufficient to ignite the structure, and there is no other feasible mitigation measure possible to reduce the risk of ignition or spread of wildfire to the structure. The greater distance may not be beyond the property line unless allowed by state law, local ordinance, rule, or regulation.

(4) Remove that portion of any tree that extends within 10 feet of the outlet of a chimney or stovepipe.

(5) Maintain any tree, shrub, or other plant adjacent to or overhanging a building free of dead or dying wood.

(6) Maintain the roof of a structure free of leaves, needles, or other vegetative materials.

(7) (a) Prior to constructing a new building or structure or rebuilding a building or structure damaged by a fire in an area subject to this section, the construction or rebuilding of which requires a building permit, the owner shall obtain a certification from the local building official that the dwelling or structure, as proposed to be built, complies with all applicable state and local building standards, including those described in subdivision (b) of Section 51189 of the Government Code, and shall provide a copy of the certification, upon request, to the insurer providing

course of construction insurance coverage for the building or structure. Upon completion of the construction or rebuilding, the owner shall obtain from the local building official, a copy of the final inspection report that demonstrates that the dwelling or structure was constructed in compliance with all applicable state and local building standards, including those described in subdivision (b) of Section 51189 of the Government Code, and shall provide a copy of the report, upon request, to the property insurance carrier that insures the dwelling or structure.

(b) A person is not required under this section to manage fuels on land if that person does not have the legal right to manage fuels, nor is a person required to enter upon or to alter property that is owned by any other person without the consent of the owner of the property.

(c) (1) Except as provided in Section 18930 of the Health and Safety Code, the director may adopt regulations exempting a structure with an exterior constructed entirely of nonflammable materials, or, conditioned upon the contents and composition of the structure, the director may vary the requirements respecting the removing or clearing away of flammable vegetation or other combustible growth with respect to the area surrounding those structures.

(2) An exemption or variance under paragraph (1) shall not apply unless and until the occupant of the structure, or if there is not an occupant, the owner of the structure, files with the department, in a form as the director shall prescribe, a written consent to the inspection of the interior and contents of the structure to ascertain whether this section and the regulations adopted under this section are complied with at all times.

(d) The director may authorize the removal of vegetation that is not consistent with the standards of this section. The director may prescribe a procedure for the removal of that vegetation and make the expense a lien upon the building, structure, or grounds, in the same manner that is applicable to a legislative body under Section 51186 of the Government Code.

(e) The Department of Forestry and Fire Protection shall develop, periodically update, and post on its Internet Web site a guidance document on fuels management pursuant to this chapter. Guidance shall include, but not be limited to, regionally appropriate vegetation management suggestions that preserve and restore native species, minimize erosion, minimize water consumption, and permit trees near homes for shade, aesthetics, and habitat; and suggestions to minimize or eliminate the risk of flammability of nonvegetative sources of combustion such as woodpiles, propane tanks, wood decks, and outdoor lawn furniture.

(f) As used in this section, "person" means a private individual, organization, partnership, limited liability company, or corporation.

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 367

An act to amend Section 13143 of the Health and Safety Code, relating to the State Fire Marshal.

[Approved by Governor September 27, 2008. Filed with Secretary of State September 27, 2008.]

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

SECTION 1. Section 13143 of the Health and Safety Code is amended to read:

13143. (a) Except as provided in Section 18930, the State Fire Marshal, with the advice of the State Board of Fire Services, shall prepare, adopt, and submit building standards for approval pursuant to Chapter 4 (commencing with Section 18935) of Part 2.5 of Division 13 and shall prepare and adopt other regulations establishing minimum requirements for the prevention of fire, and for the protection of life and property against fire and panic, in any building or structure used or intended for use as an asylum, jail, mental hospital, hospital, home for the elderly, children's nursery, children's home or institution not otherwise excluded from the coverage of this subdivision, school, or any similar occupancy of any capacity, and in any assembly occupancy where 50 or more persons may gather together in a building, room, or structure for the purpose of amusement, entertainment, instruction, deliberation, worship, drinking or dining, awaiting transportation, or education, and for any laboratory or research and development facility that stores, handles, or uses regulated hazardous materials. The State Fire Marshal shall adopt and submit building standards for approval pursuant to Chapter 4 (commencing with Section 18935) of Part 2.5 of Division 13 for the purposes described in this section. Regulations adopted pursuant

to this subdivision and building standards relating to fire and panic safety published in the California Building Standards Code shall establish minimum requirements relating to the means of egress and the adequacy of exits from, the installation and maintenance of fire extinguishing and fire alarm systems in, the storage and handling of combustible or explosive materials or substances, and the installation and maintenance of appliances, equipment, decorations, security bars, grills, grates, and furnishings that present a fire, explosion, or panic hazard, and the minimum requirements shall be predicated on the height and fire-resistive qualities of the building or structure and the type of occupancy for which it is to be used. The building standards and other regulations shall apply to auxiliary or accessory buildings used or intended for use with any of the occupancies mentioned in this subdivision. Violation of any building standard or other regulation shall be a violation of this chapter.

In preparing and adopting building standards for approval pursuant to Chapter 4 (commencing with Section 18935) of Part 2.5 of Division 13, and in preparing and adopting other regulations affecting public schools, the State Fire Marshal shall also secure the advice of the State Department of Education. No regulation adopted by the State Fire Marshal shall conflict with any rule, regulation, or building standard lawfully adopted or enforced by the Department of General Services pursuant to Article 3 (commencing with Section 39140) of Chapter 2 of Part 23 or Article 7 (commencing with Section 81130) of Chapter 1 of Part 49 of the Education Code.

In addition to any other requirements for location of exit signs or devices in any building or structure used or intended for use as an asylum, jail, mental hospital, hospital, home for the elderly, children's nursery, children's home or institution not otherwise excluded from the coverage of this subdivision, school, or any similar occupancy of any capacity, and in any assembly occupancy where 50 or more persons may gather together in a building, room, or structure for the purpose of amusement, entertainment, instruction, deliberation, worship, drinking or dining, awaiting transportation, or education, the State Fire Marshal shall adopt building standards pursuant to this section establishing minimum requirements for the placement of distinctive devices, signs, or other means that identify exits and can be felt or seen near the floor. Exit sign technologies permitted by the model building code upon which the California Building Standards Code is based, shall be permitted. These building standards shall be adopted before July 1, 1998, and shall apply to all newly constructed buildings or structures subject to this subdivision for which a building permit is issued, or construction commenced, if no building permit is issued, on or after January 1, 1989.

(b) Notwithstanding subdivision (a) and Section 13143.6, facilities licensed pursuant to Chapter 3 (commencing with Section 1500) of Division 2 which provide nonmedical board, room, and care for six or fewer ambulatory children placed with the licensee for care or foster family homes and family day care homes for children, licensed pursuant to Chapter 3.6 (commencing with Section 1597.50) of Division 2, with a capacity of six or fewer and providing care and supervision for ambulatory children or children two years of age or younger, or both, shall not be subject to Article 1 (commencing with Section 13100) or Article 2 (commencing with Section 13140) of this chapter or regulations adopted pursuant thereto. No city, county, or public district shall adopt or enforce any requirement for the prevention of fire, or for the protection of life and property against fire and panic, with respect to structures used as facilities specified in this subdivision, unless the requirement would be applicable to a structure regardless of the special occupancy. Nothing in this subdivision shall restrict the application of state or local housing standards to those facilities, if the standards are applicable to residential occupancies and are not based upon the use of the structure as a facility specified in this subdivision.

"Ambulatory children," as used in this subdivision, does not include nonambulatory persons, as defined in Section 13131, and relatives of the licensee or the licensee's spouse.

(c) The State Fire Marshal shall adopt building standards establishing regulations providing that all school classrooms constructed after January 1, 1990, not equipped with automatic sprinkler systems, which have metal grills or bars on all their windows and do not have at least two exit doors within three feet of each end of the classroom opening to the exterior of the building or to a common hallway used for evacuation purposes, shall have an inside release for the grills or bars on at least one window farthest from the exit doors. The window or windows with the inside release shall be clearly marked as an emergency exit, in accordance with regulations adopted by the State Fire Marshal.

CHAPTER 368

An act to amend Sections 15250.6 and 34520 of the Vehicle Code, relating to vehicles.

[Approved by Governor September 27, 2008. Filed with Secretary of State September 27, 2008.]

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

SECTION 1. Section 15250.6 of the Vehicle Code is amended to read:

15250.6. (a) A person shall not operate firefighting equipment unless that person has in his or her immediate possession a valid driver's license for the appropriate class of vehicle operated, or a license issued pursuant to subdivision (b).

(b) The department may issue a restricted driver's license for the appropriate class of vehicle to a firefighter for the operation of firefighting equipment. The restricted license shall be valid only for operating (1) firefighting equipment within this state, or in another state during a response under a mutual aid pact, or (2) any vehicle for which a class C driver's license is required.

(c) The restricted firefighter's license may be issued only to an applicant qualified by examination prescribed and conducted by the department.

The pretrip inspection and driving test required to receive the license shall be the same as required to obtain a license under Section 15250.

The written examination shall be developed by the department with the cooperation of the State Fire Marshal. The department shall include a sufficient number of questions from the examinations required to obtain a license under Section 15250 to ensure that passing the special examination under this section ensures a level of safety comparable to examinations given under Section 15250.

(d) In lieu of a report of medical examination required by Section 12804.9, an applicant for a restricted license issued pursuant to subdivision (b) shall, upon application and every two years thereafter, submit medical information on a form approved by the department.

(e) Upon application for issuance of an original driver's license pursuant to subdivision (b), or for a renewal of a driver's license issued pursuant to subdivision (b), there shall be paid to the department a fee of thirty-four dollars ($34) for a license that will expire on the fifth birthday of the applicant following the date of the application.

(f) A "firefighter" is a person employed as a firefighter by a federal or state agency or by a regularly organized fire department of a city, county, city and county, or district, or registered as a volunteer member of a regularly organized fire department having official recognition of the city, county, city and county, or district in which the department is located.

(g) "Firefighting equipment" means a motor vehicle used to travel to and from the scene of any emergency situation, or to transport equipment used in the control of any emergency situation, and which is owned,

leased, or rented by, or under the exclusive control of, a federal or state agency, a regularly organized fire department of a city, county, city and county, or district, or a volunteer fire department having official recognition of the city, county, city and county, or district in which the department is located.

(h) For purposes of the penalties and sanctions prescribed by Article 7 (commencing with Section 15300), the operation of firefighting equipment under a license issued pursuant to subdivision (b) is deemed to be the operation of a commercial motor vehicle.

SEC. 2. Section 34520 of the Vehicle Code is amended to read:

34520. (a) Motor carriers and drivers shall comply with the controlled substances and alcohol use, transportation, and testing requirements of the United States Secretary of Transportation as set forth in Part 382 (commencing with Section 382.101) of, and Sections 392.5(a)(1) and 392.5(a)(3) of, Title 49 of the Code of Federal Regulations.

(b) (1) A motor carrier shall make available for inspection, upon the request of an authorized employee of the department, copies of all results and other records pertaining to controlled substances and alcohol use and testing conducted pursuant to federal law, as specified in subdivision (a), including those records contained in individual driver qualification files.

(2) For the purposes of complying with the return-to-duty alcohol or controlled substances test requirements, or both, of Section 382.309 of Title 49 of the Code of Federal Regulations and the followup alcohol or controlled substances test requirements, or both, of Section 382.311 of that title, the department may use those test results to monitor drivers who are motor carriers.

(3) Evidence derived from a positive test result in the possession of a motor carrier shall not be admissible in a criminal prosecution concerning unlawful possession, sale, or distribution of controlled substances.

(c) A drug or alcohol testing consortium, as defined in Section 382.107 of Title 49 of the Code of Federal Regulations, shall mail a copy of all drug and alcohol positive test result summaries to the department within three days of the test. This requirement applies only to drug and alcohol positive tests of those drivers employed by motor carriers who operate terminals within this state.

(d) A transit agency receiving federal financial assistance under Section 3, 9, or 18 of the Federal Transit Act, or under Section 103(e)(4) of Title 23 of the United States Code, shall comply with the controlled substances and alcohol use and testing requirements of the United States Secretary of Transportation as set forth in Part 655 (commencing with Section 655.1) of Title 49 of the Code of Federal Regulations.

(e) The owner-operator shall notify all other motor carriers with whom he or she is under contract when the owner-operator has met the requirements of subdivision (c) of Section 15242. Notwithstanding subdivision (i), a violation of this subdivision is an infraction.

(f) Except as provided in Section 382.301 of Title 49 of the Code of Federal Regulations, an applicant for employment as a commercial driver or an owner-operator seeking to provide transportation services and meeting the requirements of subdivision (b) of Section 34624, may not be placed on duty by a motor carrier until a preemployment test for controlled substances and alcohol use meeting the requirements of the federal regulations referenced in subdivision (a) have been completed and a negative test result has been reported.

(g) An applicant for employment as a commercial driver or an owner-operator, seeking to provide transportation services and meeting the requirements of subdivision (b) of Section 34624, may not be placed on duty by a motor carrier until the motor carrier has completed a full investigation of the driver's employment history meeting the requirements of the federal regulations cited under subdivision (a). Every motor carrier, whether making or receiving inquiries concerning a driver's history, shall document all activities it has taken to comply with this subdivision.

(h) A motor carrier that utilizes a preemployment screening service to review applications is in compliance with the employer duties under subdivisions (e) and (f) if the preemployment screening services that are provided satisfy the requirements of state and federal law and the motor carrier abides by any findings that would, under federal law, disqualify an applicant from operating a commercial vehicle.

(i) It is a misdemeanor punishable by imprisonment in the county jail for six months and a fine not to exceed five thousand dollars ($5,000), or by both the imprisonment and fine, for a person to willfully violate this section. As used in this subdivision, "willfully" has the same meaning as defined in Section 7 of the Penal Code.

(j) This section does not apply to a peace officer, as defined in Section 830.1 or 830.2 of the Penal Code, who is authorized to drive vehicles described in Section 34500, or to a firefighter, as defined in subdivision (f) of Section 15250.6, who is authorized to operate firefighting equipment as defined in subdivision (g) of Section 15250.6, if that peace officer or firefighter is participating in a substance abuse detection program within the scope of his or her employment.

CHAPTER 369

An act to add Section 22010 to the Education Code, to amend Section 7504 of, to add Section 31455.5 to, and to add Article 3 (commencing with Section 20085) to Chapter 1 of Part 3 of Division 5 of Title 2 of, the Government Code, to amend Section 1877.1 of, and to add Section 1877.35 to, the Insurance Code, and to amend Section 1095 of the Unemployment Insurance Code, relating to public employee benefits.

[Approved by Governor September 27, 2008. Filed with Secretary of State September 27, 2008.]

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

SECTION 1. The Legislature finds and declares the following:

(a) The Public Employee Post-Employment Benefits Commission was jointly formed by the Governor and the Legislature to determine how best to fund postemployment benefits for the employees and retirees of California's state and local governments.

(b) The Public Employee Post-Employment Benefits Commission concluded that the best way to ensure that these benefits are delivered as promised is to prefund them.

(c) The Public Employee Post-Employment Benefits Commission further concluded that in order to gain and maintain public support for these benefits, the benefits should be adopted in well-noticed public hearings, with their costs clearly and publicly reported annually, and any fraud or abuse addressed directly.

SEC. 2. Section 22010 is added to the Education Code, to read:

22010. (a) It is unlawful for a person to do any of the following:

(1) Make, or cause to be made, any knowingly false material statement or material representation, to knowingly fail to disclose a material fact, or to otherwise provide false information with the intent to use it, or allow it to be used, to obtain, receive, continue, increase, deny, or reduce any benefit administered by this system.

(2) Present, or cause to be presented, any knowingly false material statement or material representation for the purpose of supporting or opposing an application for any benefit administered by this system.

(3) Knowingly accept or obtain payment from this system with knowledge that the recipient is not entitled to the payment under the provisions of this part or Part 14 (commencing with Section 2600) and with the intent to retain the payment for personal use or benefit.

(4) Knowingly aid, abet, solicit, or conspire with any person to do an act prohibited by this section.

(b) For purposes of this section, "statement" includes, but is not limited to, any oral or written application for benefits, report of family relationship, report of injury or physical or mental limitation, hospital records, test results, physician reports, or other medical records, employment records, duty statements, reports of compensation, or any other evidence material to the determination of a person's initial or continued eligibility for a benefit or the amount of a benefit administered by this system.

(c) A person who violates any provision of this section is punishable by imprisonment in a county jail not to exceed one year, or by a fine of not more than five thousand dollars ($5,000), or by both that imprisonment and fine.

(d) A person violating any provision of this section may be required by the court in a criminal action to make restitution to this system, or to any other person determined by the court, for the amount of the benefit unlawfully obtained, unless the court finds that restitution, or a portion of it, is not in the interests of justice. Any restitution order imposed pursuant to this section shall be satisfied before any criminal fine imposed under this section may be collected.

(e) The provisions provided by this section are cumulative and shall not be construed as restricting the application of any other law.

SEC. 3. Section 7504 of the Government Code is amended to read:

7504. (a) All state and local public retirement systems shall, not less than triennially, secure the services of an enrolled actuary. An enrolled actuary, for the purposes of this section, means an actuary enrolled under subtitle C of Title III of the federal Employee Retirement Income Security Act of 1974 (Public Law 93-406) and who has demonstrated experience in public retirement systems. The actuary shall perform a valuation of the system utilizing actuarial assumptions and techniques established by the agency that are, in the aggregate, reasonably related to the experience and the actuary's best estimate of anticipated experience under the system. Any differences between the actuarial assumptions and techniques used by the actuary that differ significantly from those established by the agency shall be disclosed in the actuary's report and the effect of the differences on the actuary's statement of costs and obligations shall be shown.

(b) All state and local public retirement systems shall secure the services of a qualified person to perform an attest audit of the system's financial statements. A qualified person means any of the following:

(1) A person who is licensed to practice as a certified public accountant in this state by the California Board of Accountancy.

(2) A person who is registered and entitled to practice as a public accountant in this state by the California Board of Accountancy.

(3) A county auditor in any county subject to the County Employees Retirement Law of 1937 (Chapter 3 (commencing with Section 31450) of Part 3 of Division 4 of Title 3).

(4) A county auditor in any county having a pension trust and retirement plan established pursuant to Section 53216.

(c) All state and local public retirement systems shall submit audited financial statements to the State Controller at the earliest practicable opportunity within six months of the close of each fiscal year. However, the State Controller may delay the filing date for reports due in the first year until the time as report forms have been developed that, in his or her judgment, will satisfy the requirements of this section. The financial statements shall be prepared in accordance with generally accepted accounting principles in the form and manner prescribed by the State Controller. The penalty prescribed in Section 53895 shall be invoked for failure to comply with this section. Upon a satisfactory showing of good cause, the State Controller may waive the penalty for late filing provided by this subdivision.

(d) The State Controller shall compile and publish a report annually on the financial condition of all state and local public retirement systems containing, but not limited to, the data required in Section 7502. The report shall be published within 12 months of the receipt of the information, and in no case later than 18 months after the end of the fiscal year upon which the information in the report is based.

SEC. 4. Article 3 (commencing with Section 20085) is added to Chapter 1 of Part 3 of Division 5 of Title 2 of the Government Code, to read:

Article 3. Penalties

20085. (a) It is unlawful for a person to do any of the following:

(1) Make, or cause to be made, any knowingly false material statement or material representation, to knowingly fail to disclose a material fact, or to otherwise provide false information with the intent to use it, or allow it to be used, to obtain, receive, continue, increase, deny, or reduce any benefit administered by this system.

(2) Present, or cause to be presented, any knowingly false material statement or material representation for the purpose of supporting or opposing an application for any benefit administered by this system.

(3) Knowingly accept or obtain payment from this system with knowledge that the recipient is not entitled to the payment under the provisions of this part and with the intent to retain the payment for personal use or benefit.

(4) Knowingly aid, abet, solicit, or conspire with any person to do an act prohibited by this section.

(b) For purposes of this section, "statement" includes, but is not limited to, any oral or written application for benefits, report of family relationship, report of injury or physical or mental limitation, hospital records, test results, physician reports, or other medical records, employment records, duty statements, reports of compensation, or any other evidence material to the determination of a person's initial or continued eligibility for a benefit or the amount of a benefit administered by this system.

(c) A person who violates any provision of this section is punishable by imprisonment in a county jail not to exceed one year, or by a fine of not more than five thousand dollars ($5,000), or by both that imprisonment and fine.

(d) A person violating any provision of this section may be required by the court in a criminal action to make restitution to this system, or to any other person determined by the court, for the amount of the benefit unlawfully obtained, unless the court finds that restitution, or a portion of it, is not in the interests of justice. Any restitution order imposed pursuant to this section shall be satisfied before any criminal fine imposed under this section may be collected.

(e) The provisions provided by this section are cumulative and shall not be construed as restricting the application of any other law.

SEC. 5. Section 31455.5 is added to the Government Code, to read:

31455.5. (a) It is unlawful for a person to do any of the following:

(1) Make, or cause to be made, any knowingly false material statement or material representation, to knowingly fail to disclose a material fact, or to otherwise provide false information with the intent to use it, or allow it to be used, to obtain, receive, continue, increase, deny, or reduce any benefit accrued or accruing to a person under this chapter.

(2) Present, or cause to be presented, any knowingly false material statement or material representation for the purpose of supporting or opposing an application for any benefit accrued or accruing to a person under this chapter.

(3) Knowingly accept or obtain payment from a retirement system with knowledge that the recipient is not entitled to the payment under the provisions of this chapter and with the intent to retain the payment for personal use or benefit.

(4) Knowingly aid, abet, solicit, or conspire with any person to do an act prohibited by this section.

(b) For purposes of this section, "statement" includes, but is not limited to, any oral or written application for benefits, report of family relationship, report of injury or physical or mental limitation, hospital

records, test results, physician reports, or other medical records, employment records, duty statements, reports of compensation, or any other evidence material to the determination of a person's initial or continued eligibility for a benefit or the amount of a benefit accrued or accruing to a person under this chapter.

(c) A person who violates any provision of this section is punishable by imprisonment in a county jail not to exceed one year, or by a fine of not more than five thousand dollars ($5,000), or by both that imprisonment and fine.

(d) A person violating any provision of this section may be required by the court in a criminal action to make restitution to the retirement system, or to any other person determined by the court, for the amount of the benefit unlawfully obtained, unless the court finds that restitution, or a portion of it, is not in the interests of justice. Any restitution order imposed pursuant to this section shall be satisfied before any criminal fine imposed under this section may be collected.

(e) The provisions provided by this section are cumulative and shall not be construed as restricting the application of any other law.

SEC. 6. Section 1877.1 of the Insurance Code is amended to read:

1877.1. The following definitions govern the construction of this article, unless the context requires otherwise:

(a) "Authorized governmental agency" means the district attorney of any county, any city attorney whose duties include criminal prosecutions, any law enforcement agency investigating workers' compensation fraud, the office of the Attorney General, the Department of Insurance, the Department of Industrial Relations, the Employment Development Department, the Department of Corrections and Rehabilitation, the Public Employees' Retirement System, and any licensing agency governed by the Business and Professions Code.

(b) "Relevant" means having a tendency to make the existence of any fact that is of consequence to the investigation or determination of an issue more probable or less probable than it would be without the information.

(c) "Insurer" means an insurer admitted to transact workers' compensation insurance in this state, the State Compensation Insurance Fund, an employer that has secured a certificate of consent to self-insure pursuant to subdivision (b) or (c) of Section 3700 of the Labor Code, or a third-party administrator that has secured a certificate pursuant to Section 3702.1 of the Labor Code.

(d) "Licensed rating organization" means a rating organization licensed by the Insurance Commissioner pursuant to Section 11750.1.

(e) Information shall be deemed important if, within the sole discretion of the authorized governmental agency, that information is requested by that authorized governmental agency.

SEC. 7. Section 1877.35 is added to the Insurance Code, to read:

1877.35. (a) The Public Employees' Retirement System may request information from an insurer for any specific investigation of eligibility for, and unlawful application or receipt of, benefits provided under Part 3 (commencing with Section 20000) of Division 5 of Title 2 of the Government Code.

(b) Information received by the Public Employees' Retirement System pursuant to this article may be used for purposes of determining eligibility for, and unlawful application or receipt of, benefits provided under Part 3 (commencing with Section 20000) of Division 5 of Title 2 of the Government Code.

SEC. 8. Section 1095 of the Unemployment Insurance Code is amended to read:

1095. The director shall permit the use of any information in his or her possession to the extent necessary for any of the following purposes and may require reimbursement for all direct costs incurred in providing any and all information specified in this section, except information specified in subdivisions (a) to (e), inclusive:

(a) To enable the director or his or her representative to carry out his or her responsibilities under this code.

(b) To properly present a claim for benefits.

(c) To acquaint a worker or his or her authorized agent with his or her existing or prospective right to benefits.

(d) To furnish an employer or his or her authorized agent with information to enable him or her to fully discharge his or her obligations or safeguard his or her rights under this division or Division 3 (commencing with Section 9000).

(e) To enable an employer to receive a reduction in contribution rate.

(f) To enable federal, state, or local government departments or agencies, subject to federal law, to verify or determine the eligibility or entitlement of an applicant for, or a recipient of, public social services provided pursuant to Division 9 (commencing with Section 10000) of the Welfare and Institutions Code, or Part A of Title IV of the Social Security Act, where the verification or determination is directly connected with, and limited to, the administration of public social services.

(g) To enable county administrators of general relief or assistance, or their representatives, to determine entitlement to locally provided general relief or assistance, where the determination is directly connected with, and limited to, the administration of general relief or assistance.

(h) To enable state or local governmental departments or agencies to seek criminal, civil, or administrative remedies in connection with the unlawful application for, or receipt of, relief provided under Division 9 (commencing with Section 10000) of the Welfare and Institutions Code or to enable the collection of expenditures for medical assistance services pursuant to Part 5 (commencing with Section 17000) of Division 9 of the Welfare and Institutions Code.

(i) To provide any law enforcement agency with the name, address, telephone number, birth date, social security number, physical description, and names and addresses of present and past employers, of any victim, suspect, missing person, potential witness, or person for whom a felony arrest warrant has been issued, when a request for this information is made by any investigator or peace officer as defined by Sections 830.1 and 830.2 of the Penal Code, or by any federal law enforcement officer to whom the Attorney General has delegated authority to enforce federal search warrants, as defined under Sections 60.2 and 60.3 of Title 28 of the Code of Federal Regulations, as amended, and when the requesting officer has been designated by the head of the law enforcement agency and requests this information in the course of and as a part of an investigation into the commission of a crime when there is a reasonable suspicion that the crime is a felony and that the information would lead to relevant evidence. The information provided pursuant to this subdivision shall be provided to the extent permitted by federal law and regulations, and to the extent the information is available and accessible within the constraints and configurations of existing department records. Any person who receives any information under this subdivision shall make a written report of the information to the law enforcement agency that employs him or her, for filing under the normal procedures of that agency.

(1) This subdivision shall not be construed to authorize the release to any law enforcement agency of a general list identifying individuals applying for or receiving benefits.

(2) The department shall maintain records pursuant to this subdivision only for periods required under regulations or statutes enacted for the administration of its programs.

(3) This subdivision shall not be construed as limiting the information provided to law enforcement agencies to that pertaining only to applicants for, or recipients of, benefits.

(4) The department shall notify all applicants for benefits that release of confidential information from their records will not be protected should there be a felony arrest warrant issued against the applicant or in the event of an investigation by a law enforcement agency into the commission of a felony.

(j) To provide public employee retirement systems in California with information relating to the earnings of any person who has applied for or is receiving a disability income, disability allowance, or disability retirement allowance, from a public employee retirement system. The earnings information shall be released only upon written request from the governing board specifying that the person has applied for or is receiving a disability allowance or disability retirement allowance from its retirement system. The request may be made by the chief executive officer of the system or by an employee of the system so authorized and identified by name and title by the chief executive officer in writing.

(k) To enable the Division of Labor Standards Enforcement in the Department of Industrial Relations to seek criminal, civil, or administrative remedies in connection with the failure to pay, or the unlawful payment of, wages pursuant to Chapter 1 (commencing with Section 200) of Part 1 of Division 2 of, and Chapter 1 (commencing with Section 1720) of Part 7 of Division 2 of, the Labor Code.

(*l*) To enable federal, state, or local governmental departments or agencies to administer child support enforcement programs under Title IV of the Social Security Act (42 U.S.C. Sec. 651 et seq.).

(m) To provide federal, state, or local governmental departments or agencies with wage and claim information in its possession that will assist those departments and agencies in the administration of the Victims of Crime Program or in the location of victims of crime who, by state mandate or court order, are entitled to restitution that has been or can be recovered.

(n) To provide federal, state, or local governmental departments or agencies with information concerning any individuals who are or have been:

(1) Directed by state mandate or court order to pay restitution, fines, penalties, assessments, or fees as a result of a violation of law.

(2) Delinquent or in default on guaranteed student loans or who owe repayment of funds received through other financial assistance programs administered by those agencies. The information released by the director for the purposes of this paragraph shall not include unemployment insurance benefit information.

(o) To provide an authorized governmental agency with any or all relevant information that relates to any specific workers' compensation insurance fraud investigation. The information shall be provided to the extent permitted by federal law and regulations. For the purposes of this subdivision, "authorized governmental agency" means the district attorney of any county, the office of the Attorney General, the Department of Industrial Relations, and the Department of Insurance. An authorized governmental agency may disclose this information to

the State Bar, the Medical Board of California, or any other licensing board or department whose licensee is the subject of a workers' compensation insurance fraud investigation. This subdivision shall not prevent any authorized governmental agency from reporting to any board or department the suspected misconduct of any licensee of that body.

(p) To enable the Director of the Bureau for Private Postsecondary and Vocational Education, or his or her representatives, to access unemployment insurance quarterly wage data on a case-by-case basis to verify information on school administrators, school staff, and students provided by those schools who are being investigated for possible violations of Chapter 7 (commencing with Section 94700) of Part 59 of the Education Code.

(q) To provide employment tax information to the tax officials of Mexico, if a reciprocal agreement exists. For purposes of this subdivision, "reciprocal agreement" means a formal agreement to exchange information between national taxing officials of Mexico and taxing authorities of the State Board of Equalization, the Franchise Tax Board, and the Employment Development Department. Furthermore, the reciprocal agreement shall be limited to the exchange of information that is essential for tax administration purposes only. Taxing authorities of the State of California shall be granted tax information only on California residents. Taxing authorities of Mexico shall be granted tax information only on Mexican nationals.

(r) To enable city and county planning agencies to develop economic forecasts for planning purposes. The information shall be limited to businesses within the jurisdiction of the city or county whose planning agency is requesting the information, and shall not include information regarding individual employees.

(s) To provide the State Department of Developmental Services with wage and employer information that will assist in the collection of moneys owed by the recipient, parent, or any other legally liable individual for services and supports provided pursuant to Chapter 9 (commencing with Section 4775) of Division 4.5 of, and Chapter 2 (commencing with Section 7200) and Chapter 3 (commencing with Section 7500) of Division 7 of, the Welfare and Institutions Code.

(t) Nothing in this section shall be construed to authorize or permit the use of information obtained in the administration of this code by any private collection agency.

(u) The disclosure of the name and address of an individual or business entity that was issued an assessment that included penalties under Section 1128 or 1128.1 shall not be in violation of Section 1094 if the assessment is final. The disclosure may also include any of the following:

(1) The total amount of the assessment.

(2) The amount of the penalty imposed under Section 1128 or 1128.1 that is included in the assessment.

(3) The facts that resulted in the charging of the penalty under Section 1128 or 1128.1.

(v) To enable the Contractors' State License Board to verify the employment history of an individual applying for licensure pursuant to Section 7068 of the Business and Professions Code.

(w) To provide any peace officer with the Division of Investigation in the Department of Consumer Affairs information pursuant to subdivision (i) when the requesting peace officer has been designated by the Chief of the Division of Investigation and requests this information in the course of and as part of an investigation into the commission of a crime or other unlawful act when there is reasonable suspicion to believe that the crime or act may be connected to the information requested and would lead to relevant information regarding the crime or unlawful act.

(x) To enable the Labor Commissioner of the Division of Labor Standards Enforcement in the Department of Industrial Relations to identify, pursuant to Section 90.3 of the Labor Code, unlawfully uninsured employers. The information shall be provided to the extent permitted by federal law and regulations.

(y) To enable the Chancellor of the California Community Colleges, in accordance with the requirements of Section 84754.5 of the Education Code, to obtain quarterly wage data, commencing January 1, 1993, on students who have attended one or more community colleges, to assess the impact of education on the employment and earnings of students, to conduct the annual evaluation of district-level and individual college performance in achieving priority educational outcomes, and to submit the required reports to the Legislature and the Governor. The information shall be provided to the extent permitted by federal statutes and regulations.

(z) To enable the Public Employees' Retirement System to seek criminal, civil, or administrative remedies in connection with the unlawful application for, or receipt of, benefits provided under Part 3 (commencing with Section 20000) of Division 5 of Title 2 of the Government Code.

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 370

An act to amend Sections 24003 and 24103 of the Education Code, and to amend Section 21156 of, and to add Sections 31720.3 and 53222.5 to, the Government Code, relating to public employee disability benefits.

[Approved by Governor September 27, 2008. Filed with Secretary of State September 27, 2008.]

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

SECTION 1. Section 24003 of the Education Code is amended to read:

24003. (a) The member shall provide medical documentation to substantiate the impairment qualifying the member for the disability allowance.

(b) On receipt of an application for disability allowance under this part, the system may order a medical examination of a member to determine whether the member is incapacitated for performance of service. The medical examination shall be conducted by a practicing physician, selected by the board, with expertise in the member's disability and the board shall pay all costs associated with the examination. The board shall pay all other reasonable costs related to travel and meals in accordance with the rates set for state employees by the Department of Personnel Administration. If the member refuses to submit to the required medical examination, the application for disability allowance shall be rejected. The member shall either remain in this state, or return to this state at the member's own expense, to undergo the initial evaluations or examinations, or the application shall be rejected, unless this requirement is waived by the board. If the member is too ill to be examined, the system shall postpone the examination until the member can be examined. The member or the member's treating physician shall inform the system, in writing, when the medical examination can be rescheduled.

(c) The system may reject the disability allowance application under this part if the member fails to provide requested medical documentation to substantiate a disability, as defined in Section 22126, within 45 days from the date of the request or within 30 days from the time that a legally designated representative is empowered to act on behalf of a member who is mentally or physically incapacitated.

(d) If the board determines that a member who has applied for a disability allowance under this part may perform service in the member's former position of employment or in a comparable level position with the assistance of reasonable accommodation, the board may require the member to request reasonable accommodation from the employer. Failure of the member to request reasonable accommodation, as directed by the board, may be grounds for cancellation of the disability allowance application.

(e) If the employer fails or refuses to provide reasonable accommodation, the board may require the member to pursue an administrative appeal of the employer's denial as a condition for receiving a disability allowance under this part.

(f) The system shall inform the member of the rejection or cancellation of the member's disability allowance application under this part within 30 days after that determination is made by the system.

(g) In determining whether a member meets the definition of disability pursuant to Section 22126, the board shall make a determination on the basis of competent medical documentation and shall not use the awarding of a disability allowance as a substitute for the disciplinary process.

SEC. 2. Section 24103 of the Education Code is amended to read:

24103. (a) The member shall provide medical documentation substantiating the impairment qualifying the member for the disability retirement under this part.

(b) On receipt of an application for disability retirement under this part, the system may order a medical examination of a member to determine whether the member is incapacitated for performance of service. The medical examination shall be conducted by a practicing physician, selected by the board, with expertise in the member's disability, and the board shall pay all costs associated with the examination. The board shall pay all other reasonable costs related to travel and meals in accordance with the rates set for state employees by the Department of Personnel Administration. If the member refuses to submit to the required medical examination, the application for disability retirement shall be rejected. The member shall either remain in this state, or return to this state at the member's own expense, to undergo the initial evaluations or examinations or the application shall be rejected, unless this requirement is waived by the board. If the member is too ill to be examined, the system shall postpone the examination until the member can be examined. The member or the member's treating physician shall inform the system, in writing, when the medical examination can be rescheduled.

(c) The system may reject the disability retirement application under this part if the member fails to provide requested medical documentation

to substantiate a disability, as defined in Section 22126, within 45 days from the date of the request or within 30 days from the time that a legally designated representative is empowered to act on behalf of a member who is mentally or physically incapacitated.

(d) If the board determines that a member who has applied for disability retirement under this part may perform service in the member's former position of employment or in a comparable level position with the assistance of reasonable accommodation, the board may require the member to request reasonable accommodation from the employer. Failure of the member to request reasonable accommodation, as directed by the board, may be grounds for cancellation of the disability retirement application under this part.

(e) If the employer fails or refuses to provide reasonable accommodation, the board may require the member to pursue an administrative appeal of the employer's denial as a condition for receiving a disability retirement allowance under this part.

(f) The system shall inform the member of the rejection or cancellation of the member's disability retirement allowance application under this part within 30 days after that determination is made by the system.

(g) In determining whether a member meets the definition of disability pursuant to Section 22126, the board shall make a determination on the basis of competent medical documentation and shall not use the awarding of a disability retirement as a substitute for the disciplinary process.

SEC. 3. Section 21156 of the Government Code is amended to read:

21156. (a) (1) If the medical examination and other available information show to the satisfaction of the board, or in case of a local safety member, other than a school safety member, the governing body of the contracting agency employing the member, that the member in the state service is incapacitated physically or mentally for the performance of his or her duties and is eligible to retire for disability, the board shall immediately retire him or her for disability, unless the member is qualified to be retired for service and applies therefor prior to the effective date of his or her retirement for disability or within 30 days after the member is notified of his or her eligibility for retirement on account of disability, in which event the board shall retire the member for service.

(2) In determining whether a member is eligible to retire for disability, the board or governing body of the contracting agency shall make a determination on the basis of competent medical opinion and shall not use disability retirement as a substitute for the disciplinary process.

(b) (1) The governing body of a contracting agency upon receipt of the request of the board pursuant to Section 21154 shall certify to the

board its determination under this section that the member is or is not incapacitated.

(2) The local safety member may appeal the determination of the governing body. Appeal hearings shall be conducted by an administrative law judge of the Office of Administrative Hearings pursuant to Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of this title.

SEC. 4. Section 31720.3 is added to the Government Code, to read:

31720.3. In determining whether a member is eligible to retire for disability, the board shall not consider medical opinion unless it is deemed competent and shall not use disability retirement as a substitute for the employer's disciplinary process.

SEC. 5. Section 53222.5 is added to the Government Code, to read:

53222.5. If a local legislative body establishes a pension trust pursuant to this article that provides for disability retirement or has established reciprocity with a retirement system that provides for disability retirement, the legislative body of the local agency, in determining whether a member is eligible to retire for disability, shall make a determination on the basis of competent medical opinion and shall not use disability retirement as a substitute for the disciplinary process.

CHAPTER 371

An act to add Section 7507.2 to, and to repeal and add Section 7507 of, the Government Code, relating to public employee benefits.

[Approved by Governor September 27, 2008. Filed with Secretary of State September 27, 2008.]

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

SECTION 1. The Legislature finds and declares the following:

(a) The Public Employee Post-Employment Benefits Commission was jointly formed by the Governor and the Legislature to determine how best to fund postemployment benefits for the employees and retirees of California's state and local governments.

(b) The Public Employee Post-Employment Benefits Commission concluded that the best way to ensure that these benefits are delivered as promised is to prefund them.

(c) The Public Employee Post-Employment Benefits Commission further concluded that in order to gain and maintain public support for these benefits, the benefits should be adopted in well-noticed public

hearings, with their costs clearly and publicly reported annually, and any fraud or abuse addressed directly.

SEC. 2. Section 7507 of the Government Code is repealed.

SEC. 3. Section 7507 is added to the Government Code, to read:

7507. (a) For the purpose of this section:

(1) "Actuary" means an actuary who is an associate or fellow of the Society of Actuaries.

(2) "Future annual costs" includes, but is not limited to, annual dollar changes, or the total dollar changes involved when available, as well as normal cost and any change in accrued liability.

(b) (1) Except as provided in paragraph (2), the Legislature and local legislative bodies, including community college district governing boards, when considering changes in retirement benefits or other postemployment benefits, shall secure the services of an actuary to provide a statement of the actuarial impact upon future annual costs, including normal cost and any additional accrued liability, before authorizing changes in public retirement plan benefits or other postemployment benefits.

(2) The requirements of this subdivision do not apply to:

(A) An annual increase in a premium that does not exceed 3 percent under a contract of insurance.

(B) A change in postemployment benefits, other than pension benefits, mandated by the state or federal government or made by an insurance carrier in connection with the renewal of a contract of insurance.

(c) (1) (A) With regard to local legislative bodies, including community college district governing boards, the future costs of changes in retirement benefits or other postemployment benefits, as determined by the actuary, shall be made public at a public meeting at least two weeks prior to the adoption of any changes in public retirement plan benefits or other postemployment benefits. If the future costs of the changes exceed one-half of 1 percent of the future annual costs, as defined in paragraph (2) of subdivision (a), of the existing benefits for the legislative body, an actuary shall be present to provide information as needed at the public meeting at which the adoption of a benefit change shall be considered. The adoption of any benefit to which this section applies shall not be placed on a consent calendar.

(B) The requirements of this paragraph do not apply to:

(i) An annual increase in a premium that does not exceed 3 percent under a contract of insurance.

(ii) A change in postemployment benefits, other than pension benefits, mandated by the state or federal government or made by an insurance carrier in connection with the renewal of a contract of insurance.

(2) With regard to the Legislature, the future costs as determined by the actuary shall be made public at the policy and fiscal committee

hearings to consider the adoption of any changes in public retirement plan benefits or other postemployment benefits. The adoption of any benefit to which this section applies shall not be placed on a consent calendar.

(d) Upon the adoption of any benefit change to which this section applies, the person with the responsibilities of a chief executive officer in an entity providing the benefit, however that person is denominated, shall acknowledge in writing that he or she understands the current and future cost of the benefit as determined by the actuary. For the adoption of benefit changes by the state, this person shall be the director of the Department of Personnel Administration.

(e) The requirements of this section do not apply to a school district or a county office of education, which shall instead comply with requirements regarding public notice of, and future cost determination for, benefit changes that have been enacted to regulate these entities. These requirements include, but are not limited to, those enacted by Chapter 1213 of the Statutes of 1991 and by Chapter 52 of the Statutes of 2004.

SEC. 4. Section 7507.2 is added to the Government Code, to read:

7507.2. (a) There is hereby enacted the California Actuarial Advisory Panel. The panel shall provide impartial and independent information on pensions, other postemployment benefits, and best practices to public agencies and shall meet quarterly.

(b) The responsibilities of the California Actuarial Advisory Panel shall include, but are not limited to:

(1) Defining the range of actuarial model policies and best practices for public retirement plan benefits, including pensions and other postemployment benefits.

(2) Developing pricing and disclosure standards for California public sector benefit improvements.

(3) Developing quality control standards for California public sector actuaries.

(4) Gathering model funding policies and practices.

(5) Replying to policy questions from public retirement systems in California.

(6) Providing comment upon request by public agencies.

(c) The California Actuarial Advisory Panel shall consist of eight members. Each member shall be an actuary, as defined in Section 7507, with public sector clients. Members shall be appointed by the entities listed below, and each member shall serve a three-year term, provided that, in the initial appointments only, the panelists named by the University of California, the Senate, and one of the panelists named by the Governor shall serve two-year terms. The Governor shall appoint

two panelists, and one panelist shall be appointed by each of the following:

(1) The Teachers' Retirement Board.

(2) The Board of Administration of the Public Employees' Retirement System.

(3) The State Association of County Retirement Systems.

(4) The Board of Regents of the University of California.

(5) The Speaker of the Assembly.

(6) The Senate Committee on Rules.

(d) The California Actuarial Advisory Panel shall be located in the Controller's office, which shall provide support staff to the panel.

(e) The opinions of the California Actuarial Advisory Panel are nonbinding and advisory only. The opinions of the panel shall not, in any case, be used as the basis for litigation.

(f) A member of the California Actuarial Advisory Panel shall receive reimbursement for expenses that shall be paid by the authority that appointed the member.

(g) The California Actuarial Advisory Panel shall report to the Legislature on or before February 1 of each year.

SEC. 5. 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 372

An act to amend Sections 6254, 8550, 8570.5, 8574.9, 8574.17, 8574.20, 8574.21, 8574.22, 8584.1, 8586, 8587, 8587.7, 8588, 8588.1, 8588.3, 8588.7, 8588.10, 8588.11, 8589, 8589.1, 8589.2, 8589.5, 8589.6, 8589.7, 8589.9, 8589.10, 8591, 8593, 8593.1, 8593.2, 8596, 8599, 8610.5, 8614, 8649, 8651, 8682, 8682.2, 8682.6, 8682.8, 8682.9, 11550, 11552, and 11554 of, to add Sections 8585.1 and 8585.2 to, to repeal Sections 8574.23 and 12016 of, to repeal Chapter 6.5 (commencing with Section 8549) of Division 1 of Title 2 of, and to repeal and add Section 8585 of, the Government Code, relating to emergency services and homeland security.

[Approved by Governor September 27, 2008. Filed with Secretary of State September 27, 2008.]

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, if 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, the California Emergency Management Agency, 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. However, 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 reflects 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, 265, 266, 266a, 266b, 266c, 266e, 266f, 266j, 267, 269, 273a, 273d, 273.5, 285, 286, 288, 288a, 288.2,

288.3 (as added by Chapter 337 of the Statutes of 2006), 288.3 (as added by Section 6 of Proposition 83 of the November 7, 2006, statewide general election), 288.5, 288.7, 289, 422.6, 422.7, 422.75, 646.9, or 647.6 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 in any of the sections of the Penal Code set forth in this subdivision 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. However, the address of the victim of any crime defined by Section 220, 261, 261.5, 262, 264, 264.1, 265, 266, 266a, 266b, 266c, 266e, 266f, 266j, 267, 269, 273a, 273d, 273.5, 285, 286, 288, 288a, 288.2, 288.3 (as added by Chapter 337 of the Statutes of 2006), 288.3 (as added by Section 6 of Proposition 83 of the November 7, 2006, statewide general election), 288.5, 288.7, 289, 422.6, 422.7, 422.75, 646.9, or 647.6 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 Division 14 of Title 3 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. However, 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, 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. If 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 Care 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 Part 2 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 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 Managed Risk Medical Insurance Board 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 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 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 their effective dates.

(B) If a contract 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 are open to inspection pursuant to paragraph (3).

(w) (1) Records of the Managed Risk Medical Insurance Board related to activities governed by Chapter 8 (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 8 (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 are 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 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 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 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 their effective dates.

(B) If 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, 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, 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.

(ab) Critical infrastructure information, as defined in Section 131(3) of Title 6 of the United States Code, that is voluntarily submitted to the California Emergency Management Agency 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.

(ac) 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 (29 U.S.C. Sec. 158).

SEC. 1.1. 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, if 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, the California Emergency Management Agency, 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. However, 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 reflects 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, 265, 266, 266a, 266b, 266c, 266e, 266f, 266j, 267, 269, 273a, 273d, 273.5, 285, 286, 288, 288a, 288.2, 288.3 (as added by Chapter 337 of the Statutes of 2006), 288.3 (as added by Section 6 of Proposition 83 of the November 7, 2006, statewide general election), 288.5, 288.7, 289, 422.6, 422.7, 422.75, 646.9, or 647.6 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 in any of the sections of the Penal Code set forth in this subdivision 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. However, the address of the victim of any crime defined by Section 220, 261, 261.5, 262, 264, 264.1, 265, 266, 266a, 266b, 266c, 266e, 266f, 266j, 267, 269, 273a, 273d, 273.5, 285, 286, 288, 288a, 288.2, 288.3 (as added by Chapter 337 of the Statutes of 2006), 288.3 (as added by Section 6 of Proposition 83 of the November 7, 2006, statewide general election), 288.5, 288.7, 289, 422.6, 422.7, 422.75, 646.9, or 647.6 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 Division 14 of Title 3 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. However, 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, 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. If 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 Care 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 Part 2 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 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 Managed Risk Medical Insurance Board 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 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 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 their effective dates.

(B) If a contract 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 are open to inspection pursuant to paragraph (3).

(w) (1) Records of the Managed Risk Medical Insurance Board related to activities governed by Chapter 8 (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 8 (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 are 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 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 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 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 their effective dates.

(B) If 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, 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, 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.

(ab) Critical infrastructure information, as defined in Section 131(3) of Title 6 of the United States Code, that is voluntarily submitted to the California Emergency Management Agency 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.

(ac) 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.

(ad) The following records of the State Compensation Insurance Fund:

(1) Records related to claims pursuant to Chapter 1 (commencing with Section 3200) of Division 4 of the Labor Code, to the extent that confidential medical information or other individually identifiable information would be disclosed.

(2) Records related to the discussions, communications, or any other portion of the negotiations with entities contracting or seeking to contract with the fund, and any related deliberations.

(3) Records related to the impressions, opinions, recommendations, meeting minutes of meetings or sessions that are lawfully closed to the public, research, work product, theories, or strategy of the fund or its staff, on the development of rates, contracting strategy, underwriting, or competitive strategy pursuant to the powers granted to the fund in Chapter 4 (commencing with Section 11770) of Part 3 of Division 2 of the Insurance Code.

(4) Records obtained to provide workers' compensation insurance under Chapter 4 (commencing with Section 11770) of Part 3 of Division 2 of the Insurance Code, including, but not limited to, any medical claims information, policyholder information provided that nothing in this paragraph shall be interpreted to prevent an insurance agent or broker from obtaining proprietary information or other information authorized by law to be obtained by the agent or broker, and information on rates, pricing, and claims handling received from brokers.

(5) (A) Records that are trade secrets pursuant to Section 6276.44, or Article 11 (commencing with Section 1060) of Chapter 4 of Division 8 of the Evidence Code, including without limitation, instructions, advice, or training provided by the State Compensation Insurance Fund to its

board members, officers, and employees regarding the fund's special investigation unit, internal audit unit, and informational security, marketing, rating, pricing, underwriting, claims handling, audits, and collections.

(B) Notwithstanding subparagraph (A), the portions of records containing trade secrets shall be available for review by the Joint Legislative Audit Committee, the Bureau of State Audits, Division of Workers' Compensation, and the Department of Insurance to ensure compliance with applicable law.

(6) (A) Internal audits containing proprietary information and the following records that are related to an internal audit:

(i) Personal papers and correspondence of any person providing assistance to the fund when that person has requested in writing that his or her papers and correspondence be kept private and confidential. Those papers and correspondence shall become public records if the written request is withdrawn, or upon order of the fund.

(ii) Papers, correspondence, memoranda, or any substantive information pertaining to any audit not completed or an internal audit that contains proprietary information.

(B) Notwithstanding subparagraph (A), the portions of records containing proprietary information, or any information specified in subparagraph (A) shall be available for review by the Joint Legislative Audit Committee, the Bureau of State Audits, Division of Workers' Compensation, and the Department of Insurance to ensure compliance with applicable law.

(7) (A) Except as provided in subparagraph (C), contracts entered into pursuant to Chapter 4 (commencing with Section 11770) of Part 3 of Division 2 of the Insurance Code shall be open to inspection one year after the contract has been fully executed.

(B) If a contract entered into pursuant to Chapter 4 (commencing with Section 11770) of Part 3 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.

(C) 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.

(D) 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 this paragraph.

(E) Nothing in this paragraph is intended to apply to documents related to contracts with public entities that are not otherwise expressly confidential as to that public entity.

(F) For purposes of this paragraph, "fully executed" means the point in time when all of the necessary parties to the contract have signed the contract.

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 (29 U.S.C. Sec. 158).

SEC. 1.2. 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, if 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, the California Emergency Management Agency, 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. However, 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 reflects 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, 236.1, 261, 261.5, 262, 264, 264.1, 265, 266, 266a, 266b, 266c, 266e, 266f, 266j, 267, 269, 273a, 273d, 273.5, 285, 286, 288, 288a, 288.2, 288.3 (as added by Chapter 337 of the Statutes of 2006), 288.3 (as added by Section 6 of Proposition 83 of the November 7, 2006, statewide general election), 288.5, 288.7, 289, 422.6, 422.7, 422.75, 646.9, or 647.6 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 in any of the sections of the Penal Code set forth in this subdivision 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. However, the address of the victim of any crime defined by Section 220, 236.1, 261, 261.5, 262, 264, 264.1, 265, 266, 266a, 266b, 266c, 266e, 266f, 266j, 267, 269, 273a, 273d, 273.5, 285, 286, 288, 288a, 288.2, 288.3 (as added by Chapter 337 of the Statutes of 2006), 288.3 (as added by Section 6 of Proposition 83 of the November 7, 2006, statewide general election), 288.5, 288.7, 289, 422.6, 422.7, 422.75, 646.9, or 647.6 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 Division 14 of Title 3 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. However, 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, 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. If 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 Care 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 Part 2 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 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 Managed Risk Medical Insurance Board 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 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 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 their effective dates.

(B) If a contract 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 contracts or amendments to the contracts are open to inspection pursuant to paragraph (3).

(w) (1) Records of the Managed Risk Medical Insurance Board related to activities governed by Chapter 8 (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 8 (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 contracts or amendments to the contracts are 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 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 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 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 their effective dates.

(B) If 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, 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, 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.

(ab) Critical infrastructure information, as defined in Section 131(3) of Title 6 of the United States Code, that is voluntarily submitted to the California Emergency Management Agency 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.

(ac) 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 (29 U.S.C. Sec. 158).

SEC. 1.3. 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, if 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, the California Emergency Management Agency, 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. However, 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 reflects 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, 236.1, 261, 261.5, 262, 264, 264.1, 265, 266, 266a, 266b, 266c, 266e, 266f, 266j, 267, 269, 273a, 273d, 273.5, 285, 286, 288, 288a, 288.2, 288.3 (as added by Chapter 337 of the Statutes of 2006), 288.3 (as added by Section 6 of Proposition 83 of the November 7, 2006, statewide general election), 288.5, 288.7, 289, 422.6, 422.7, 422.75, 646.9, or 647.6 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 in any of the sections of the Penal Code set forth in this subdivision 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. However, the address of the victim of any crime defined by Section 220, 236.1, 261, 261.5, 262, 264, 264.1, 265, 266, 266a, 266b, 266c, 266e, 266f, 266j, 267, 269, 273a, 273d, 273.5, 285, 286, 288, 288a, 288.2, 288.3 (as

added by Chapter 337 of the Statutes of 2006), 288.3 (as added by Section 6 of Proposition 83 of the November 7, 2006, statewide general election), 288.5, 288.7, 289, 422.6, 422.7, 422.75, 646.9, or 647.6 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 Division 14 of Title 3 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. However, 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, 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. If 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 Care 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 Part 2 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 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 Managed Risk Medical Insurance Board 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 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 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 their effective dates.

(B) If a contract 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 contracts or amendments to the contracts are open to inspection pursuant to paragraph (3).

(w) (1) Records of the Managed Risk Medical Insurance Board related to activities governed by Chapter 8 (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 8 (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 contracts or amendments to the contracts are 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 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 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 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 their effective dates.

(B) If 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, 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, 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.

(ab) Critical infrastructure information, as defined in Section 131(3) of Title 6 of the United States Code, that is voluntarily submitted to the California Emergency Management Agency 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.

(ac) 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.

(ad) The following records of the State Compensation Insurance Fund:

(1) Records related to claims pursuant to Chapter 1 (commencing with Section 3200) of Division 4 of the Labor Code, to the extent that confidential medical information or other individually identifiable information would be disclosed.

(2) Records related to the discussions, communications, or any other portion of the negotiations with entities contracting or seeking to contract with the fund, and any related deliberations.

(3) Records related to the impressions, opinions, recommendations, meeting minutes of meetings or sessions that are lawfully closed to the public, research, work product, theories, or strategy of the fund or its staff, on the development of rates, contracting strategy, underwriting, or competitive strategy pursuant to the powers granted to the fund in Chapter 4 (commencing with Section 11770) of Part 3 of Division 2 of the Insurance Code.

(4) Records obtained to provide workers' compensation insurance under Chapter 4 (commencing with Section 11770) of Part 3 of Division 2 of the Insurance Code, including, but not limited to, any medical claims information, policyholder information provided that nothing in this paragraph shall be interpreted to prevent an insurance agent or broker

from obtaining proprietary information or other information authorized by law to be obtained by the agent or broker, and information on rates, pricing, and claims handling received from brokers.

(5) (A) Records that are trade secrets pursuant to Section 6276.44, or Article 11 (commencing with Section 1060) of Chapter 4 of Division 8 of the Evidence Code, including without limitation, instructions, advice, or training provided by the State Compensation Insurance Fund to its board members, officers, and employees regarding the fund's special investigation unit, internal audit unit, and informational security, marketing, rating, pricing, underwriting, claims handling, audits, and collections.

(B) Notwithstanding subparagraph (A), the portions of records containing trade secrets shall be available for review by the Joint Legislative Audit Committee, the Bureau of State Audits, Division of Workers' Compensation, and the Department of Insurance to ensure compliance with applicable law.

(6) (A) Internal audits containing proprietary information and the following records that are related to an internal audit:

(i) Personal papers and correspondence of any person providing assistance to the fund when that person has requested in writing that his or her papers and correspondence be kept private and confidential. Those papers and correspondence shall become public records if the written request is withdrawn, or upon order of the fund.

(ii) Papers, correspondence, memoranda, or any substantive information pertaining to any audit not completed or an internal audit that contains proprietary information.

(B) Notwithstanding subparagraph (A), the portions of records containing proprietary information, or any information specified in subparagraph (A) shall be available for review by the Joint Legislative Audit Committee, the Bureau of State Audits, Division of Workers' Compensation, and the Department of Insurance to ensure compliance with applicable law.

(7) (A) Except as provided in subparagraph (C), contracts entered into pursuant to Chapter 4 (commencing with Section 11770) of Part 3 of Division 2 of the Insurance Code shall be open to inspection one year after the contract has been fully executed.

(B) If a contract entered into pursuant to Chapter 4 (commencing with Section 11770) of Part 3 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.

(C) 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.

(D) 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 this paragraph.

(E) Nothing in this paragraph is intended to apply to documents related to contracts with public entities that are not otherwise expressly confidential as to that public entity.

(F) For purposes of this paragraph, "fully executed" means the point in time when all of the necessary parties to the contract have signed the contract.

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 (29 U.S.C. Sec. 158).

SEC. 2. Chapter 6.5 (commencing with Section 8549) of Division 1 of Title 2 of the Government Code, as added by Section 3 of Chapter 1210 of the Statutes of 1990, is repealed.

SEC. 3. Section 8550 of the Government Code is amended to read:

8550. The state has long recognized its responsibility to mitigate the effects of natural, manmade, or war-caused emergencies which result in conditions of disaster or in extreme peril to life, property, and the resources of the state, and generally to protect the health and safety and preserve the lives and property of the people of the state. To ensure that preparations within the state will be adequate to deal with such emergencies, it is hereby found and declared to be necessary:

(a) To confer upon the Governor and upon the chief executives and governing bodies of political subdivisions of this state the emergency powers provided herein; and to provide for state assistance in the organization and maintenance of the emergency programs of such political subdivisions.

(b) To provide for a state agency to be known and referred to as the California Emergency Management Agency (Cal EMA), within the office of the Governor, and to prescribe the powers and duties of the secretary of that agency.

(c) To provide for the assignment of functions to state agencies to be performed during an emergency and for the coordination and direction of the emergency actions of such agencies.

(d) To provide for the rendering of mutual aid by the state government and all its departments and agencies and by the political subdivisions of this state in carrying out the purposes of this chapter.

(e) To authorize the establishment of such organizations and the taking of such actions as are necessary and proper to carry out the provisions of this chapter.

It is further declared to be the purpose of this chapter and the policy of this state that all emergency services functions of this state be coordinated as far as possible with the comparable functions of its political subdivisions, of the federal government including its various departments and agencies, of other states, and of private agencies of every type, to the end that the most effective use may be made of all manpower, resources, and facilities for dealing with any emergency that may occur.

SEC. 4. Section 8570.5 of the Government Code is amended to read:

8570.5. The California Emergency Management Agency shall develop a guidance document to the state emergency plan to specify the response of the state and its political subdivisions to agriculture-related disasters. This document shall be completed by January 2002, and updated by January 2009, and shall include, but not be limited to, all of the following:

(a) The roles and responsibilities of the county agricultural commissioners.

(b) The roles and responsibilities of the Department of Agriculture and other relevant state agencies that are involved in the response to agriculture-related disasters.

(c) Coordination of initial and ongoing crop damage assessments.

(d) Disaster assistance between the time of the request for a federal disaster declaration and issuance of a federal declaration.

(e) State assistance available if a requested federal declaration is not issued.

(f) State assistance under a United States Department of Agriculture designation rather than a federal declaration.

(g) State assistance for long-term unemployment in areas with high unemployment rates prior to an emergency.

(h) Provision for the removal and elimination of extraordinary numbers of dead livestock for purposes of protecting public health and safety.

(i) Strategies to assist in the development of an integrated and coordinated response by community-based organizations to the victims of agriculture-related disasters.

(j) Procedures for the decontamination of individuals who have been or may have been exposed to hazardous materials, which may vary

depending on the hazards posed by a particular hazardous material. The report shall specify that individuals shall be assisted in a humanitarian manner.

(k) Integration of various local and state emergency response plans, including, but not limited to, plans that relate to hazardous materials, oil spills, public health emergencies, and general disasters.

SEC. 5. Section 8574.9 of the Government Code is amended to read:

8574.9. (a) The State Interagency Oil Spill Committee shall consist of all of the following persons:

(1) The administrator named by the Governor pursuant to Section 8670.4.

(2) The Chairperson of the State Lands Commission, or his or her designee.

(3) The Chairperson of the California Coastal Commission, or his or her designee.

(4) The Chairperson of the San Francisco Bay Conservation and Development Commission, or his or her designee. The chairperson of the commission shall only have voting and decisionmaking authority regarding matters under the jurisdiction of the commission.

(5) A designated representative from all of the following agencies:

(A) The California Emergency Management Agency.

(B) The State Water Resources Control Board.

(C) The Department of Justice.

(D) The California Highway Patrol.

(E) The California National Guard.

(F) The Division of Oil and Gas in the Department of Conservation.

(G) The Department of Toxic Substances Control.

(H) The Department of Transportation.

(I) The Department of Parks and Recreation.

(J) The Department of Water Resources.

(K) The Department of Forestry and Fire Protection.

(L) The State Fire Marshal.

(M) The California regional water quality control boards (one representative).

(N) The Resources Agency.

(O) The California Environmental Protection Agency.

(P) The California Conservation Corps.

(Q) The Office of Environmental Health Hazard Assessment.

(R) The Division of Occupational Safety and Health in the Department of Industrial Relations.

(b) The administrator shall be the chairperson of the committee. The administrator shall ensure that personnel serve as staff to the committee.

SEC. 6. Section 8574.17 of the Government Code is amended to read:

8574.17. (a) (1) A state toxic disaster contingency plan established pursuant to this article shall provide for an integrated and effective state procedure to respond to the occurrence of toxic disasters within the state. The plan shall provide for the designation of a lead agency to direct strategy to ameliorate the effects of a toxic disaster, for specified state agencies to implement the plan, for interagency coordination of the training conducted by state agencies pursuant to the plan, and for on-scene coordination of response actions.

(2) Notwithstanding any provision of the plan, the authority for the management of the scene of an on-highway toxic spill or disaster shall be vested in the appropriate law enforcement agency having primary traffic investigative authority on the highway where the incident occurs or in a local fire protection agency as provided by Section 2454 of the Vehicle Code. During the preparation of the toxic disaster contingency plan, the California Emergency Management Agency shall adopt the recommendations of the Department of the California Highway Patrol in developing response and on-scene procedures for toxic disasters which occur upon the highways, based upon previous studies for such procedures, insofar as the procedures are not inconsistent with the overall plan for initial notification of toxic disasters by public agencies and for after-incident evaluation and reporting.

(b) The California Emergency Management Agency shall establish a central notification and reporting system to facilitate operation of the state toxic disaster response procedures designated by the toxic disaster contingency plan.

SEC. 7. Section 8574.20 of the Government Code is amended to read:

8574.20. The California Emergency Management Agency shall manage the California Hazardous Substances Incident Response Training and Education Program to provide approved classes in hazardous substance response, taught by trained instructors, and to certify students who have completed these classes. To carry out this program, the California Emergency Management Agency shall do all of the following:

(a) Adopt regulations necessary to implement the program.

(b) Establish a training and education program by developing the curriculum to be used in the program in colleges, academies, the California Specialized Training Institute, and other educational institutions, as specified in Section 8574.21.

(c) Establish recommended minimum standards for training emergency response personnel and instructors, including, but not limited to, fire, police, and environmental health personnel.

(d) Make available a training and education program in the use of hazardous substances emergency rescue, safety, and monitoring equipment, on a voluntary basis, at the California Specialized Training Institute.

(e) Train and certify instructors at the California Specialized Training Institute according to standards and procedures developed by the curriculum development advisory committee, as specified in Section 8574.21.

(f) Approve classes, as meeting the requirements of the program, if the classes meet the curriculum developed by the California Emergency Management Agency pursuant to Section 8574.21 and the instructor received training and certification at the California Specialized Training Institute, as specified in subdivision (e).

(g) Certify students who have successfully completed a class approved as meeting the requirements of the program.

(h) Review and revise, as necessary, the program.

(i) Establish and collect admission fees and other fees that may be necessary to be charged for advanced or specialized training given at the California Specialized Training Institute. These fees shall be used to offset costs incurred pursuant to this article.

SEC. 8. Section 8574.21 of the Government Code is amended to read:

8574.21. (a) The California Emergency Management Agency shall develop the curriculum to be used in classes that meet the program requirements and shall adopt standards and procedures for training instructors at the California Specialized Training Institute.

(b) The curriculum for the training and education program established pursuant to this article shall include all of the following aspects of hazardous substance incident response actions:

(1) First responder training.

(2) On-scene manager training.

(3) Hazardous substance incident response training for management personnel.

(4) Hazardous materials specialist training that equals or exceeds the standards of the National Fire Protection Association.

(5) Environmental monitoring.

(6) Hazardous substance release investigations.

(7) Hazardous substance incident response activities at ports.

(c) The California Emergency Management Agency shall establish a curriculum development advisory committee, which shall consist of a representative from each of the following agencies or organizations:

(1) The California Emergency Management Agency.

(2) The Office of the State Fire Marshal.

(3) The Department of Toxic Substances Control.
(4) The Department of Fish and Game.
(5) The State Water Resources Control Board.
(6) The Department of the California Highway Patrol.
(7) The California Police Chiefs' Association.
(8) The California Fire Chiefs' Association.
(9) The Commission on Police Officer Standards and Training.
(10) The California District Attorneys' Association.
(11) The Department of Forestry and Fire Protection.
(12) The Emergency Medical Services Authority.
(13) The Department of Transportation.
(14) The Environmental Protection Agency.
(15) The Chemical Industry Council of California.
(16) The California Manufacturers Association.
(17) The California Conference of Local Health Officers.
(18) The University of California.
(19) The California State Fireman's Association.
(20) The California State University.
(21) The California Professional Firefighters.
(22) The California Association of Highway Patrolmen.
(23) The Office of Environmental Health Hazard Assessment.

(d) The curriculum development advisory committee shall advise the California Emergency Management Agency on the development of course curricula and the standards and procedures specified in subdivision (a). In advising the California Emergency Management Agency, the committee shall do the following:

(1) Assist, and cooperate with, representatives of the Board of Governors of the California Community Colleges in developing the course curricula.

(2) Ensure that the curriculum developed pursuant to this section is accredited by the State Board of Fire Services.

(3) Define equivalent training and experience considered as meeting the initial training requirements as specified in subdivision (a) that existing employees might have already received from actual experience or formal education undertaken, and which would qualify as meeting the requirements established pursuant to this article.

(e) The representative from the California Emergency Management Agency shall serve as the chairperson of the curriculum development advisory committee.

(f) After the course curricula and standards are established pursuant to subdivision (a), the curriculum development advisory committee shall meet at least once each year to review the program and advise the California Emergency Management Agency on any required revisions.

(g) The California Emergency Management Agency shall make the curriculum development advisory committee a subcommittee of the Curriculum Advisory Board of the California Specialized Training Institute.

(h) This article does not affect the authority of the State Fire Marshal granted pursuant to Section 13142.4 or 13159 of the Health and Safety Code.

(i) Upon completion of instructor training and certification pursuant to subdivision (e) of Section 8574.20 by any employee of the Department of the California Highway Patrol, the Commissioner of the California Highway Patrol may deem any training programs taught by that employee to be equivalent to any training program meeting the requirements established pursuant to this article.

SEC. 9. Section 8574.22 of the Government Code is amended to read:

8574.22. The California Emergency Management Agency may hire professional and clerical staff pursuant to the State Civil Service Act (Part 2 (commencing with Section 18500) of Division 5 of Title 2). However, any person employed pursuant to this section shall be employed only at the California Specialized Training Institute.

SEC. 10. Section 8574.23 of the Government Code is repealed.

SEC. 11. Section 8584.1 of the Government Code is amended to read:

8584.1. (a) It is the intent of the Legislature that the state have an urban heavy rescue capability in the event of a major earthquake. It is also the intent of the Legislature that the California Emergency Management Agency and the State Fire Marshal's Office pursue the necessary funding to carry out this article through the normal budget process.

(b) The Fire and Rescue Division of the California Emergency Management Agency shall acquire and maintain urban heavy rescue units and transportable caches of search and rescue gear, including hand tools and protective gear. The division shall position the units and caches to ensure a rapid response of personnel and equipment anywhere in the state, and ensure that a unit will be available on the scene within one hour of a major earthquake.

(c) The State Fire Marshal's Office shall coordinate the training of personnel in the use of the units and equipment in cooperation with the California Emergency Management Agency.

SEC. 12. Section 8585 of the Government Code is repealed.

SEC. 13. Section 8585 is added to the Government Code, to read:

8585. (a) (1) There is in state government, within the office of the Governor, the California Emergency Management Agency. The

California Emergency Management Agency shall be under the supervision of a Secretary of California Emergency Management, who shall have all rights and powers of a head of an agency as provided by this code.

(2) Unless the context clearly requires otherwise, whenever the term "Office of Emergency Services" appears in any statute, regulation, or contract, it shall be construed to refer to the California Emergency Management Agency, and whenever the term "Director of Emergency Services" or the "Director of the Office of Emergency Services" appears in statute, regulation, or contract, it shall be construed to refer to the Secretary of California Emergency Management.

(3) Unless the context clearly requires otherwise, whenever the term "Director of Homeland Security" or "Office of Homeland Security" appears in any statute, regulation, or contract, it shall be construed to refer to the California Emergency Management Agency, and whenever the term "Director of Homeland Security" or "Director of the Office of Homeland Security" appears in any statute, regulation, or contract, it shall be construed to refer to the Secretary of California Emergency Management.

(b) (1) The California Emergency Management Agency and the Secretary of California Emergency Management succeed to and are vested with all the duties, powers, purposes, responsibilities, and jurisdiction vested in the Office of Emergency Services and the Director of the Office of Emergency Services, respectively.

(2) The California Emergency Management Agency and the Secretary of California Emergency Management succeed to and are vested with all the duties, powers, purposes, responsibilities, and jurisdiction vested in the Office of Homeland Security and the Director of Homeland Security, respectively.

(c) The California Emergency Management Agency shall be considered a law enforcement organization as required for receipt of criminal intelligence information pursuant to subdivision (f) of Section 6254 of the Government Code by persons employed within the agency whose duties and responsibilities require the authority to access criminal intelligence information.

(d) Persons employed by the California Emergency Management Agency whose duties and responsibilities require the authority to access criminal intelligence information shall be furnished state summary criminal history information as described in Section 11105 of the Penal Code, if needed in the course of their duties.

(e) The California Emergency Management Agency shall be responsible for the state's emergency and disaster response services for natural, technological, or manmade disasters and emergencies, including

responsibility for activities necessary to prevent, respond to, recover from, and mitigate the effects of emergencies and disasters to people and property.

(f) Notwithstanding any other provision of law, nothing in this section shall authorize an employee of the California Emergency Management Agency to access criminal intelligence information under subdivision (c) or (d) for the purpose of determining eligibility for, or providing access to, disaster-related assistance and services.

SEC. 14. Section 8585.1 is added to the Government Code, to read:

8585.1. (a) The Secretary of California Emergency Management shall be appointed by, and hold office at the pleasure of, the Governor. The appointment of the secretary is subject to confirmation by the Senate. The secretary shall coordinate all state disaster response, emergency planning, emergency preparedness, disaster recovery, disaster mitigation, and homeland security activities.

(b) The Secretary of California Emergency Management shall receive an annual salary as set forth in Section 11550.

(c) The Governor may appoint an Undersecretary of California Emergency Management. The undersecretary shall hold office at the pleasure of the Governor.

(d) All positions exempt from civil service that existed in the predecessor agencies shall be transferred to the agency.

(e) Neither state nor federal funds may be expended to pay the salary or benefits of any deputy or employee who may be appointed by the secretary or undersecretary pursuant to Section 4 of Article VII of the California Constitution.

SEC. 15. Section 8585.2 is added to the Government Code, to read:

8585.2. (a) All employees serving in state civil service, other than temporary employees, who are engaged in the performance of functions transferred to the California Emergency Management Agency or engaged in the administration of law, the administration of which is transferred to the California Emergency Management Agency, are transferred to the agency. The status, positions, and rights of those persons shall not be affected by their transfer and shall continue to be retained by them pursuant to the State Civil Service Act (Part 2 (commencing with Section 18500) of Division 5), except as to positions the duties of which are vested in a position exempt from civil service. The personnel records of all transferred employees shall be transferred to the California Emergency Management Agency.

(b) The property of any agency or department related to functions transferred to the California Emergency Management Agency, is transferred to the agency. If any doubt arises as to where that property

is transferred, the Department of General Services shall determine where the property is transferred.

(c) All unexpended balances of appropriations and other funds available for use in connection with any function or the administration of any law transferred to the California Emergency Management Agency shall be transferred to the agency for use for the purpose for which the appropriation was originally made or the funds were originally available. If there is any doubt as to where those balances and funds are transferred, the Department of Finance shall determine where the balances and funds are transferred.

(d) The California Emergency Management Agency shall submit a report to the Joint Legislative Committee on Emergency Services and Homeland Security on or before January 1, 2010, regarding the successes and failures of the consolidation of the Office of Homeland Security and the Office of Emergency Services, including, but not limited to, any efficiencies achieved.

(e) As part of the 2009–10 budget, the California Emergency Management Agency shall propose a spending and staff consolidation plan.

SEC. 16. Section 8586 of the Government Code is amended to read:

8586. The Governor shall assign all or part of his or her powers and duties under this chapter to the California Emergency Management Agency.

SEC. 17. Section 8587 of the Government Code is amended to read:

8587. (a) During a state of war emergency, a state of emergency, or a local emergency, the secretary shall coordinate the emergency activities of all state agencies in connection with that emergency, and every state agency and officer shall cooperate with the secretary in rendering all possible assistance in carrying out the provisions of this chapter.

(b) In addition to the powers designated in this section, the Governor may delegate any of the powers vested in him or her under this chapter to the secretary except the power to make, amend, and rescind orders and regulations, and the power to proclaim a state of emergency.

SEC. 18. Section 8587.7 of the Government Code is amended to read:

8587.7. (a) The California Emergency Management Agency, in cooperation with the State Department of Education, the Department of General Services, and the Seismic Safety Commission, shall develop an educational pamphlet for use by grades Kindergarten to 14 personnel to identify and mitigate the risks posed by nonstructural earthquake hazards.

(b) The agency shall print and distribute the pamphlet to the governing board of each school district and community college district in the state, along with a copy of the current edition of the agency's school emergency

response publication. The agency shall also make the pamphlet or the current edition of the agency's school emergency response publication available to a private elementary or secondary school upon request.

(c) The agency, as soon as feasible, shall make the pamphlet and the current edition of the agency's school emergency response publication available by electronic means, including, but not limited to, the Internet.

SEC. 19. Section 8588 of the Government Code is amended to read:

8588. Whenever conditions exist within any region or regions of the state which warrant the proclamation by the Governor of a state of emergency and the Governor has not acted under the provisions of Section 8625, by reason of the fact that the Governor has been inaccessible, the Secretary of California Emergency Management may proclaim the existence of a state of emergency in the name of the Governor as to any region or regions of the state. Whenever the Secretary of California Emergency Management has so proclaimed a state of emergency, that action shall be ratified by the Governor as soon as the Governor becomes accessible, and in the event the Governor does not ratify the action, the Governor shall immediately terminate the state of emergency as proclaimed by the Secretary of California Emergency Management.

SEC. 20. Section 8588.1 of the Government Code is amended to read:

8588.1. (a) The Legislature finds and declares that this state can only truly be prepared for the next disaster if the public and private sector collaborate.

(b) The California Emergency Management Agency may, as appropriate, include private businesses and nonprofit organizations within its responsibilities to prepare the state for disasters under this chapter. All participation by businesses and nonprofit associations in this program shall be voluntary.

(c) The agency may do any of the following:

(1) Provide guidance to business and nonprofit organizations representing business interests on how to integrate private sector emergency preparedness measures into governmental disaster planning programs.

(2) Conduct outreach programs to encourage business to work with governments and community associations to better prepare the community and their employees to survive and recover from disasters.

(3) Develop systems so that government, businesses, and employees can exchange information during disasters to protect themselves and their families.

(4) Develop programs so that businesses and government can work cooperatively to advance technology that will protect the public during disasters.

(d) The agency may share facilities and systems for the purposes of subdivision (b) with the private sector to the extent the costs for their use are reimbursed by the private sector.

(e) Proprietary information or information protected by state or federal privacy laws shall not be disclosed under this program.

(f) Notwithstanding Section 11005, donations and private grants may be accepted by the agency and shall not be subject to Section 11005.

(g) The Disaster Resistant Communities Fund is hereby created in the State Treasury. Upon appropriation by the Legislature, the Secretary of California Emergency Management may expend the money in the account for the costs associated within this section.

(h) This section shall be implemented only to the extent that in-kind contributions or donations are received from the private sector, or grant funds are received from the federal government, for these purposes.

SEC. 21. Section 8588.3 of the Government Code is amended to read:

8588.3. (a) The Legislature finds and declares that it is the responsibility of the State of California to protect and preserve the right of its citizens to a safe and peaceful existence. To accomplish this goal and to minimize the destructive impact of disasters and other massive emergencies, the actions of numerous public agencies must be coordinated to effectively manage all four phases of emergency activity: preparedness, mitigation, response, and recovery. In order to ensure that the state's response to disasters or massive emergencies is effective, specialized training is necessary.

(b) The California Specialized Training Institute of the office of the Adjutant General is hereby transferred to the California Emergency Management Agency. The institute shall assist the Governor in providing, pursuant to subdivision (f) of Section 8570, training to state agencies, cities, and counties in their planning and preparation for disasters.

(c) The Secretary of California Emergency Management may solicit, receive, and administer funds or property from federal, state, or other public agency sources for the support and operation of the institute.

(d) The Secretary of California Emergency Management may solicit and receive firearms, other weaponry, explosive materials, chemical agents, and other items confiscated by or otherwise in the possession of law enforcement officers as donations to the institute if he or she deems them to be appropriate for the institute's training purposes.

(e) Any moneys received by the Secretary of California Emergency Management from charges or fees imposed in connection with the operation of the institute shall be deposited in the General Fund.

SEC. 22. Section 8588.7 of the Government Code is amended to read:

8588.7. (a) The California Emergency Management Agency shall procure mobile communication translators to enable mutual-aid emergency response agencies to communicate effectively while operating on incompatible frequencies.

(b) Translators shall be located in the San Francisco Bay Area and the Los Angeles metropolitan area, made ready for use by local public safety officials by the California Emergency Management Agency, and provided to the appropriate state-established mutual-aid region pursuant to Section 8600.

(c) The California Emergency Management Agency shall implement this section only to the extent that funds are appropriated to the agency for this purpose in the Budget Act or in other legislation.

SEC. 23. Section 8588.10 of the Government Code is amended to read:

8588.10. (a) The Emergency Response Training Advisory Committee shall be established pursuant to subdivision (d). The committee shall recommend the criteria for terrorism awareness curriculum content to meet the training needs of state and local emergency response personnel and volunteers. In addition, the committee shall identify any additional training that would be useful and appropriate but that may not be generally available in California, and shall make recommendations pertaining to any need for training oversight agencies for first responder disciplines to expedite their curriculum approval processes.

(b) Basic terrorism awareness training shall include, but not be limited to, the following:

(1) An overview of conventional, chemical, biological, radiological, and nuclear threats.

(2) Threat and hazard recognition, with an emphasis on ability to determine local vulnerabilities.

(3) Understanding the structure and function of an incident command system.

(4) Initial response actions, including preliminary assessment, notifications, resource needs, and safety considerations.

(5) Coordination with other emergency service first responders.

(6) Gathering, verifying, assessing, and communicating incident information.

(7) Understanding mass casualty implications and decontamination requirements.

(8) Balancing lifesaving activities with evidence preservation.

(9) General awareness and additional training for each of the first responder categories specific to each discipline.

(c) (1) The Legislature finds and declares that training on terrorism awareness for first responders is of critical importance to the people of California.

(2) Every agency responsible for development of terrorism awareness training and every agency that employs or uses first responders shall give a high priority to the completion of that training.

(d) The Emergency Response Training Advisory Committee is hereby created, which shall be chaired by the Secretary of California Emergency Management and shall consist of the following members, or their representatives:

(1) The California Emergency Management Agency.

(2) The Commissioner of the California Highway Patrol.

(3) The Executive Director of the Commission on Peace Officer Standards and Training.

(4) The State Fire Marshal.

(5) The Director of Public Health.

(6) The Director of the Emergency Medical Services Authority.

(7) The Chairperson of the California Fire Fighter Joint Apprenticeship Committee.

(8) The Attorney General.

(9) Nine representatives, appointed by the Governor, comprised of all of the following:

(A) One police chief from the California Police Chiefs Association.

(B) One county sheriff from the California State Sheriffs' Association.

(C) One representative of port security agencies.

(D) Two fire chiefs, one from the California Fire Chiefs Association and one from the California Metropolitan Fire Chiefs Association.

(E) Two firefighters, one from a statewide organization that represents career firefighters and one from a statewide organization that represents both career and volunteer firefighters.

(F) Two law enforcement labor representatives, one from a state organization and one from a local organization.

SEC. 24. Section 8588.11 of the Government Code is amended to read:

8588.11. (a) The California Emergency Management Agency shall contract with the California Fire Fighter Joint Apprenticeship Program to develop a fire service specific course of instruction on the responsibilities of first responders to terrorism incidents. The course shall include the criteria for the curriculum content recommended by the Emergency Response Training Advisory Committee established

pursuant to Section 8588.10 to address the training needs of both of the following:

(1) Firefighters in conformance with the standards established by the State Fire Marshal.

(2) Paramedics and other emergency medical services fire personnel in conformance with the standards established by the State Emergency Medical Services Authority.

(b) The course of instruction shall be developed in consultation with individuals knowledgeable about consequence management that addresses the topics of containing and mitigating the impact of a terrorist incident, including, but not limited to, a terrorist act using hazardous materials, as well as weapons of mass destruction, including any chemical warfare agent, weaponized biological agent, or nuclear or radiological agent, as those terms are defined in Section 11417 of the Penal Code, by techniques including, but not limited to, rescue, firefighting, casualty treatment, and hazardous materials response and recovery.

(c) The contract shall provide for the delivery of training by the California Fire Fighter Joint Apprenticeship Program through reimbursement contracts with the state, local, and regional fire agencies who may, in turn, contract with educational institutions.

(d) To maximize the availability and delivery of training, the California Fire Fighter Joint Apprenticeship Program shall develop a course of instruction to train the trainers in the presentation of the first responder training of consequence management for fire service personnel.

SEC. 25. Section 8589 of the Government Code is amended to read:

8589. The California Emergency Management Agency shall be permitted such use of all state and local fair properties as conditions require.

SEC. 26. Section 8589.1 of the Government Code is amended to read:

8589.1. (a) The California Emergency Management Agency shall plan to establish the State Computer Emergency Data Exchange Program (SCEDEP) which shall be responsible for collection and dissemination of essential data for emergency management.

(b) Participating agencies in SCEDEP shall include the Department of Water Resources, Department of Forestry and Fire Protection, Department of the California Highway Patrol, Department of Transportation, Emergency Medical Services Authority, the State Fire Marshal, State Department of Public Health, and any other state agency that collects critical data and information that affects emergency response.

(c) It is the intent of the Legislature that the State Computer Emergency Data Exchange Program facilitate communication between state agencies and that emergency information be readily accessible to

city and county emergency services offices. The California Emergency Management Agency shall develop policies and procedures governing the collection and dissemination of emergency information and shall recommend or design the appropriate software and programs necessary for emergency communications with city and county emergency services offices.

SEC. 27. Section 8589.2 of the Government Code is amended to read:

8589.2. (a) The California Emergency Management Agency, in consultation with the California Highway Patrol and other state and local agencies, shall establish a statewide plan for the delivery of hazardous material mutual aid.

(b) Within 180 days of the adoption of a plan by the California Emergency Management Agency, an entity shall only be considered a candidate for training or equipment funds provided by the state for hazardous material emergency response when that entity is a signatory to the plan established under this section.

(1) For the purpose of this chapter "hazardous material emergency response" includes, but is not limited to, assessment, isolation, stabilization, containment, removal, evacuation, neutralization, transportation, rescue procedures, or other activities necessary to ensure the public safety during a hazardous materials emergency.

(2) For the purpose of this chapter, "hazardous material" is defined as in Section 25501 of the Health and Safety Code.

(c) Entities providing hazardous material emergency response services under this chapter shall be exempt from the fee restriction of Section 6103.

SEC. 28. Section 8589.5 of the Government Code is amended to read:

8589.5. (a) Inundation maps showing the areas of potential flooding in the event of sudden or total failure of any dam, the partial or total failure of which the California Emergency Management Agency determines, after consultation with the Department of Water Resources, would result in death or personal injury, shall be prepared and submitted as provided in this subdivision within six months after the effective date of this section, unless previously submitted or unless the time for submission of those maps is extended for reasonable cause by the California Emergency Management Agency. The local governmental organization, utility, or other public or private owner of any dam so designated shall submit to the California Emergency Management Agency one map that shall delineate potential flood zones that could result in the event of dam failure when the reservoir is at full capacity, or if the local governmental organization, utility, or other public or private

owner of any dam shall determine it to be desirable, he or she shall submit three maps that shall delineate potential flood zones that could result in the event of dam failure when the reservoir is at full capacity, at median-storage level, and at normally low-storage level. After submission of copies of the map or maps, the California Emergency Management Agency shall review the map or maps, and shall return any map or maps that do not meet the requirements of this subdivision, together with recommendations relative to conforming to the requirements. Maps rejected by the California Emergency Management Agency shall be revised to conform to those recommendations and resubmitted. The California Emergency Management Agency shall keep on file those maps that conform to the provisions of this subdivision. Maps approved pursuant to this subdivision shall also be kept on file with the Department of Water Resources. The owner of a dam shall submit final copies of those maps to the California Emergency Management Agency that shall immediately submit identical copies to the appropriate public safety agency of any city, county, or city and county likely to be affected.

(b) (1) Based upon a review of inundation maps submitted pursuant to subdivision (a) or based upon information gained by an onsite inspection and consultation with the affected local jurisdiction when the requirement for an inundation map is waived pursuant to subdivision (d), the California Emergency Management Agency shall designate areas within which death or personal injury would, in its determination, result from the partial or total failure of a dam. The appropriate public safety agencies of any city, county, or city and county, the territory of which includes any of those areas, may adopt emergency procedures for the evacuation and control of populated areas below those dams. The California Emergency Management Agency shall review the procedures to determine whether adequate public safety measures exist for the evacuation and control of populated areas below the dams, and shall make recommendations with regard to the adequacy of those procedures to the concerned public safety agency. In conducting the review, the California Emergency Management Agency shall consult with appropriate state and local agencies.

(2) Emergency procedures specified in this subdivision shall conform to local needs, and may be required to include any of the following elements or any other appropriate element, in the discretion of the California Emergency Management Agency:

(A) Delineation of the area to be evacuated.

(B) Routes to be used.

(C) Traffic control measures.

(D) Shelters to be activated for the care of the evacuees.

(E) Methods for the movement of people without their own transportation.

(F) Identification of particular areas or facilities in the flood zones that will not require evacuation because of their location on high ground or similar circumstances.

(G) Identification and development of special procedures for the evacuation and care of people from unique institutions.

(H) Procedures for the perimeter and interior security of the area, including such things as passes, identification requirements, and antilooting patrols.

(I) Procedures for the lifting of the evacuation and reentry of the area.

(J) Details as to which organizations are responsible for the functions described in this paragraph and the material and personnel resources required.

(3) It is the intent of the Legislature to encourage each agency that prepares emergency procedures to establish a procedure for their review every two years.

(c) "Dam," as used in this section, has the same meaning as specified in Sections 6002, 6003, and 6004 of the Water Code.

(d) Where both of the following conditions exist, the California Emergency Management Agency may waive the requirement for an inundation map:

(1) Where the effects of potential inundation in terms of death or personal injury, as determined through onsite inspection by the California Emergency Management Agency in consultation with the affected local jurisdictions, can be ascertained without an inundation map.

(2) Where adequate evacuation procedures can be developed without benefit of an inundation map.

(e) If development should occur in any exempted area after a waiver has been granted, the local jurisdiction shall notify the California Emergency Management Agency of that development. All waivers shall be reevaluated every two years by the California Emergency Management Agency.

(f) A notice may be posted at the offices of the county recorder, county assessor, and county planning agency that identifies the location of the map, and of any information received by the county subsequent to the receipt of the map regarding changes to inundation areas within the county.

SEC. 29. Section 8589.6 of the Government Code is amended to read:

8589.6. (a) The California Emergency Management Agency shall develop model guidelines for local government agencies and community-based organizations planning to develop a disaster registry

program. Adoption of the model guidelines shall be voluntary. Local governmental agencies or community-based organizations wishing to establish a disaster registry program may consult with the California Emergency Management Agency for further guidance.

(b) The guidelines required by subdivision (a) shall address, at a minimum, all of the following issues:

(1) A purpose statement specifying that the intent of the registry is not to provide immediate assistance during a local, state, or national disaster, to those who are registered, but to encourage that those registered will receive a telephone call or visit from neighborhood disaster volunteers or other organizations specified in the final local plan as soon as possible after the disaster in order to check on their well-being and ask if they need assistance. This statement shall also specify that persons registered should be prepared to be self-sufficient for at least 72 hours.

(2) A list of persons eligible for the registry. This list shall include, but not be limited to, disabled persons, including those with developmental disabilities, the elderly, those for whom English is not a first language, persons who are unskilled or deficient in the English language, long-term health care facilities, residential community care facilities, and residential care facilities for the elderly.

(3) A statement specifying that the party responsible for responding to those registered will not be held liable for not responding.

(4) A plan for ensuring that hard data is available if computers shut down.

(5) A recommendation for those persons or organizations that would be appropriate to respond to persons on the disaster registry, and a plan for training the responsible party.

(6) A plan for community outreach to encourage those eligible to participate.

(7) A plan for distribution of preparedness materials to those eligible to participate in the disaster registry.

(8) Recommendations and assistance for obtaining federal and state moneys to establish a disaster registry.

(9) A recommendation that organizations currently providing services to persons who are eligible for the disaster registry program be encouraged to alter their information form to include a space on the form where the person has the option of registering for the program. By checking the box and giving approval to be registered for the program the person waives confidentiality rights. Despite this waiver of confidentiality rights, local government agencies and community-based organizations planning to develop a disaster registry are encouraged to do everything possible to maintain the confidentiality of their registries. Organizations that currently have lists of people who would be eligible

to register for the program should be encouraged to share this information with persons establishing a disaster registry.

SEC. 30. Section 8589.7 of the Government Code is amended to read:

8589.7. (a) In carrying out its responsibilities pursuant to subdivision (b) of Section 8574.17, the California Emergency Management Agency shall serve as the central point in state government for the emergency reporting of spills, unauthorized releases, or other accidental releases of hazardous materials and shall coordinate the notification of the appropriate state and local administering agencies that may be required to respond to those spills, unauthorized releases, or other accidental releases. The California Emergency Management Agency is the only state agency required to make the notification required by subdivision (b).

(b) Upon receipt of a report concerning a spill, unauthorized release, or other accidental release involving hazardous materials, as defined in Section 25501 of the Health and Safety Code, or concerning a rupture of, or an explosion or fire involving, a pipeline reportable pursuant to Section 51018, the California Emergency Management Agency shall immediately inform the following agencies of the incident:

(1) For an oil spill reportable pursuant to Section 8670.25.5, the California Emergency Management Agency shall inform the administrator for oil spill response, the State Lands Commission, the California Coastal Commission, and the California regional water quality control board having jurisdiction over the location of the discharged oil.

(2) For a rupture, explosion, or fire involving a pipeline reportable pursuant to Section 51018, the California Emergency Management Agency shall inform the State Fire Marshal.

(3) For a discharge in or on any waters of the state of a hazardous substance or sewage reportable pursuant to Section 13271 of the Water Code, the California Emergency Management Agency shall inform the appropriate California regional water quality control board.

(4) For a spill or other release of petroleum reportable pursuant to Section 25270.8 of the Health and Safety Code, the California Emergency Management Agency shall inform the local administering agency that has jurisdiction over the spill or release.

(5) For a crude oil spill reportable pursuant to Section 3233 of the Public Resources Code, the California Emergency Management Agency shall inform the Division of Oil, Gas, and Geothermal Resources and the appropriate California regional water quality control board.

(c) This section does not relieve a person who is responsible for an incident specified in subdivision (b) from the duty to make an emergency

notification to a local agency, or the 911 emergency system, under any other law.

(d) A person who is subject to Section 25507 of the Health and Safety Code shall immediately report all releases or threatened releases pursuant to that section to the appropriate local administering agency and each local administering agency shall notify the California Emergency Management Agency and businesses in their jurisdiction of the appropriate emergency telephone number that can be used for emergency notification to the administering agency on a 24-hour basis. The administering agency shall notify other local agencies of releases or threatened releases within their jurisdiction, as appropriate.

(e) No facility, owner, operator, or other person required to report an incident specified in subdivision (b) to the California Emergency Management Agency shall be liable for any failure of the California Emergency Management Agency to make a notification required by this section or to accurately transmit the information reported.

SEC. 30.5. Section 8589.7 of the Government Code is amended to read:

8589.7. (a) In carrying out its responsibilities pursuant to subdivision (b) of Section 8574.17, the California Emergency Management Agency shall serve as the central point in state government for the emergency reporting of spills, unauthorized releases, or other accidental releases of hazardous materials and shall coordinate the notification of the appropriate state and local administering agencies that may be required to respond to those spills, unauthorized releases, or other accidental releases. The California Emergency Management Agency is the only state agency required to make the notification required by subdivision (b).

(b) Upon receipt of a report concerning a spill, unauthorized release, or other accidental release involving hazardous materials, as defined in Section 25501 of the Health and Safety Code, or concerning a rupture of, or an explosion or fire involving, a pipeline reportable pursuant to Section 51018, the California Emergency Management Agency shall immediately inform the following agencies of the incident:

(1) For an oil spill reportable pursuant to Section 8670.25.5, the California Emergency Management Agency shall inform the administrator for oil spill response, the State Lands Commission, the California Coastal Commission, and the California regional water quality control board having jurisdiction over the location of the discharged oil. If the spill has occurred within the jurisdiction of the San Francisco Bay Conservation and Development Commission, the California Emergency Management Agency shall notify that commission and the Counties of Alameda, Contra Costa, Marin, Napa, San Mateo, Santa Clara, Solano,

and Sonoma, and the City and County of San Francisco if the spill is within the jurisdiction of the McAteer-Petris Act (Chapter 1 (commencing with Section 66600) of Title 7.2).

(2) For a rupture, explosion, or fire involving a pipeline reportable pursuant to Section 51018, the California Emergency Management Agency shall inform the State Fire Marshal.

(3) For a discharge in or on any waters of the state of a hazardous substance or sewage reportable pursuant to Section 13271 of the Water Code, the California Emergency Management Agency shall inform the appropriate California regional water quality control board.

(4) For a spill or other release of petroleum reportable pursuant to Section 25270.8 of the Health and Safety Code, the California Emergency Management Agency shall inform the local administering agency that has jurisdiction over the spill or release.

(5) For a crude oil spill reportable pursuant to Section 3233 of the Public Resources Code, the California Emergency Management Agency shall inform the Division of Oil, Gas, and Geothermal Resources and the appropriate California regional water quality control board.

(c) This section does not relieve a person who is responsible for an incident specified in subdivision (b) from the duty to make an emergency notification to a local agency, or the 911 emergency system, under any other law.

(d) A person who is subject to Section 25507 of the Health and Safety Code shall immediately report all releases or threatened releases pursuant to that section to the appropriate local administering agency and each local administering agency shall notify the California Emergency Management Agency and businesses in their jurisdiction of the appropriate emergency telephone number that can be used for emergency notification to the administering agency on a 24-hour basis. The administering agency shall notify other local agencies of releases or threatened releases within their jurisdiction, as appropriate.

(e) A facility, owner, operator, or other person required to report an incident specified in subdivision (b) to the California Emergency Management Agency shall not be liable for any failure of the California Emergency Management Agency to make a notification required by this section or to accurately transmit the information reported.

SEC. 31. Section 8589.9 of the Government Code is amended to read:

8589.9. (a) The Legislature finds and declares that there is a growing need to find new ways to acquire firefighting apparatus and equipment for use by local agencies. Local agencies, particularly those that serve rural areas, have had and are likely to continue to have, difficulty acquiring firefighting apparatus and equipment. The Legislature further

finds and declares that this situation presents a statewide problem for the protection of the public safety.

(b) In enacting this article, the Legislature intends to create new ways for the California Emergency Management Agency to help local agencies acquire firefighting apparatus and equipment. Through the identification of available apparatus and equipment, the acquisition of new and used apparatus and equipment, the refurbishing and resale of used apparatus and equipment, and assisting the financing of resales, the California Emergency Management Agency will help local agencies meet public safety needs.

SEC. 32. Section 8589.10 of the Government Code is amended to read:

8589.10. As used in this article:

(a) "Acquire" means acquisition by purchase, grant, gift, or any other lawful means.

(b) "Agency" means the California Emergency Management Agency.

(c) "Firefighting apparatus and equipment" means any vehicle and its associated equipment which is designed and intended for use primarily for firefighting. "Firefighting apparatus and equipment" does not include vehicles that are designed and intended for use primarily for emergency medical services, rescue services, communications and command operations, or hazardous materials operations.

(d) "Indirect expenses" means those items that are identified as indirect costs in the federal Office of Management and Budget, Circular A-87 on January 1, 1985.

(e) "Local agency" means any city, county, special district, or any joint powers agency composed exclusively of those agencies, that provides fire suppression services. "Local agency" also includes a fire company organized pursuant to Part 4 (commencing with Section 14825) of Division 12 of the Health and Safety Code.

(f) "Rural area" means territory that is outside of any urbanized area designated by the United States Census Bureau from the 1980 federal census.

(g) "Secretary" means the Secretary of California Emergency Management.

SEC. 33. Section 8591 of the Government Code is amended to read:

8591. Nothing in this chapter shall operate to prevent the Governor or the Secretary of California Emergency Management from formally recognizing committees or boards established by or with segments of the private sector, public agencies, or both the private sector and public agencies, that control facilities, resources, or the provision of services essential to the mitigation of the effects of an emergency or recovery therefrom, or from assigning administrative authority or responsibility

to those committees or boards or to members thereof with respect to the provision and effective utilization of those resources to meet needs resulting from an emergency.

SEC. 34. Section 8593 of the Government Code is amended to read:

8593. The California Emergency Management Agency shall work with advocacy groups representing the deaf and hearing impaired, including, but not limited to, the California Association of the Deaf and the Coalition of Deaf Access Providers, California television broadcasters, city and county emergency services coordinators, and, as appropriate, the Federal Emergency Management Agency and the Federal Communications Commission, to improve communication with deaf and hearing-impaired persons during emergencies, including the use of open captioning by California television broadcasters when transmitting emergency information.

SEC. 35. Section 8593.1 of the Government Code is amended to read:

8593.1. The California Emergency Management Agency shall investigate the feasibility of, and the funding requirements for, establishing a "Digital Emergency Broadcast System" network, to be used by local and state government agencies for the provision of warnings and instructions in digital or printed form to California broadcast outlets for relay to the public both orally and visually, through television, and orally, through radio, during emergencies.

SEC. 36. Section 8593.2 of the Government Code is amended to read:

8593.2. The California Emergency Management Agency shall investigate the feasibility of establishing a toll-free 800 telephone hotline, including TDD (telecommunications device for the deaf) accessibility, which would be accessible to the public, including deaf, hearing-impaired, and non-English speaking persons, for use during nonemergency and emergency periods to respond to inquiries about emergency preparedness and disaster status.

SEC. 37. Section 8596 of the Government Code is amended to read:

8596. (a) Each department, division, bureau, board, commission, officer, and employee of this state shall render all possible assistance to the Governor and to the Secretary of California Emergency Management in carrying out the provisions of this chapter.

(b) In providing that assistance, state agencies shall cooperate to the fullest possible extent with each other and with political subdivisions, relief agencies, and the American National Red Cross, but nothing contained in this chapter shall be construed to limit or in any way affect the responsibilities of the American National Red Cross under the federal act approved January 5, 1905 (33 Stat. 599), as amended.

(c) State personnel, equipment, and facilities may be used to clear and dispose of debris on private property only after the Governor finds: (1) that the use is for a state purpose; (2) that the use is in the public interest, serving the general welfare of the state; and (3) that the personnel, equipment, and facilities are already in the emergency area.

SEC. 37.5. Section 8596 of the Government Code is amended to read:

8596. (a) Each department, division, bureau, board, commission, officer, and employee of this state shall render all possible assistance to the Governor and to the Secretary of California Emergency Management in carrying out the provisions of this chapter.

(b) In providing that assistance, state agencies shall cooperate to the fullest possible extent with each other and with political subdivisions, relief agencies, and the American National Red Cross, but nothing contained in this chapter shall be construed to limit or in any way affect the responsibilities of the American National Red Cross under the federal act approved January 5, 1905 (33 Stat. 599), as amended.

(c) Entities providing disaster-related services and assistance shall strive to ensure that all victims receive the assistance that they need and for which they are eligible. Public employees shall assist evacuees and other individuals in securing disaster-related assistance and services without eliciting any information or document that is not strictly necessary to determine eligibility under state and federal laws. Nothing in this subdivision shall prevent public employees from taking reasonable steps to protect the health or safety of evacuees and other individuals during an emergency.

(d) State personnel, equipment, and facilities may be used to clear and dispose of debris on private property only after the Governor finds: (1) that the use is for a state purpose; (2) that the use is in the public interest, serving the general welfare of the state; and (3) that the personnel, equipment, and facilities are already in the emergency area.

SEC. 38. Section 8599 of the Government Code is amended to read:

8599. The California Emergency Management Agency shall develop a plan for state and local governmental agencies to utilize volunteer resources during a state of emergency proclaimed by the Governor. The agency shall consult with appropriate state and local governmental agencies and volunteer organizations in the development of this plan.

SEC. 39. Section 8610.5 of the Government Code is amended to read:

8610.5. (a) For purposes of this section, the following definitions shall apply:

(1) "Agency" means the California Emergency Management Agency.

(2) "Utility" means an "electrical corporation" as defined in Section 218 of the Public Utilities Code, and "utilities" means more than one electrical corporation.

(b) (1) State and local costs to carry out activities pursuant to this section and Chapter 4 (commencing with Section 114650) of Part 9 of Division 104 of the Health and Safety Code that are not reimbursed by federal funds shall be borne by utilities operating nuclear powerplants with a generating capacity of 50 megawatts or more.

(2) The Public Utilities Commission shall develop and transmit to the agency an equitable method of assessing the utilities operating the powerplants for their reasonable pro rata share of state agency costs specified in paragraph (1).

(3) Each local government involved shall submit a statement of its costs specified in paragraph (1), as required, to the agency.

(4) Upon each utility's notification by the agency, from time to time, of the amount of its share of the actual or anticipated state and local agency costs, the utility shall pay this amount to the Controller for deposit in the Nuclear Planning Assessment Special Account, which is continued in existence, for allocation by the Controller, upon appropriation by the Legislature, to carry out activities pursuant to this section and Chapter 4 (commencing with Section 114650) of Part 9 of Division 104 of the Health and Safety Code. The Controller shall pay from this account the state and local costs relative to carrying out this section and Chapter 4 (commencing with Section 114650) of Part 9 of Division 104 of the Health and Safety Code, upon certification thereof by the agency.

(5) Upon appropriation by the Legislature, the Controller may disburse up to 80 percent of a fiscal year allocation from the Nuclear Planning Assessment Special Account, in advance, for anticipated local expenses, as certified by the agency pursuant to paragraph (4). The agency shall review program expenditures related to the balance of funds in the account and the Controller shall pay the portion, or the entire balance, of the account, based upon those approved expenditures.

(c) (1) The total annual disbursement of state costs from the utilities operating the nuclear powerplants within the state for activities pursuant to this section and Chapter 4 (commencing with Section 114650) of Part 9 of Division 104 of the Health and Safety Code, shall not exceed the lesser of the actual costs or the maximum funding levels established in this section, subject to subdivisions (e) and (f), to be shared equally among the utilities.

(2) Of the annual amount of two million forty-seven thousand dollars ($2,047,000) for the 2009–10 fiscal year, the sum of one million ninety-four thousand dollars ($1,094,000) shall be for support of the agency for activities pursuant to this section and Chapter 4 (commencing

with Section 114650) of Part 9 of Division 104 of the Health and Safety Code, and the sum of nine hundred fifty-three thousand dollars ($953,000) shall be for support of the State Department of Public Health for activities pursuant to this section and Chapter 4 (commencing with Section 114650) of Part 9 of Division 104 of the Health and Safety Code.

(d) (1) The total annual disbursement for each fiscal year, commencing July 1, 2009, of local costs from the utilities shall not exceed the lesser of the actual costs or the maximum funding levels established in this section, in support of activities pursuant to this section and Chapter 4 (commencing with Section 114650) of Part 9 of Division 104 of the Health and Safety Code. The maximum annual amount available for disbursement for local costs, subject to subdivisions (e) and (f), shall, for the fiscal year beginning July 1, 2009, be one million seven hundred thirty-two thousand dollars ($1,732,000) for the Diablo Canyon site and one million six hundred thousand dollars ($1,600,000) for the San Onofre site.

(2) The amounts paid by the utilities under this section shall be allowed for ratemaking purposes by the Public Utilities Commission.

(e) (1) Except as provided in paragraph (2), the amounts available for disbursement for state and local costs as specified in this section shall be adjusted and compounded each fiscal year by the percentage increase in the California Consumer Price Index of the previous calendar year.

(2) For the Diablo Canyon site, the amounts available for disbursement for state and local costs as specified in this section shall be adjusted and compounded each fiscal year by the larger of the percentage change in the prevailing wage for San Luis Obispo County employees, not to exceed 5 percent, or the percentage increase in the California Consumer Price Index from the previous calendar year.

(f) Through the inoperative date specified in subdivision (g), the amounts available for disbursement for state and local costs as specified in this section shall be cumulative biennially. Any unexpended funds from a year shall be carried over for one year. The funds carried over from the previous year may be expended when the current year's funding cap is exceeded.

(g) This section shall become inoperative on July 1, 2019, and, as of January 1, 2020, is repealed, unless a later enacted statute, which becomes effective on or before July 1, 2019, deletes or extends the dates on which it becomes inoperative and is repealed.

(h) Upon inoperation of this section, any amounts remaining in the special account shall be refunded pro rata to the utilities contributing thereto, to be credited to the utility's ratepayers.

SEC. 40. Section 8614 of the Government Code is amended to read:

8614. (a) Each department, division, bureau, board, commission, officer, and employee of each political subdivision of the state shall render all possible assistance to the Governor and to the Secretary of California Emergency Management in carrying out the provisions of this chapter.

(b) The emergency power that may be vested in a local public official during a state of war emergency or a state of emergency shall be subject or subordinate to the powers vested in the Governor under this chapter when exercised by the Governor.

(c) Ordinances, orders, and regulations of a political subdivision shall continue in effect during a state of war emergency or a state of emergency except as to any provision suspended or superseded by an order or regulation issued by the Governor.

SEC. 41. Section 8649 of the Government Code is amended to read:

8649. Subject to the approval of the Department of Finance, any state agency may use its personnel, property, equipment, and appropriations for carrying out the purposes of this chapter, and in that connection may loan personnel to the California Emergency Management Agency. The Department of Finance shall determine whether reimbursement shall be made to any state agency for expenditures heretofore or hereafter made or incurred for those purposes from any appropriation available for the California Emergency Management Agency, except that as to any expenditure made or incurred by any state agency the funds of which are subject to constitutional restriction that would prohibit their use for those purposes, that reimbursement shall be provided and the original expenditure shall be considered a temporary loan to the General Fund.

SEC. 42. Section 8651 of the Government Code is amended to read:

8651. The Secretary of California Emergency Management may procure from the federal government or any of its agencies such surplus equipment, apparatus, supplies, and storage facilities therefor as may be necessary to accomplish the purposes of this chapter.

SEC. 43. Section 8682 of the Government Code is amended to read:

8682. The secretary shall administer this chapter. The secretary may delegate any power or duty vested in him or her under this chapter to a state agency or to any other officer or employee of the California Emergency Management Agency.

SEC. 44. Section 8682.2 of the Government Code is amended to read:

8682.2. To the extent that funds are allocated therefor, a state agency, when requested by the secretary, shall render services and perform duties within its area of responsibility when considered necessary to carry out the purposes of this chapter.

SEC. 45. Section 8682.6 of the Government Code is amended to read:

8682.6. The project proposal executed between a local agency and the secretary pursuant to Section 8685.6 shall contain a provision under which the local agency agrees to hold the state harmless from damages due to the work for which funds are allocated.

SEC. 46. Section 8682.8 of the Government Code is amended to read:

8682.8. When certified by the secretary, claims of local agencies for payment shall be presented to the Controller for payment out of funds made available therefor. The secretary may request the Controller to audit any claim to ensure that funds were expended in accordance with the requirements and purposes of this chapter.

SEC. 47. Section 8682.9 of the Government Code is amended to read:

8682.9. The secretary shall adopt regulations, as necessary, to govern the administration of the disaster assistance program authorized by this chapter in accordance with the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3). These regulations shall include specific project eligibility requirements, a procedure for local governments to request the implementation of programs under this chapter, and a method for evaluating these requests by the California Emergency Management Agency.

SEC. 48. Section 11550 of the Government Code is amended to read:

11550. (a) Effective January 1, 1988, an annual salary of ninety-one thousand fifty-four dollars ($91,054) shall be paid to each of the following:

(1) Director of Finance.
(2) Secretary of Business, Transportation and Housing.
(3) Secretary of the Resources Agency.
(4) Secretary of California Health and Human Services.
(5) Secretary of State and Consumer Services.
(6) Commissioner of the California Highway Patrol.
(7) Secretary of the Department of Corrections and Rehabilitation.
(8) Secretary of Food and Agriculture.
(9) Secretary of Veterans Affairs.
(10) Secretary of Labor and Workforce Development.
(11) State Chief Information Officer.
(12) Secretary for Environmental Protection.
(13) Secretary of California Emergency Management.

(b) The annual compensation provided by this section shall be increased in any fiscal year in which a general salary increase is provided for state employees. The amount of the increase provided by this section

shall be comparable to, but shall not exceed, the percentage of the general salary increases provided for state employees during that fiscal year.

SEC. 49. Section 11552 of the Government Code is amended to read:

11552. (a) Effective January 1, 1988, an annual salary of eighty-five thousand four hundred two dollars ($85,402) shall be paid to each of the following:

(1) Commissioner of Financial Institutions.

(2) Commissioner of Corporations.

(3) Director of Transportation.

(4) Real Estate Commissioner.

(5) Director of Social Services.

(6) Director of Water Resources.

(7) Chief Deputy Secretary for Adult Operations of the Department of Corrections and Rehabilitation.

(8) Director of General Services.

(9) Director of Motor Vehicles.

(10) Chief Deputy Secretary for Juvenile Justice in the Department of Corrections and Rehabilitation.

(11) Executive Officer of the Franchise Tax Board.

(12) Director of Employment Development.

(13) Director of Alcoholic Beverage Control.

(14) Director of Housing and Community Development.

(15) Director of Alcohol and Drug Programs.

(16) Director of Statewide Health Planning and Development.

(17) Director of the Department of Personnel Administration.

(18) Director of Health Care Services.

(19) Director of Mental Health.

(20) Director of Developmental Services.

(21) State Public Defender.

(22) Director of the California State Lottery.

(23) Director of Fish and Game.

(24) Director of Parks and Recreation.

(25) Director of Rehabilitation.

(26) Director of the Office of Administrative Law.

(27) Director of Consumer Affairs.

(28) Director of Forestry and Fire Protection.

(29) The Inspector General pursuant to Section 6125 of the Penal Code.

(30) Director of Child Support Services.

(31) Director of Industrial Relations.

(32) Chief Deputy Secretary for Adult Programs in the Department of Corrections and Rehabilitation.

(33) Director of Toxic Substances Control.

(34) Director of Pesticide Regulation.
(35) Director of Managed Health Care.
(36) Director of Environmental Health Hazard Assessment.
(37) Director of Technology.
(38) Director of California Bay-Delta Authority.
(39) Director of California Conservation Corps.

(b) The annual compensation provided by this section shall be increased in any fiscal year in which a general salary increase is provided for state employees. The amount of the increase provided by this section shall be comparable to, but shall not exceed, the percentage of the general salary increases provided for state employees during that fiscal year.

SEC. 50. Section 11554 of the Government Code is amended to read:

11554. (a) Effective January 1, 1988, an annual salary of seventy-five thousand three hundred fifty-four dollars ($75,354) shall be paid to each of the following:

(1) Director of Conservation.
(2) Director of Community Services and Development.
(3) State Architect.
(4) Director of Fair Employment and Housing.
(5) Director of the California Department of Aging.
(6) State Fire Marshal.
(7) Director of Boating and Waterways.

(b) The annual compensation provided by this section shall be increased in any fiscal year in which a general salary increase is provided for state employees. The amount of the increase provided by this section shall be comparable to, but shall not exceed, the percentage of the general salary increases provided for state employees during that fiscal year.

SEC. 51. Section 12016 of the Government Code is repealed.

SEC. 52. 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. 53. 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:

Preventing the disclosure of certain records and procedures of the California Emergency Management Agency will preserve the security of the state.

SEC. 54. (a) Section 1.1 of this bill incorporates amendments to Section 6254 of the Government Code proposed by both this bill and SB 1145. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2009, (2) each bill amends Section 6254 of the Government Code, (3) AB 2810 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after SB 1145, in which case Section 6254 of the Government Code, as amended by Section 1 of SB 1145, shall remain operative only until the operative date of this bill, at which time Section 1.1 of this bill shall become operative and Sections 1, 1.2, and 1.3 of this bill shall not become operative.

(b) Section 1.2 of this bill incorporates amendments to Section 6254 of the Government Code proposed by both this bill and AB 2810. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2009, (2) each bill amends Section 6254 of the Government Code, (3) SB 1145 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after AB 2810 in which case Sections 1, 1.1, and 1.3 of this bill shall not become operative.

(c) Section 1.3 of this bill incorporates amendments to Section 6254 of the Government Code proposed by this bill, SB 1145, and AB 2810. It shall only become operative if (1) all three bills are enacted and become effective on or before January 1, 2009, (2) all three bills amend Section 6254 of the Government Code, and (3) this bill is enacted after SB 1145 and AB 2810, in which case Section 6254 of the Government Code, as amended by Section 1 of SB 1145, shall remain operative only until the operative date of this bill at which time Section 1.3 of this bill shall become operative and Sections 1, 1.1, and 1.2 of this bill shall not become operative.

SEC. 55. Section 30.5 of this bill incorporates amendments to Section 8589.7 of the Government Code proposed by both this bill and SB 1056. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2009, (2) each bill amends Section 8589.7 of the Government Code, and (3) this bill is enacted after SB 1056, in which case Section 30 of this bill shall not become operative.

SEC. 56. Section 37.5 of this bill incorporates amendments to Section 8596 of the Government Code proposed by this bill and AB 2327. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2009, (2) each bill amends Section

8596 of the Government Code, and (3) this bill is enacted after AB 2327, in which case Section 8596 of the Government Code, as amended by AB 2327, shall remain operative only until the operative date of this bill, at which time Section 37.5 of this bill shall become operative, and Section 37 of this bill shall not become operative.

CHAPTER 373

An act to add Chapter 7.5 (commencing with Section 2370) to Division 3 of the Streets and Highways Code, relating to transportation.

[Approved by Governor September 27, 2008. Filed with Secretary of State September 27, 2008.]

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

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

(a) According to several studies dating back many years, integrating underprivileged young adults between the ages of 14 and 24 into the mainstream of social and economic life produces numerous social benefits, including the reduction of criminal activity, alcohol and drug abuse, teen pregnancy, and welfare dependency.

(b) These studies have found that among the most productive strategies for assisting young people to develop civic consciousness and become productive members of society are programs that link employment training, jobs, education, and public service through community-based programs, such as California's community conservation corps.

(c) The federal Transportation Equity Act of 1998 and subsequent acts direct the United States Secretary of Transportation to encourage states to enter into contracts and cooperative agreements with qualified youth conservation or service corps using federal transportation enhancement funds to perform appropriate transportation enhancement activities, including the construction of bicycle lanes, development of landscaping and scenic beautification, environmental mitigation, and other similar activities consistent with federal law. Federal Highway Administration guidance to states on use of transportation enhancement funds declares that "where states and local officials are able to identify opportunities to enter into partnership with these service organizations, they should fully consider the benefits to their own efforts and the benefits to the youth involved."

(d) Cities and counties, which are the recipients of transportation enhancement funds, and regional transportation planning agencies that

prioritize projects nominated to use those funds, have not taken advantage of the provision in federal law authorizing and encouraging the involvement of qualified community conservation corps agencies in eligible transportation enhancement activities and projects.

SEC. 2. Chapter 7.5 (commencing with Section 2370) is added to Division 3 of the Streets and Highways Code, to read:

CHAPTER 7.5. FEDERAL FUNDS FOR TRANSPORTATION ENHANCEMENTS

2370. As used in this chapter, the following terms have the following meanings:

(a) "Community conservation corps" shall have the same meaning as defined in Section 14507.5 of the Public Resources Code.

(b) "Transportation enhancement project" means a project constructed or undertaken with funds made available to the state pursuant to Section 133(b)(8) of Title 23 of the United States Code.

2371. (a) The department, in consultation with community conservation corps, the California Conservation Corps, the commission, regional transportation planning agencies, county transportation commissions or authorities, and congestion management agencies, shall develop criteria that give priority in the selection of projects to the sponsors of eligible projects that partner with, or commit to employ the services of, a community conservation corps or the California Conservation Corp to construct or undertake the project

(b) Regional transportation planning agencies, county transportation commissions or authorities, and congestion management agencies, when selecting candidates for transportation enhancement projects, shall utilize the criteria in subdivision (a) that give priority in the selection of projects to the sponsors of eligible projects that partner with, or commit to employ the services of, a community conservation corps or the California Conservation Corps to construct or undertake the project.

2372. The department, regional transportation planning agencies, county transportation commissions or authorities, or congestion management agencies shall be authorized to enter into cooperative agreements, grant agreements, or procurement contracts with community conservation corps pursuant to the simplified contract requirements authorized by Section 18.36(j) of Title 49 of the Code of Federal Regulations in order to enable community conservation corps to utilize transportation enhancement project funds.

2373. The commission, when developing guidelines for the state transportation improvement program and the state highway operations and protection program, shall include guidance to encourage the allocation of funds for transportation enhancement projects to qualified

community conservation corps and the California Conservation Corps as partners with applicants that commit to employ the services of corps members in the construction of those projects.

2374. The criteria prepared pursuant to subdivision (a) of Section 2373 and the guidelines prepared pursuant to Section 2371 relative to the allocation of funds for transportation enhancement projects to qualified community conservation corps and the California Conservation Corps shall further the purposes of this chapter.

CHAPTER 374

An act to add Section 2932.3 to the Fish and Game Code, relating to the Salton Sea.

[Approved by Governor September 27, 2008. Filed with Secretary of State September 27, 2008.]

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

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

(a) The Salton Sea is an internationally significant resource and its restoration is essential to wildlife, the protection of public health and the quality of life in the surrounding communities.

(b) The Salton Sea is considered a globally important bird area because of its astounding diversity of bird species, with more than 400 species, the second highest count in the nation, and the very large populations of some species that rely on it for habitat.

(c) The restoration of the Salton Sea is essential to protect public health and agriculture from dangerous levels of dust pollution that would otherwise result from exposed seabed.

(d) The Salton Sea also offers important opportunities for recreation, hunting, fishing, and economic development.

(e) Pursuant to subdivision (e) of Section 2081.7 and Section 2931 of the Fish and Game Code, the Secretary of the Resources Agency has undertaken a programmatic planning process to identify a preferred alternative for the restoration of the Salton Sea, the final recommendations from which are contained in the secretary's May 2007 report submitted to the Legislature.

SEC. 2. Section 2932.3 is added to the Fish and Game Code, to read:

2932.3. Any moneys made available by paragraph (3) of subdivision (b) of Section 75050 of the Public Resources Code and deposited in the Salton Sea Restoration Fund shall be expended, upon appropriation by

the Legislature in the annual Budget Act, for a restoration project at the Salton Sea that is consistent with subdivision (c) of Section 2931. The activities and expenditures authorized by this section shall be limited to funding those activities identified in the Resources Agency report entitled "Salton Sea Ecosystem Restoration Program Preferred Alternative Report and Funding Plan," and dated May 2007, for completion in the first five years of implementation identified in the report as "Period I." The activities specified for completion in Period I include, but are not limited to, a demonstration project, early start habitat, and additional biological, inflow, sediment quality, water quality, and air quality investigations. For purposes of carrying out these activities and expending the funds made available, the Resources Agency shall act as the lead agency and work cooperatively with designated staff from the Department of Water Resources, the State Air Resources Board, the State Water Resources Control Board, and the department. The Resources Agency shall remain the lead agency for implementation, in partnership with one or more of its departments, unless and until legislation is enacted on or after January 1, 2009, establishing a new governance structure for restoration of the Salton Sea. This section is not legislative approval or denial of the preferred alternative identified in the Secretary of the Resources Agency's recommendations contained in the "Salton Sea Ecosystem Restoration Program Preferred Alternative Report and Funding Plan," dated May 2007 and submitted to the Legislature.

CHAPTER 375

An act to amend Sections 11005 and 11005.3 of the Revenue and Taxation Code, relating to local government finance.

[Approved by Governor September 27, 2008. Filed with Secretary of State September 27, 2008.]

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

SECTION 1. Section 11005 of the Revenue and Taxation Code is amended to read:

11005. After payment of refunds therefrom and after making the deductions authorized by Section 11003 and reserving the amount determined necessary by the Pooled Money Investment Board to meet the transfers ordered or proposed to be ordered pursuant to Section 16310 of the Government Code, commencing with the 2004–05 fiscal year, the balance of all motor vehicle license fees and any other money

appropriated by law for expenditure pursuant to this section and deposited to the credit of the Motor Vehicle License Fee Account in the Transportation Tax Fund and remaining unexpended therein at the close of business on the last day of the calendar month, shall be allocated by the Controller by the 10th day of the following month in accordance with the following:

(a) First, to the County of Orange. For the 2004–05 fiscal year, that county shall be allocated fifty-four million dollars ($54,000,000) in monthly installments. For the 2005–06 fiscal year and each fiscal year thereafter, that county shall receive, in monthly installments, an amount equal to the amount allocated under this section for the prior fiscal year, adjusted for the percentage change in the amount of revenues credited to the Motor Vehicle License Fee Account in the Transportation Tax Fund from the revenues credited to that account in the prior fiscal year. Moneys allocated to the County of Orange under this subdivision shall be used first for the service of indebtedness as provided in paragraph (1) of subdivision (a) of Section 11001.5. Any amounts in excess of the amount required for this service of indebtedness may be used by that county for any lawful purpose.

(b) Second, to each city, the population of which is determined under Section 11005.3 on August 5, 2004, in an amount equal to the additional amount of vehicle license fee revenue, including offset transfers, that would be allocated to that city under Sections 11000 and 11005, as those sections read on January 1, 2004, as a result of that city's population being determined under subdivision (a) or (b) of Section 11005.3.

(c) Third, to each city that was incorporated from an unincorporated territory after August 5, 2004, in an amount equal to the product of the following two amounts:

(1) The quotient derived from the following fraction:

(A) The numerator is the product of the following two amounts:

(i) Fifty dollars ($50) per year.

(ii) The fraction determined as the total amount of vehicle license fee revenue collected during the most recent fiscal year divided by the total amount of vehicle license fee revenue collected during the 2004–05 fiscal year.

(B) The denominator is the fraction determined as the actual population, as defined in subdivision (e) of Section 11005.3, of all cities during the most recent fiscal year, divided by the actual population, as defined in subdivision (e) of Section 11005.3, of all cities in the 2004–05 fiscal year.

(2) The city's population determined in accordance with Section 11005.3.

(d) Fourth, to each city that was incorporated before August 5, 2004, in an amount equal to the product of the following two amounts:

(1) The quotient derived from the following fraction:

(A) The numerator is the product of the following two amounts:

(i) Fifty dollars ($50) per year.

(ii) The fraction determined as the total amount of vehicle license fee revenue collected during the most recent fiscal year divided by the total amount of vehicle license fee revenue collected during the 2004–05 fiscal year.

(B) The denominator is the fraction determined as the actual population, as defined in subdivision (e) of Section 11005.3, of all cities during the most recent fiscal year, divided by the actual population, as defined in subdivision (e) of Section 11005.3, of all cities in the 2004–05 fiscal year.

(2) The actual population, as defined in subdivision (e) of Section 11005.3, residing in areas annexed after August 5, 2004, as of the date of annexation.

(e) Fifth, to the cities and cities and counties of this state in the proportion that the population of each city or city and county bears to the total population of all cities and cities and counties in this state, as determined by the Demographic Research Unit of the Department of Finance. For the purpose of this subdivision, the population of each city or city and county shall be determined in accordance with Section 11005.3.

SEC. 2. Section 11005.3 of the Revenue and Taxation Code is amended to read:

11005.3. (a) In the case of a city that incorporated on or after January 1, 1987, and before August 5, 2004, the Controller shall determine that the population of the city for its first 10 full fiscal years, and any portion of the first year in which the incorporation is effective if less than a full fiscal year, is the greater of either:

(1) The number of registered voters in the city multiplied by three. The number of registered voters shall be calculated as of the effective date of the incorporation of the city.

(2) The actual population, as defined in subdivision (e).

(b) In the case of a city that incorporated on or after January 1, 1987, and before August 5, 2004, and for which the application for incorporation was filed with the executive officer of the local agency formation commission pursuant to subdivision (a) of Section 56828 of the Government Code on or after January 1, 1991, the Controller shall determine that the population of the city for its first seven full fiscal years, and any portion of the first year in which the incorporation is effective if less than a full fiscal year, is the greater of either:

(1) The number of registered voters in the city multiplied by three. The number of registered voters shall be calculated as of the effective date of the incorporation of the city.

(2) The actual population, as defined in subdivision (e).

(c) In the case of a city that was incorporated from unincorporated territory after August 5, 2004, the Controller shall determine the population of the city as follows:

(1) For its first 12 months, 150 percent of the city's actual population.

(2) For its 13th through 24th months, 140 percent of the city's actual population.

(3) For its 25th through 36th months, 130 percent of the city's actual population.

(4) For its 37th through 48th months, 120 percent of the city's actual population.

(5) For its 49th through 60th months, 110 percent of the city's actual population.

(6) After its 60th month, the city's actual population.

(d) For purposes of this section, "actual population" means the population determined by the last federal decennial or special census, or a subsequent census validated by the Demographic Research Unit of the Department of Finance or subsequent estimate prepared pursuant to Section 2107.2 of the Streets and Highways Code.

(e) In the case of unincorporated territory being annexed to a city, during the 10-year, seven-year, or five-year period following incorporation, as the case may be, subsequent to the last federal census, or a subsequent census validated by the Demographic Research Unit of the Department of Finance, the unit shall determine the population of the annexed territory by the use of any federal decennial or special census or any estimate prepared pursuant to Section 2107.2 of the Streets and Highways Code. The population of the annexed territory as determined by the Demographic Research Unit shall be added to the city's population as previously determined by the Controller pursuant to paragraph (1) or (2) of subdivision (a), paragraph (1) or (2) of subdivision (b), or subdivision (c), as applicable.

(f) After the 10-year, seven-year, or five-year period following incorporation, as the case may be, the Controller shall determine the population of the city as the city's actual population, as defined in subdivision (d).

(g) The amendments made to this section by the act adding this subdivision shall not apply with respect to either of the following:

(1) Any city that has adopted an ordinance or resolution, approved a ballot measure, or is subject to a consent decree or court order, that

annually limits the number of housing units that may be constructed within the city.

(2) Any city that has not prepared and adopted a housing element in compliance with Section 65585 of the Government Code.

(h) This section shall become operative July 1, 1991.

CHAPTER 376

An act to amend Sections 14005, 14013, 14020, 14221, and 14230 of, and to add Sections 9600.5 and 9600.7 to, the Unemployment Insurance Code, relating to employment development.

[Approved by Governor September 27, 2008. Filed with Secretary of State September 27, 2008.]

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

SECTION 1. Section 9600.5 is added to the Unemployment Insurance Code, to read:

9600.5. The director of the Employment Development Department shall report annually to the Governor, the Legislature, and the California Workforce Investment Board, no later than November 30, regarding the training expenditures made by local workforce investment boards in the prior fiscal year. The department shall specify what expenditures qualify as training expenditures, including, but not limited to, the price paid for classroom instruction or other training opportunities, contracted services for customized training and on-the-job training, development of training materials, and supportive services, including case management, that enable a participant to attend and complete training. The annual report shall specify the total amount of federal funding provided to the state and to each of the local workforce investment areas for the adult and dislocated persons programs and the amount within each program expended for training services.

SEC. 2. Section 9600.7 is added to the Unemployment Insurance Code, to read:

9600.7. (a) The department shall have the authority to administer the requirements of the federal Workforce Investment Act of 1998 including, but not limited to, establishing accounting, monitoring, auditing, and reporting procedures and criteria in order to ensure state compliance with the objectives and requirements of the federal Workforce Investment Act.

(b) The department shall adopt, amend, or repeal any rules and regulations as necessary to implement Division 7 (commencing with Section 14000).

SEC. 3. Section 14005 of the Unemployment Insurance Code is amended to read:

14005. For purposes of this division:

(a) "Board" shall mean the California Workforce Investment Board.

(b) "Agency" means the Labor and Workforce Development Agency.

(c) "Workforce Investment Act of 1998" means the federal act enacted as Public Law 105-220.

(d) "Local labor federation" means a central labor council that is an organization of local unions affiliated with the California Labor Federation or a local building and construction trades council affiliated with the State Building and Construction Trades Council.

SEC. 4. Section 14013 of the Unemployment Insurance Code is amended to read:

14013. The board shall assist the Governor in the following:

(a) Promoting the development of a well-educated and highly skilled workforce.

(b) Developing the State Workforce Investment Plan.

(c) Developing guidelines for the continuous improvement and operation of the workforce investment system, including:

(1) Developing policies to guide the one-stop system.

(2) Providing technical assistance for the continuous improvement of the one-stop system.

(3) Recommending state investments in the one-stop system.

(4) Targeting resources to high-wage industry sectors that are either high-growth sectors or critical to California's economy, or both.

(d) Developing and continuously improving the statewide workforce investment system as delivered via the one-stop delivery system, including:

(1) Developing linkages in order to assure coordination and nonduplication among workforce programs and activities.

(2) Reviewing local workforce investment plans.

(3) Providing guidance to ensure services reflect the needs of high-wage industry sectors.

(e) Commenting, at least once annually, on the measures taken pursuant to the Carl D. Perkins Vocational and Applied Technology Education Act Amendments of 1990 (Public Law 101-392; 20 U.S.C. Sec. 2301 et seq.).

(f) Designating local workforce investment areas within the state based on information derived from all of the following:

(1) Consultations with the Governor.

(2) Consultations with the chief local elected officials.

(3) Consideration of comments received through the public comment process, as described in Section 112(b)(9) of the federal Workforce Investment Act of 1998.

(g) Developing and modifying allocation formulas, as necessary, for the distribution of funds for adult employment and training activities, for youth activities to local workforce investment areas, and dislocated worker employment and training activities, as permitted by federal law.

(h) Coordinating the development and continuous improvement of comprehensive state performance measures, including state adjusted levels of performance, to assess the effectiveness of the workforce investment activities in the state.

(i) Preparing the annual report to the United States Secretary of Labor.

(j) Recommending policy for the development of the statewide employment statistics system, including workforce and economic data, as described in Section 15 of Title 29 of the United States Code, and using, to the fullest extent possible, the Employment Development Department's existing labor market information systems.

(k) Recommending strategies to the Governor for strategic training investments of the Governor's 15-percent discretionary funds.

(*l*) Developing and recommending waivers, in conjunction with local workforce investment boards, to the Governor as provided for in the federal Workforce Investment Act of 1998.

(m) Recommending policy to the Governor for the use of the 25-percent rapid response funds, as authorized under the federal Workforce Investment Act of 1998.

(n) Developing an application to the United States Department of Labor for an incentive grant under Section 9273 of Title 20 of the United States Code.

SEC. 4.5. Section 14013 of the Unemployment Insurance Code is amended to read:

14013. The board shall assist the Governor in the following:

(a) Promoting the development of a well-educated and highly skilled workforce.

(b) Developing the State Workforce Investment Plan.

(c) Developing guidelines for the continuous improvement and operation of the workforce investment system, including:

(1) Developing policies to guide the one-stop system.

(2) Providing technical assistance for the continuous improvement of the one-stop system.

(3) Recommending state investments in the one-stop system.

(4) Targeting resources to high-wage industry sectors that are either high-growth sectors or critical to California's economy, or both.

(d) Developing and continuously improving the statewide workforce investment system as delivered via the one-stop delivery system, including:

(1) Developing linkages in order to ensure coordination and nonduplication among workforce programs and activities.

(2) Reviewing local workforce investment plans.

(3) Providing guidance to ensure services reflect the needs of high-wage industry sectors.

(e) Commenting, at least once annually, on the measures taken pursuant to the Carl D. Perkins Vocational and Applied Technology Education Act Amendments of 1990 (Public Law 101-392; 20 U.S.C. Sec. 2301 et seq.).

(f) Designating local workforce investment areas within the state based on information derived from all of the following:

(1) Consultations with the Governor.

(2) Consultations with the chief local elected officials.

(3) Consideration of comments received through the public comment process, as described in Section 112(b)(9) of the federal Workforce Investment Act of 1998.

(g) Developing and modifying allocation formulas, as necessary, for the distribution of funds for adult employment and training activities, for youth activities to local workforce investment areas, and dislocated worker employment and training activities, as permitted by federal law.

(h) Coordinating the development and continuous improvement of comprehensive state performance measures, including state adjusted levels of performance, to assess the effectiveness of the workforce investment activities in the state.

(i) Preparing the annual report to the United States Secretary of Labor.

(j) Recommending policy for the development of the statewide employment statistics system, including workforce and economic data, as described in Section 15 of Title 29 of the United States Code, and using, to the fullest extent possible, the Employment Development Department's existing labor market information systems.

(k) Recommending strategies to the Governor for strategic training investments of the Governor's 15-percent discretionary funds.

(*l*) Developing and recommending waivers, in conjunction with local workforce investment boards, to the Governor as provided for in the federal Workforce Investment Act of 1998.

(m) Recommending policy to the Governor for the use of the 25-percent rapid response funds, as authorized under the federal Workforce Investment Act of 1998.

(n) Developing an application to the United States Department of Labor for an incentive grant under Section 9273 of Title 20 of the United States Code.

(o) Recommending policy and providing technical assistance on entrepreneurial training opportunities that could be made available through programs of local workforce investment boards as authorized under the federal Workforce Investment Act of 1998.

SEC. 5. Section 14020 of the Unemployment Insurance Code is amended to read:

14020. The California Workforce Investment Board, in collaboration with state and local partners, including the Chancellor of the California Community Colleges, the State Department of Education, other appropriate state agencies, and local workforce investment boards, shall develop a strategic workforce plan to serve as a framework for the development of public policy, fiscal investment, and operation of all state labor exchange, workforce education, and training programs to address the state's economic, demographic, and workforce needs. The strategic workforce plan shall also serve as the framework for the single state plan required by the Workforce Investment Act of 1998. The plan shall be updated at least every five years.

SEC. 6. Section 14221 of the Unemployment Insurance Code is amended to read:

14221. The local plan shall include all of the following:

(a) A local labor market assessment which contains an identification of local and regional workforce investment needs of key industry sectors, businesses, jobseekers, and incumbent workers in the local area, the current and projected employment opportunities and the job skills necessary to obtain that employment.

(b) A description of the local one-stop delivery system, including all of the following:

(1) A description of how the local board will achieve system integration that will improve services to employers, incumbent workers, and jobseekers, and a description of local funding sources.

(2) A copy of each memorandum of understanding between the local board and each of the one-stop partners concerning the operation of the one-stop delivery system in the local area.

(c) A description of the local levels of performance negotiated with the Governor and chief local elected official to be used to measure the performance of the local area and the performance of the local fiscal agent, eligible providers, and the one-stop delivery system in the local area. Performance standards shall not create disincentives for serving clients for whom it is more difficult to provide service.

(d) A description and assessment of the type and availability of adult and dislocated worker employment and training activities in the local area.

(e) A description of how the local board will provide services to the business community, including, but not limited to, recruitment and staffing services, training, and development, information and resources, and outplacement and business retention services.

(f) A description of how the local board will coordinate workforce investment activities carried out in the local area with statewide rapid response activities, as appropriate.

(g) A description and assessment of the type and availability of youth activities in the local area, including an identification of successful providers of those activities.

(h) A description of the process used by the local board, consistent with Section 14223, to provide an opportunity for public comment, including comment by representatives of businesses, labor organizations, and community-based organizations, and input into the development of the local plan, prior to submission of the plan.

(i) An identification of the entity, as prescribed in the Workforce Investment Act of 1998, responsible for the disbursal of funds under the Workforce Investment Act of 1998.

(j) A description of the competitive process to be used to award the grants and contracts in the local area for activities carried out under the Workforce Investment Act of 1998.

SEC. 7. Section 14230 of the Unemployment Insurance Code is amended to read:

14230. (a) It is the intent of the Legislature that:

(1) California deliver comprehensive workforce services to jobseekers, students, and employers through a system of one-stop career centers.

(2) Services and resources target high-wage industry sectors with career advancement opportunities.

(3) Universal access to core services shall be available to adult residents regardless of income, education, employment barriers, or other eligibility requirements. Core services shall include, but not be limited to:

(A) Outreach, intake, and orientation to services available through the one-stop delivery system.

(B) Initial assessment of skill levels, aptitudes, abilities, and supportive service needs.

(C) Job search and placement assistance.

(D) Career counseling, where appropriate.

(E) Provision of labor market information.

(F) Provision of program performance and cost information on eligible providers of training services and local area performance measures.

(G) Provision of information on supportive services in the local area.

(H) Provision of information on the filing of claims for unemployment compensation benefits and unemployment compensation disability benefits.

(I) Assistance in establishing eligibility for welfare-to-work activities pursuant to Section 11325.8 of the Welfare and Institutions Code, and financial aid assistance.

(4) State and federally funded workforce education, training, and employment programs shall be integrated in the one-stop delivery system to achieve universal access to the core services described in paragraph (3).

(5) Intensive services shall be available to individuals who have completed at least one core service, have been unable to obtain employment, and who have been determined, by the one-stop operator, as being in need of more intensive services, or who are employed but in need of intensive services to obtain or retain employment to achieve self-sufficiency. Intensive services may include comprehensive and specialized assessments of skill levels and service needs, including learning disability screening, the development of individual employment plans, counseling, career planning, and short-term prevocational services to prepare an individual for training and employment.

(6) Training services shall be made available to individuals who have met the requirements for intensive services, have been unable to obtain or retain employment through these services, and who, after an interview, evaluation, or assessment, are determined to be in need of training, and have selected a program of services directly linked to occupations in demand in the local or regional area. Training services may include:

(A) Occupational skill training including training for nontraditional employment.

(B) On-the-job training.

(C) Programs that combine workplace training with related instruction.

(D) Training programs operated by the private sector.

(E) Skill upgrading and retraining.

(F) Entrepreneurial training.

(G) Job readiness training.

(H) Adult education and literacy activities, including vocational English as a second language, provided in combination with subparagraphs (A) through (G), inclusive.

(I) Customized training conducted by an employer or a group of employers or a labor-management training partnership with a commitment to employ an individual upon completion of the training.

(7) As prescribed in the Workforce Investment Act of 1998, when funds are limited, priority for intensive services and training services shall be given to adult recipients of public assistance and other low-income adults, such as CalWORKs participants.

(b) Each local workforce investment board shall establish at least one full service one-stop career center in the local workforce investment area. Each full service one-stop career center shall have all entities specified in Section 14231 as partners and shall provide jobseekers with integrated employment, education, training, and job search services. Additionally, employers will be provided with access to comprehensive career and labor market information, job placement, economic development information, performance and program information on service providers, and other such services as the businesses in the community may require.

(c) Local boards may also establish affiliated and specialized centers, as defined in the Workforce Investment Act of 1998, which shall act as portals into the larger local one-stop system, but are not required to have all of the partners specified for full service one-stop centers.

(d) Each local board shall develop a policy for identifying individuals who, because of their skills or experience, should be referred immediately to training services. This policy, along with the methods for referral of individuals between the one-stop operators and the one-stop partners for appropriate services and activities, shall be contained in the memorandum of understanding between the local board and the one-stop partners.

(e) In light of California's diverse population, each one-stop career center should have the capacity to provide the appropriate services to the full range of languages and cultures represented in the community served by the one-stop career center.

SEC. 8. Section 4.5 of this bill incorporates amendments to Section 14013 of the Unemployment Insurance Code proposed by both this bill and AB 2998. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2009, (2) each bill amends Section 14013 of the Unemployment Insurance Code, and (3) this bill is enacted after AB 2998, in which case Section 4 of this bill shall not become operative.

SEC. 9. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because this act implements a federal law or regulation and results only in costs mandated by the federal government, within the meaning of Section 17556 of the Government Code.

CHAPTER 377

An act to amend Section 65089.11 of the Government Code, relating to local government.

[Approved by Governor September 27, 2008. Filed with Secretary of State September 27, 2008.]

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

SECTION 1. Section 65089.11 of the Government Code is amended to read:

65089.11. (a) The City/County Association of Governments of San Mateo County, which has been formed by the resolutions of the board of supervisors within San Mateo County and a majority of the city councils within the county that represent a majority of the population in the incorporated area of San Mateo County, may impose a fee of up to four dollars ($4) on motor vehicles registered within San Mateo County. The City/County Association of Governments of San Mateo County may impose the fee only if the board of the association adopts a resolution providing for both the fee and a corresponding program for the management of traffic congestion and stormwater pollution within San Mateo County as set forth in Sections 65089.12 to 65089.15, inclusive. Adoption by the board requires a vote of approval by board members representing two-thirds of the population of San Mateo County.

(b) A fee imposed pursuant to this section shall not become operative until July 1, 2005, pursuant to the resolution adopted by the board in subdivision (a).

(c) The City/County Association of Governments of San Mateo County may reauthorize the fee established under subdivision (a) pursuant to the same conditions required in that subdivision for a period of four years and the fee shall terminate on January 1, 2013, unless reauthorized by the Legislature.

CHAPTER 378

An act to amend Section 101.7 of the Streets and Highways Code, relating to transportation.

[Approved by Governor September 27, 2008. Filed with Secretary of State September 27, 2008.]

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

SECTION 1. Section 101.7 of the Streets and Highways Code is amended to read:

101.7. (a) The department shall adopt rules and regulations that allow the placement, near exits on freeways located in rural areas, of information signs identifying specific roadside businesses offering fuel, food, lodging, camping services, approved 24-hour pharmacy services, or approved attractions, and that prescribe the standards for those signs.

(b) The department shall provide equal access to all business applicants.

(c) The department shall not approve the placement of any sign within any urban area designated by the United States Bureau of the Census as having a population of 5,000 or more.

The department may not remove an information sign that was placed before January 1, 2003, due solely to population growth in an urban area that results in a population of 5,000 or more but less than 10,000.

(d) The information signs may be placed near the freeway exits in addition to, or in lieu of, other highway signs of the department, but not in lieu of on-premises or off-premises highway oriented business signs and directional signs.

(e) The department shall establish and charge a fee to place and maintain information signs in an amount not less than 25 percent above its estimated cost in placing and maintaining the information signs. The department shall annually review the amount of that fee and revise it as necessary. Funds derived from the imposition of the fee, after deduction of the cost to the department for the placement and maintenance of the information signs, shall be available, upon appropriation by the Legislature, for safety roadside rest purposes.

(f) The department shall incorporate the use of an "RV-friendly" symbol on an information sign placed pursuant to subdivision (a) for a specific roadside business that meets criteria of the department regarding sufficiency for recreational vehicles with respect to the parking spaces and surfaces, vertical clearance, turning radius, and entrances and exits of the facility. A specific roadside business otherwise qualified for a sign pursuant to subdivision (a) may qualify for and request an "RV-friendly" symbol for that sign. The department shall adopt rules and regulations for an "RV-friendly" symbol consistent with this section as well as the Federal Highway Administration's Interim Approval for Addition of RV-friendly Symbol to Specific Service Signs. The rules and regulations adopted by the department shall include a provision for the roadside business to acknowledge that overnight occupancy is not permitted unless the roadside business is licensed as a special occupancy

park as defined in Section 18862.43 of the Health and Safety Code. The department shall establish and charge an additional fee pursuant to subdivision (e) to place and maintain the symbol.

(g) The department shall develop rules and regulations governing signs for approved attractions, which shall include amusement parks, botanical and zoological facilities, business districts and main street communities, education centers, golf courses, historical sites, museums, religious sites, resorts, ski areas, marinas, "u-pick" farms and orchards, farmers' markets, and wineries, viticulture areas, and vineyards.

CHAPTER 379

An act to amend Sections 14005, 14015, and 14018 of, to amend and renumber Section 14002 of, and to add Sections 14006.01, 14006.15, 14006.41, 14009.6, 14009.7, 14015.1, and 14015.2 to, the Welfare and Institutions Code, relating to Medi-Cal.

[Approved by Governor September 27, 2008. Filed with Secretary of State September 27, 2008.]

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

SECTION 1. Section 14002 of the Welfare and Institutions Code, as amended by Section 3 of Chapter 1024 of the Statutes of 1992, is amended and renumbered to read:

14002.5. For the purposes of this article, the following definitions shall apply:

(a) "Annuity" means a contract that names an annuitant and gives a person or entity the right to receive periodic payments of a fixed or variable sum for a described period of time, which may include a lump-sum payment or periodic payments upon the death of the annuitant.

(b) "Community spouse" means the spouse of an institutionalized spouse.

(c) "Home and facility care" means the following services that are subject to Medi-Cal reimbursement:

(1) Nursing facility care services.

(2) A level of care in any institution equivalent to that of nursing facility care services.

(3) Home- or community-based care services furnished under a waiver granted pursuant to subsection (c) or (d) of Section 1396n of Title 42 of the United States Code.

(d) "Institutionalized spouse" means any individual to whom all of the following apply:

(1) The individual is in a medical institution or nursing facility or is a person who is receiving institutional or noninstitutional services from an organization with a frail elderly demonstration project waiver pursuant to Chapter 8.75 (commencing with Section 14590), and is likely to meet that requirement for at least 30 consecutive days.

(2) The individual is married to a spouse who is not in a medical institution or nursing facility, or to a spouse who is not receiving services from any organization with a frail elderly demonstration project waiver pursuant to Chapter 8.75 (commencing with Section 14590).

(3) Except for purposes of Sections 14005.7, 14005.12, 14005.16, and 14005.17, an individual who is admitted to a medical institution or nursing facility on or after September 30, 1989, and who applies for Medi-Cal benefits on or after January 1, 1990, or a Medi-Cal recipient who is admitted to a medical institution or nursing facility on or after January 1, 1990.

(e) "Medical institution" has the same meaning as defined in Section 435.1010 of Title 42 of the Code of Federal Regulations.

(f) "Nursing facility" has the same meaning as defined in Section 1250 of the Health and Safety Code.

SEC. 2. Section 14005 of the Welfare and Institutions Code is amended to read:

14005. (a) The health care benefits and services specified in this chapter, to the extent that such services are neither provided under any other federal or state law nor provided nor available under other contractual or legal entitlements of the person, shall be provided under this chapter to any person who is a resident of this state and is made eligible by the provisions of this article. It is the intent of the Legislature that a provider shall look to such other contractual or legal entitlements for payment before submitting a bill for payment under this chapter.

(b) Any applicant for, or recipient of, Medi-Cal benefits who requests medical assistance for home and facility care shall meet the specific eligibility requirements for the receipt of medical assistance for home and facility care set forth in this chapter.

(c) This section shall be implemented pursuant to the requirements of Title XIX of the federal Social Security Act (42 U.S.C. Sec. 1396 et seq.), and any regulations adopted pursuant to that act, and only to the extent that federal financial participation is available.

(d) To the extent that regulations are necessary to implement this section, the department shall promulgate regulations using the nonemergency regulatory process described in Article 5 (commencing

with Section 11346) of Chapter 3.5 of Part 1 of Division 3 of the Government Code.

(e) It is the intent of the Legislature that the provisions of this section shall apply prospectively to any individual to whom the act applies commencing from the date regulations adopted pursuant to this act are filed with the Secretary of State.

SEC. 3. Section 14006.01 is added to the Welfare and Institutions Code, to read:

14006.01. (a) This section applies to any individual who is residing in a continuing care retirement community, as defined in paragraph (11) of subdivision (c) of Section 1771 of the Health and Safety Code, pursuant to a continuing care contract, as defined in paragraph (8) of subdivision (c) of Section 1771 of the Health and Safety Code, or pursuant to a life care contract, as defined in subdivision (*l*) of Section 1771 of the Health and Safety Code, that collects an entrance fee from its residents upon admission.

(b) In determining an individual's eligibility for Medi-Cal benefits, the individual's entrance fee shall be considered a resource available to the individual if all of the following apply:

(1) The individual has the ability to use the entrance fee, or the contract provides that the entrance fee may be used, to pay for care if other resources or income of the individual are insufficient to pay for care.

(2) The individual is eligible for a refund of any remaining entrance fee when he or she dies or terminates his or her contract with, and leaves, the continuing care retirement community.

(3) The entrance fee does not confer an ownership interest in the continuing care retirement community.

(c) This section shall be implemented pursuant to the requirements of Title XIX of the federal Social Security Act (42 U.S.C. Sec. 1396 et seq.), and any regulations adopted pursuant to that act, and only to the extent required by federal law, and only to the extent that federal financial participation is available.

(d) To the extent that regulations are necessary to implement this section, the department shall promulgate regulations using the nonemergency regulatory process described in Article 5 (commencing with Section 11346) of Chapter 3.5 of Part 1 of Division 3 of the Government Code.

(e) It is the intent of the Legislature that the provisions of this section shall apply prospectively to any individual to whom the act applies commencing from the date regulations adopted pursuant to this act are filed with the Secretary of State.

SEC. 4. Section 14006.15 is added to the Welfare and Institutions Code, to read:

14006.15. (a) For the purposes of this section, "equity interest" means the lesser of the following:

(1) The assessed value of the principal residence determined under the most recent tax assessment, less any encumbrances of record.

(2) The appraised value of the principal residence determined by a qualified real estate appraiser who has been retained by the applicant or beneficiary, less any encumbrances of record.

(b) Notwithstanding subdivisions (b) and (c) of Section 14006, and except as provided in subdivision (c), an individual is not eligible for medical assistance for home and facility care if his or her equity interest in the principal residence exceeds seven hundred fifty thousand dollars ($750,000). No later than December 31, 2011, and each year thereafter, this amount shall be increased based on the percentage increase in the consumer price index for all urban consumers (all items, United States city average), rounded to the nearest one thousand dollars ($1,000).

(c) This section does not apply to an individual if any of the following circumstances exist:

(1) The spouse of the individual or the individual's child, who is under 21 years of age, or who is blind or who is disabled, as defined in paragraph (3) of subsection (a) of Section 1382c of Title 42 of the United States Code, is lawfully residing in the individual's home.

(2) The individual was determined eligible for medical assistance for home and facility care based on an application filed before January 1, 2006.

(3) The department determines that ineligibility for medical assistance for home and facility care would result in demonstrated hardship on the individual. For purposes of this section, demonstrated hardship shall include, but need not be limited to, any of the following circumstances:

(A) The individual was receiving home and facility care prior to January 1, 2006.

(B) The individual has been determined to be eligible for medical assistance for home and facility care based on an application filed on or after January 1, 2006, and before the date that regulations adopted pursuant to this section are certified with the Secretary of State.

(C) The individual purchased and received benefits under a long-term care insurance policy certified by the department's California Partnership for Long-Term Care Program, established by Division 12 (commencing with Section 22000).

(D) The individual's equity interest in the principal residence exceeds the equity interest limit as provided in subdivision (b), but would not exceed the equity interest limit under that subdivision if it had been

increased by using the quarterly House Price Index (HPI) for California, published by the Office of Federal Housing Enterprise Oversight (OFHEO).

(E) The applicant or beneficiary has been denied a home equity loan by at least three lending institutions, or is ineligible for any one Federal Housing Administration (FHA) approved loan or reverse mortgage.

(F) The applicant or beneficiary, with good cause, is unable to provide verification of the equity value.

(G) The applicant or beneficiary meets the criteria set forth in subdivision (b) of Section 14015.1.

(d) To the extent that federal financial participation is unavailable to cover the costs associated with subparagraph (C) of paragraph (3) of subdivision (c), state general funds shall be used.

(e) This section shall be implemented pursuant to the requirements of Title XIX of the federal Social Security Act (42 U.S.C. Sec. 1396 et seq.) and any regulations adopted pursuant to that act, and except for subparagraph (C) of paragraph (3) of subdivision (c), and subdivision (d), only to the extent that federal financial participation is available.

(f) To the extent that regulations are necessary to implement this section, the department shall promulgate regulations using the nonemergency regulatory process described in Article 5 (commencing with Section 11346) of Chapter 3.5 of Part 1 of Division 3 of the Government Code.

(g) It is the intent of the Legislature that the provisions of this section shall apply prospectively to any individual to whom the act applies commencing from the date regulations adopted pursuant to this act are filed with the Secretary of State.

SEC. 5. Section 14006.41 is added to the Welfare and Institutions Code, to read:

14006.41. (a) To be eligible for medical assistance for home and facility care, an individual shall disclose at the time of the individual's application or redetermination a description of any interest that he or she or his or her spouse has in an annuity, which is known to the individual or his or her spouse, regardless of whether the annuity is irrevocable or is treated as income or as a resource.

(b) At the time of the individual's application or redetermination, the department shall inform the individual and his or her spouse that, by virtue of its provision of medical assistance for home and facility care to the individual, the state will, by operation of law, become a remainder beneficiary of certain annuities, as described in Section 14009.6.

(c) This section shall be implemented pursuant to the requirements of Title XIX of the federal Social Security Act (42 U.S.C. Sec. 1396 et

seq.) and any regulations adopted pursuant to that act, and only to the extent that federal financial participation is available.

(d) To the extent that regulations are necessary to implement this section, the department shall promulgate regulations using the nonemergency regulatory process described in Article 5 (commencing with Section 11346) of Chapter 3.5 of Part 1 of Division 3 of the Government Code.

(e) It is the intent of the Legislature that the provisions of this section shall apply prospectively to any individual to whom the act applies commencing from the date regulations adopted pursuant to this act are filed with the Secretary of State.

SEC. 6. Section 14009.6 is added to the Welfare and Institutions Code, to read:

14009.6. (a) As a result of providing medical assistance for home and facility care to an individual, the state shall, by operation of law, become a remainder beneficiary, to the extent required by Section 1917(e) of the federal Social Security Act (42 U.S.C. Sec. 1396p(e)), of annuities purchased in whole or in part by the individual or his or her spouse in which the individual or his or her spouse is an annuitant, except as provided in Section 14009.7, unless the individual or his or her spouse notifies the department in writing that he or she prohibits the state from acquiring a remainder interest in his or her annuity, in which case subdivision (d) shall apply.

(b) This section shall only apply to the following annuities:

(1) Those purchased on or after February 8, 2006.

(2) Those purchased before February 8, 2006, and subjected to a transaction that occurred on or after February 8, 2006.

(A) For the purposes of this paragraph, "transaction" includes, but is not limited to, any action taken by the individual or his or her spouse that changes the course of payments to be made by the annuity or the treatment of the income or principal of the annuity.

(B) For the purpose of this paragraph, "transaction" shall not include any of the following:

(i) Routine changes and automatic events that do not require any action or decision on or after February 8, 2006.

(ii) Changes that occur based on the terms of the annuity that existed prior to February 8, 2006, and that do not require a decision, election, or action to take effect.

(iii) Changes that are beyond the control of the individual or the individual's spouse.

(c) Any provision in any annuity subject to this section that has the effect of restricting the right of the state to become a remainder beneficiary is void.

(d) If an individual or his or her spouse notifies the department in writing that he or she prohibits the state from acquiring a remainder interest in his or her annuity, the purchase of the annuity shall be treated as the transfer of an asset for less than fair market value that is subject to Section 14015.

(e) (1) When the state becomes aware of an annuity in which it has acquired a remainder interest, the department shall notify the issuer of the annuity of the state's acquisition of its remainder beneficiary interest.

(2) The issuer of the annuity shall, upon notification by the department, immediately inform the department of the amount of income and principal being withdrawn from the annuity as of the date of the individual's disclosure of the annuity.

(3) The issuer of the annuity shall, upon request by the department or any agent of the department, immediately disclose to the department the amount of income and principal being withdrawn from the annuity.

(4) The issuer of the annuity shall immediately notify the department if there is any change in either of the following:

(A) The amount of income or principal being withdrawn from that annuity.

(B) The named beneficiaries of the annuity.

(f) Any moneys received by the state pursuant to this section shall be deposited into the General Fund.

(g) This section shall be implemented pursuant to the requirements of Title XIX of the federal Social Security Act (42 U.S.C. Sec. 1396 et seq.) and any regulations adopted pursuant to that act, and only to the extent that federal financial participation is available.

(h) To the extent that regulations are necessary to implement this section, the department shall promulgate regulations using the nonemergency regulatory process described in Article 5 (commencing with Section 11346) of Chapter 3.5 of Part 1 of Division 3 of the Government Code.

(i) It is the intent of the Legislature that the provisions of this section shall apply prospectively to any individual to whom the act applies commencing from the date regulations adopted pursuant to this act are filed with the Secretary of State.

SEC. 7. Section 14009.7 is added to the Welfare and Institutions Code, to read:

14009.7. (a) If an annuity is considered part or all of the community spouse resource allowance allowed under subdivision (c) of Section 14006, the state shall only become a remainder beneficiary of that portion of the annuity that is not a part of that community spouse resource allowance.

(b) The state shall not become a remainder beneficiary of an annuity that is any of the following:

(1) Purchased by a community spouse with resources of the community spouse during the continuous period in which the individual is receiving medical assistance for home and facility care and after the month in which the individual is determined eligible for these benefits.

(2) Contained in a retirement plan qualified under Title 26 of the United States Code, established by an employer or an individual, including, but not limited to, an Individual Retirement Annuity or Account (IRA), Roth IRA, or Keogh fund.

(3) An annuity that is all of the following:

(A) The annuity is irrevocable and nonassignable.

(B) The annuity is actuarially sound.

(C) The annuity provides for payments in equal amounts during the term of the annuity, with no deferral and no balloon payments made from the annuity.

(c) The individual or the community spouse, or both, shall bear the burden of demonstrating that the requirements of this section that limit the state's right to become a remainder beneficiary, as described in Section 14009.6, are met.

(d) This section shall be implemented pursuant to the requirements of Title XIX of the federal Social Security Act (42 U.S.C. Sec. 1396 et seq.) and any regulations adopted pursuant to that act, and only to the extent that federal financial participation is available.

(e) To the extent that regulations are necessary to implement this section, the department shall promulgate regulations using the nonemergency regulatory process described in Article 5 (commencing with Section 11346) of Chapter 3.5 of Part 1 of Division 3 of the Government Code.

(f) It is the intent of the Legislature that the provisions of this section shall apply prospectively to any individual to whom the act applies commencing from the date regulations adopted pursuant to this act are filed with the Secretary of State.

SEC. 8. Section 14015 of the Welfare and Institutions Code is amended to read:

14015. (a) (1) The providing of health care under this chapter shall not impose any limitation or restriction upon the person's right to sell, exchange or change the form of property holdings nor shall the care provided constitute any encumbrance on the holdings. However, the transfer or gift of assets, including income and resources, for less than fair market value shall, pursuant to the requirements of Title XIX of the federal Social Security Act (42 U.S.C. Sec. 1396 et seq.) and any regulations adopted pursuant to that act, result in a period of ineligibility

for medical assistance for home and facility care, which may include partial months of ineligibility, applied in accordance with federal law.

(2) Any items, including notes, loans, life estates, or annuities that are held and distributed in a manner that is not in conformity with the requirements of Title XIX of the federal Social Security Act (42 U.S.C. Sec. 1396 et seq.) and regulations adopted pursuant to that act, shall be treated as a transferred asset and may result in a period of ineligibility as described in paragraph (1), as required by Title XIX of the federal Social Security Act (42 U.S.C. Sec. 1396 et seq.) and any regulations adopted pursuant to that act.

(b) Pursuant to Section 1917 (c)(2)(C)(ii) of the federal Social Security Act (42 U.S.C. Sec. 1396p(c)(2)(C)(ii)), a satisfactory showing that assets transferred exclusively for a purpose other than to qualify for medical assistance shall not result in ineligibility for Medi-Cal and shall include, but not be limited to, the following:

(1) Assets that would have been considered exempt for purposes of establishing eligibility pursuant to federal or state laws at the time of transfer.

(2) Property with a net market value that, when the property is transferred, if included in the property reserve, would not result in ineligibility.

(3) Assets for which adequate consideration is received.

(4) Property upon which foreclosure or repossession was imminent at the time of transfer, provided there is no evidence of collusion.

(5) Assets transferred in return for an enforceable contract for life care that does not include complete medical care.

(6) Assets transferred without adequate consideration, provided that the applicant or beneficiary provides convincing evidence to overcome the presumption that the transfer was for the purpose of establishing eligibility or reducing the share of cost.

(c) In administering this section, it shall be presumed that assets transferred by the applicant or beneficiary prior to the look-back period established by the department preceding the date of initial application were not transferred to establish eligibility or reduce the share of cost. These assets shall not be considered in determining eligibility.

(d) Any item of durable medical equipment which is purchased for a recipient pursuant to this chapter exclusively with Medi-Cal program funds shall be returned to the department when the department determines that the item is no longer medically necessary for the recipient. Items of durable medical equipment shall include, but are not limited to, wheelchairs and special hospital beds.

(e) This section shall be implemented pursuant to the requirements of Title XIX of the federal Social Security Act (42 U.S.C. Sec. 1396 et

seq.) and any regulations adopted pursuant to that act, and only to the extent that federal financial participation is available.

(f) To the extent that regulations are necessary to implement this section, the department shall promulgate regulations using the nonemergency regulatory process described in Article 5 (commencing with Section 11346) of Chapter 3.5 of Part 1 of Division 3 of the Government Code.

(g) It is the intent of the Legislature that the provisions of this section shall apply prospectively to any individual to whom the act applies commencing from the date regulations adopted pursuant to this act are filed with the Secretary of State.

SEC. 9. Section 14015.1 is added to the Welfare and Institutions Code, to read:

14015.1. (a) The department shall consider, at initial application or redetermination, whether an undue hardship, as described in subdivision (b), exists prior to finding that an applicant or recipient is subject to a period of ineligibility for medical assistance for home and facility care pursuant to this article. No person shall be subject to a period of ineligibility for medical assistance for home and facility care at the time of the initial application or redetermination if the department determines that an undue hardship exists.

(b) An undue hardship shall be found to exist under any of the following circumstances:

(1) The individual has been determined eligible for medical assistance for home and facility care based on an application filed on or after January 1, 2006, and before the date that regulations adopted pursuant or relating to this section have been certified with the Secretary of State.

(2) The deprivation of medical assistance for home and facility care would cause an endangerment to the life or health of the individual.

(3) The denial of medical assistance for home and facility care would result in the eviction of the individual from a nursing home.

(4) The individual is otherwise eligible for the Medi-Cal program and unable to obtain home and facility care without Medi-Cal.

(5) The denial of medical assistance for home and facility care would cause the individual to be unable to remain at home or in the community and would hasten or cause the individual's entry into a medical or long-term care institution.

(6) The individual would be deprived of food, clothing, shelter, or other necessities of life.

(c) The department shall establish regulations, procedures, and forms that ensure all of the following:

(1) The department or county provides a notice of the undue hardship process, at the initial request and the annual redetermination, to any

individual who requests medical assistance for home and facility care. The notice shall inform the individual that undue hardship shall be considered before a request for medical assistance for home and facility care is denied.

(2) A timely and simplified process is established to determine whether an undue hardship exists and an exception will be granted.

(3) If the issue of undue hardship is considered and found not to apply, the department shall provide the individual with a notice of action that states the reasons for the adverse determination. The notice of action shall specify how that adverse determination can be appealed. Upon the request of the applicant or beneficiary, or person acting on his or her behalf, undue hardship notices shall be provided to the home and facility care administrator in accordance with regulations promulgated by the department.

(d) This section shall be implemented pursuant to the requirements of Title XIX of the federal Social Security Act (42 U.S.C. Sec. 1396 et seq.) and any regulations adopted pursuant to that act, and only to the extent that federal financial participation is available.

(e) To the extent that regulations are necessary to implement this section, the department shall promulgate regulations using the nonemergency regulatory process described in Article 5 (commencing with Section 11346) of Chapter 3.5 of Part 1 of Division 3 of the Government Code.

(f) It is the intent of the Legislature that the provisions of this section shall apply prospectively to any individual to whom the act applies commencing from the date regulations adopted pursuant to this act are filed with the Secretary of State.

SEC. 10. Section 14015.2 is added to the Welfare and Institutions Code, to read:

14015.2. (a) In accordance with Section 1917(c)(2)(D) of the federal Social Security Act (42 U.S.C. Sec. 1396p(c)(2)(D)), any of the following may request a fair hearing on the issue of undue hardship:

(1) An individual requesting or receiving medical assistance for home and facility care.

(2) A personal representative of an individual requesting or receiving medical assistance for home and facility care.

(3) The facility in which the individual requesting or receiving medical assistance for home and facility care is residing, with the consent of that individual or the personal representative of that individual.

(b) An individual with a pending undue hardship appeal who is subject to a period of ineligibility pursuant to this article shall receive medical assistance for home and facility care for a maximum of 30 bed-hold days.

(c) This section does not alter or limit the right of applicants or recipients to obtain a state hearing in accordance with Chapter 7 (commencing with Section 10950) of Part 2.

(d) This section shall be implemented pursuant to the requirements of Title XIX of the federal Social Security Act (42 U.S.C. 1396 et seq.), and any regulations adopted pursuant to that act, and only to the extent that federal financial participation is available.

(e) To the extent that regulations are necessary to implement this section, the department shall promulgate regulations using the nonemergency regulatory process described in Article 5 (commencing with Section 11346) of Chapter 3.5 of Part 1 of Division 3 of the Government Code.

(f) It is the intent of the Legislature that the provisions of this section shall apply prospectively to any individual to whom the act applies commencing from the date regulations adopted pursuant to this act are filed with the Secretary of State.

SEC. 11. Section 14018 of the Welfare and Institutions Code is amended to read:

14018. (a) (1) The Medi-Cal card shall be authorization for payment for health care services rendered, during and subsequent to the month of application of a person eligible under Section 14005.1, or a person eligible under Section 14005.4 or 14005.7 who is certified by the department.

(2) The Medi-Cal card shall be signed and dated in the space provided on the card by the beneficiary upon receipt of the card and prior to presentation of the card for any service. This paragraph shall not apply to either of the following:

(A) Persons 17 years of age and under.

(B) Persons in long-term care.

(b) Notwithstanding subdivision (a), any person with a Medi-Cal card who receives medical assistance for home and facility care may be ineligible for payment for periods of time, including partial months of ineligibility, as determined pursuant to Section 14015 and in accordance with Title XIX of the federal Social Security Act (42 U.S.C. Sec. 1396 et seq.).

(c) This section shall be implemented pursuant to the requirements of Title XIX of the federal Social Security Act (42 U.S.C. Sec. 1396 et seq.) and any regulations adopted pursuant to that act, and only to the extent that federal financial participation is available.

(d) To the extent that regulations are necessary to implement this section, the department shall promulgate regulations using the nonemergency regulatory process described in Article 5 (commencing

with Section 11346) of Chapter 3.5 of Part 1 of Division 3 of the Government Code.

(e) It is the intent of the Legislature that the provisions of this section shall apply prospectively to any individual to whom the act applies commencing from the date regulations adopted pursuant to this act are filed with the Secretary of State.

CHAPTER 380

An act to amend Sections 19532, 19549, and 19549.1 of the Business and Professions Code, relating to horse racing, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 27, 2008. Filed with Secretary of State September 27, 2008.]

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

SECTION 1. Section 19532 of the Business and Professions Code is amended to read:

19532. (a) Any association licensed to conduct thoroughbred racing in the northern zone may receive no more than 35 weeks of that racing.

(b) Any association licensed to conduct thoroughbred racing in the central zone may receive no more than 17 weeks of that racing, except that any association which conducts a split meeting may receive up to 20 weeks of that racing. No more than one such split meeting may be licensed in any one year.

(c) This section and Section 19531 shall not operate to deprive any association of any weeks of racing granted during 1980.

(d) This section and Section 19531 shall not operate to deprive the California State Fair and Exposition of any weeks of racing granted during the previous calendar year, and the board may continue to allocate those weeks of racing to the California Exposition and State Fair or any lessee thereof.

(e) Nothing in subdivision (d) is a limitation on the board allocating racing weeks to any private racing association as a lessee of the California Exposition and State Fair racetrack facility pursuant to Sections 19531 and 19532.

SEC. 2. Section 19549 of the Business and Professions Code is amended to read:

19549. Except as provided in Section 19549.1, the maximum number of racing weeks that may be allocated to a fair shall be four weeks each

year. The board shall take public testimony and make all determinations on the allocation of racing dates during a public hearing. All discussions of allocating racing dates by the board or its subcommittees shall be conducted during a public hearing. Nothing in this section diminishes the authority of the board to establish racing dates.

SEC. 3. Section 19549.1 of the Business and Professions Code is amended to read:

19549.1. Notwithstanding Sections 19533 and 19549 or any other provision of this chapter, the board may allocate horse racing days for mixed breed meetings and combined fair horse racing meetings pursuant to Section 4058 of the Food and Agricultural Code, except as follows:

(a) Dates may only be allocated for a combined fair horse racing meeting between June 1 and October 31.

(b) Days may not be allocated for a mixed breed meeting or a combined fair horse racing meeting during the month of June at the California Exposition and State Fair if a standardbred meeting is being conducted at that facility during the month of June.

The mixed breed meetings shall be conducted by a person other than the fair and shall be subject to Section 19550. The mixed breed meetings shall encourage the racing of emerging breeds of horses.

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:

Changes to the allocation of racing weeks in northern California are needed due to the imminent closure of Bay Meadows Race Track on September 1, 2008. It is necessary to expand the number of potential racing weeks that can be allocated to fairs or private racing associations in northern California because without the ability to race those weeks previously utilized by Bay Meadows, thoroughbred racing in the north would have to close down. That closure would result in serious negative consequences for both the State of California and the racing industry.

CHAPTER 381

An act to amend Sections 124174 and 124174.2 of, and to add Section 124174.6 to, the Health and Safety Code, relating to child health.

[Approved by Governor September 27, 2008. Filed with Secretary of State September 27, 2008.]

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

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

(a) (1) School health centers provide quality, age and developmentally appropriate primary health care and other support services on or near a public school campus.

(2) School health centers are primarily located in areas where children are underserved, lack health insurance, and face significant barriers to care.

(3) School health centers provide an optimal setting to promote healthy lifestyles such as good nutrition and fitness and provide preventive health care services such as obesity prevention to children and families.

(4) School health centers increase access to care, reduce health disparities and provide potential savings through better preventive care and reduced emergency department utilization, drug utilization, and inpatient treatment services.

(5) Children do better in school if they are healthy and have received all of their immunizations and preventive annual exams.

(6) School health centers have proven to be particularly important to the Latino population, with recent estimates showing that approximately 49 percent of youth served at high school health centers and 66 percent of children served at elementary school health centers, are Latino.

(7) School health centers support educational achievement, help increase attendance rates, and allow educational resources to be more effectively targeted toward learning.

(8) The Governor has determined that there is a need to expand the number of sites of school health centers as discussed in his White Paper on School-Based Health Centers released in July 2006.

(b) It is the intent of the Legislature to support existing school health centers and expand the number of health centers in California, and that funds should be placed within the Public School Health Center Support Program, as defined under Article 10 (commencing with Section 124174) of Chapter 3 of Part 2 of Division 106 of the Health and Safety Code.

SEC. 2. Section 124174 of the Health and Safety Code is amended to read:

124174. The following definitions shall govern the construction of this article, unless the context requires otherwise:

(a) "Program" means a Public School Health Center Support Program.

(b) "School health center" means a center or program, located at or near a local educational agency, that provides age-appropriate health care services at the program site or through referrals. A school health center may conduct routine physical, mental health, and oral health assessments, and provide referrals for any services not offered onsite.

A school health center may serve two or more nonadjacent schools or local educational agencies.

(c) For purposes of this section, "local educational agency" means a school, school district, charter school, or county office of education if the county office of education serves students in kindergarten, or any grades from 1 to 12, inclusive.

(d) "Department" means the State Department of Public Health.

SEC. 3. Section 124174.2 of the Health and Safety Code is amended to read:

124174.2. (a) The department, in cooperation with the State Department of Education, shall establish a Public School Health Center Support Program.

(b) The program, in collaboration with the State Department of Education, shall perform the following program functions:

(1) Provide technical assistance to school health centers on effective outreach and enrollment strategies to identify children who are eligible for, but not enrolled in, the Medi-Cal program, the Healthy Families Program, or any other applicable program.

(2) Serve as a liaison between organizations within the department, including, but not limited to, prevention services, primary care, and family health.

(3) Serve as a liaison between other state entities, as appropriate, including, but not limited to, the State Department of Health Care Services, the State Department of Mental Health, the State Department of Alcohol and Drug Programs, the Department of Managed Health Care, the Office of Emergency Services, and the Managed Risk Medical Insurance Board.

(4) Provide technical assistance to facilitate and encourage the establishment, retention, or expansion of, school health centers. For purposes of this paragraph, technical assistance may include, but is not limited to, identifying available public and private sources of funding, which may include federal Medicaid funds, funds from third-party reimbursements, and available federal or foundation grant moneys.

(c) The department shall consult with interested parties and appropriate stakeholders, including the California School Health Centers Association and representatives of youth and parents, in carrying out its responsibilities under this article.

SEC. 4. Section 124174.6 is added to the Health and Safety Code, to read:

124174.6. The department shall establish a grant program within the Public School Health Center Support Program to provide technical assistance, and funding for the expansion, renovation, and retrofitting of existing school health centers, and the development of new school

health centers, in accordance with the following procedures and requirements:

(a) A school health center receiving grant funds pursuant to this section shall meet or have a plan to meet the following requirements:

(1) Strive to provide a comprehensive set of services including medical, oral health, mental health, health education, and related services in response to community needs.

(2) Provide primary and other health care services, provided or supervised by a licensed professional, which may include all of the following:

(A) Physical examinations, immunizations, and other preventive medical services.

(B) Diagnosis and treatment of minor injuries and acute medical conditions.

(C) Management of chronic medical conditions.

(D) Basic laboratory tests.

(E) Referrals to and followup for specialty care.

(F) Reproductive health services.

(G) Nutrition services.

(H) Mental health services provided or supervised by an appropriately licensed mental health professional may include: assessments, crisis intervention, counseling, treatment, and referral to a continuum of services including emergency psychiatric care, community support programs, inpatient care, and outpatient programs. School health centers providing mental health services as specified in this section shall consult with the local county mental health department for collaboration in planning and service delivery.

(I) Oral health services that may include preventive services, basic restorative services, and referral to specialty services.

(3) Work in partnership with the school nurse, if one is employed by the school or school district, to provide individual and family health education; school or districtwide health promotion; first aid and administration of medications; facilitation of student enrollment in health insurance programs; screening of students to identify the need for physical, mental health, and oral health services; referral and linkage to services not offered onsite; public health and disease surveillance; and emergency response procedures. A school health center may receive grant funding pursuant to this section if the school or school district does not employ a school nurse. However, it is not the intent of the Legislature that a school health center serve as a substitute for a school nurse employed by a local school or school district.

(4) Have a written contract or memorandum of understanding between the school district and the health care provider or any other community

providers that ensures coordination of services, ensures confidentiality and privacy of health information consistent with applicable federal and state laws, and integration of services into the school environment.

(5) Serve all registered students in the school regardless of ability to pay.

(6) Be open during all normal school hours, or on a more limited basis if resources are not available, or on a more expansive basis if dictated by community needs and resources are available.

(7) Establish protocols for referring students to outside services when the school health center is closed.

(8) Facilitate transportation between the school and the health center if the health center is not located on school or school district property.

(b) Planning grants shall be available in amounts between twenty-five thousand dollars ($25,000) and fifty thousand dollars ($50,000) for a 6- to 12-month period to be used for the costs associated with assessing the need for a school health center in a particular community or area, and developing the partnerships necessary for the operation of a school health center in that community or area. Applicants for planning grants shall be required to have a letter of interest from a school or district if the applicant is not a local education agency. Grantees provided funding pursuant to this subdivision shall be required to do all of the following:

(1) Seek input from students, parents, school nurses, school staff and administration, local health providers, and if applicable, special population groups, on community health needs, barriers to health care and the need for a school health center.

(2) Collect data on the school and community to estimate the percentage of students that lack health insurance and the percentage that are eligible for Medi-Cal benefits, or other public programs providing free or low-cost health services.

(3) Assess capacity and interest among health care providers in the community to provide services in a school health center.

(4) Assess the need for specific cultural or linguistic services or both.

(c) Facilities and startup grants shall be available in amounts between twenty thousand dollars ($20,000) and two hundred fifty thousand dollars ($250,000) per year for a three-year period for the purpose of establishing a school health center, with the potential addition of one hundred thousand dollars ($100,000) in the first year for facilities construction, purchase, or renovation. Grant funds may be used to cover a portion or all of the costs associated with designing, retrofitting, renovating, constructing, or buying a facility, for medical equipment and supplies for a school health center, or for personnel costs at a school health center. Preference will be given to proposals that include a plan for cost sharing among schools, health providers, and community organizations for

facilities construction and renovation costs. Applicants for facilities and startup grants offered pursuant to this subdivision shall be required to meet the following criteria:

(1) Have completed a community assessment determining the need for a school health center.

(2) Have a contract or memorandum of understanding between the school district and the health care provider, if other than the district, and any other provider agencies describing the relationship between the district and the school health center.

(3) Have a mechanism, described in writing, to coordinate services to individual students among school and school health center staff while maintaining confidentiality and privacy of health information consistent with applicable state and federal laws.

(4) Have a written description of how the school health center will participate in the following:

(A) School and districtwide health promotion, coordinated school health, health education in the classroom or on campus, program/activities that address nutrition, fitness, or other important public health issues, or promotion of policies that create a healthy school environment.

(B) Outreach and enrollment of students in health insurance programs.

(C) Public health prevention, surveillance, and emergency response for the school population.

(5) Have the ability to provide the linguistic or cultural services needed by the community. If the school health center is not yet able to provide these services due to resource limitations, the school health center shall engage in an ongoing assessment of its capacity to provide these services.

(6) Have a plan for maximizing available third-party reimbursement revenue streams.

(d) Sustainability grants shall be available in amounts between twenty-five thousand dollars ($25,000) and one hundred twenty-five thousand dollars ($125,000) per year for a three-year period for the purpose of operating a school health center, or enhancing programming at a fully operational school health center, including oral health or mental health services. Applicants for sustainability grants offered pursuant to this subdivision shall be required to meet all of the criteria described in subdivision (c), in addition to both of the following criteria:

(1) The applicant shall be eligible to become or already be an approved Medi-Cal provider.

(2) The applicant shall have ability and procedures in place for billing public insurance programs and managed care providers.

(3) The applicant shall seek reimbursement and have procedures in place for billing public and private insurance that covers students at the school health center.

(e) The department shall award technical assistance grants through a competitive bidding process to qualified contractors to support grantees receiving grants under subdivisions (b), (c), and (d). A qualified contractor means a vendor with demonstrated capacity in all aspects of planning, facilities development, startup, and operation of a school health center.

(f) The department shall also develop a request for proposal (RFP) process for collecting information on applicants, and determining which proposals shall receive grant funding. The department shall give preference for grant funding to the following schools:

(1) Schools in areas designated as federally medically underserved areas or in areas with medically underserved populations.

(2) Schools with a high percentage of low-income and uninsured children and youth.

(3) Schools with large numbers of limited English proficient (LEP) students.

(4) Schools in areas with a shortage of health professionals.

(5) Low-performing schools with Academic Performance Index (API) rankings in the deciles of three and below of the state.

(g) Moneys shall be allocated to the department annually for evaluation to be conducted by an outside evaluator that is selected through a competitive bidding process. The evaluation shall document the number of grantees that establish and sustain school health centers, and describe the challenges and lessons learned in creating successful school health centers. The evaluator shall use data collected pursuant to Section 124174.3, if it is available, and work in collaboration with the Public School Health Center Support Program. The department shall post the evaluation on its Internet Web site.

(h) This section shall be implemented only to the extent that funds are appropriated to the department in the annual Budget Act or other statute for implementation of this article.

CHAPTER 382

An act to amend Sections 12206, 17058, and 23610.5 of the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

[Approved by Governor September 27, 2008. Filed with Secretary of State September 27, 2008.]

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

SECTION 1. 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.

(C) (i) For a project that receives a preliminary reservation of the state low-income housing tax credit, allowed pursuant to subdivision (a), on or after January 1, 2009, and before January 1, 2016, the credit shall be allocated to the partners of a partnership owning the project in accordance with the partnership agreement, regardless of how the federal low-income housing tax credit with respect to the project is allocated to the partners, or whether the allocation of the credit under the terms of the agreement has substantial economic effect, within the meaning of Section 704(b) of the Internal Revenue Code.

(ii) This subparagraph shall cease to be operative with respect to any project that receives a preliminary reservation of credit on or after January 1, 2016.

(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.

(B) The restrictions on rent and income levels will terminate or the federal insured mortgage on the property is eligible for prepayment any time within five years before or after the date 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. 1.5. 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) Except for projects to provide farmworker housing, as defined in subdivision (h) of Section 50199.7 of the Health and Safety Code, that are allocated credits solely under the set-aside described in subdivision (c) of Section 50199.20 of the Health and Safety Code, 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.

(C) (i) For a project that receives a preliminary reservation of the state low-income housing tax credit, allowed pursuant to subdivision (a), on or after January 1, 2009, and before January 1, 2016, the credit shall be allocated to the partners of a partnership owning the project in accordance with the partnership agreement, regardless of how the federal low-income housing tax credit with respect to the project is allocated to the partners, or whether the allocation of the credit under the terms of the agreement has substantial economic effect, within the meaning of Section 704(b) of the Internal Revenue Code.

(ii) This subparagraph shall not apply to a project that receives a preliminary reservation of state low-income housing tax credits under the set-aside described in subdivision (c) of Section 50199.20 unless the project also receives a preliminary reservation of federal low-income housing tax credits.

(iii) This subparagraph shall cease to be operative with respect to any project that receives a preliminary reservation of a credit on or after January 1, 2016.

(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.

(B) The restrictions on rent and income levels will terminate or the federal insured mortgage on the property is eligible for prepayment any time within five years before or after the date 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.

(4) Five hundred thousand dollars ($500,000) per calendar year for projects to provide farmworker housing, as defined in subdivision (h) of Section 50199.7 of the Health and Safety Code.

(5) The amount of any unallocated or returned credits under former Sections 17053.14, 23608.2, and 23608.3, as those sections read prior to January 1, 2009, until fully exhausted for projects to provide farmworker housing, as defined in subdivision (h) of Section 50199.7 of the Health and Safety Code.

(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. 2. 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.

(C) (i) For a project that receives a preliminary reservation of the state low-income housing tax credit, allowed pursuant to subdivision (a), on or after January 1, 2009, and before January 1, 2016, the credit shall be allocated to the partners of a partnership owning the project in accordance with the partnership agreement, regardless of how the federal low-income housing tax credit with respect to the project is allocated to the partners, or whether the allocation of the credit under the terms of the agreement has substantial economic effect, within the meaning of Section 704(b) of the Internal Revenue Code.

(ii) To the extent the allocation of the credit to a partner under this section lacks substantial economic effect, any loss or deduction otherwise allowable under this part that is attributable to the sale or other disposition of that partner's partnership interest made prior to the expiration of the federal credit shall not be allowed in the taxable year in which the sale or other disposition occurs, but shall instead be deferred until and treated as if it occurred in the first taxable year immediately following the taxable year in which the federal credit period expires for the project described in clause (i).

(iii) This subparagraph shall cease to be operative with respect to any project that receives a preliminary reservation of credit on or after January 1, 2016.

(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.

(B) The restrictions on rent and income levels will terminate or the federal insured mortgage on the property is eligible for prepayment any time within five years before or after the date 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. 2.5. 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) Except for projects to provide farmworker housing, as defined in subdivision (h) of Section 50199.7 of the Health and Safety Code, that are allocated credits solely under the set-aside described in subdivision (c) of Section 50199.20 of the Health and Safety Code, 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.

(C) (i) For a project that receives a preliminary reservation of the state low-income housing tax credit, allowed pursuant to subdivision (a), on or after January 1, 2009, and before January 1, 2016, the credit shall be allocated to the partners of a partnership owning the project in accordance with the partnership agreement, regardless of how the federal low-income housing tax credit with respect to the project is allocated to the partners, or whether the allocation of the credit under the terms of the agreement has substantial economic effect, within the meaning of Section 704(b) of the Internal Revenue Code.

(ii) To the extent the allocation of the credit to a partner under this section lacks substantial economic effect, any loss or deduction otherwise allowable under this part that is attributable to the sale or other disposition of that partner's partnership interest made prior to the expiration of the federal credit shall not be allowed in the taxable year in which the sale or other disposition occurs, but shall instead be deferred until and treated as if it occurred in the first taxable year immediately following the taxable year in which the federal credit period expires for the project described in clause (i).

(iii) This subparagraph shall not apply to a project that receives a preliminary reservation of state low-income housing tax credits under the set-aside described in subdivision (c) of Section 50199.20 unless the project also receives a preliminary reservation of federal low-income housing tax credits.

(iv) This subparagraph shall cease to be operative with respect to any project that receives a preliminary reservation of a credit on or after January 1, 2016.

(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.

(B) The restrictions on rent and income levels will terminate or the federal insured mortgage on the property is eligible for prepayment any time within five years before or after the date 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.

(4) Five hundred thousand dollars ($500,000) per calendar year for projects to provide farmworker housing, as defined in subdivision (h) of Section 50199.7 of the Health and Safety Code.

(5) The amount of any unallocated or returned credits under former Sections 17053.14, 23608.2, and 23608.3, as those sections read prior to January 1, 2009, until fully exhausted for projects to provide farmworker housing, as defined in subdivision (h) of Section 50199.7 of the Health and Safety Code.

(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. 3. 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.

(C) (i) For a project that receives a preliminary reservation of the state low-income housing tax credit, allowed pursuant to subdivision (a), on or after January 1, 2009, and before January 1, 2016, the credit shall be allocated to the partners of a partnership owning the project in accordance with the partnership agreement, regardless of how the federal low-income housing tax credit with respect to the project is allocated to the partners, or whether the allocation of the credit under the terms of

the agreement has substantial economic effect, within the meaning of Section 704(b) of the Internal Revenue Code.

(ii) To the extent the allocation of the credit to a partner under this section lacks substantial economic effect, any loss or deduction otherwise allowable under this part that is attributable to the sale or other disposition of that partner's partnership interest made prior to the expiration of the federal credit shall not be allowed in the taxable year in which the sale or other disposition occurs, but shall instead be deferred until and treated as if it occurred in the first taxable year immediately following the taxable year in which the federal credit period expires for the project described in clause (i).

(iii) This subparagraph shall cease to be operative with respect to any project that receives a preliminary reservation of credit on or after January 1, 2016.

(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.

(B) The restrictions on rent and income levels will terminate or the federally insured mortgage on the property is eligible for prepayment any time within five years before or after the date 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.

SEC. 3.5. 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) Except for projects to provide farmworker housing, as defined in subdivision (h) of Section 50199.7 of the Health and Safety Code, that are allocated credits solely under the set-aside described in subdivision (c) of Section 50199.20 of the Health and Safety Code, 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.

(C) (i) For a project that receives a preliminary reservation of the state low-income housing tax credit, allowed pursuant to subdivision (a), on or after January 1, 2009, and before January 1, 2016, the credit shall be allocated to the partners of a partnership owning the project in accordance with the partnership agreement, regardless of how the federal low-income housing tax credit with respect to the project is allocated to the partners, or whether the allocation of the credit under the terms of the agreement has substantial economic effect, within the meaning of Section 704(b) of the Internal Revenue Code.

(ii) To the extent the allocation of the credit to a partner under this section lacks substantial economic effect, any loss or deduction otherwise allowable under this part that is attributable to the sale or other disposition of that partner's partnership interest made prior to the expiration of the federal credit shall not be allowed in the taxable year in which the sale or other disposition occurs, but shall instead be deferred until and treated as if it occurred in the first taxable year immediately following the taxable year in which the federal credit period expires for the project described in clause (i).

(iii) This subparagraph shall not apply to a project that receives a preliminary reservation of state low-income housing tax credits under the set-aside described in subdivision (c) of Section 50199.20 unless the project also receives a preliminary reservation of federal low-income housing tax credits.

(iv) This subparagraph shall cease to be operative with respect to any project that receives a preliminary reservation of a credit on or after January 1, 2016.

(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.

(B) The restrictions on rent and income levels will terminate or the federally insured mortgage on the property is eligible for prepayment any time within five years before or after the date 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.

(4) Five hundred thousand dollars ($500,000) per calendar year for projects to provide farmworker housing, as defined in subdivision (h) of Section 50199.7 of the Health and Safety Code.

(5) The amount of any unallocated or returned credits under former Sections 17053.14, 23608.2, and 23608.3, as those sections read prior to January 1, 2009, until fully exhausted for projects to provide farmworker housing, as defined in subdivision (h) of Section 50199.7 of the Health and Safety Code.

(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.

SEC. 4. The state low-income housing credit is a unique tax credit program in that the credit is based on a federal income tax credit, and that federal income tax credit is allocated by the California Tax Credit

Allocation Committee, a state agency. Increasing the availability of low-income housing serves an important public interest. As a result, the state low-income housing credit, under existing law, has several unique aspects not applicable to other tax credits. The Legislature hereby finds and declares that, in order to enhance the availability of low-income housing, provisions of this act that provide for an allocation of the state low-income housing credit in accordance with a partnership agreement that fails to comport with normally applicable rules serve an important public interest with respect to this unique state tax credit.

SEC. 5. Sections 1.5, 2.5, and 3.5 of this bill incorporate amendments to Sections 12206, 17058, and 23610.5 of the Revenue and Taxation Code proposed by both this bill and SB 1247. Sections 1.5, 2.5, and 3.5 of this bill shall become operative only if (1) both bills are enacted and become effective on or before January 1, 2009, but this bill becomes operative first, (2) each bill amends Sections 12206, 17058, and 23610.5 of the Revenue and Taxation Code, and (3) this bill is enacted after SB 1247, in which case Sections 12206, 17058, and 23610.5 of the Revenue and Taxation Code, as amended by Sections 1, 2, and 3 of this bill, shall remain operative only until the operative date of SB 1247, at which time Sections 1.5, 2.5, and 3.5 of this bill shall become operative.

SEC. 6. This act provides for a tax levy within the meaning of Article IV of the Constitution and shall go into immediate effect.

CHAPTER 383

An act to amend Section 905 of the Government Code, relating to government tort claims.

[Approved by Governor September 27, 2008. Filed with Secretary of State September 27, 2008.]

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

SECTION 1. Section 905 of the Government Code is amended to read:

905. There shall be presented in accordance with Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) all claims for money or damages against local public entities except:

(a) Claims under the Revenue and Taxation Code or other statute prescribing procedures for the refund, rebate, exemption, cancellation, amendment, modification, or adjustment of any tax, assessment, fee, or

charge or any portion thereof, or of any penalties, costs, or charges related thereto.

(b) Claims in connection with which the filing of a notice of lien, statement of claim, or stop notice is required under any law relating to liens of mechanics, laborers, or materialmen.

(c) Claims by public employees for fees, salaries, wages, mileage, or other expenses and allowances.

(d) Claims for which the workers' compensation authorized by Division 4 (commencing with Section 3200) of the Labor Code is the exclusive remedy.

(e) Applications or claims for any form of public assistance under the Welfare and Institutions Code or other provisions of law relating to public assistance programs, and claims for goods, services, provisions, or other assistance rendered for or on behalf of any recipient of any form of public assistance.

(f) Applications or claims for money or benefits under any public retirement or pension system.

(g) Claims for principal or interest upon any bonds, notes, warrants, or other evidences of indebtedness.

(h) Claims that relate to a special assessment constituting a specific lien against the property assessed and that are payable from the proceeds of the assessment, by offset of a claim for damages against it or by delivery of any warrant or bonds representing it.

(i) Claims by the state or by a state department or agency or by another local public entity or by a judicial branch entity.

(j) Claims arising under any provision of the Unemployment Insurance Code, including, but not limited to, claims for money or benefits, or for refunds or credits of employer or worker contributions, penalties, or interest, or for refunds to workers of deductions from wages in excess of the amount prescribed.

(k) Claims for the recovery of penalties or forfeitures made pursuant to Article 1 (commencing with Section 1720) of Chapter 1 of Part 7 of Division 2 of the Labor Code.

(*l*) Claims governed by the Pedestrian Mall Law of 1960 (Part 1 (commencing with Section 11000) of Division 13 of the Streets and Highways Code).

(m) Claims made pursuant to Section 340.1 of the Code of Civil Procedure for the recovery of damages suffered as a result of childhood sexual abuse. This subdivision shall apply only to claims arising out of conduct occurring on or after January 1, 2009.

CHAPTER 384

An act to add and repeal Chapter 10.5 (commencing with Section 4600) of Division 2 of the Business and Professions Code, relating to massage therapy.

[Approved by Governor September 27, 2008. Filed with Secretary of State September 27, 2008.]

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

SECTION 1. It is the intent of this act to create a voluntary certification for the massage therapy profession that will enable consumers to easily identify credible certified massage therapists; assure that certified massage therapists have completed sufficient training at approved schools; phase in increased education and training standards consistent with other states; assure that massage therapy can no longer be used as a subterfuge to violate subdivision (a) or (b) of Section 647 of the Penal Code; and to provide a self-funded nonprofit oversight body to approve certification and education requirements for massage therapists.

SEC. 2. Chapter 10.5 (commencing with Section 4600) is added to Division 2 of the Business and Professions Code, to read:

CHAPTER 10.5. MASSAGE THERAPISTS

4600. As used in this chapter, the following terms shall have the following meanings:

(a) "Approved school" or "approved massage school" means a facility that meets minimum standards for training and curriculum in massage and related subjects and that is approved by any of the following:

(1) The Bureau for Private Postsecondary and Vocational Education pursuant to former Section 94739 of the Education Code prior to July 1, 2007, and as of the date on which an applicant met the requirements of paragraph (2) of subdivision (b) or subparagraph (A) of paragraph (2) of subdivision (c) of Section 4601.

(2) The Department of Consumer Affairs.

(3) An institution accredited by the Accrediting Commission for Senior Colleges and Universities or the Accrediting Commission for Community and Junior Colleges of the Western Association of Schools and Colleges and that is one of the following:

(A) A public institution.

(B) An institution incorporated and lawfully operating as a nonprofit public benefit corporation pursuant to Part 2 (commencing with Section 5110) of Division 2 of Title 1 of the Corporations Code, and that is not managed by any entity for profit.

(C) A for-profit institution.

(D) An institution that does not meet all of the criteria in subparagraph (B) that is incorporated and lawfully operating as a nonprofit public benefit corporation pursuant to Part 2 (commencing with Section 5110) of Division 2 of Title 1 of the Corporations Code, that has been in continuous operation since April 15, 1997, and that is not managed by any entity for profit.

(4) A college or university of the state higher education system, as defined in Section 100850 of the Education Code.

(5) A school of equal or greater training that is approved by the corresponding agency in another state or accredited by an agency recognized by the United States Department of Education.

(b) "Compensation" means the payment, loan, advance, donation, contribution, deposit, or gift of money or anything of value.

(c) "Massage therapist," "bodyworker," "bodywork therapist," or "massage and bodywork therapist" means a person who is certified by the Massage Therapy Organization under subdivision (c) of Section 4601 and who administers massage for compensation.

(d) "Massage practitioner," "bodywork practitioner," or "massage and bodywork practitioner" means a person who is certified by the Massage Therapy Organization under subdivision (b) of Section 4601 and who administers massage for compensation.

(e) "Organization" means the Massage Therapy Organization created pursuant to this chapter, which shall be a nonprofit organization exempt from taxation under Section 501(c)(3) of Title 26 of the United States Code. The organization may commence activities as authorized by this section once it has submitted a request to the Internal Revenue Service seeking this exemption.

(f) "Registered school" means a facility that meets minimum standards for training and curriculum in massage and related subjects and that either was recognized by the Bureau for Private Postsecondary and Vocational Education pursuant to Section 94931 of the Education Code prior to July 1, 2007, and as of the date on which an applicant met the requirements of paragraph (2) of subdivision (b) or subparagraph (A) of paragraph (2) of subdivision (c) of Section 4601, or is recognized by the Department of Consumer Affairs, by an institution accredited by the senior commission or the junior commission of the Western Association of Schools and Colleges as defined in paragraph (2) of subdivision (a) of Section 4600, by a college or university of the state higher education

system as defined in Section 100850 of the Education Code, or by a school of equal or greater training that is approved by the corresponding agency in another state.

(g) For purposes of this chapter, the terms "massage" and "bodywork" shall have the same meaning.

4600.5. (a) A Massage Therapy Organization, as defined in subdivision (e) of Section 4600, shall be created and shall have the responsibilities and duties set forth in this chapter. The organization may take any reasonable actions to carry out the responsibilities and duties set forth in this chapter, including, but not limited to, hiring staff and entering into contracts.

(b) (1) The organization shall be governed by a board of directors made up of two representatives selected by each professional society, association, or other entity, whose membership is comprised of massage therapists and that chooses to participate in the organization. To qualify, a professional society, association, or other entity shall have a dues-paying membership in California of at least 1,000 individuals for the last three years, and shall have bylaws that require its members to comply with a code of ethics. The board of directors shall also include each of the following persons:

(A) One member selected by each statewide association of private postsecondary schools incorporated on or before January 1, 2010, whose member schools have together had at least 1,000 graduates in each of the previous three years from massage therapy programs meeting the approval standards set forth in subdivision (a) of Section 4600, except from those qualifying associations that choose not to exercise this right of selection.

(B) One member selected by the League of California Cities, unless that entity chooses not to exercise this right of selection.

(C) One member selected by the California State Association of Counties, unless that entity chooses not to exercise this right of selection.

(D) One member selected by the Director of Consumer Affairs, unless that entity chooses not to exercise this right of selection.

(E) One member appointed by the California Community College Chancellor's Office, unless that entity chooses not to exercise this right of selection. The person appointed, if any, shall not be part of any massage therapy certificate or degree program.

The organization's bylaws shall establish a process for appointing other professional directors as determined by the board.

(2) The initial board of directors shall establish the organization, initiate the request for tax-exempt status from the Internal Revenue Service, and solicit input from the massage community concerning the operations of the organization. The initial board of directors, in its

discretion, may immediately undertake to issue the certificates authorized by this chapter after adopting the necessary bylaws or other rules, or may establish by adoption of bylaws the permanent governing structure prior to issuing certificates.

(c) The board of directors shall establish fees reasonably related to the cost of providing services and carrying out its ongoing responsibilities and duties. Initial and renewal fees shall be established by the board of directors annually.

(d) The meetings of the organization shall be subject to the rules of the Bagley-Keene Open Meetings Act (Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2 of the Government Code).

4601. (a) The organization shall issue a certificate under this chapter to an applicant who satisfies the requirements of this chapter.

(b) (1) In order to obtain certification as a massage practitioner, an applicant shall submit a written application and provide the organization with satisfactory evidence that he or she meets all of the following requirements:

(A) The applicant is 18 years of age or older.

(B) The applicant has successfully completed, at a single approved school, curricula in massage and related subjects totaling a minimum of 250 hours that incorporates appropriate school assessment of student knowledge and skills. Included in the hours shall be instruction addressing anatomy and physiology, contraindications, health and hygiene, and business and ethics, with at least 100 hours of the required minimum 250 hours devoted to these curriculum areas.

(C) All fees required by the organization have been paid.

(2) New certificates shall not be issued pursuant to this subdivision after December 31, 2015. Certificates issued pursuant to this section or subdivision (a) or (c) of Section 4604 on or before December 31, 2015, shall, after December 31, 2015, be renewed without any additional educational requirements, provided that the certificate holder continues to be qualified pursuant to this chapter.

(c) In order to obtain certification as a massage therapist, an applicant shall submit a written application and provide the organization with satisfactory evidence that he or she meets all of the following requirements:

(1) The applicant is 18 years of age or older.

(2) The applicant satisfies at least one of the following requirements:

(A) He or she has successfully completed the curricula in massage and related subjects totaling a minimum of 500 hours. Of this 500 hours, a minimum of 250 hours shall be from approved schools. The remaining 250 hours required may be secured either from approved or registered

schools, or from continuing education providers approved by, or registered with, the organization or the Department of Consumer Affairs. After December 31, 2015, applicants may only satisfy the curricula in massage and related subjects from approved schools.

(B) The applicant has passed a massage and bodywork competency assessment examination that meets generally recognized psychometric principles and standards, and that is approved by the board. The successful completion of this examination may have been accomplished before the date the organization is authorized by this chapter to begin issuing certificates.

(3) All fees required by the organization have been paid.

(d) The organization shall issue a certificate to an applicant who meets the other qualifications of this chapter and holds a current and valid registration, certification, or license from any other state whose licensure requirements meet or exceed those defined within this chapter. The organization shall have discretion to give credit for comparable academic work completed by an applicant in a program outside of California.

(e) An applicant applying for a massage therapist or massage practitioner certificate shall file with the organization a written application provided by the organization, showing to the satisfaction of the organization that he or she meets all of the requirements of this chapter.

(f) Any certification issued under this chapter shall be subject to renewal every two years in a manner prescribed by the organization, and shall expire unless renewed in that manner. The organization may provide for the late renewal of a license.

(g) (1) The organization shall have the responsibility to determine that the school or schools from which an applicant has obtained the education required by this chapter meet the requirements of this chapter. If the organization has any reason to question whether or not the applicant received the education that is required by this chapter from the school or schools that the applicant is claiming, the organization shall investigate the facts to determine that the applicant received the required education prior to issuing a certificate.

(2) For purposes of paragraph (1) and any other provision of this chapter for which the organization is authorized to receive factual information as a condition of taking any action, the organization shall have the authority to conduct oral interviews of the applicant and others or to make any investigation deemed necessary to establish that the information received is accurate and satisfies any criteria established by this chapter.

4601.2. No certificates shall be issued by the organization pursuant to this chapter prior to September 1, 2009.

4601.3. (a) Prior to issuing a certificate to the applicant or designating a custodian of records, the organization shall require the applicant or the custodian of records candidate to submit fingerprint images in a form consistent with the requirements of this section. The organization shall submit the fingerprint images and related information to the Department of Justice for the purpose of obtaining information as to the existence and nature of a record of state and federal level convictions and of state and federal level arrests for which the Department of Justice establishes that the applicant or candidate was released on bail or on his or her own recognizance pending trial. Requests for federal level criminal offender record information received by the Department of Justice pursuant to this section shall be forwarded to the Federal Bureau of Investigation by the Department of Justice. The Department of Justice shall review the information returned from the Federal Bureau of Investigation, and shall compile and disseminate a fitness determination regarding the applicant or candidate to the organization.

(b) The Department of Justice shall provide information to the organization pursuant to subdivision (p) of Section 11105 of the Penal Code.

(c) The Department of Justice and the organization shall charge a fee sufficient to cover the cost of processing the request for state and federal level criminal offender record information.

(d) The organization shall request subsequent arrest notification service from the Department of Justice, as provided under Section 11105.2 of the Penal Code, for all applicants for licensure or custodian of records candidates for whom fingerprint images and related information are submitted to conduct a search for state and federal level criminal offender record information.

(e) This section shall become operative September 1, 2009.

4601.4. Organization directors, employees, or volunteer individuals may undergo the background investigation process delineated in Section 4601.3.

4602. (a) The organization may discipline a certificate holder by any, or a combination, of the following methods:

(1) Placing the certificate holder on probation.

(2) Suspending the certificate and the rights conferred by this chapter on a certificate holder for a period not to exceed one year.

(3) Revoking the certificate.

(4) Suspending or staying the disciplinary order, or portions of it, with or without conditions.

(5) Taking other action as the organization, as authorized by this chapter or its bylaws, deems proper.

(b) The organization may issue an initial certificate on probation, with specific terms and conditions, to any applicant.

(c) (1) Notwithstanding any other provision of law, if the organization receives notice that a certificate holder has been arrested and charges have been filed by the appropriate prosecuting agency against the certificate holder alleging a violation of subdivision (b) of Section 647 of the Penal Code or any other offense described in subdivision (h) of Section 4603, the organization shall take all of the following actions:

(A) Immediately suspend, on an interim basis, the certificate of that certificate holder.

(B) Notify the certificate holder within 10 days at the address last filed with the organization that the certificate has been suspended, and the reason for the suspension.

(C) Notify any business within 10 days that the organization has in its records as employing the certificate holder that the certificate has been suspended.

(2) Upon notice to the organization that the charges described in paragraph (1) have resulted in a conviction, the suspended certificate shall become subject to permanent revocation. The organization shall provide notice to the certificate holder within 10 days that it has evidence of a valid record of conviction and that the certificate will be revoked unless the certificate holder provides evidence within 15 days that the conviction is either invalid or that the information is otherwise erroneous.

(3) Upon notice that the charges have resulted in an acquittal, or have otherwise been dismissed prior to conviction, the certificate shall be immediately reinstated and the certificate holder and any business that received notice pursuant to subparagraph (C) of paragraph (1) shall be notified of the reinstatement within 10 days.

4602.5. (a) Upon the request of any law enforcement agency or any other representative of a local government agency with responsibility for regulating, or administering a local ordinance relating to, massage or massage businesses, the organization shall provide information concerning a certificate holder, including, but not limited to, the current status of the certificate, any history of disciplinary actions taken against the certificate holder, the home and work addresses of the certificate holder, and any other information in the organization's possession that is necessary to verify facts relevant to administering the local ordinance.

(b) The organization shall accept information provided by any law enforcement agency or any other representative of a local government agency with responsibility for regulating, or administering a local ordinance relating to, massage or massage businesses. The organization shall have the responsibility to review any information received and to

take any actions authorized by this chapter that are warranted by that information.

4603. It is a violation of this chapter for a certificate holder to commit, and the organization may deny an application for a certificate or discipline a certificate holder for, any of the following:

(a) Unprofessional conduct, including, but not limited to, denial of licensure, revocation, suspension, restriction, or any other disciplinary action against a certificate holder by another state or territory of the United States, by any other government agency, or by another California health care professional licensing board. A certified copy of the decision, order, or judgment shall be conclusive evidence of these actions.

(b) Procuring a certificate by fraud, misrepresentation, or mistake.

(c) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate, any provision or term of this chapter or any rule or bylaw adopted by the organization.

(d) Conviction of any felony, or conviction of a misdemeanor that is substantially related to the qualifications or duties of a certificate holder, in which event the record of the conviction shall be conclusive evidence of the crime.

(e) Impersonating an applicant or acting as a proxy for an applicant in any examination referred to under this chapter for the issuance of a certificate.

(f) Impersonating a certified practitioner or therapist, or permitting or allowing an uncertified person to use a certificate.

(g) Committing any fraudulent, dishonest, or corrupt act that is substantially related to the qualifications or duties of a certificate holder.

(h) Committing any act punishable as a sexually related crime.

4603.1. (a) No certificate holder or certificate applicant may be disciplined or denied a certificate pursuant to Section 4603 except according to procedures satisfying the requirements of this section. A denial or discipline not in accord with this section or subdivision (c) of Section 4602 shall be void and without effect.

(b) Any certificate applicant denial or certificate holder discipline shall be done in good faith and in a fair and reasonable manner. Any procedure that conforms to the requirements of subdivision (c) is fair and reasonable, but a court may also find other procedures to be fair and reasonable when the full circumstances of the certificate denial or certificate holder discipline are considered.

(c) A procedure is fair and reasonable when the procedures in subdivision (c) of Section 4602 are followed, or if all of the following apply:

(1) The provisions of the procedure have been set forth in the articles or bylaws, or copies of those provisions are sent annually to all the members as required by the articles or bylaws.

(2) It provides the giving of 15 days prior notice of the certificate denial or certificate holder discipline and the reasons therefor.

(3) It provides an opportunity for the certificate applicant or certificate holder to be heard, orally or in writing, not less than five days before the effective date of the certificate denial or certificate holder discipline by a person or body authorized to decide that the proposed certificate denial or certificate holder discipline not take place.

(d) Any notice required under this section may be given by any method reasonably calculated to provide actual notice. Any notice given by mail must be given by first-class or certified mail sent to the last address of the certificate applicant or certificate holder shown on the organization's records.

(e) Any action challenging a certificate denial or certificate holder discipline, including any claim alleging defective notice, shall be commenced within one year after the date of the certificate denial or certificate holder discipline. If the action is successful, the court may order any relief, including reinstatement, that it finds equitable under the circumstances.

(f) This section governs only the procedures for certificate denial or certificate holder discipline and not the substantive grounds therefor. A certificate denial or certificate holder discipline based upon substantive grounds that violates contractual or other rights of the member or is otherwise unlawful is not made valid by compliance with this section.

(g) A certificate applicant or certificate holder who is denied or disciplined shall be liable for any charges incurred, services or benefits actually rendered, dues, assessments, or fees incurred before the certificate denial or certificate holder discipline or arising from contract or otherwise.

4603.5. It shall be the responsibility of any certificate holder to notify the organization of his or her home address, as well as the address of any business establishment where he or she regularly works as a massage therapist or massage practitioner, whether as an employee or as an independent contractor. A certificate holder shall notify the organization within 30 days of changing either his or her home address or the address of the business establishment where he or she regularly works as a massage therapist or massage practitioner.

4604. (a) Notwithstanding Section 4601, the organization may grant a massage practitioner certificate to any person who applies on or before January 1, 2012, with one of the following:

(1) A current valid massage permit or license from a California city, county, or city and county and documentation evidencing that the person has completed at least a 100-hour course in massage at a state-approved or registered school, or out-of-state school recognized by the organization as providing comparable education, has been practicing for at least three years, and has provided at least 1,000 hours of massage to members of the public for compensation.

(2) Documentation evidencing that the person has completed at least a 100-hour course in massage at a state-approved or registered school, or out-of-state school recognized by the organization as providing comparable education, has been practicing for at least three years, and has provided at least 1,750 hours of massage to members of the public for compensation. For purposes of this subdivision, evidence of practice shall include either of the following:

(A) A W-2 form or employer's affidavit containing the dates of the applicant's employment.

(B) Tax returns indicating self-employment as a massage practitioner or massage therapist or any other title that may demonstrate experience in the field of massage.

(3) Documentation evidencing that the person holds a current valid certificate of authorization as an instructor at an approved massage school, or holds the position of a massage instructor at a school accredited by an agency recognized by the United States Department of Education, or colleges and universities of the state higher education system, as defined in Section 100850 of the Education Code.

(b) (1) After reviewing the information submitted under subdivision (a), the organization may require additional information necessary to enable it to determine whether to issue a certificate.

(2) If an applicant under paragraph (1) of subdivision (a) or paragraph (1) of subdivision (c) has not complied with Section 4601.3, or its equivalent, when obtaining a license or permit from the city, county, or city and county, the organization shall require the applicant to comply with Section 4601.3 prior to issuing a certificate pursuant to this section.

(c) (1) A person applying for a massage practitioner certificate on or before January 1, 2012, who meets the educational requirements of either paragraph (1) or (2) of subdivision (a), but who has not completed the required number of practice hours prior to submitting an application pursuant to this section, may apply for a conditional certificate.

(2) An applicant for a conditional certificate shall, within five years of being issued the conditional certificate, be required to complete at least 30 hours of additional education per year from schools or courses described in paragraph (5) until he or she has completed a total of at least 250 hours of education, which may include massage education

hours previously completed in a massage course described in either paragraph (1) or (2) of subdivision (a).

(3) Upon successful completion of the requirements of this subdivision, the organization shall issue a certificate to the person that is not conditional.

(4) The organization shall immediately revoke the conditional certificate issued to any person pursuant to this subdivision if the time period specified in paragraph (2) expires without proof of completion of the requirements having been filed with the organization.

(5) Any additional education required by this section may be completed through courses provided by any of the following:

(A) An approved school.

(B) A registered school.

(C) A provider approved by, or registered with, the organization or the Department of Consumer Affairs.

(D) A provider that establishes to the satisfaction of the organization that its course or courses are appropriate educational programs for this purpose.

(d) Nothing in this section shall preclude the organization from exercising any power or authority conferred by this chapter with respect to a conditional certificate holder.

4605. It is an unfair business practice for any person to state or advertise or put out any sign or card or other device, or to represent to the public through any print or electronic media, that he or she is certified, registered, or licensed by a governmental agency as a massage therapist or massage practitioner.

4606. It is an unfair business practice for any person to hold oneself out or use the title of "certified massage therapist" or "certified massage practitioner" or any other term, such as "licensed," "registered," or "CMT," that implies or suggests that the person is certified as a massage therapist or practitioner without meeting the requirements of Section 4601 or 4604.

4607. The superior court in and for the county in which any person acts as a massage practitioner or massage therapist in violation of the provisions of this chapter, may, upon a petition by any person, issue an injunction or other appropriate order restraining the conduct. The proceedings under this paragraph shall be governed by Chapter 3 (commencing with Section 525) of Title 7 of Part 2 of the Code of Civil Procedure.

4608. Nothing in this chapter is intended to limit or prohibit a person who obtains a certification pursuant to this chapter from providing services pursuant to, and in compliance with, Sections 2053.5 and 2053.6.

4612. (a) (1) The holder of a certificate issued pursuant to this chapter shall have the right to practice massage, consistent with this chapter and the qualifications established by his or her certification, in any city, county, or city and county in this state and shall not be required to obtain any other license, permit, or other authorization, except as provided in this section, to engage in that practice.

(2) Notwithstanding any other provision of law, a city, county, or city and county shall not enact an ordinance that requires a license, permit, or other authorization to practice massage by an individual who is certified pursuant to this chapter and who is practicing consistent with the qualifications established by his or her certification. No provision of any ordinance enacted by a city, county, or city and county that is in effect before the effective date of this chapter, and that requires a license, permit, or other authorization to practice massage, may be enforced against an individual who is certified pursuant to this chapter.

(3) Except as provided in subdivision (b), nothing in this section shall be interpreted to prevent a city, county, or city and county from adopting or enforcing any local ordinance governing zoning, business licensing, and reasonable health and safety requirements for massage establishments or businesses. Subdivision (b) shall not apply to any massage establishment or business that employs or uses persons to provide massage services who are not certified pursuant to this chapter.

(b) (1) This subdivision shall apply only to massage establishments or businesses that are sole proprietorships, where the sole proprietor is certified pursuant to this chapter, and to massage establishments or businesses that employ or use only persons certified pursuant to this chapter to provide massage services. For purposes of this subdivision, a sole proprietorship is a business where the owner is the only person employed by that business to provide massage services.

(2) (A) Any massage establishment or business described in paragraph (1) shall maintain on its premises evidence for review by local authorities that demonstrates that all persons providing massage services are certified.

(B) Nothing in this section shall preclude a city, county, or city and county from including in a local ordinance a provision that requires a business described in paragraph (1) to file copies or provide other evidence of the certificates held by the persons who are providing massage services at the business.

(3) A city, county, or city and county may charge a massage business or establishment a business licensing fee sufficient to cover the costs of the business licensing activities established by a local ordinance described in this section.

(4) Nothing in this section shall prohibit a city, county, or city and county from adopting land use and zoning requirements applicable to massage establishments or businesses, provided that these requirements shall be no different than the requirements that are uniformly applied to other professional or personal services businesses.

(5) Local building code or physical facility requirements applicable to massage establishments or businesses shall not require additional restroom, shower, or other facilities that are not uniformly applicable to other professional or personal service businesses, nor shall building or facility requirements be adopted that (A) require unlocked doors when there is no staff available to assure security for clients and massage staff who are behind closed doors, or (B) require windows that provide a view into massage rooms that interfere with the privacy of clients of the massage business.

(6) A city, county, or city and county may adopt reasonable health and safety requirements with respect to massage establishments or businesses, including, but not limited to, requirements for cleanliness of massage rooms, towels and linens, and reasonable attire and personal hygiene requirements for persons providing massage services, provided that nothing in this paragraph shall be interpreted to authorize adoption of local ordinances that impose additional qualifications, such as medical examinations, background checks, or other criteria, upon any person certified pursuant to this chapter.

(7) Nothing in this section shall preclude a city, county, or city and county from doing any of the following:

(A) Requiring an applicant for a business license to operate a massage business or establishment to fill out an application that requests the applicant to provide relevant information.

(B) Making reasonable investigations into the information so provided.

(C) Denying or restricting a business license if the applicant has provided materially false information.

(c) An owner or operator of a massage business or establishment subject to subdivision (b) shall be responsible for the conduct of all employees or independent contractors working on the premises of the business. Nothing in this section shall preclude a local ordinance from authorizing suspension, revocation, or other restriction of a license or permit issued to a massage establishment or business if violations of this chapter, or of the local ordinance, occur on the business premises.

(d) Nothing in this section shall preclude a city, county, or city and county from adopting a local ordinance that is applicable to massage businesses or establishments described in paragraph (1) of subdivision (b) and that does either of the following:

(1) Provides that duly authorized officials of the city, county, or city and county have the right to conduct reasonable inspections, during regular business hours, to ensure compliance with this chapter, the local ordinance, or other applicable fire and health and safety requirements.

(2) Requires an owner or operator to notify the city, county, or city and county of any intention to rename, change management, or convey the business to another person.

4613. (a) Nothing in this chapter shall restrict or limit in any way the authority of a city, county, or city and county to adopt a local ordinance governing any person who is not certified pursuant to this chapter.

(b) Nothing in this chapter is intended to affect the practice rights of any person licensed by the state to practice or perform any functions or services pursuant to that license.

4615. This chapter shall be subject to the review required by Division 1.2 (commencing with Section 473).

4620. This chapter shall remain in effect only until January 1, 2016, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2016, deletes or extends that date.

CHAPTER 385

An act to amend Sections 2920, 2933, 4928, 4934, 4990, 4990.04, 7000.5, 7011, 7810, 7815.5, 8000, 8030.2, 8030.4, 8030.6, 8030.8, 18602, and 18613 of the Business and Professions Code, and to amend and repeal Section 94801.5 of the Education Code, relating to regulatory boards.

[Approved by Governor September 27, 2008. Filed with Secretary of State September 27, 2008.]

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

SECTION 1. 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 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. 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 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 4928 of the Business and Professions Code is amended 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 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.

The repeal of this section renders the board subject to the review required by Division 1.2 (commencing with Section 473).

SEC. 4. Section 4934 of the Business and Professions Code is amended 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 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. 5. Section 4990 of the Business and Professions Code is amended to read:

4990. (a) There is in the Department of Consumer Affairs, a Board of Behavioral Sciences that consists of 11 members composed as follows:

(1) Two state licensed clinical social workers.

(2) One state licensed educational psychologist.

(3) Two state licensed marriage and family therapists.

(4) Six public members.

(b) Each member, except the six public members, shall have at least two years of experience in his or her profession.

(c) Each member shall reside in the State of California.

(d) The Governor shall appoint four of the public members and the five licensed members with the advice and consent of the Senate. The Senate Committee on Rules and the Speaker of the Assembly shall each appoint a public member.

(e) Each member of the board shall be appointed for a term of four years. A member appointed by the Speaker of the Assembly or the Senate Committee on Rules shall hold office until the appointment and qualification of his or her successor or until one year from the expiration date of the term for which he or she was appointed, whichever first occurs. Pursuant to Section 1774 of the Government Code, a member appointed by the Governor shall hold office until the appointment and qualification of his or her successor or until 60 days from the expiration date of the term for which he or she was appointed, whichever first occurs.

(f) A vacancy on the board shall be filled by appointment for the unexpired term by the authority who appointed the member whose membership was vacated.

(g) Not later than the first of June of each calendar year, the board shall elect a chairperson and a vice chairperson from its membership.

(h) Each member of the board shall receive a per diem and reimbursement of expenses as provided in Section 103.

(i) 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. 5.5. Section 4990 of the Business and Professions Code is amended to read:

4990. (a) There is in the Department of Consumer Affairs, a Board of Behavioral Sciences that consists of the following members:

(1) Two state-licensed clinical social workers.

(2) One state-licensed educational psychologist.

(3) Two state-licensed marriage and family therapists.

(4) After January 1, 2011, one state-licensed alcoholism and drug abuse counselor.

(5) Seven public members.

(b) Each member, except the seven public members, shall have at least two years of experience in his or her profession.

(c) Each member shall reside in the State of California.

(d) The Governor shall appoint five of the public members and the six licensed members with the advice and consent of the Senate. The

Senate Committee on Rules and the Speaker of the Assembly shall each appoint a public member.

(e) Each member of the board shall be appointed for a term of four years. A member appointed by the Speaker of the Assembly or the Senate Committee on Rules shall hold office until the appointment and qualification of his or her successor or until one year from the expiration date of the term for which he or she was appointed, whichever first occurs. Pursuant to Section 1774 of the Government Code, a member appointed by the Governor shall hold office until the appointment and qualification of his or her successor or until 60 days from the expiration date of the term for which he or she was appointed, whichever first occurs.

(f) A vacancy on the board shall be filled by appointment for the unexpired term by the authority who appointed the member whose membership was vacated.

(g) Not later than the first of June of each calendar year, the board shall elect a chairperson and a vice chairperson from its membership.

(h) Each member of the board shall receive a per diem and reimbursement of expenses as provided in Section 103.

(i) 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. 6. Section 4990.04 of the Business and Professions Code is amended to read:

4990.04. (a) The board shall appoint an executive officer. This position is designated as a confidential position and is exempt from civil service under subdivision (e) of Section 4 of Article VII of the California Constitution.

(b) The executive officer serves at the pleasure of the board.

(c) The executive officer shall exercise the powers and perform the duties delegated by the board and vested in him or her by this chapter.

(d) With the approval of the director, the board shall fix the salary of the executive officer.

(e) The chairperson and executive officer may call meetings of the board and any duly appointed committee at a specified time and place. For purposes of this section, "call meetings" means setting the agenda, time, date, or place for any meeting of the board or any committee.

(f) 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. 7. 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 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.

The repeal of this section renders the board subject to the review required by Division 1.2 (commencing with Section 473).

SEC. 8. 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 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. 9. 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 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.

The repeal of this section renders the board subject to the review required by Division 1.2 (commencing with Section 473).

SEC. 10. 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 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. 11. 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 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. 12. 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 in the amount of three hundred thousand dollars ($300,000) at the beginning of each fiscal year. Notwithstanding any other provision of this article, a transfer to the Transcript Reimbursement Fund in excess of the fund balance established at the beginning of each fiscal year shall not be made by the board if the transfer will result in the reduction of the balance of the Court Reporters' Fund to an amount less than six months' operating budget.

(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 level of funding for the Transcript Reimbursement Fund, as specified in subdivision (a), 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, 2009, shall be transferred to the Court Reporters' Fund.

(h) 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. 13. 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, that 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) (1) "Indigent person" means any of the following:

(A) 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.

(B) A person who is eligible for supplemental security income.

(C) A person who is eligible for, or receiving, free services under the Older Americans Act or the Developmentally Disabled Assistance Act.

(D) A person whose income is 75 percent or less of the maximum level of income for lower income households as defined in Section 50079.5 of the Health and Safety Code, for purposes of a program that provides legal assistance by an attorney in private practice on a pro bono basis.

(2) For the purposes of this subdivision, the income of a person who is disabled shall be determined after deducting the costs of medical and other disability-related special expenses.

(g) "Fee-generating case" means any case or matter that, 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) If 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) If 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) If 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) "Developmentally Disabled Assistance Act" means the Developmentally Disabled Assistance and Bill of Rights Act of 1975, (42 U.S.C. Sec. 6001 et seq.) as amended.

(p) 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. 14. 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 by official reporters, 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 there is no deposition transcript, 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. If 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 regular customary

charges for a 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 section 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. Applications held over shall be given a priority standing in the next fiscal year.

(i) 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. 15. 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 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 18602 of the Business and Professions Code is amended to read:

18602. (a) Except as provided in this section, there is in the Department of Consumer Affairs the State Athletic Commission, which consists of seven members. Five members shall be appointed by the Governor, one member shall be appointed by the Senate Rules Committee, and one member shall be appointed by the Speaker of the Assembly.

The members of the commission appointed by the Governor are subject to confirmation by the Senate pursuant to Section 1322 of the Government Code.

No person who is currently licensed, or who was licensed within the last two years, under this chapter may be appointed or reappointed to, or serve on, the commission.

(b) In appointing commissioners under this section, the Governor, the Senate Rules Committee, and the Speaker of the Assembly shall make every effort to ensure that at least four of the members of the commission shall have experience and demonstrate expertise in one of the following areas:

(1) A licensed physician or surgeon having expertise or specializing in neurology, neurosurgery, head trauma, or sports medicine. Sports medicine includes, but is not limited to, physiology, kinesiology, or other aspects of sports medicine.

(2) Financial management.

(3) Public safety.

(4) Past experience in the activity regulated by this chapter, either as a contestant, a referee or official, a promoter, or a venue operator.

(c) Each member of the commission shall be appointed for a term of four years. All terms shall end on January 1. Vacancies occurring prior to the expiration of the term shall be filled by appointment for the unexpired term. No commission member may serve more than two consecutive terms.

(d) Notwithstanding any other provision of this chapter, members first appointed shall be subject to the following terms:

(1) The Governor shall appoint two members for two years, two members for three years, and one member for four years.

(2) The Senate Committee on Rules shall appoint one member for four years.

(3) The Speaker of the Assembly shall appoint one member for four years.

(4) The appointing powers, as described in subdivision (a), may appoint to the commission a person who was a member of the prior commission prior to the repeal of that commission on July 1, 2006.

(e) 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.

The repeal of this section renders the commission subject to the review required by Division 1.2 (commencing with Section 473).

SEC. 17. Section 18613 of the Business and Professions Code is amended to read:

18613. (a) (1) To assure the continuity and stable transition as the commission is reformed on January 1, 2007, the person serving as the bureau chief on December 31, 2006, shall serve as the executive officer beginning January 1, 2007, for a term through June 30, 2007. On or

before June 30, 2007, but not earlier than June 1, 2007, the commission shall determine whether to retain the services of the person who was serving as the bureau chief on December 31, 2006, or to follow the procedure set forth in paragraph (2) of this subdivision to appoint a new executive officer. During the period between January 1, 2007, and June 30, 2007, any inconsistent provisions of this section notwithstanding, the executive officer may be terminated for cause upon the affirmative vote of a majority of the members of the commission.

(2) The commission shall 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 commission and vested in him or her by this chapter. The appointment of the executive officer is subject to the approval of the Director of Consumer Affairs.

(3) The commission may employ in accordance with Section 154 other personnel as may be necessary for the administration of this chapter.

(b) 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. 18. Section 94801.5 of the Education Code, as added by Senate Bill 823 of the 2007–08 Regular Session, is amended to read:

94801.5. (a) There is a Bureau for Private Postsecondary Education in the Department of Consumer Affairs. The bureau has the responsibility for approving and regulating private postsecondary educational institutions and programs.

(b) This section shall remain in effect only until January 1, 2013, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2013, deletes or extends that date.

SEC. 19. Section 5.5 of this bill incorporates amendments to Section 4990 of the Business and Professions Code proposed by both this bill and AB 239. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2009, (2) each bill amends Section 4990 of the Business and Professions Code, and (3) this bill is enacted after AB 239, in which case Section 5 of this bill shall not become operative.

SEC. 20. Section 18 of this bill shall become operative only if Senate Bill 823 of the 2007–08 Regular Session is also enacted, becomes operative, and adds Section 94801.5 to the Education Code.

CHAPTER 386

An act to amend Sections 195.120, 195.122, 218, 17207, and 24347.5 of, and to add Sections 195.128, 195.129, 195.130, 195.131, 195.132,

195.133, 195.134, 195.135, 195.136, 195.137, 195.138, 195.139, 195.140, 195.141, 195.142, 195.143, 195.144, and 195.145 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 September 27, 2008. Filed with Secretary of State September 27, 2008.]

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

SECTION 1. Section 195.120 of the Revenue and Taxation Code is amended to read:

195.120. (a) By October 31, 2008, the auditor of the County of El Dorado, which was the subject of the Governor's proclamation of a state of emergency for the wildfires that commenced on June 24, 2007, 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 2007–08 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 195.122 of the Revenue and Taxation Code is amended to read:

195.122. (a) On or before June 30, 2009, the eligible county, as described in Section 195.120, 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 195.121, 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 195.120 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 the 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 195.121, 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. 3. Section 195.128 is added to the Revenue and Taxation Code, to read:

195.128. (a) By October 30, 2008, the auditors of the Counties of Los Angeles, Orange, Riverside, San Bernardino, San Diego, Santa Barbara, and Ventura, which were the subject of the Governor's disaster proclamations of September 15, 2007, and October 21, 2007, 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 2008–09 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 those disasters, 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. 4. Section 195.129 is added to the Revenue and Taxation Code, to read:

195.129. After the county auditor of the eligible county, as described in Section 195.128, 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. 5. Section 195.130 is added to the Revenue and Taxation Code, to read:

195.130. (a) On or before June 30, 2009, the eligible county, as described in Section 195.128, 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 195.129, 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 195.128 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 195.129, 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. 6. Section 195.131 is added to the Revenue and Taxation Code, to read:

195.131. (a) By October 30, 2008, the auditor of the County of Riverside, which was the subject of the Governor's proclamation of a state of emergency for the extremely strong and damaging winds that commenced on October 20, 2007, 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 2008–09 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 those disasters, 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. 7. Section 195.132 is added to the Revenue and Taxation Code, to read:

195.132. After the county auditor of the eligible county, as described in Section 195.131, 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. 8. Section 195.133 is added to the Revenue and Taxation Code, to read:

195.133. (a) On or before June 30, 2009, the eligible county, as described in Section 195.131, 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 195.132, 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 195.131 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 195.132, 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. 9. Section 195.134 is added to the Revenue and Taxation Code, to read:

195.134. (a) By September 30, 2009, the auditors of the Counties of Butte, Kern, Mariposa, Mendocino, Monterey, Plumas, Santa Clara, Santa Cruz, Shasta, and Trinity, which were the subject of the Governor's proclamations of a state of emergency for the wildfires that occurred during May or June 2008, 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 2008–09 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 those disasters, 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. 10. Section 195.135 is added to the Revenue and Taxation Code, to read:

195.135. After the county auditor of the eligible county, as described in Section 195.134, 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. 11. Section 195.136 is added to the Revenue and Taxation Code, to read:

195.136. (a) On or before June 30, 2010, the eligible county, as described in Section 195.134, 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 195.135, 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 195.134 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 195.135, 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. 12. Section 195.137 is added to the Revenue and Taxation Code, to read:

195.137. (a) By September 30, 2009, the auditor of the County of Santa Barbara, which was the subject of the Governor's proclamation of a state of emergency for wildfires that commenced on July 1, 2008, 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 2008–09 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 those disasters, 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. 13. Section 195.138 is added to the Revenue and Taxation Code, to read:

195.138. After the county auditor of the eligible county, as described in Section 195.137, 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. 14. Section 195.139 is added to the Revenue and Taxation Code, to read:

195.139. (a) On or before June 30, 2010, an eligible county, as described in Section 195.137, 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 195.138, 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 195.137 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 195.138, 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. 15. Section 195.140 is added to the Revenue and Taxation Code, to read:

195.140. (a) By September 30, 2009, the auditor of the County of Inyo, which was the subject of the Governor's proclamations of a state of emergency for wildfires that commenced on July 6, 2007, and the severe rainstorms that commenced on July 12, 2008, and caused flash floods, landslides, the accumulation of debris, and that washed-out and damaged roads in that county, 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 2008–09 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. 16. Section 195.141 is added to the Revenue and Taxation Code, to read:

195.141. After the county auditor of an eligible county, as described in Section 195.140, 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. 17. Section 195.142 is added to the Revenue and Taxation Code, to read:

195.142. (a) On or before June 30, 2010, each eligible county, as described in Section 195.140, 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 195.141, 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 195.140 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 195.141,

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. 18. Section 195.143 is added to the Revenue and Taxation Code, to read:

195.143. (a) By September 30, 2009, the auditor of the County of Humboldt, which was the subject of the Governor's proclamation of a state of emergency for wildfires that commenced on May 22, 2008, 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 2008–09 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 those disasters, 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. 19. Section 195.144 is added to the Revenue and Taxation Code, to read:

195.144. After the county auditor of the eligible county, as described in Section 195.143, 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. 20. Section 195.145 is added to the Revenue and Taxation Code, to read:

195.145. (a) On or before June 30, 2010, an eligible county, as described in Section 195.143, 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 195.144, 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 195.143

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 195.144, 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. 21. 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) Any dwelling that qualified for an exemption under this section prior to December 19, 2005, that was damaged or destroyed by severe rainstorms, floods, mudslides, or the accumulation of debris in a disaster, as declared by the Governor in January 2006, April 2006, May 2006, or June 2006, and that has not changed ownership since December 19, 2005, 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.

(j) Any dwelling that qualified for an exemption under this section prior to July 9, 2006, that was damaged or destroyed by the wildfires and any other related casualty that occurred in the County of San Bernardino, as declared by the Governor in July 2006, and that has not changed ownership since July 9, 2006, 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 the wildfires.

(k) Any dwelling that qualified for an exemption under this section prior to the commencement dates of the wildfires listed in the Governor's proclamations of 2006 that was damaged or destroyed by the wildfires and any other related casualty that occurred in the Counties of Riverside and Ventura, and that has not changed ownership since the commencement dates of these disasters as listed in the Governor's proclamations of 2006 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 the wildfires.

(*l*) Any dwelling that qualified for an exemption under this section prior to January 11, 2007, that was damaged or destroyed by severe freezing conditions, commencing January 11, 2007, and any other related casualty that occurred in the Counties of El Dorado, Fresno, Imperial, Kern, Kings, Madera, Merced, Monterey, Riverside, San Bernardino, San Diego, San Luis Obispo, Santa Barbara, Santa Clara, Stanislaus,

Tulare, Ventura, and Yuba as a result of a disaster as declared by the Governor, and that has not changed ownership since January 11, 2007, 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 severe freezing conditions.

(m) Any dwelling that qualified for an exemption under this section prior to June 24, 2007, that was damaged or destroyed by the wildfires and any other related casualty that occurred as a result of this disaster in the County of El Dorado, as declared by the Governor in June 2007, and that has not changed ownership since June 24, 2007, 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 the wildfires.

(n) Any dwelling that qualified for an exemption under this section prior to July 4, 2007, that was damaged or destroyed by the Zaca Fire and any other related casualty that occurred as a result of this disaster in the Counties of Santa Barbara and Ventura, as declared by the Governor in August 2007, and that has not changed ownership since July 4, 2007, may not be denied an exemption 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 the Zaca Fire.

(o) Any dwelling that qualified for an exemption under this section prior to July 6, 2007, that was damaged or destroyed by the wildfires and any other related casualty that occurred as a result of this disaster in the County of Inyo, as declared by the Governor in July 2007, and that has not changed ownership since July 6, 2007, may not be denied an exemption 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 the wildfires.

(p) Any dwelling that qualified for an exemption under this section prior to the commencement dates of the wildfires listed in the Governor's disaster proclamations of September 15, 2007, and October 21, 2007, that was damaged or destroyed by the wildfires and any other related casualty that occurred in the Counties of Los Angeles, Orange, Riverside, San Bernardino, San Diego, Santa Barbara, and Ventura, and that has not changed ownership since the commencement dates of these disasters as listed in the proclamations 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 the wildfires.

(q) Any dwelling that qualified for an exemption under this section prior to October 20, 2007, that was damaged or destroyed by the extremely strong and damaging winds and any other related casualty that occurred as a result of this disaster in the County of Riverside, as declared by the Governor in November 2007, and that has not changed ownership since October 20, 2007, 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 the extremely strong and damaging winds.

(r) Any dwelling that qualified for an exemption under this section prior to the commencement dates of the wildfires listed in the Governor's disaster proclamations of May, June, or July 2008, that was damaged or destroyed by the wildfires and any other related casualty that occurred in the Counties of Butte, Kern, Mariposa, Mendocino, Monterey, Plumas, Santa Clara, Santa Cruz, Shasta, and Trinity and that has not changed ownership since the commencement dates of these disasters as listed in the proclamations 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 the wildfires.

(s) Any dwelling that qualified for an exemption under this section prior to July 1, 2008, that was damaged or destroyed by the wildfires and any other related casualty that occurred as a result of this disaster in the County of Santa Barbara, as declared by the Governor in July 2008, and that has not changed ownership since July 1, 2008, may not be denied an exemption 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 the wildfires.

(t) Any dwelling that qualified for an exemption under this section prior to July 12, 2008, that was damaged or destroyed by severe rainstorms, floods, landslides, or the accumulation of debris in a disaster, as declared by the Governor, in July 2008, and that has not changed ownership since July 12, 2008, 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, landslides, the accumulation of debris, or washed-out or damaged roads.

(u) Any dwelling that qualified for an exemption under this section prior to May 22, 2008, that was damaged or destroyed by the wildfires and any other related casualty that occurred as a result of this disaster in the County of Humboldt, as declared by the Governor in August 2008, and that has not changed ownership since May 22, 2008, may not be denied an exemption 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 the wildfires.

(v) 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. 22. 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, 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.

(27) Any loss sustained in the Counties of Alameda, Alpine, Amador, Butte, Calaveras, Colusa, Contra Costa, Del Norte, El Dorado, Fresno, Humboldt, Kings, Lake, Lassen, Madera, Marin, Mariposa, Mendocino, Merced, Monterey, Napa, Nevada, Placer, Plumas, Sacramento, San Joaquin, San Luis Obispo, San Mateo, Santa Cruz, Shasta, Sierra, Siskiyou, Solano, Sonoma, Stanislaus, Sutter, Trinity, Tulare, Tuolumne, Yolo, and Yuba as a result of the severe rainstorms, related flooding and slides, and any other related casualties, that occurred in December 2005, January 2006, March 2006, or April 2006.

(28) Any loss sustained in the County of San Bernardino as a result of the wildfires that occurred in July 2006.

(29) Any loss sustained in the Counties of Riverside and Ventura as a result of wildfires that occurred during the 2006 calendar year.

(30) Any loss sustained in the Counties of El Dorado, Fresno, Imperial, Kern, Kings, Madera, Merced, Monterey, Riverside, San Bernardino, San Diego, San Luis Obispo, Santa Barbara, Santa Clara, Stanislaus, Tulare, Ventura, and Yuba that were the subject of the Governor's proclamations of a state of emergency for the severe freezing conditions that occurred in January 2007.

(31) Any loss sustained in the County of El Dorado as a result of wildfires that occurred in June 2007.

(32) Any loss sustained in the Counties of Santa Barbara and Ventura as a result of the Zaca Fire that occurred during the 2007 calendar year.

(33) Any loss sustained in the County of Inyo as a result of wildfires that commenced in July 2007.

(34) Any loss sustained in the Counties of Los Angeles, Orange, Riverside, San Bernardino, San Diego, Santa Barbara, and Ventura as a result of wildfires that occurred during the 2007 calendar year that

were the subject of the Governor's disaster proclamations of September 15, 2007, and October 21, 2007.

(35) Any loss sustained in the County of Riverside as a result of extremely strong and damaging winds that occurred in October 2007.

(36) Any loss sustained in the Counties of Butte, Kern, Mariposa, Mendocino, Monterey, Plumas, Santa Clara, Santa Cruz, Shasta, and Trinity as a result of wildfires that occurred in May or June 2008 that were the subject of the Governor's proclamations of a state of emergency.

(37) Any loss sustained in the County of Santa Barbara as a result of wildfires that occurred in July 2008.

(38) Any loss sustained in the County of Inyo as a result of the severe rainstorms, related flooding and landslides, and any other related casualties, that occurred in July 2008.

(39) Any loss sustained in the County of Humboldt as a result of wildfires that commenced in May 2008.

(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 (39), 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. 23. 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, 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.

(27) Any loss sustained in the Counties of Alameda, Alpine, Amador, Butte, Calaveras, Colusa, Contra Costa, Del Norte, El Dorado, Fresno, Humboldt, Kings, Lake, Lassen, Madera, Marin, Mariposa, Mendocino, Merced, Monterey, Napa, Nevada, Placer, Plumas, Sacramento, San Joaquin, San Luis Obispo, San Mateo, Santa Cruz, Shasta, Sierra, Siskiyou, Solano, Sonoma, Stanislaus, Sutter, Trinity, Tulare, Tuolumne, Yolo, and Yuba as a result of the severe rainstorms, related flooding and slides, and any other related casualties, that occurred in December 2005, January 2006, March 2006, or April 2006.

(28) Any loss sustained in the County of San Bernardino as a result of the wildfires that occurred in July 2006.

(29) Any loss sustained in the Counties of Riverside and Ventura as a result of wildfires that occurred during the 2006 calendar year.

(30) Any loss sustained in the Counties of El Dorado, Fresno, Imperial, Kern, Kings, Madera, Merced, Monterey, Riverside, San Bernardino, San Diego, San Luis Obispo, Santa Barbara, Santa Clara, Stanislaus, Tulare, Ventura, and Yuba that were the subject of the Governor's proclamations of a state of emergency for the severe freezing conditions that occurred in January 2007.

(31) Any loss sustained in the County of El Dorado as a result of wildfires that occurred in June 2007.

(32) Any loss sustained in the Counties of Santa Barbara and Ventura as a result of the Zaca Fire that occurred during the 2007 calendar year.

(33) Any loss sustained in the County of Inyo as a result of wildfires that commenced in July 2007.

(34) Any loss sustained in the Counties of Los Angeles, Orange, Riverside, San Bernardino, San Diego, Santa Barbara, and Ventura as a result of wildfires that occurred during the 2007 calendar year that were the subject of the Governor's disaster proclamations of September 15, 2007, and October 21, 2007.

(35) Any loss sustained in the County of Riverside as a result of extremely strong and damaging winds that occurred in October 2007.

(36) Any loss sustained in the Counties of Butte, Kern, Mariposa, Mendocino, Monterey, Plumas, Santa Clara, Santa Cruz, Shasta, and Trinity as a result of wildfires that occurred in May or June 2008 that were the subject of the Governor's proclamations of a state of emergency.

(37) Any loss sustained in the County of Santa Barbara as a result of wildfires that occurred in July 2008.

(38) Any loss sustained in the County of Inyo as a result of the severe rainstorms, related flooding and landslides, and any other related casualties, that occurred in July 2008.

(39) Any loss sustained in the County of Humboldt as a result of wildfires that commenced in May 2008.

(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 (39), 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. 24. 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 21 of this act, are required by Section 25 of Article XIII of the California Constitution.

SEC. 25. 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 issued proclamations of a state of emergency declaring that the wildfires that occurred within the County of El Dorado, commencing in June 2007, within the Counties of Inyo, Los Angeles, Orange, Riverside, San Bernardino, San Diego, Santa Barbara, and Ventura during the 2007 calendar year, the extremely strong and damaging winds that occurred in the County of Riverside in October 2007, the wildfires that occurred within the Counties of Butte, Kern, Mariposa, Mendocino, Monterey, Plumas, Santa Clara, Santa Cruz, Shasta, and Trinity in May or June 2008, the wildfires that occurred within the County of Humboldt, commencing in May 2008, the wildfires that occurred within the County of Santa Barbara in July 2008, and the severe rainstorms, flash floods, landslides, the accumulation of debris, and washed-out and damaged roads that occurred within the County of Inyo in July 2008, constitute conditions of extreme peril to public health and safety to persons and property within those counties, 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. 26. 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. 27. 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 within the County of El Dorado, commencing in June 2007, within the Counties of Inyo, Los Angeles, Orange, Riverside, San Bernardino, San Diego, Santa Barbara, and Ventura during the 2007 calendar year, as a result of the extremely strong and damaging winds that occurred in the County of Riverside in October 2007, as a result of the wildfires that occurred within the Counties of Butte, Kern, Mariposa, Mendocino, Monterey, Plumas, Santa Clara, Santa Cruz, Shasta, and

Trinity in May or June 2008, that were the subject of the Governor's proclamation of a state of emergency, as the result of the wildfires that occurred within the County of Humboldt, commencing in May 2008, as the result of the wildfires that occurred within the County of Santa Barbara in July 2008, or as the result of the severe rainstorms that occurred within the County of Inyo in July 2008, it is necessary that this act take effect immediately.

CHAPTER 387

An act to amend Sections 66540.6, 66540.11, 66540.12, 66540.16, 66540.22, 66540.24, 66540.32, 66540.43, and 66540.68 of, and to add Sections 66540.315 and 66540.325 to, the Government Code, and to amend Sections 30913 and 30914 of the Streets and Highways Code, relating to transportation.

[Approved by Governor September 27, 2008. Filed with Secretary of State September 27, 2008.]

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

SECTION 1. Section 66540.6 of the Government Code is amended to read:

66540.6. (a) In order to establish and secure emergency activities of all water transportation and related facilities within the bay area region, the authority shall have the authority to operate a comprehensive emergency public water transportation system that includes water transportation services, water transit terminals, and any other transport and facilities supportive of the system for the bay area region, provided that those facilities are consistent with the bay plan adopted by the Bay Conservation and Development Commission, as it may be amended from time to time, and that the authority consults in good faith with affected municipalities, counties, and other public agencies that may be affected by a particular facility. The authority shall have authority and control over public transportation ferries within the bay area region, except that this section shall not affect any vessels, facilities, or services owned, operated, or provided by the Golden Gate Bridge, Highway and Transportation District. The planning, management, and operation of any existing or planned public transportation ferries and related facilities and services in the bay area region shall be consolidated under the authority's control, subject to the adoption of the transition plan required by subdivision (b) of Section 66540.32. The authority shall not compel

property transfers or operational changes to water transportation services provided by public agencies on or before January 1, 2008, prior to the adoption of that transition plan.

(b) Because of the importance of an orderly development of a comprehensive bay area region emergency water transportation system, the environmental, health, and public safety issues implicated, and the scarce resources available, the authority shall determine the entry within its jurisdiction of any water transportation service or facility that will affect public lands or receive or benefit from the use of federal, state, or local funds, except those owned, operated, or provided by the Golden Gate Bridge, Highway and Transportation District.

(c) Nothing in this section shall be construed to be in derogation of the existing authority of the California Public Utilities Commission.

SEC. 2. Section 66540.11 of the Government Code is amended to read:

66540.11. (a) Public transportation ferries and related water transportation services and facilities within the bay area region shall be transferred to the authority in accordance with the transition plan required under subdivision (b) of Section 66540.32. This section shall not affect any vessels, services, or facilities owned, operated, or provided by the Golden Gate Bridge, Highway and Transportation District.

(b) The authority may accept the transfer of ownership, leasehold interests, operation, and management of any other public transportation ferries and related water transportation services and facilities within the bay area region developed or adopted by any general purpose local government or special district that operates or sponsors water transit, including, but not limited to, those water transportation services provided under agreement with a private operator.

(c) All transfers pursuant to subdivisions (a) and (b) shall be consistent with the adopted transition plan required under subdivision (b) of Section 66540.32 and may include, but not be limited to, all of the following:

(1) All real and personal property, including, but not limited to, all terminals, ferries, vehicles or facilities, parking facilities for passengers and employees, and buildings and facilities used to operate, maintain, and manage the water transportation services system.

(2) All personnel currently employed by the water transportation services system, subject to the provisions of Article 5 (commencing with Section 66540.55) of Chapter 5.

(3) All contracts with tenants, concessionaires, leaseholders, and others.

(4) All nondiscretionary local funds and subsidies for the water transportation services system, other than the direct subsidy the Golden

Gate Bridge, Highway and Transportation District currently provides to the water transportation services system it provides.

(5) All financial obligations generated from the operations of the water transportation services system, including, but not limited to, bonded indebtedness and subsidies associated with the public transportation ferry system.

(d) In accepting a transfer, the authority shall commit to maintaining public transportation ferries and related water transportation services and facilities provided by the transferring agency or operator for a period of at least five years following the transfer. The authority shall attempt to maintain the service levels provided by the transferring agency or operator pursuant to the operating plan prepared pursuant to subparagraph (E) of paragraph (2) of subdivision (b) of Section 66540.32. The authority may assume no financial obligations other than the financial obligations associated with the operation of the services and facilities being transferred to the authority.

(e) Reasonable administrative costs incurred by operators of water transportation services as of January 1, 2008, related to the transfers required by this section or the implementation of this title shall be borne by the authority. The authority may use Regional Measure 2 operating funds pursuant to paragraph (6) of subdivision (d) of Section 30914 of the Streets and Highways Code, in an amount not to exceed six hundred thousand dollars ($600,000) to support development of the transition plan specified in subdivision (b) of Section 66540.32 and for transition-related costs incurred by the authority or the transferring agencies on or after July 1, 2008, upon a determination by the Metropolitan Transportation Commission that the costs are reasonable and are substantially a result of the transition. After adoption of the transition plan and formal agreement by the Cities of Vallejo and Alameda to transition their ferry services to the authority in accordance with the transition plan, the authority may use additional Regional Measure 2 operating funds above the limits referenced in this subdivision for transition and transition-related activities, incurred before or after the actual transfer of services and facilities, as specified in the transition plan and approved by the Metropolitan Transportation Commission.

(f) After adoption of the transition plan and after formal agreement by the Cities of Vallejo and Alameda to transition their services and facilities to the authority in accordance with the transition plan, the authority may use Regional Measure 2 operating funds in accordance with paragraph (6) of subdivision (d) of Section 30914 of the Streets and Highways Code for operation of the Vallejo and Alameda services and facilities if consistent with the transition plan and approved by the Metropolitan Transportation Commission.

(g) Notwithstanding any other provision of this title, if a transfer of assets occurs, the authority shall indemnify the state against any claims or liability relating to the ferry vessel operations and facilities transferred, or any act or failure to act when the authority has a legal obligation under the laws of this state, except for any claims or liability arising out of or related to City of Vallejo v. State of California (Solano County Superior Court, Case No. FCS031170).

SEC. 3. Section 66540.12 of the Government Code is amended to read:

66540.12. (a) The authority shall be governed by a board composed of five members, as follows:

(1) Three members shall be appointed by the Governor, subject to confirmation by the Senate. The Governor shall make the initial appointment of these members of the board within 10 days after the effective date of this title.

(2) One member shall be appointed by the Senate Committee on Rules.

(3) One member shall be appointed by the Speaker of the Assembly.

(b) Each member of the board shall be a resident of a county in the bay area region.

(c) Public officers associated with any area of government, including planning or water, whether elected or appointed, may be appointed to serve contemporaneously as members of the board. No public agency may have more than one representative on the board of the authority.

(d) The Governor shall designate one member as the chair of the board and one member as the vice chair of the board.

(e) The term of a member of the board shall be six years.

(f) Vacancies shall be immediately filled by the appointing power for the unexpired portion of the terms in which they occur.

SEC. 4. Section 66540.16 of the Government Code is amended to read:

66540.16. (a) The board shall have the power to appoint all of the following officers of the authority:

(1) Executive director.

(2) General counsel.

(3) Chief financial officer.

(b) The executive director shall be responsible for operation, maintenance, financing, and planning functions, within the policy guidelines established by the board. The executive director shall prepare and submit an annual budget to the board. The executive director shall have the authority to execute contracts, grant documents, and financing documents under the policy guidelines that may be established by the

board. The executive director shall appoint all other officers and employees.

SEC. 5. Section 66540.22 of the Government Code is amended to read:

66540.22. (a) The board shall supervise and regulate every water transportation services facility owned, operated, maintained, or controlled by the authority, including the establishment of rates, rentals, charges, and classifications, and the making and enforcement of rules, regulations, contracts, practices, and schedules, for or in connection with any transportation facility owned, operated, or controlled by the authority.

(b) If the board proposes to establish or change rates or schedules for or in connection with a facility described in subdivision (a), the board shall establish a process for taking public input on those proposed rates, schedules, or changes and shall conduct a public hearing prior to the adoption of those rates, schedules, or changes. The board shall provide written notification of the proposed rates, schedules, or changes to the city where the ferry terminal affected by those rates, schedules, or changes is located at least 30 days prior to the public hearing.

SEC. 6. Section 66540.24 of the Government Code is amended to read:

66540.24. (a) Three members of the board shall constitute a quorum for the purpose of transacting any business of the board.

(b) Except as otherwise specifically provided to the contrary in this title, a recorded majority vote of the total authorized membership of the board is required on each action.

SEC. 7. Section 66540.315 is added to the Government Code, to read:

66540.315. The authority may establish a community advisory committee to receive community and passenger recommendations related to consolidation and operational issues affecting existing and proposed water transportation services. The authority shall determine the composition of that committee.

SEC. 8. Section 66540.32 of the Government Code is amended to read:

66540.32. (a) The authority shall create and adopt, on or before July 1, 2009, an emergency water transportation system management plan for water transportation services in the bay area region in the event that bridges, highways, and other facilities are rendered wholly or significantly inoperable.

(b) (1) The authority shall create and adopt, on or before July 1, 2009, a transition plan to facilitate the transfer of existing public transportation ferry services within the bay area region to the authority pursuant to this title. In the preparation of the transition plan, priority shall be given to

ensuring continuity in the programs, services, and activities of existing public transportation ferry services.

(2) The plan required by this subdivision shall include all of the following:

(A) A description of existing ferry services in the bay area region, as of January 1, 2008, that are to be transferred to the authority pursuant to Section 66540.11 and a description of any proposed changes to those services.

(B) A description of any proposed expansion of ferry services in the bay area region.

(C) An inventory of the ferry and ferry-related capital assets or leasehold interests, including, but not limited to, vessels, terminals, maintenance facilities, and existing or planned parking facilities or parking structures, and of the personnel, operating costs, and revenues of public agencies operating public transportation ferries and providing water transportation services as of January 1, 2008, and those facilities that are to be transferred, in whole or in part, to the authority pursuant to Section 66540.11.

(D) A description of those capital assets, leasehold interests, and personnel identified in subparagraph (C) that the authority proposes to be transferred pursuant to Section 66540.11.

(E) An operating plan that includes, at a minimum, an estimate of the costs to continue the ferry services described in subparagraph (A) for at least five years and a detailed description of current and historically available revenues and proposed sources of revenue to meet those anticipated costs. Further, the operating plan shall identify options for closing any projected deficits or for addressing increased cost inputs, such as fuel, for at least the five-year period.

(F) A description of the proposed services, duties, functions, responsibilities, and liabilities of the authority and those of agencies providing or proposed to provide water transportation services for the authority.

(G) To the extent the plan may include the transfer of assets or services from a local agency to the authority pursuant to Section 66540.11, that transfer shall be subject to negotiation and agreement by the local agency. The authority and the local agency shall negotiate and agree on fair terms, including just compensation, prior to any transfer authorized by this title.

(H) An initial five-year Capital Improvement Program (CIP) detailing how the authority and its local agency partners plan to support financing and completion of capital improvement projects, including, but not limited to, those described in subparagraph (C), that are required to support the operation of transferred ferry services. Priority shall be given

to emergency response projects and those capital improvement projects for which a Notice of Determination pursuant to the California Environmental Quality Act has been filed and which further the expansion, efficiency, or effectiveness of the ferry system.

(I) A description of how existing and expanded water transportation services will provide seamless connections to other transit providers in the bay area region, including, but not limited to, a description of how the authority will coordinate with all local agencies to ensure optimal public transportation services, including supplemental bus services that existed on January 1, 2008, that support access to the ferry system for the immediate and surrounding communities.

(J) The date on which the ferry services are to be transferred to the authority.

(3) To the extent the plan required by this subdivision includes proposed changes to water transportation services or related facilities historically provided by the City of Vallejo or the City of Alameda, the proposed changes shall be consistent with that city's general plan, its redevelopment plans, and its development and disposition agreements for projects related to the provision of water transportation services. Those projects include, but are not limited to, the construction of parking facilities and transit transfer facilities within close proximity of a ferry terminal or the relocation of a ferry terminal.

(c) In developing the plans described in subdivisions (a) and (b), the authority shall cooperate to the fullest extent possible with the Metropolitan Transportation Commission, the State Office of Emergency Services, the Association of Bay Area Governments, and the San Francisco Bay Conservation and Development Commission, and shall, to the fullest extent possible, coordinate its planning with local agencies, including those local agencies that operated, or contracted for the operation of, public water transportation services as of the effective date of this title. To avoid duplication of work, the authority shall make maximum use of data and information available from the planning programs of the Metropolitan Transportation Commission, the State Office of Emergency Services, the Association of Bay Area Governments, the San Francisco Bay Conservation and Development Commission, the cities and counties in the San Francisco Bay area, and other public and private planning agencies. In addition, the authority shall consider both of the following:

(1) The San Francisco Bay Area Water Transit Implementation and Operations Plan adopted by the San Francisco Bay Area Water Transit Authority on July 10, 2003.

(2) Any other plan concerning water transportation within the bay area region developed or adopted by any general purpose local

government or special district that operates or sponsors water transit, including, but not limited to, those water transportation services provided under agreement with a private operator.

(d) The authority shall prepare a specific transition plan for any transfer not anticipated by the transition plan required under subdivision (b).

(e) Prior to adopting the plans required by this section, the authority shall establish a process for taking public input on the plans in consultation with existing operators of public ferry services affected by the plans. The public input process shall include at least one public hearing conducted at least 60 days prior to the adoption of the plans in each city where an operational ferry facility existed as of January 1, 2008.

SEC. 9. Section 66540.325 is added to the Government Code, to read:

66540.325. When feeder transportation services are proposed to be established to or from the facilities operated by the authority, the authority shall coordinate with the public transit agency or agencies in whose service territory the feeder service will operate.

SEC. 10. Section 66540.43 of the Government Code is amended to read:

66540.43. (a) The authority may issue bonds, from time to time, payable from revenue of any facility or enterprise operated, acquired, or constructed by the authority, for any of the purposes authorized by this title in accordance with the Revenue Bond Law of 1941 (Chapter 6 (commencing with Section 54300) of Part 1 of Division 2 of Title 5), excluding Article 3 (commencing with Section 54380) of Chapter 6 of Part 1 of Division 2 of Title 5 and the limitations set forth in subdivision (b) of Section 54402 which shall not apply to the issuance and sale of bonds pursuant to this section.

(b) The authority is a local agency within the meaning of Section 54307. The water transportation services system or any or all facilities and all additions and improvements that the authority's governing board authorizes to be acquired or constructed and any purpose, operation, facility, system, improvement, or undertaking of the authority from which revenues are derived or otherwise allocable, which revenues are, or may by resolution or ordinance be, required to be separately accounted for from other revenues of the authority, shall constitute an enterprise within the meaning of Section 54309.

(c) The board shall authorize the issuance of bonds pursuant to this section by resolution, which resolution shall be adopted by a majority vote and shall specify all of the following:

(1) The purposes for which the bonds are to be issued, which may include one or more purposes permitted by this title.

(2) The maximum principal amount of bonds.

(3) The maximum term of bonds.

(4) The maximum rate of interest, fixed or variable, to be payable upon the bonds.

(5) The maximum discount or premium payable on sale of the bonds.

(d) For purposes of the issuance and sale of bonds pursuant to this section, the following definitions shall be applicable to the Revenue Bond Law of 1941:

(1) "Fiscal agent" means any fiscal agent, trustee, paying agent, depository, or other fiduciary provided for in the resolution providing the terms and conditions for the issuance of the bonds, which fiscal agent may be located within or without the state.

(2) "Resolution" means, unless the context otherwise requires, the instrument providing the terms and conditions for the issuance of bonds, which instrument may be an indenture, trust agreement, installment sale agreement, lease, ordinance, or other instrument in writing.

(e) Each resolution shall provide for the issuance of bonds in the amounts as may be necessary, until the full amount of bonds authorized has been issued. The full amount of bonds may be divided into two or more series with different dates of payment fixed for bonds of each series. A bond need not mature on its anniversary date.

(f) The authority may issue refunding bonds to redeem or retire any bonds issued by the authority upon the terms, at the times, and in the manner which the authority's governing body determines by resolution. Refunding bonds may be issued in a principal amount sufficient to pay all, or any part of, the principal of the outstanding bonds, the premium, if any due upon call redemption thereof prior to maturity, all expenses of redemption, and either of the following:

(1) The interest upon the refunding bonds from the date of sale thereof to the date of payment of the bonds to be refunded out of the sale of the refunding bonds or to the date upon which the bonds to be refunded will be paid pursuant to call or agreement with the holders of the bonds.

(2) The interest upon the bonds to be refunded from the date of sale of the refunding bonds to the date of payment of the bonds to be refunded or to the date upon which the bonds to be refunded will be paid pursuant to call or agreement with the holders of the bonds.

(g) The authority may enter into any liquidity or credit agreement it may deem necessary in connection with the issuance of bonds authorized by this section.

(h) This section provides a complete, additional, and alternative method of performing the acts authorized by this article, and the issuance

of bonds, including refunding bonds, need not comply with any other law applicable to borrowing or the issuance of bonds. Any provision of the Revenue Bond Law of 1941 which is inconsistent with this section or this title shall not be applicable.

(i) Nothing in this section prohibits the authority from availing itself of any procedure provided in this article for the issuance of bonds of any type or character for any of the authorized water transportation facilities. All bond proceedings may be carried on simultaneously or, in the alternative, as the authority may determine.

SEC. 11. Section 66540.68 of the Government Code is amended to read:

66540.68. (a) This article does not apply to any employees of the authority in a bargaining unit that is represented by a labor organization, except as to the protection of the rights of those employees that were employees of the San Francisco Bay Area Water Transit Authority as specifically provided in Section 66540.56.

(b) The adoption, terms, and conditions of the retirement systems covering employees of the authority in a bargaining unit represented by a labor organization shall be pursuant to a collective bargaining agreement between that labor organization and the authority. Any such retirement system adopted pursuant to a collective bargaining agreement shall be on a sound actuarial basis. The authority and the labor organization representing the authority's employees in a bargaining unit shall be equally represented in the administration of that retirement system.

(c) (1) The authority shall assume and be bound by the terms and conditions of employment set forth in any collective bargaining agreement or employment contract between the San Francisco Bay Area Water Transit Authority and any labor organization or employee affected by the creation of the authority, as well as the duties, obligations, and liabilities arising from, or relating to, labor obligations imposed by state or federal law upon the San Francisco Bay Area Water Transit Authority.

(2) The authority shall assume and be bound by the terms and conditions of employment set forth in any collective bargaining agreement or employment contract between any entity, whether public or private, whose services the authority directly assumes, and any labor organization or employee included within the assumption of those services.

SEC. 12. Section 30913 of the Streets and Highways Code is amended to read:

30913. (a) In addition to any other authorized expenditure of toll bridge revenues, the following major projects may be funded from toll revenues:

(1) Benicia-Martinez Bridge: Widening of the existing bridge.

(2) Benicia-Martinez Bridge: Construction of an additional span parallel to the existing bridge.

(3) Carquinez Bridge: Replacement of the existing western span.

(4) Richmond-San Rafael Bridge: Major rehabilitation of the bridge, and development of a new easterly approach between the toll plaza and Route 80, near Pinole, known as the Richmond Parkway.

(b) The toll increase approved in 1988, which authorized a uniform toll of one dollar ($1) for two-axle vehicles on the bridges and corresponding increases for multi-axle vehicles, resulted in the following toll increases for two-axle vehicles on the bridges:

Bridge	1988 Increase (Two-axle vehicles)
Antioch Bridge	$0.50
Benicia-Martinez Bridge	.60
Carquinez Bridge	.60
Dumbarton Bridge	.25
Richmond-San Rafael Bridge	.00
San Francisco-Oakland Bay Bridge	.25
San Mateo-Hayward Bridge	.25

Portions of the 1988 toll increase were dedicated to transit purposes, and these amounts shall be calculated as up to 2 percent of the revenue generated each year by the collection on all bridges of the base toll at the level established by the 1988 toll increase. The Metropolitan Transportation Commission shall allocate two-thirds of these amounts for transportation projects, other than those specified in Sections 30912 and 30913 and in subdivision (a) of Section 30914, which are designed to reduce vehicular traffic congestion and improve bridge operations on any bridge, including, but not limited to, bicycle facilities and for the planning, construction, operation, and acquisition of rapid water transit systems. The commission shall allocate the remaining one-third solely for the planning, construction, operation, and acquisition of rapid water transit systems. The plans for the projects may also be funded by these moneys. Funds made available for rapid water transit systems pursuant to this subdivision shall be allocated to the San Francisco Bay Area Water Emergency Transportation Authority beginning on the date specified in the adopted transition plan developed by the authority pursuant to subdivision (b) of Section 66540.32 of the Government Code.

(c) The department shall not include, in the plans for the new Benicia-Martinez Bridge, toll plazas, highways, or other facilities leading

to or from the Benicia-Martinez Bridge, any construction that would result in the net loss of any wetland acreage.

(d) With respect to the Benicia-Martinez and Carquinez Bridges, the department shall consider the potential for rail transit as part of the plans for the new structures specified in paragraphs (2) and (3) of subdivision (a).

(e) At the time the first of the new bridges specified in paragraphs (2) and (3) of subdivision (a) is opened to the public, there shall be a lane for the exclusive use of pedestrians and bicycles available on at least, but not limited to, the original span at Benicia or Carquinez, or the additional or replacement spans planned for those bridges. The design of these bridges shall not preclude the subsequent addition of a lane for the exclusive use of pedestrians and bicycles.

SEC. 13. 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) Transbay Commute Ferry Service. Purchase two vessels for transbay ferry services. 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 San Francisco Bay Area Water Emergency Transportation Authority. If the San Francisco Bay Area Water Emergency Transportation 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 or for consolidation of existing ferry operations.

(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 the San Francisco Bay Area Water Emergency Transportation Authority. If the San Francisco Bay Area Water Emergency Transportation 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 San Francisco Bay Area Water Emergency Transportation 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 the San Francisco Bay Area Water Emergency Transportation Authority. If the San Francisco Bay Area Water Emergency Transportation 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 San Francisco Bay Area Water Emergency Transportation Authority. Up to one million dollars ($1,000,000) of the funds described in this paragraph shall be made available for the San Francisco Bay Area Water Emergency Transportation 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) San Francisco Bay Area Water Emergency Transportation Authority, Alameda/Oakland/Harbor Bay, Berkeley/Albany, South San Francisco, Vallejo, or other transbay ferry service. A portion of the operating funds may be dedicated to landside transit operations. Fifteen million three hundred thousand dollars ($15,300,000). Funds historically made available to the City of Vallejo or the City of Alameda shall continue to be allocated to those cities until the date specified in the adopted transition plan developed by the San Francisco Bay Area Water Emergency Authority pursuant to subdivision (b) of Section 66540.32 of the Government Code. The authority may use up to six hundred thousand dollars ($600,000) to support development of the transition plan and for transition-related costs, including, but not limited to, reasonable administrative costs incurred by the authority and transferring

agencies on or after July 1, 2008, in accordance with subdivision (e) of Section 66540.11 of the Government Code, upon a determination by the Metropolitan Transportation Commission that these costs are reasonable and substantially the result of the transition. After adoption of the transition plan and after formal agreement by the Cities of Alameda and Vallejo to transition their ferry services to the authority in accordance with the transition plan, the authority may use additional funds, above the limits previously referenced in this paragraph, for transition and transition-related activities, incurred before or after the actual transfer of services, as defined in the transition plan and approved by the Metropolitan Transportation Commission. The authority may utilize funds from this section for operation of the services transferred from the City of Vallejo or the City of Alameda if approved by the Metropolitan Transportation Commission.

(7) Owl Bus Service on BART Corridor. One million eight hundred thousand dollars ($1,800,000).

(8) MUNI Metro Third Street Light Rail Line. Two million five hundred thousand dollars ($2,500,000) without escalation.

(9) 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.

(10) TransLink, three-year operating program. Twenty million dollars ($20,000,000) without escalation.

(11) San Francisco Bay Area Water Emergency Transportation 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 a program or project identified in subdivision (c) has cost savings after completion, taking into account construction costs and an estimate of future settlement claims, or 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 project sponsor. After consulting with the sponsor, the commission shall hold a public hearing concerning the program or project. After the hearing, the commission may vote to modify the program or the project's scope, decrease its level of funding, or reassign some or all of the funds to another project within the same bridge corridor. If a program or project identified in subdivision (c) is to be implemented with other funds not derived from tolls, the commission shall follow the same consultation and hearing process described above and may vote thereafter to reassign the funds to another project consistent with the intent of this chapter. If an operating program or project as identified in subdivision (d) cannot achieve its performance objectives described in subdivision (a) of Section 30914.5 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 program or 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 some or 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 before reassigning its funding.

(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. 14. 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 388

An act to amend Section 276.5 of the Public Utilities Code, relating to telecommunications.

[Approved by Governor September 27, 2008. Filed with Secretary of State September 27, 2008.]

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

SECTION 1. Section 276.5 of the Public Utilities Code is amended to read:

276.5. (a) The commission shall establish the Rural Telecommunications Infrastructure Grant Program to aid in the establishment of telecommunications service in areas not currently served by existing local exchange carriers. The program shall be funded out of either the California High-Cost Administrative Committee Fund-A or the California High-Cost Administrative Committee Fund-B, or both, as determined by the commission. No more than forty million dollars ($40,000,000) shall be encumbered from the California High-Cost Administrative Committee Fund-A or the California High-Cost Administrative Committee Fund-B, or both, during the four-year period

ending on December 31, 2012, for the Rural Telecommunications Infrastructure Grant Program.

(b) On or after July 1, 2002, any community-based group representing a qualifying community may apply for and receive grants to build an original telecommunications infrastructure that can provide basic telecommunications service that will serve an area that meets the grant program's population criteria with consideration given (1) to areas that lack access to an emergency telephone system described in the Warren-911-Emergency Assistance Act (Article 6 (commencing with Section 53100) of Chapter 1 of Part 1 of Division 2 of Title 5 of the Government Code), and (2) to communities with schools, hospitals, and health clinics, as set forth in Decision 96-10-066 of the commission, and that currently lacks basic telecommunications services, as described in Decision 96-10-066. A community-based group representing a qualifying community may alternatively apply for and receive a grant to subsidize the cost of the telecommunications service itself, if the group determines that this would be more cost-effective than subsidizing the building of an original telecommunications infrastructure. On or before June 30, 2002, the commission, shall establish eligibility criteria for community-based groups to qualify to apply for telecommunications infrastructure grants. The criteria shall include a requirement that a local agency, as defined by Section 50001 of the Government Code, or a town, as defined by Section 21 of the Government Code, shall act as the community-based group's fiscal agent for the receipt and distribution of funds. Qualifying communities shall have a median household income no greater than the income level used in the Universal Lifeline Telephone Service index for a family of four. The commission shall require that the telecommunications carrier that provides the service has the obligation to serve the community.

(c) Grant proposals shall be submitted in accordance with procedures prescribed by the commission and evaluated and awarded by the commission using technology criteria developed by the government-industry working group established by subdivision (g). Grant proposals shall contain all of the following:

(1) A letter from a local agency or town agreeing to act as a fiscal agent for the receipt and distribution of funds.

(2) Preliminary engineering feasibility studies conducted in cooperation with the local service providers that include all of the following:

(A) Topographical maps indicating the location of all existing residences.

(B) Schematic maps of the proposed network facilities.

(C) Recommendations and justifications for the preferred technologies.

(D) Network compatibility statements from one or more interconnecting carriers.

(E) Cost projections for the infrastructure facilities.

(F) Cost projections for the interconnection and recurring service provisions.

(G) Projected budget for engineering feasibility studies.

(3) Recommendations and letters of support from all of the following:

(A) The county board of supervisors.

(B) Other affected local governments.

(C) Affected school districts.

(D) Affected emergency service providers.

(E) Affected law enforcement agencies.

(4) Letters of commitment from 75 percent of the unserved population.

(5) A project schedule, including timeline and budget.

(6) A management plan that assures the proper utilization of grant funds.

(7) Evidence that competing providers and competing technologies have been considered and evaluated.

(d) Grant applicants that are rejected by the commission may be reimbursed for the cost of their preliminary engineering feasibility studies, including, but not limited to, any approved cost of a local telecommunications carrier that contributes to the studies, from the grant program.

(e) The procedures developed for awarding grants shall ensure that the grants awarded do not exceed moneys available to support the program, that not more than one grant is awarded to a qualifying community, and that no single grant shall exceed five million dollars ($5,000,000).

(f) In evaluating grant applications, the commission shall consider the cost effectiveness of the application, the number of people served, the level of local support, the ability of the community served to pay for the services delivered, and the effect on public health and safety.

(g) The commission shall establish a government and industry working group to develop the technical criteria to be used in evaluating grant awards. The working group shall be composed of, but not limited to, all of the following:

(1) Representatives of the commission.

(2) Representatives of the incumbent local exchange carrier industry.

(3) Representatives of the competitive local exchange carrier industry.

(4) Representatives of the wireless carrier industry.

(h) Grant applicants shall seek to secure federal sources of funding in conjunction with local subsidies for the construction of telecommunications infrastructure.

(i) This section shall remain in effect only until January 1, 2013, and as of that date is repealed, unless a later enacted statute enacted before January 1, 2013, deletes or extends that date.

CHAPTER 389

An act to amend Section 10514 of, and to add Section 10844 to, the Fish and Game Code, relating to game refuges.

[Approved by Governor September 27, 2008. Filed with Secretary of State September 27, 2008.]

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

SECTION 1. Section 10514 of the Fish and Game Code is amended to read:

10514. All state game refuges shall, for all purposes of protecting birds, mammals, fish, or amphibia thereon, be under the control and management of the department, and the officers and employees of the department, all game wardens, and law enforcement officers may at all times enter in and upon such refuges in the performance of their duties.

SEC. 2. Section 10844 is added to the Fish and Game Code, to read:

10844. (a) The department shall undertake appropriate education and outreach regarding the current location of existing game refuges, agency contacts for statutory notices in Sections 10506 and 10507, and the potential closure of all state game refuges, except the California Sea Otter Game Refuge and the Farallon Islands Game Refuge. The department shall provide an opportunity for public comment concerning the potential elimination of game refuges. The department shall provide information about game refuge boundaries, including, but not limited to, maps available both on the department's Internet Web site and in hardcopy format. The department shall also provide Internet Web site contact information for the public to contact the department in accordance with state law. The department may conduct regional workshops as it determines to be necessary to provide public information about the proposed elimination of game refuges.

(b) The department, on or before January 1, 2011, shall prepare and submit to the Legislature a description of the public education and outreach effort undertaken pursuant to subdivision (a), and a summary of any information provided by the public that is relevant to the potential

closure of all state game refuges except the California Sea Otter Game Refuge and the Farallon Islands Game Refuge.

CHAPTER 390

An act to amend Section 1373 of the Health and Safety Code, and to amend Sections 10277 and 10278 of the Insurance Code, relating to health care.

[Approved by Governor September 27, 2008. Filed with Secretary of State September 27, 2008.]

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

SECTION 1. Section 1373 of the Health and Safety Code is amended to read:

1373. (a) A plan contract may not provide an exception for other coverage if the other coverage is entitlement to Medi-Cal benefits under Chapter 7 (commencing with Section 14000) or Chapter 8 (commencing with Section 14200) of Part 3 of Division 9 of the Welfare and Institutions Code, or Medicaid benefits under Subchapter 19 (commencing with Section 1396) of Chapter 7 of Title 42 of the United States Code.

Each plan contract shall be interpreted not to provide an exception for the Medi-Cal or Medicaid benefits.

A plan contract shall not provide an exemption for enrollment because of an applicant's entitlement to Medi-Cal benefits under Chapter 7 (commencing with Section 14000) or Chapter 8 (commencing with Section 14200) of Part 3 of Division 9 of the Welfare and Institutions Code, or Medicaid benefits under Subchapter 19 (commencing with Section 1396) of Chapter 7 of Title 42 of the United States Code.

A plan contract may not provide that the benefits payable thereunder are subject to reduction if the individual insured has entitlement to the Medi-Cal or Medicaid benefits.

(b) A plan contract that provides coverage, whether by specific benefit or by the effect of general wording, for sterilization operations or procedures shall not impose any disclaimer, restriction on, or limitation of, coverage relative to the covered individual's reason for sterilization.

As used in this section, "sterilization operations or procedures" shall have the same meaning as that specified in Section 10120 of the Insurance Code.

(c) Every plan contract that provides coverage to the spouse or dependents of the subscriber or spouse shall grant immediate accident and sickness coverage, from and after the moment of birth, to each newborn infant of any subscriber or spouse covered and to each minor child placed for adoption from and after the date on which the adoptive child's birth parent or other appropriate legal authority signs a written document, including, but not limited to, a health facility minor release report, a medical authorization form, or a relinquishment form, granting the subscriber or spouse the right to control health care for the adoptive child or, absent this written document, on the date there exists evidence of the subscriber's or spouse's right to control the health care of the child placed for adoption. No plan may be entered into or amended if it contains any disclaimer, waiver, or other limitation of coverage relative to the coverage or insurability of newborn infants of, or children placed for adoption with, a subscriber or spouse covered as required by this subdivision.

(d) (1) Every plan contract that provides that coverage of a dependent child of a subscriber shall terminate upon attainment of the limiting age for dependent children specified in the plan, shall also provide that attainment of the limiting age shall not operate to terminate the coverage of the child while the child is and continues to meet both of the following criteria:

(A) Incapable of self-sustaining employment by reason of a physically or mentally disabling injury, illness, or condition.

(B) Chiefly dependent upon the subscriber for support and maintenance.

(2) The plan shall notify the subscriber that the dependent child's coverage will terminate upon attainment of the limiting age unless the subscriber submits proof of the criteria described in subparagraphs (A) and (B) of paragraph (1) to the plan within 60 days of the date of receipt of the notification. The plan shall send this notification to the subscriber at least 90 days prior to the date the child attains the limiting age. Upon receipt of a request by the subscriber for continued coverage of the child and proof of the criteria described in subparagraphs (A) and (B) of paragraph (1), the plan shall determine whether the child meets that criteria before the child attains the limiting age. If the plan fails to make the determination by that date, it shall continue coverage of the child pending its determination.

(3) The plan may subsequently request information about a dependent child whose coverage is continued beyond the limiting age under this subdivision but not more frequently than annually after the two-year period following the child's attainment of the limiting age.

(4) If the subscriber changes carriers to another plan or to a health insurer, the new plan or insurer shall continue to provide coverage for the dependent child. The new plan or insurer may request information about the dependent child initially and not more frequently than annually thereafter to determine if the child continues to satisfy the criteria in subparagraphs (A) and (B) of paragraph (1). The subscriber shall submit the information requested by the new plan or insurer within 60 days of receiving the request.

(e) A plan contract that provides coverage, whether by specific benefit or by the effect of general wording, for both an employee and one or more covered persons dependent upon the employee and provides for an extension of the coverage for any period following a termination of employment of the employee shall also provide that this extension of coverage shall apply to dependents upon the same terms and conditions precedent as applied to the covered employee, for the same period of time, subject to payment of premiums, if any, as required by the terms of the policy and subject to any applicable collective bargaining agreement.

(f) A group contract shall not discriminate against handicapped persons or against groups containing handicapped persons. Nothing in this subdivision shall preclude reasonable provisions in a plan contract against liability for services or reimbursement of the handicap condition or conditions relating thereto, as may be allowed by rules of the director.

(g) Every group contract shall set forth the terms and conditions under which subscribers and enrollees may remain in the plan in the event the group ceases to exist, the group contract is terminated or an individual subscriber leaves the group, or the enrollees' eligibility status changes.

(h) (1) A health care service plan or specialized health care service plan may provide for coverage of, or for payment for, professional mental health services, or vision care services, or for the exclusion of these services. If the terms and conditions include coverage for services provided in a general acute care hospital or an acute psychiatric hospital as defined in Section 1250 and do not restrict or modify the choice of providers, the coverage shall extend to care provided by a psychiatric health facility as defined in Section 1250.2 operating pursuant to licensure by the State Department of Mental Health. A health care service plan that offers outpatient mental health services but does not cover these services in all of its group contracts shall communicate to prospective group contractholders as to the availability of outpatient coverage for the treatment of mental or nervous disorders.

(2) No plan shall prohibit the member from selecting any psychologist who is licensed pursuant to the Psychology Licensing Law (Chapter 6.6 (commencing with Section 2900) of Division 2 of the Business and

Professions Code), any optometrist who is the holder of a certificate issued pursuant to Chapter 7 (commencing with Section 3000) of Division 2 of the Business and Professions Code or, upon referral by a physician and surgeon licensed pursuant to the Medical Practice Act (Chapter 5 (commencing with Section 2000) of Division 2 of the Business and Professions Code), (A) any marriage and family therapist who is the holder of a license under Section 4980.50 of the Business and Professions Code, (B) any licensed clinical social worker who is the holder of a license under Section 4996 of the Business and Professions Code, (C) any registered nurse licensed pursuant to Chapter 6 (commencing with Section 2700) of Division 2 of the Business and Professions Code, who possesses a master's degree in psychiatric-mental health nursing and is listed as a psychiatric-mental health nurse by the Board of Registered Nursing, or (D) any advanced practice registered nurse certified as a clinical nurse specialist pursuant to Article 9 (commencing with Section 2838) of Chapter 6 of Division 2 of the Business and Professions Code who participates in expert clinical practice in the specialty of psychiatric-mental health nursing, to perform the particular services covered under the terms of the plan, and the certificate holder is expressly authorized by law to perform these services.

(3) Nothing in this section shall be construed to allow any certificate holder or licensee enumerated in this section to perform professional mental health services beyond his or her field or fields of competence as established by his or her education, training and experience.

(4) For the purposes of this section, "marriage and family therapist" means a licensed marriage and family therapist who has received specific instruction in assessment, diagnosis, prognosis, and counseling, and psychotherapeutic treatment of premarital, marriage, family, and child relationship dysfunctions that is equivalent to the instruction required for licensure on January 1, 1981.

(5) Nothing in this section shall be construed to allow a member to select and obtain mental health or psychological or vision care services from a certificate or licenseholder who is not directly affiliated with or under contract to the health care service plan or specialized health care service plan to which the member belongs. All health care service plans and individual practice associations that offer mental health benefits shall make reasonable efforts to make available to their members the services of licensed psychologists. However, a failure of a plan or association to comply with the requirements of the preceding sentence shall not constitute a misdemeanor.

(6) As used in this subdivision, "individual practice association" means an entity as defined in subsection (5) of Section 1307 of the federal Public Health Service Act (42 U.S.C. Sec. 300e-1 (5)).

(7) Health care service plan coverage for professional mental health services may include community residential treatment services that are alternatives to inpatient care and that are directly affiliated with the plan or to which enrollees are referred by providers affiliated with the plan.

(i) If the plan utilizes arbitration to settle disputes, the plan contracts shall set forth the type of disputes subject to arbitration, the process to be utilized, and how it is to be initiated.

(j) A plan contract that provides benefits that accrue after a certain time of confinement in a health care facility shall specify what constitutes a day of confinement or the number of consecutive hours of confinement that are requisite to the commencement of benefits.

(k) If a plan provides coverage for a dependent child who is over 18 years of age and enrolled as a full-time student at a secondary or postsecondary educational institution, the following shall apply:

(1) Any break in the school calendar shall not disqualify the dependent child from coverage.

(2) If the dependent child takes a medical leave of absence, and the nature of the dependent child's injury, illness, or condition would render the dependent child incapable of self-sustaining employment, the provisions of subdivision (d) shall apply if the dependent child is chiefly dependent on the subscriber for support and maintenance.

(3) (A) If the dependent child takes a medical leave of absence from school, but the nature of the dependent child's injury, illness, or condition does not meet the requirements of paragraph (2), the dependent child's coverage shall not terminate for a period not to exceed 12 months or until the date on which the coverage is scheduled to terminate pursuant to the terms and conditions of the plan, whichever comes first. The period of coverage under this paragraph shall commence on the first day of the medical leave of absence from the school or on the date the physician determines the illness prevented the dependent child from attending school, whichever comes first. Any break in the school calendar shall not disqualify the dependent child from coverage under this paragraph.

(B) Documentation or certification of the medical necessity for a leave of absence from school shall be submitted to the plan at least 30 days prior to the medical leave of absence from the school, if the medical reason for the absence and the absence are foreseeable, or 30 days after the start date of the medical leave of absence from school and shall be considered prima facie evidence of entitlement to coverage under this paragraph.

(4) This subdivision shall not apply to a specialized health care service plan or to a Medicare supplement plan.

SEC. 2. Section 10277 of the Insurance Code is amended to read:

10277. (a) A group health insurance policy that provides that coverage of a dependent child of an employee or other member of the covered group shall terminate upon attainment of the limiting age for dependent children specified in the policy, shall also provide that attainment of the limiting age shall not operate to terminate the coverage of the child while the child is and continues to meet both of the following criteria:

(1) Incapable of self-sustaining employment by reason of a physically or mentally disabling injury, illness, or condition.

(2) Chiefly dependent upon the employee or member for support and maintenance.

(b) The insurer shall notify the employee or member that the dependent child's coverage will terminate upon attainment of the limiting age unless the employee or member submits proof of the criteria described in paragraphs (1) and (2) of subdivision (a) to the insurer within 60 days of the date of receipt of the notification. The insurer shall send this notification to the employee or member at least 90 days prior to the date the child attains the limiting age. Upon receipt of a request by the employee or member for continued coverage of the child and proof of the criteria described in paragraphs (1) and (2) of subdivision (a), the insurer shall determine whether the dependent child meets that criteria before the child attains the limiting age. If the insurer fails to make the determination by that date, it shall continue coverage of the child pending its determination.

(c) The insurer may subsequently request information about a dependent child whose coverage is continued beyond the limiting age under subdivision (a), but not more frequently than annually after the two-year period following the child's attainment of the limiting age.

(d) If the employee or member changes carriers to another insurer or to a health care service plan, the new insurer or plan shall continue to provide coverage for the dependent child. The new plan or insurer may request information about the dependent child initially and not more frequently than annually thereafter to determine if the child continues to satisfy the criteria in paragraphs (1) and (2) of subdivision (a). The employee or member shall submit the information requested by the new plan or insurer within 60 days of receiving the request.

(e) If a group health insurance policy provides coverage for a dependent child who is over 18 years of age and enrolled as a full-time student at a secondary or postsecondary educational institution, the following shall apply:

(1) Any break in the school calendar shall not disqualify the dependent child from coverage.

(2) If the dependent child takes a medical leave of absence, and the nature of the dependent child's injury, illness, or condition would render the dependent child incapable of self-sustaining employment, the provisions of subdivision (a) shall apply if the dependent child is chiefly dependent on the policyholder for support and maintenance.

(3) (A) If the dependent child takes a medical leave of absence from school, but the nature of the dependent child's injury, illness, or condition does not meet the requirements of paragraph (2), the dependent child's coverage shall not terminate for a period not to exceed 12 months or until the date on which the coverage is scheduled to terminate pursuant to the terms and conditions of the policy, whichever comes first. The period of coverage under this paragraph shall commence on the first day of the medical leave of absence from the school or on the date the physician determines the illness prevented the dependent child from attending school, whichever comes first. Any break in the school calendar shall not disqualify the dependent child from coverage under this paragraph.

(B) Documentation or certification of the medical necessity for a leave of absence from school shall be submitted to the insurer at least 30 days prior to the medical leave of absence from the school, if the medical reason for the absence and the absence are foreseeable, or 30 days after the start date of the medical leave of absence from school and shall be considered prima facie evidence of entitlement to coverage under this paragraph.

(4) This subdivision shall not apply to a policy of specialized health insurance, Medicare supplement insurance, CHAMPUS-supplement, or TRICARE-supplement insurance policies, or to hospital-only, accident-only, or specified disease insurance policies that reimburse for hospital, medical, or surgical benefits.

SEC. 3. Section 10278 of the Insurance Code is amended to read:

10278. (a) An individual health insurance policy that provides that coverage of a dependent child shall terminate upon attainment of the limiting age for dependent children specified in the policy, shall also provide that attainment of the limiting age shall not operate to terminate the coverage of the child while the child is and continues to meet both of the following criteria:

(1) Incapable of self-sustaining employment by reason of a physically or mentally disabling injury, illness, or condition.

(2) Chiefly dependent upon the policyholder or subscriber for support and maintenance.

(b) The insurer shall notify the policyholder or subscriber that the dependent child's coverage will terminate upon attainment of the limiting age unless the policyholder or subscriber submits proof of the criteria

described in paragraphs (1) and (2) of subdivision (a) to the insurer within 60 days of the date of receipt of the notification. The insurer shall send this notification to the policyholder or subscriber at least 90 days prior to the date the child attains the limiting age. Upon receipt of a request by the policyholder or subscriber for continued coverage of the child and proof of the criteria described in paragraphs (1) and (2) of subdivision (a), the insurer shall determine whether the dependent child meets that criteria before the child attains the limiting age. If the insurer fails to make the determination by that date, it shall continue coverage of the child pending its determination.

(c) The insurer may subsequently request information about a dependent child whose coverage is continued beyond the limiting age under subdivision (a), but not more frequently than annually after the two-year period following the child's attainment of the limiting age.

(d) If the subscriber or policyholder changes carriers to another insurer or to a health care service plan, the new insurer or plan shall continue to provide coverage for the dependent child. The new plan or insurer may request information about the dependent child initially and not more frequently than annually thereafter to determine if the child continues to satisfy the criteria in paragraphs (1) and (2) of subdivision (a). The subscriber or policyholder shall submit the information requested by the new plan or insurer within 60 days of receiving the request.

(e) If an individual health insurance policy provides coverage for a dependent child who is over 18 years of age and enrolled as a full-time student at a secondary or postsecondary educational institution, the following shall apply:

(1) Any break in the school calendar shall not disqualify the dependent child from coverage.

(2) If the dependent child takes a medical leave of absence, and the nature of the dependent child's injury, illness, or condition would render the dependent child incapable of self-sustaining employment, the provisions of subdivision (a) shall apply if the dependent child is chiefly dependent on the policyholder for support and maintenance.

(3) (A) If the dependent child takes a medical leave of absence from school, but the nature of the dependent child's injury, illness, or condition does not meet the requirements of paragraph (2), the dependent child's coverage shall not terminate for a period not to exceed 12 months or until the date on which the coverage is scheduled to terminate pursuant to the terms and conditions of the policy, whichever comes first. The period of coverage under this paragraph shall commence on the first day of the medical leave of absence from the school or on the date the physician determines the illness prevented the dependent child from attending school, whichever comes first. Any break in the school calendar

shall not disqualify the dependent child from coverage under this paragraph.

(B) Documentation or certification of the medical necessity for a leave of absence from school shall be submitted to the insurer at least 30 days prior to the medical leave of absence from the school, if the medical reason for the absence and the absence are foreseeable, or 30 days after the start date of the medical leave of absence from school and shall be considered prima facie evidence of entitlement to coverage under this paragraph.

(4) This subdivision shall not apply to a policy of specialized health insurance, Medicare supplement insurance, CHAMPUS-supplement, or TRICARE-supplement insurance policies, or to hospital-only, accident-only, or specified disease insurance policies that reimburse for hospital, medical, or surgical benefits.

SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

CHAPTER 391

An act to amend Section 679 of, and to add Section 680 to, the Unemployment Insurance Code, relating to unemployment insurance.

[Approved by Governor September 27, 2008. Filed with Secretary of State September 27, 2008.]

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

SECTION 1. Section 679 of the Unemployment Insurance Code is amended to read:

679. (a) Notwithstanding Sections 606.5, 621, and 678, for the purposes of this code, "employer" means any employing unit that is a motion picture payroll services company who pays and controls the payment of wages of a motion picture production worker for services either to a motion picture production company or to an allied motion picture services company. The motion picture payroll services company

must also have filed a timely statement of its intent to be the employer of motion picture production workers pursuant to subdivision (b).

(b) (1) Any employing unit meeting the requirements of a motion picture payroll services company, as defined by this section, that intends to be treated as an employer of motion picture production workers pursuant to subdivision (a) shall file a statement with the department that declares its intent to be the employer of motion picture production workers, pursuant to this section, within 15 days after first paying wages to the workers. The statement shall include identification of all affiliated entities as defined by this section.

(2) Any employing unit operating as a motion picture payroll services company as of January 1, 2007, that intends to be treated as an employer of motion picture production workers pursuant to this section, shall file a statement with the department that declares its intent to be the employer of motion picture production workers, pursuant to this section, by January 15, 2007. The statement shall include identification of all affiliated entities as defined by this section.

(3) Any motion picture payroll company that quits business shall:

(A) Within 10 days of quitting business:

(i) File with the director, a final return and report of wages of its workers, as required by Section 1116.

(ii) File all statements required by this subdivision.

(B) Forty-five days in advance of quitting business, notify the motion picture production companies and allied motion picture services companies, with respect to which they have been treated as the employer of the motion picture production workers, of its intent to quit business.

(4) The director may prevent a motion picture payroll services company that fails to file a timely statement, as required by this section, from being treated as an employer of motion picture production workers, for a period not to exceed the period for which the statement is required.

(5) Any statement filed by a motion picture payroll services company pursuant to this subdivision shall be applied to all affiliated entities of the motion picture payroll services company in existence at the time the statement is filed.

(c) For each rating period beginning on or after January 1, 2007, in which an employer operating as a motion picture payroll services company obtains or attempts to obtain a more favorable rate of contributions under this section in a manner that is due to deliberate ignorance, reckless disregard, fraud, intent to evade, misrepresentation, or willful nondisclosure, the director shall assign the maximum contribution rate plus 2 percent for each applicable rating period, the current rating period, and the subsequent rating period. Contributions

paid in excess of the maximum rate under this section shall not be credited to the employing unit's reserve account.

(d) (1) On and after January 1, 2007, whenever a motion picture payroll services company creates or acquires a motion picture payroll services company, or acquires substantially all of the assets of a motion picture payroll services company, the created or acquired motion picture payroll services company shall:

(A) Constitute a separate employing unit, notwithstanding Sections 135.1 and 135.2.

(B) Have its reserve account and rate of contributions determined in accordance with subdivision (e).

(C) Notify the department of the entity being created or acquired and the nature of its affiliation to that entity.

(2) The department may promulgate regulations requiring a motion picture payroll services company, prior to the creation or acquisition of a motion picture payroll services company that will be an affiliated entity, to seek the approval of the department to apply the provisions of this section to the created or acquired entity.

(e) When a motion picture payroll services company transfers all or part of its business or payroll to another motion picture payroll services company, as defined by this section, the reserve account attributable to the transferor shall be transferred to the transferee motion picture payroll services company, and the transferee's rate of contribution shall be determined in accordance with Section 1052. The transferee shall notify the department within 15 days of the transfer of the business or payroll.

(f) For purposes of this section, the following definitions apply:

(1) "Affiliated entity" means any one or more motion picture payroll services company or companies that are united by factors of common ownership, management, or control as prescribed by Section 1061.

(2) "Allied motion picture services company" means any person engaged in an industry closely allied with, and whose work is integral to, a motion picture production company in the development, production, or postproduction of a motion picture, excluding the distribution of the completed motion picture and any activities occurring thereafter, and who hires from the same pool of craft and guild or union workers, actors, or extras as a motion picture production company.

(3) "Motion picture" means a motion picture of any type, including a theatrical motion picture, a television production, a television commercial, a music video, or any other type of motion picture regardless of its theme or the technology used in its production or distribution.

(4) (A) "Motion picture payroll services company" means any employing unit that directly or through its affiliated entities meets all of the following criteria:

(i) Contractually provides the services of motion picture production workers to a motion picture production company or to an allied motion picture services company.

(ii) Is a signatory to a collective bargaining agreement for one or more of its clients.

(iii) Controls the payment of wages to the motion picture production workers and pays those wages from its own account or accounts.

(iv) Is contractually obligated to pay wages to the motion picture production workers without regard to payment or reimbursement by the motion picture production company or allied motion picture services company.

(v) At least 80 percent of the wages paid by the motion picture payroll services company each calendar year are paid to workers associated between contracts with motion picture production companies and motion picture payroll services companies.

(B) If the director determines that any employing unit is operating as a motion picture payroll services company but is failing to comply with any of the provisions of subparagraph (A) of paragraph (4), the employing unit is subject to determination of the employer-employee relationship pursuant to this code. When the director's ruling becomes final, the director may preclude the employing unit from being classified as a motion picture payroll services company pursuant to this section for up to three years from the date of the determination.

(5) "Motion picture production company" means any employing unit engaged in the development, production, and postproduction of a motion picture, excluding the distribution of the completed motion picture and any activities occurring thereafter.

(6) "Motion picture production worker" means an individual who provides services to a motion picture production company or allied motion picture services company and who, with regard to those services, is reported under this part as an employee by the motion picture payroll services company. An individual who has been reported as an employee by the motion picture payroll services company, without regard to the individual's status as an employee or independent contractor, shall be the employee of the motion picture payroll services company for the purposes of this code throughout the contractual period with the motion picture payroll services company.

(7) "Wages" shall have the same meaning given the term in Article 2 (commencing with Section 926) of Chapter 4 of Part 1 of Division 1, and shall include residual payments.

(g) If the director determines that an entity does not meet any of the requirements specified by this section, the director shall give notice of its determination to that entity pursuant to Section 1206. The notice shall

contain a statement of the facts and circumstances upon which the determination was made. The entity so noticed shall have the right to petition for review of the director's determination within 30 days of the notice, as provided in Section 1222.

(h) The director shall prescribe the form and manner of the statements and information required to be filed or reported by this section.

(i) On or before December 31, 2010, the department may report to the Legislature regarding the impact of this section on the Unemployment Insurance Fund and the entertainment industry.

(j) This section shall remain in effect only until January 1, 2012, and as of that date is repealed, unless a later enacted statute, which is chaptered before January 1, 2012, deletes or extends that date.

SEC. 2. Section 680 is added to the Unemployment Insurance Code, to read:

680. (a) Notwithstanding any other provision of law, when motion picture production workers are employed by one or more affiliated entities of a motion picture payroll services company that has elected to be treated and is being treated as the employer of those motion picture production workers pursuant to Section 679, the motion picture payroll services company may apply to the director for approval of the extension of an existing voluntary plan or plans for the payment of disability benefits to all motion picture production workers employed by all of the affiliated entities of the motion picture payroll services company. The director shall approve the extension of the voluntary plan to all of the motion picture production workers of all of the affiliated entities if he or she finds all of the following exist:

(1) The voluntary plan to be extended was in existence at the time of the election of the motion picture payroll services company to be treated as the employer of motion picture production workers pursuant to Section 679.

(2) The rights afforded to the covered employees are greater than those provided for in Chapter 2 (commencing with Section 2625) and Chapter 7 (commencing with Section 3300) of Part 2 of Division 1.

(3) The plan has been made available to all of the motion picture production workers of the employer employed in this state.

(4) If the plan provides for insurance, the form of the insurance policies to be issued has been approved by the Insurance Commissioner and the policies are to be issued by an admitted disability insurer.

(5) The motion picture payroll services company has consented to the extension of the plan and has agreed to make the payroll deductions required, if any, and transmit the proceeds to the plan insurer, if any.

(6) The plan provides for the inclusion of future employees in the manner described in subparagraph (A) of paragraph (2) of subdivision (b).

(7) (A) The plan will be in effect for a period of not less than one year and, thereafter, continuously, unless the director finds that the motion picture payroll services company or a majority of motion picture production workers employed in this state covered by the plan has given notice of withdrawal from the plan. The notice shall be filed in writing with the director and shall be effective only on the anniversary of the effective date of the plan next following the filing of the notice, but in any event not less than 30 days from the date of the filing of the notice.

(B) Notwithstanding the provisions of subparagraph (A), the plan may be withdrawn on the operative date of any law increasing the benefit amounts provided by Sections 2653 and 2655 or on the operative date of any change in the rate of worker contributions as determined by Section 984, if notice of the withdrawal from the plan is transmitted to the director not less than 30 days prior to the operative date of that law or change. If the plan is not withdrawn on 30 days' notice because of the enactment of a law increasing the benefit amounts provided by Sections 2653 and 2655 or because of a change in the rate of worker contributions as determined by Section 984, the plan shall be amended to conform to that increase or change on the operative date of the increase or change.

(8) The amount of deductions from the wages of an employee in effect for any plan shall not be increased on a date other than an anniversary date of the effective date of the plan, except to the extent that any increase in the deductions from the wages of an employee allowed by Section 3260 permits that amount to exceed the amount of deductions in effect. The amount of deductions, for the purpose of providing coverage under the plan, shall not exceed that which would be required by Sections 984 and 985 if the employee were not covered by the plan.

(9) The approval of the extension of the plan will not result in a substantial selection of risks adverse to the Disability Fund.

(b) The extension of a plan approved by the director pursuant to subdivision (a) shall be deemed to have also met the consent requirements of Section 3257 if both of the following requirements are met:

(1) The plan met the consent requirements of Section 3257 when initially adopted.

(2) The plan provides for both of the following:

(A) Each employee to whom the plan is applicable shall be given written notice of his or her right to reject coverage under the plan and a written statement setting forth the essential features of the plan prior to

or at the time of employment. The form of the notice and of the statement shall be approved by the director.

(B) On or before January 31 of each calendar year, each employee shall be given written notice, in a form approved by the director, of his or her right to withdraw from the plan at the beginning of any calendar quarter upon giving reasonable notice in writing directed to the motion picture payroll services company.

CHAPTER 392

An act to amend Section 23575 of, and to add Section 23575.1 to, the Vehicle Code, relating to vehicles.

[Approved by Governor September 27, 2008. Filed with Secretary of State September 27, 2008.]

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

SECTION 1. Section 23575 of the Vehicle Code is amended to read:

23575. (a) (1) In addition to any other provisions of law, the court may require that a person convicted of a first offense violation of Section 23152 or 23153 install a certified ignition interlock device on any vehicle that the person owns or operates and prohibit that person from operating a motor vehicle unless that vehicle is equipped with a functioning, certified ignition interlock device. The court shall give heightened consideration to applying this sanction to a first offense violator with 0.15 percent or more, by weight, of alcohol in his or her blood at arrest, or with two or more prior moving traffic violations, or to persons who refused the chemical tests at arrest. If the court orders the ignition interlock device restriction, the term shall be determined by the court for a period not to exceed three years from the date of conviction. The court shall notify the Department of Motor Vehicles, as specified in subdivision (a) of Section 1803, of the terms of the restrictions in accordance with subdivision (a) of Section 1804. The Department of Motor Vehicles shall place the restriction in the person's records in the Department of Motor Vehicles.

(2) The court shall require a person convicted of a violation of Section 14601.2 to install an ignition interlock device on any vehicle that the person owns or operates and prohibit the person from operating a motor vehicle unless the vehicle is equipped with a functioning, certified ignition interlock device. The term of the restriction shall be determined by the court for a period not to exceed three years from the date of

conviction. The court shall notify the Department of Motor Vehicles, as specified in subdivision (a) of Section 1803, of the terms of the restrictions in accordance with subdivision (a) of Section 1804. The Department of Motor Vehicles shall place the restriction in the person's records in the Department of Motor Vehicles.

(b) The court shall include on the abstract of conviction or violation submitted to the Department of Motor Vehicles under Section 1803 or 1816, the requirement and term for the use of a certified ignition interlock device. The records of the department shall reflect mandatory use of the device for the term ordered by the court.

(c) The court shall advise the person that installation of an ignition interlock device on a vehicle does not allow the person to drive without a valid driver's license.

(d) A person whose driving privilege is restricted by the court pursuant to this section shall arrange for each vehicle with an ignition interlock device to be serviced by the installer at least once every 60 days in order for the installer to recalibrate and monitor the operation of the device. The installer shall notify the court if the device is removed or indicates that the person has attempted to remove, bypass, or tamper with the device, or if the person fails three or more times to comply with a requirement for the maintenance or calibration of the ignition interlock device. There is no obligation for the installer to notify the court if the person has complied with all of the requirements of this article.

(e) The court shall monitor the installation and maintenance of an ignition interlock device restriction ordered pursuant to subdivision (a) or (*l*). If a person fails to comply with the court order, the court shall give notice of the fact to the department pursuant to Section 40509.1.

(f) (1) Pursuant to Section 13352, if a person is convicted of a violation of Section 23152 or 23153, and the offense occurred within 10 years of one or more separate violations of Section 23152 or 23153 that resulted in a conviction, the person may apply to the Department of Motor Vehicles for a restricted driver's license pursuant to Section 13352 that prohibits the person from operating a motor vehicle unless that vehicle is equipped with a functioning ignition interlock device, certified pursuant to Section 13386. The restriction shall remain in effect for at least the remaining period of the original suspension or revocation and until all reinstatement requirements in Section 13352 are met.

(2) Pursuant to subdivision (g), the Department of Motor Vehicles shall immediately terminate the restriction issued pursuant to Section 13352 and shall immediately suspend or revoke the privilege to operate a motor vehicle of a person who attempts to remove, bypass, or tamper with the device, who has the device removed prior to the termination date of the restriction, or who fails three or more times to comply with

any requirement for the maintenance or calibration of the ignition interlock device ordered pursuant to Section 13352. The privilege shall remain suspended or revoked for the remaining period of the originating suspension or revocation and until all reinstatement requirements in Section 13352 are met.

(g) A person whose driving privilege is restricted by the Department of Motor Vehicles pursuant to Section 13352 shall arrange for each vehicle with an ignition interlock device to be serviced by the installer at least once every 60 days in order for the installer to recalibrate the device and monitor the operation of the device. The installer shall notify the Department of Motor Vehicles if the device is removed or indicates that the person has attempted to remove, bypass, or tamper with the device, or if the person fails three or more times to comply with any requirement for the maintenance or calibration of the ignition interlock device. There is no obligation on the part of the installer to notify the department or the court if the person has complied with all of the requirements of this section.

(h) Nothing in this section permits a person to drive without a valid driver's license.

(i) The Department of Motor Vehicles shall include information along with the order of suspension or revocation for repeat offenders informing them that after a specified period of suspension or revocation has been completed, the person may either install an ignition interlock device on any vehicle that the person owns or operates or remain with a suspended or revoked driver's license.

(j) Pursuant to this section, an out-of-state resident who otherwise would qualify for an ignition interlock device restricted license in California shall be prohibited from operating a motor vehicle in California unless that vehicle is equipped with a functioning ignition interlock device. An ignition interlock device is not required to be installed on any vehicle owned by the defendant that is not driven in California.

(k) If a person has a medical problem that does not permit the person to breathe with sufficient strength to activate the device, then that person shall only have the suspension option.

(*l*) This section does not restrict a court from requiring installation of an ignition interlock device and prohibiting operation of a motor vehicle unless that vehicle is equipped with a functioning, certified ignition interlock device for a person to whom subdivision (a) or (b) does not apply. The term of the restriction shall be determined by the court for a period not to exceed three years from the date of conviction. The court shall notify the Department of Motor Vehicles, as specified in subdivision (a) of Section 1803, of the terms of the restrictions in accordance with subdivision (a) of Section 1804. The Department of Motor Vehicles shall

place the restriction in the person's records in the Department of Motor Vehicles.

(m) For the purposes of this section, "vehicle" does not include a motorcycle until the state certifies an ignition interlock device that can be installed on a motorcycle. Any person subject to an ignition interlock device restriction shall not operate a motorcycle for the duration of the ignition interlock device restriction period.

(n) For the purposes of this section, "owned" means solely owned or owned in conjunction with another person or legal entity. For purposes of this section, "operates" includes operating a vehicle that is not owned by the person subject to this section.

(o) For the purposes of this section, "bypass" includes, but is not limited to, either of the following:

(1) A combination of failing or not taking the ignition interlock device rolling retest three consecutive times.

(2) An incidence of failing or not taking the ignition interlock device rolling retest, when not followed by an incidence of passing the ignition interlock rolling retest prior to turning off the vehicle's engine.

SEC. 2. Section 23575.1 is added to the Vehicle Code, to read:

23575.1. The department may undertake a study and report its findings of that study to the Legislature on or before January 1, 2013, regarding the overall effectiveness of the use of ignition interlock devices (IID) to reduce the recidivism rate of first-time violators of Section 23152 or 23153. If the department exercises this authority, the study shall focus on those drivers who actually have an IID installed in their vehicles rather than on those who are subject to a judicial order to have an IID installed.

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 393

An act to amend Section 270 of, and to amend, renumber, add, and repeal Section 281 of, the Public Utilities Code, relating to telecommunications, and making an appropriation therefor.

[Approved by Governor September 27, 2008. Filed with
Secretary of State September 27, 2008.]

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

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

(a) The emergence of advanced high capacity communication networks, often defined as broadband, based on high-speed interactive networks designed for voice, data, and video communications, have opened up tremendous opportunities for communication.

(b) Advanced communications services are important for our state's economic growth and can increase democratic and civic participation, improve the delivery of health care, education, job training, public safety, and other vital services.

(c) Those who do not have access to advanced communications services will be isolated from information, services, products, and means of entrepreneurship, ultimately weakening our competitiveness in the global economy.

(d) Existing law provides for various universal service programs relating to telephone corporations to be administered by the Public Utilities Commission, and paid for through program end-user surcharges authorized by the commission.

(e) In order to promote the widespread availability of high-quality telecommunications, emerging technologies, and information services to all Californians, the commission shall develop, implement, and administer a California Advanced Services Fund.

(f) The purpose of the California Advanced Services Fund program will be to spur deployment of broadband infrastructure in unserved and underserved areas within the state, in both rural and urban areas, and encourage the existing statewide policy to promote broadband throughout the state.

SEC. 2. Section 270 of the Public Utilities Code is amended to read:

270. (a) The following funds are hereby created in the State Treasury:

(1) The California High-Cost Fund-A Administrative Committee Fund.

(2) The California High-Cost Fund-B Administrative Committee Fund.

(3) The Universal Lifeline Telephone Service Trust Administrative Committee Fund.

(4) The Deaf and Disabled Telecommunications Program Administrative Committee Fund.

(5) The Payphone Service Providers Committee Fund.

(6) The California Teleconnect Fund Administrative Committee Fund.

(7) The California Advanced Services Fund.

(b) Moneys in the funds are the proceeds of rates and are held in trust for the benefit of ratepayers and to compensate telephone corporations for their costs of providing universal service. Moneys in the funds may only be expended pursuant to this chapter and upon appropriation in the annual Budget Act or upon supplemental appropriation.

(c) Moneys in each fund may not be appropriated, or in any other manner transferred or otherwise diverted, to any other fund or entity, except as provided in Sections 19325 and 19325.1 of the Education Code.

SEC. 3. Section 281 of the Public Utilities Code is amended and renumbered to read:

282. Any revenues that are deposited in funds created pursuant to this chapter shall not be used by the state for any purpose other than as specified in this chapter.

SEC. 4. Section 281 is added to the Public Utilities Code, to read:

281. (a) The commission shall develop, implement, and administer the California Advanced Services Fund to encourage deployment of high-quality advanced communications services to all Californians that will promote economic growth, job creation, and the substantial social benefits of advanced information and communications technologies, as provided in Decision 07-12-054.

(b) (1) All moneys collected by the surcharge authorized by the commission pursuant to that decision, whether collected before or after the operative date of this section, shall be transmitted to the commission pursuant to a schedule established by the commission. The commission shall transfer the moneys received to the Controller for deposit in the California Advanced Services Fund.

(2) All interest earned on moneys in the fund shall be deposited in the fund.

(3) The commission may not collect moneys, by imposing the surcharge described in paragraph (1) for deposit in the fund, in an amount that exceeds a total amount of one hundred million dollars ($100,000,000).

(c) Any moneys appropriated from the California Advanced Services Fund to the commission may only be expended for the program administered by the commission pursuant to subdivision (a), including the costs incurred by the commission in developing, implementing, and administering the program and the fund.

(d) The commission shall conduct both a financial audit and a performance audit of the implementation and effectiveness of the California Advanced Services Fund to ensure that funds have been expended in accordance with the approved terms of the winning bids

and this section. The commission shall report its findings to the Legislature by December 31, 2010. The report shall also include an update to the maps in the final report of the California Broadband Task Force.

(e) This section shall remain in effect only until January 1, 2013, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2013, deletes or extends that date.

SEC. 5. (a) The sum of twenty-five million dollars ($25,000,000) is hereby appropriated to the Public Utilities Commission from moneys which will be deposited into the California Advanced Services Fund, pursuant to Section 281 of the Public Utilities Code, on the effective date of this act for purposes of Section 281 of the Public Utilities Code, to be expended in the 2008–09 fiscal year. All unexpended moneys shall be returned to the California Advanced Services Fund.

(b) The Public Utilities Commission shall report to the Assembly and Senate Committees on Budget and the appropriate Senate and Assembly policy committees by May 15, 2009, detailing all of the following:

(1) A description of the projects approved with the moneys appropriated by this section, including the name of the applicant, the area to be served, and the criteria used to score the application.

(2) The amount of funding committed to each approved project.

(3) The status of those approved projects.

(4) The amount of funds expended up to the date of the report.

(5) The anticipated expenditures for the 2009–10 fiscal year.

CHAPTER 394

An act to amend Section 35401 of the Vehicle Code, relating to vehicles.

[Approved by Governor September 27, 2008. Filed with Secretary of State September 27, 2008.]

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

SECTION 1. Section 35401 of the Vehicle Code, as amended by Section 1 of Chapter 450 of the Statutes of 2006, is amended to read:

35401. (a) Except as provided in subdivisions (b), (c), and (d), a combination of vehicles coupled together, including attachments, may not exceed a total length of 65 feet.

(b) (1) A combination of vehicles coupled together, including attachments, that consists of a truck tractor, a semitrailer, and a semitrailer

or trailer, may not exceed a total length of 75 feet, if the length of neither the semitrailers nor the trailer in the combination of vehicles exceeds 28 feet 6 inches.

(2) A B-train assembly is excluded from the measurement of semitrailer length when used between the first and second semitrailers of a truck tractor-semitrailer-semitrailer combination of vehicles. However, if there is no second semitrailer mounted to the B-train assembly, it shall be included in the length measurement of the semitrailer to which it is attached.

(3) (A) A combination of vehicles coupled together, including attachments, may have a total length of not more than 75 feet, if all of the following apply:

(i) The combination of vehicles consists of a motortruck and two trailers.

(ii) A trailer in the combination does not exceed 28 feet 6 inches in length.

(iii) The combination is used exclusively to transport agricultural products from the field to the first point of handling and return, and each direction of transport does not exceed 80 miles.

(iv) The combination is not operated on a highway designated by the United States Department of Transportation as a national network route.

(v) The combination of vehicles may not exceed 50 miles per hour when operating on the highway.

(vi) The combination of vehicles shall successfully complete a commercial vehicle safety alliance inspection on a quarterly basis conducted by the Department of the California Highway Patrol.

(vii) The combination of vehicles shall operate on the highway only after, agricultural entities develop safe routing techniques, in consultation with the Department of the California Highway Patrol, from the field to the first point of handling and return.

(B) This paragraph applies only in the County of San Luis Obispo and the County of Santa Barbara or a city in those counties if the board of supervisors of the county or the city council, as the case may be, by resolution or ordinance adopts its provisions.

(C) The Department of the California Highway Patrol, in consultation with the Department of Transportation, shall conduct a study of the effect that the exemption provided in this paragraph has on public safety particularly the enhanced safety requirements imposed by clauses (v), (vi), and (vii) of subparagraph (A). The Department of the California Highway Patrol shall report the results of the study to the Legislature and the Governor on or before April 1, 2008.

(c) (1) A tow truck in combination with a single disabled vehicle or a single abandoned vehicle that is authorized to travel on the highways

by this chapter is exempt from subdivision (a) when operating under a valid annual transportation permit.

(2) A tow truck, in combination with a disabled or abandoned combination of vehicles that are authorized to travel on the highways by this chapter, is exempt from subdivision (a) when operating under a valid annual transportation permit and within a 100-mile radius of the location specified in the permit.

(3) A tow truck may exceed the 100-mile radius restriction imposed under paragraph (2) if a single trip permit is obtained from the Department of Transportation.

(d) A city or county may, by ordinance, prohibit a combination of vehicles of a total length in excess of 60 feet upon highways under its respective jurisdiction. The ordinance may not be effective until appropriate signs are erected indicating either the streets affected by the ordinance or the streets not affected, as the local authority determines will best serve to give notice of the ordinance.

(e) A city or county, upon a determination that a highway or portion of highway under its jurisdiction cannot, in consideration of public safety, sustain the operation of trailers or semitrailers of the maximum kingpin to rearmost axle distances permitted under Section 35400, may, by ordinance, establish lesser distances consistent with the maximum distances that the highway or highway portion can sustain, except that a city or county may not restrict the kingpin to rearmost axle measurement to less than 38 feet on those highways or highway portions. A city or county considering the adoption of an ordinance shall consider, but not be limited to, consideration of, all of the following:

(1) A comparison of the operating characteristics of the vehicles to be limited as compared to operating characteristics of other vehicles regulated by this code.

(2) Actual traffic volume.

(3) Frequency of accidents.

(4) Any other relevant data.

In addition, the city or county may appoint an advisory committee consisting of local representatives of those interests that are likely to be affected and shall consider the recommendations of the advisory committee in adopting the ordinance. The ordinance may not be effective until appropriate signs are erected indicating the highways or highway portions affected by the ordinance.

This subdivision shall only become operative upon the adoption of an enabling ordinance by a city or county.

(f) Whenever, in the judgment of the Department of Transportation, a state highway cannot, in consideration of public safety, sustain the operation of trailers or semitrailers of the maximum kingpin to rearmost

axle distances permitted under Section 35400, the director, in consultation with the Department of the California Highway Patrol, shall compile data on total traffic volume, frequency of use by vehicles covered by this subdivision, accidents involving these vehicles, and other relevant data to assess whether these vehicles are a threat to public safety and should be excluded from the highway or highway segment. The study, containing the conclusions and recommendations of the director, shall be submitted to the Secretary of the Business, Transportation and Housing Agency. Unless otherwise notified by the secretary, the director shall hold public hearings in accordance with the procedures set forth in Article 3 (commencing with Section 35650) of Chapter 5 for the purpose of determining the maximum kingpin to rear axle length, which shall be not less than 38 feet, that the highway or highway segment can sustain without unreasonable threat to the safety of the public. Upon the basis of the findings, the Director of Transportation shall declare in writing the maximum kingpin to rear axle lengths which can be maintained with safety upon the highway. Following the declaration of maximum lengths as provided by this subdivision, the Department of Transportation shall erect suitable signs at each end of the affected portion of the highway and at any other points that the Department of Transportation determines to be necessary to give adequate notice of the length limits.

The Department of Transportation, in consultation with the Department of the California Highway Patrol, shall compile traffic volume, geometric, and other relevant data, to assess the maximum kingpin to rearmost axle distance of vehicle combinations appropriate for those state highways or portion of highways, affected by this section, that cannot safely accommodate trailers or semitrailers of the maximum kingpin to rearmost axle distances permitted under Section 35400.

(g) This section shall remain in effect only until January 1, 2010, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2010, deletes or extends that date.

SEC. 2. Section 35401 of the Vehicle Code, as added by Section 2 of Chapter 450 of the Statutes of 2006, is amended to read:

35401. (a) Except as provided in subdivisions (b), (c), and (d), a combination of vehicles coupled together, including attachments, may not exceed a total length of 65 feet.

(b) (1) A combination of vehicles coupled together, including attachments, that consists of a truck tractor, a semitrailer, and a semitrailer or trailer, may not exceed a total length of 75 feet, if the length of neither the semitrailers nor the trailer in the combination of vehicles exceeds 28 feet 6 inches.

(2) A B-train assembly is excluded from the measurement of semitrailer length when used between the first and second semitrailers

of a truck tractor-semitrailer-semitrailer combination of vehicles. However, if there is no second semitrailer mounted to the B-train assembly, it shall be included in the length measurement of the semitrailer to which it is attached.

(c) (1) A tow truck in combination with a single disabled vehicle or a single abandoned vehicle that is authorized to travel on the highways by this chapter is exempt from subdivision (a) when operating under a valid annual transportation permit.

(2) A tow truck, in combination with a disabled or abandoned combination of vehicles that are authorized to travel on the highways by this chapter, is exempt from subdivision (a) when operating under a valid annual transportation permit and within a 100-mile radius of the location specified in the permit.

(3) A tow truck may exceed the 100-mile radius restriction imposed under paragraph (2) if a single trip permit is obtained from the Department of Transportation.

(d) A city or county may, by ordinance, prohibit a combination of vehicles of a total length in excess of 60 feet upon highways under its respective jurisdiction. The ordinance may not be effective until appropriate signs are erected indicating either the streets affected by the ordinance or the streets not affected, as the local authority determines will best serve to give notice of the ordinance.

(e) A city or county, upon a determination that a highway or portion of highway under its jurisdiction cannot, in consideration of public safety, sustain the operation of trailers or semitrailers of the maximum kingpin to rearmost axle distances permitted under Section 35400, may, by ordinance, establish lesser distances consistent with the maximum distances that the highway or highway portion can sustain, except that a city or county may not restrict the kingpin to rearmost axle measurement to less than 38 feet on those highways or highway portions. A city or county considering the adoption of an ordinance shall consider, but not be limited to, consideration of, all of the following:

(1) A comparison of the operating characteristics of the vehicles to be limited as compared to operating characteristics of other vehicles regulated by this code.

(2) Actual traffic volume.

(3) Frequency of accidents.

(4) Any other relevant data.

In addition, the city or county may appoint an advisory committee consisting of local representatives of those interests that are likely to be affected and shall consider the recommendations of the advisory committee in adopting the ordinance. The ordinance may not be effective

until appropriate signs are erected indicating the highways or highway portions affected by the ordinance.

This subdivision shall only become operative upon the adoption of an enabling ordinance by a city or county.

(f) Whenever, in the judgment of the Department of Transportation, a state highway cannot, in consideration of public safety, sustain the operation of trailers or semitrailers of the maximum kingpin to rearmost axle distances permitted under Section 35400, the director, in consultation with the Department of the California Highway Patrol, shall compile data on total traffic volume, frequency of use by vehicles covered by this subdivision, accidents involving these vehicles, and other relevant data to assess whether these vehicles are a threat to public safety and should be excluded from the highway or highway segment. The study, containing the conclusions and recommendations of the director, shall be submitted to the Secretary of the Business, Transportation and Housing Agency. Unless otherwise notified by the secretary, the director shall hold public hearings in accordance with the procedures set forth in Article 3 (commencing with Section 35650) of Chapter 5 for the purpose of determining the maximum kingpin to rear axle length, which shall be not less than 38 feet, that the highway or highway segment can sustain without unreasonable threat to the safety of the public. Upon the basis of the findings, the Director of Transportation shall declare in writing the maximum kingpin to rear axle lengths which can be maintained with safety upon the highway. Following the declaration of maximum lengths as provided by this subdivision, the Department of Transportation shall erect suitable signs at each end of the affected portion of the highway and at any other points that the Department of Transportation determines to be necessary to give adequate notice of the length limits.

The Department of Transportation, in consultation with the Department of the California Highway Patrol, shall compile traffic volume, geometric, and other relevant data, to assess the maximum kingpin to rearmost axle distance of vehicle combinations appropriate for those state highways or portion of highways, affected by this section, that cannot safely accommodate trailers or semitrailers of the maximum kingpin to rearmost axle distances permitted under Section 35400. The department shall erect suitable signs appropriately restricting truck travel on those highways, or portions of highways.

(g) This section shall become operative on January 1, 2010.

CHAPTER 395

An act to add Section 25611.3 to the Business and Professions Code, relating to alcoholic beverages.

[Approved by Governor September 27, 2008. Filed with Secretary of State September 27, 2008.]

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

SECTION 1. Section 25611.3 is added to the Business and Professions Code, to read:

25611.3. A beer wholesaler may sell or rent exterior signs advertising beer for use at any on-sale or off-sale retail premises. Exterior signs include, but are not limited to, signs, inflatables, and banners used to advertise a beer manufacturer's product. Exterior signs must be sold or rented at not less than cost, as defined in Section 17026. An exterior sign that is customized for a retailer must be sold, and may not be rented.

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 396

An act to add Section 1253.5 to the Health and Safety Code, relating to health facilities.

[Approved by Governor September 27, 2008. Filed with Secretary of State September 27, 2008.]

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

SECTION 1. Section 1253.5 is added to the Health and Safety Code, to read:

1253.5. (a) The State Department of Public Health, upon issuance and renewal of a license for a general acute care hospital as defined in subdivision (a) of Section 1250, an acute psychiatric hospital as defined

in subdivision (b) of Section 1250, or a special hospital as defined in subdivision (f) of Section 1250, shall separately identify on the license each supplemental service, including the address of where each outpatient service is provided and the type of services provided at each outpatient location.

(b) On or before July 1, 2010, the department shall post and make available on its Web site a listing of all outpatient services of licensed hospitals identified on the hospital's license as a supplemental service pursuant to subdivision (a). The listing shall include the name and physical address of where the outpatient service is provided. The department's Web site shall include a disclaimer that the information contained in the listing is limited to the outpatient service information reported to the department by licensed hospitals.

(c) The department shall work with stakeholders to review, streamline, and revise the initial and renewal license application form prescribed and furnished by the department to any person, firm, association, partnership, or corporation desiring a license, a change in licensed beds or services, or renewing a license for a hospital, acute psychiatric hospital, or special hospital.

CHAPTER 397

An act to amend Sections 1416.22 and 1416.55 of, and to add Section 1416.23 to, the Health and Safety Code, relating to nursing home administrators.

[Approved by Governor September 27, 2008. Filed with Secretary of State September 27, 2008.]

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

SECTION 1. Section 1416.22 of the Health and Safety Code is amended to read:

1416.22. (a) To qualify for the licensing examination, an applicant must be at least 18 years of age, be a citizen of the United States or a legal resident, be of reputable and responsible character, demonstrate an ability to comply with this chapter, and comply with at least one of the following requirements:

(1) Have a master's degree in nursing home administration or a related health administration field. The master's program in which the degree was obtained must have included an internship or residency of at least 480 hours in a skilled nursing facility or intermediate care facility.

(2) (A) With regard to applicants who have a current valid license as a nursing home administrator in another state and apply for licensure in this state, meet the minimum education requirements that existed in this state at the time the applicant was originally licensed in the other state.

(B) The minimum education requirements that have existed in California are as follows:

Prior to 7/1/73	None
From 7/1/73 to 6/30/74	30 semester units
From 7/1/74 to 6/30/75	45 semester units
From 7/1/75 to 6/30/80	60 semester units
From 7/1/80 to present	Baccalaureate degree

(3) A doctorate degree in medicine, a current valid license as a physician and surgeon, and the completion of a program-approved AIT Program of at least 1,000 hours.

(4) A baccalaureate degree, and the completion of a program-approved AIT Program of at least 1,000 hours.

(5) Ten years of recent full-time work experience, and a current license, as a licensed registered nurse, and the completion of a program-approved AIT Program of at least 1,000 hours. At least the most recent five years of the 10 years of work experience shall be in a supervisory or director of nursing position.

(6) Ten years of full-time work experience in any department of a skilled nursing facility, an intermediate care facility, or an intermediate care facility developmentally/disabled with at least 60 semester units (or 90 quarter units) of college or university courses, and the completion of a program-approved AIT Program of at least 1,000 hours. At least the most recent five years of the 10 years of work experience shall be in a position as a department manager.

(7) Ten years of full-time hospital administration experience in an acute care hospital with at least 60 semester units (or 90 quarter units) of college or university courses, and the completion of a program-approved AIT Program of at least 1,000 hours. At least the most recent five years of the 10 years of work experience shall be in a supervisory position.

(b) An applicant for the licensing examination may obtain from the department a waiver of the education requirements in subdivision (a) if they meet the requirements of Section 1416.23.

(c) If the applicant and the preceptor provide compelling evidence that previous work experience of the applicant directly relates to nursing home administrator duties, the program may accept a waiver exception

to a portion of the AIT Program that requires 1,000 hours. An applicant seeking a waiver of the educational requirements pursuant to Section 1416.23 shall not be eligible for a waiver under this subdivision.

(d) The applicant shall submit an official transcript that evidences the completion of required college and university courses, degrees, or both. An applicant who applies for the licensing examination on the basis of work experience shall submit a declaration signed under penalty of perjury, verifying his or her work experience. This declaration shall be signed by a licensed nursing home administrator, physician and surgeon, chief of staff, director of nurses, or registered nurse who can attest to the applicant's work experience.

SEC. 2. Section 1416.23 is added to the Health and Safety Code, to read:

1416.23. (a) Upon request of an applicant who is a member of a church or religious denomination, recognized by the Internal Revenue Service under Section 501(c)(3) of the Internal Revenue Code, that owns and operates a faith-based skilled nursing facility in California, and whose teachings historically prohibit the acquisition of the formal education that would otherwise be required to qualify for the AIT Program and the licensing examination, that applicant may seek an educational waiver. That applicant shall be required to possess at least an accredited high school diploma or proof of successfully passing a General Educational Development (GED) test of the American Council on Education or the California High School Proficiency Examination, as well as 10 years of full-time work experience in business, health, or rehabilitation fields, with at least five of the 10 years of work experience in business, health, or rehabilitation management or administration.

(b) The department may review the applicant's church's or religious denomination's Internal Revenue Code 501(c)(3) application, including attachments, the Internal Revenue Service's Letter of Determination of tax-exempt status to the church or religious denomination, and the church's or religious denomination's bylaws, constitution, or member orientation information to confirm an applicant's eligibility for the educational waiver. The applicant's church or religious denomination shall provide the foregoing information to the department for its review and processing of the educational waiver application. The department shall accept notarized copies of these documents.

(c) If the educational requirements are waived, the applicant successfully completes the program-approved 1,000 hour AIT Program, and is successful in passing the national and state licensing examinations, the applicant may only serve as a nursing home administrator in a facility that is owned and operated by the applicant's church or religious denomination.

SEC. 3. Section 1416.55 of the Health and Safety Code is amended to read:

1416.55. (a) An Administrator-in-Training Program (AIT Program) shall be developed by the NHAP, in consultation with representatives from the long-term care industry and advocacy groups. The AIT Program shall include, but not be limited to, all of the following areas of instruction:

(1) Orientation.
(2) Administration and business office.
(3) State and federal regulations governing long-term care facilities.
(4) Residents' rights and abuse prevention.
(5) Staffing requirements and workforce retention.
(6) Nursing services.
(7) Resident activities.
(8) Resident care.
(9) Social services.
(10) Dietary management.
(11) Environmental care, including housekeeping, laundry, and maintenance.
(12) Financial management.
(13) General management.
(14) Government regulations.
(15) Legal management.
(16) Personnel management and training.
(17) Consultants and contracts.
(18) Medical records.
(19) Public relations and marketing.

(b) A person who seeks to satisfy requirements for admission to licensure examinations through participation in an AIT Program shall first receive approval to begin the AIT Program. An applicant shall successfully complete the AIT Program in a program-approved facility under the coordination, supervision, and teaching of a preceptor who has obtained certification from the program and continues to meet the qualifications set forth in the rules and regulations of the program.

(c) In order to be eligible for the AIT Program, an applicant shall submit an application package on forms provided by the NHAP, and pay the applicable fees established by this chapter. The applicant shall be at least 18 years of age.

(d) In addition to the requirements in subdivision (c), the applicant shall meet one or a combination of the following requirements to be eligible for the AIT Program:

(1) A doctorate degree in medicine and a current valid license as a physician and surgeon.

(2) A baccalaureate degree.

(3) Ten years of full-time work experience and a current valid license as a registered nurse. At least the most recent five years of the 10 years of work experience shall be in a supervisory or director of nursing position.

(4) Ten years of full-time work experience in any department of a skilled nursing facility, an intermediate care facility, or an intermediate care facility/developmentally disabled with at least 60 semester units (or 90 quarter units) of college or university courses. At least the most recent five years of the 10 years of work experience shall be in a position as a department manager.

(5) Ten years of full-time hospital administration experience in an acute care hospital with at least 60 semester units (or 90 quarter units) of college or university courses. At least the most recent five years of the 10 years of work experience shall be in a supervisory position.

(e) An applicant for the AIT Program may obtain from the department a waiver of the education requirements in subdivision (d) if he or she meets the requirements of Section 1416.23.

(f) The applicant shall submit an official transcript that evidences the completion of required college or university courses, degrees, or both. An applicant who is a member of a recognized church or religious denomination whose teachings historically prohibit the acquisition of the formal education that would otherwise be required to qualify the applicant for the AIT Program may request a written waiver of the education requirements from the department.

(g) An applicant who qualifies for the AIT Program on the basis of work experience shall submit a declaration signed under penalty of perjury verifying his or her work experience. This declaration shall be signed by a licensed nursing home administrator, physician and surgeon, chief of staff, director of nurses, or registered nurse who can attest to the applicant's work experience.

CHAPTER 398

An act relating to synthetic turf.

[Approved by Governor September 27, 2008. Filed with Secretary of State September 27, 2008.]

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

SECTION 1. (a) By September 1, 2010, the Integrated Waste Management Board, in consultation with the Office of Environmental Health Hazard Assessment and the State Department of Public Health, shall prepare and provide to the Legislature and post on the board's Internet Web site a study that compares the effects of synthetic turf and natural turf on the environment and the public health.

(b) For purposes of this section, synthetic turf means any composition material used to cover or surface a field as an alternative to grass.

CHAPTER 399

An act to amend Sections 52291 and 52351 of the Food and Agricultural Code, relating to agriculture.

[Approved by Governor September 27, 2008. Filed with Secretary of State September 27, 2008.]

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

SECTION 1. Section 52291 of the Food and Agricultural Code is amended to read:

52291. There is in the department a Seed Advisory Board consisting of 11 members appointed by the secretary, seven of whom shall be labelers registered under the provisions of this chapter, two of whom shall be persons who receive or possess seed for sale in this state, and two of whom shall be members of the public. The members of the board who are labelers registered under the provisions of this chapter shall be representative of the functions of seed production, conditioning, marketing, or utilization.

SEC. 2. Section 52351 of the Food and Agricultural Code is amended to read:

52351. Every labeler of agricultural or vegetable seed offered for sale in this state, or any person, as defined in Section 52256.5, who sells that seed in this state, shall annually register with the secretary to obtain authorization to sell agricultural or vegetable seed before engaging in this activity, except any of the following:

(a) An individual grower that conditions such seed exclusively for the grower's own planting use.

(b) A person using agricultural or vegetable seed, or both agricultural and vegetable seed, only for purposes of planting seed increase.

(c) Any person licensed to sell nursery stock pursuant to Chapter 1 (commencing with Section 6701) of Part 3 of Division 4, except when he or she also engages in activities as defined under Section 52257.5.

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 400

An act to amend Section 8686 of the Government Code, relating to disaster assistance, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 27, 2008. Filed with Secretary of State September 27, 2008.]

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

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

(a) The Angora Wildfire that occurred in this state in June and July of 2007, caused substantial damages to public and private property in an environmentally sensitive location and caused a variety of economic damages in the areas impacted by the wildfire. The economic damages include business and employment disruptions. The environmental damages are severe and long lasting. The environmental damages can cause damage in unburned areas from much higher than average water and debris flows over the next several years. Those high volume and high velocity water and debris flows can convey highly erosive debris, sediments, and hazardous materials. Conveyance of sediments, other eroded materials, and hazardous substances are a threat to human health and safety, undamaged public and private property, and the water quality of Lake Tahoe and its tributaries. A variety of local public agencies will need to take actions necessary to respond to threats to undamaged property, to repair publicly owned damaged property, and to mitigate future damages caused by the short- and long-term fire aftereffects.

(b) Insufficient time passed between January 1, 2007, the effective and operative date of Section 8685.9 of the Government Code, and June 24, 2007, the commencement date of the Angora Wildfire, to allow local agencies in the area impacted by that wildfire a reasonable opportunity to adopt local hazard mitigation plans, as specified in that section, in order to be eligible for an increase in the percentage of the total state eligible costs for disaster relief.

SEC. 2. 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.

(12) The severe storms, flooding, mudslides, and landslides that occurred in northern California during the period from December 17,

2005, to January 3, 2006, inclusive, as specified in agreements between this state and the United States for federal financial assistance.

(13) The severe storms and flooding that occurred in northern and central California during the period from March 29, 2006, to April 16, 2006, inclusive, as specified in agreements between this state and the United States for federal financial assistance.

(14) The wildfire that occurred in the Lake Tahoe Basin commencing on June 24, 2007, as specified in agreements for federal assistance between this state and the United States. Section 8685.9 shall not apply to this event.

(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. 3. Section 2 of this act shall become operative only if Senate Bill 1764 of the 2007–08 Regular Session is enacted.

SEC. 4. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to provide enhanced state funding, at the earliest possible opportunity, for the wildfire that occurred in the Lake Tahoe Basin commencing on June 24, 2007, it is necessary that this act take effect immediately.

CHAPTER 401

An act to amend Sections 44559.3 and 44559.4 of the Health and Safety Code, relating to the Capital Access Loan Program.

[Approved by Governor September 27, 2008. Filed with Secretary of State September 27, 2008.]

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

SECTION 1. Section 44559.3 of the Health and Safety Code is amended to read:

44559.3. (a) The authority shall establish a loss reserve account for each financial institution with which the authority makes a contract.

(b) The loss reserve account for a financial institution shall consist of moneys paid as fees by borrowers and the financial institution, moneys transferred to the account from a small business assistance fund, any matching federal moneys, and any other moneys provided by the authority or other source.

(c) Notwithstanding any other provision of law, the authority may establish and maintain loss reserve accounts with any financial institution under such policies as the authority may adopt.

(d) All moneys in a loss reserve account established pursuant to this article are the exclusive property of, and solely controlled by, the authority. Interest or income earned on moneys credited to the loss reserve account shall be deemed to be part of the loss reserve account. The authority may withdraw from the loss reserve account all interest or other income that has been credited to the loss reserve account. Any withdrawal made pursuant to this subdivision may be made prior to paying any claim and shall be used for the sole purpose of offsetting costs associated with carrying out the program, including administrative costs and loss reserve account contributions.

(e) The combined amount to be deposited by the participating financial institution into any individual loss reserve account over a three-year period, in connection with any single borrower or any group of borrowers among which a common enterprise exists, shall be not more than one hundred thousand dollars ($100,000).

SEC. 2. Section 44559.4 of the Health and Safety Code is amended to read:

44559.4. (a) If a financial institution that is participating in the Capital Access Loan Program established pursuant to this article decides to enroll a qualified loan under the program in order to obtain the protection against loss provided by its loss reserve account, it shall notify the authority in writing on a form prescribed by the authority, within 10 days after the date on which the loan is made, of all of the following:

(1) The disbursement of the loan.

(2) The dollar amount of the loan enrolled.

(3) The interest rate applicable to, and the term of, the loan.

(4) The amount of the agreed upon premium.

(b) The financial institution may make a qualified loan to be enrolled under the program to an individual, or to a partnership or trust wholly owned or controlled by an individual, for the purpose of financing property that will be leased to a qualified business that is wholly owned by that individual. In that case, the property shall be treated as meeting the requirements of paragraph (1) of subdivision (g) of Section 44559.1.

(c) When making a qualified loan that will be enrolled under the program, the participating financial institution shall require the qualified business to which the loan is made to pay a fee of not less than 2 percent of the principal amount of the loan, but not more than 3 ½ percent of the principal amount. The financial institution shall also pay a fee in an amount equal to the fee paid by the borrower. The financial institution shall deliver the fees collected under this subdivision to the authority for deposit in the loss reserve account for the institution. The financial institution may recover from the borrower the cost of its payments to the loss reserve account through the financing of the loan, upon the agreement of the financial institution and the borrower.

(d) When depositing fees collected under subdivision (c) to the credit of the loss reserve account for a participating financial institution, the authority shall do the following:

(1) If no matching funds are available under a federal capital access program or other source, the authority shall transfer to the loss reserve account an amount that is not less than the amount of the fees paid by the participating financial institution. However, if the qualified business is located within a severely affected community, the authority shall transfer to the loss reserve account an amount equal to 150 percent of the amount of the fees paid by the participating financial institution.

(2) If matching funds are available under a federal capital access program or other source, the authority shall transfer, on an immediate or deferred basis, to the loss reserve account the amount required by that federal program or other source. However, the total amount deposited into the loss reserve account shall not be less than the amount which would have been deposited in the absence of matching funds.

CHAPTER 402

An act to amend Section 1742.1 of, and to amend and repeal Section 1742 of, the Labor Code, relating to public works.

[Approved by Governor September 27, 2008. Filed with Secretary of State September 27, 2008.]

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

SECTION 1. Section 1742 of the Labor Code, as amended by Section 1 of Chapter 828 of the Statutes of 2006, is amended to read:

1742. (a) An affected contractor or subcontractor may obtain review of a civil wage and penalty assessment under this chapter by transmitting

a written request to the office of the Labor Commissioner that appears on the assessment within 60 days after service of the assessment. If no hearing is requested within 60 days after service of the assessment, the assessment shall become final.

(b) Upon receipt of a timely request, a hearing shall be commenced within 90 days before the director, who shall appoint an impartial hearing officer possessing the qualifications of an administrative law judge pursuant to subdivision (b) of Section 11502 of the Government Code. The appointed hearing officer shall be an employee of the department, but shall not be an employee of the Division of Labor Standards Enforcement. The contractor or subcontractor shall be provided an opportunity to review evidence to be utilized by the Labor Commissioner at the hearing within 20 days of the receipt of the written request for a hearing. Any evidence obtained by the Labor Commissioner subsequent to the 20-day cutoff shall be promptly disclosed to the contractor or subcontractor.

The contractor or subcontractor shall have the burden of proving that the basis for the civil wage and penalty assessment is incorrect. The assessment shall be sufficiently detailed to provide fair notice to the contractor or subcontractor of the issues at the hearing.

Within 45 days of the conclusion of the hearing, the director shall issue a written decision affirming, modifying, or dismissing the assessment. The decision of the director shall consist of a notice of findings, findings, and an order. This decision shall be served on all parties and the awarding body pursuant to Section 1013 of the Code of Civil Procedure by first-class mail at the last known address of the party on file with the Labor Commissioner. Within 15 days of the issuance of the decision, the director may reconsider or modify the decision to correct an error, except that a clerical error may be corrected at any time.

The director shall adopt regulations setting forth procedures for hearings under this subdivision.

(c) An affected contractor or subcontractor may obtain review of the decision of the director by filing a petition for a writ of mandate to the appropriate superior court pursuant to Section 1094.5 of the Code of Civil Procedure within 45 days after service of the decision. If no petition for writ of mandate is filed within 45 days after service of the decision, the order shall become final. If it is claimed in a petition for writ of mandate that the 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 the light of the whole record.

(d) A certified copy of a final order may be filed by the Labor Commissioner in the office of the clerk of the superior court in any county in which the affected contractor or subcontractor has property or

has or had a place of business. The clerk, immediately upon the filing, shall enter judgment for the state against the person assessed in the amount shown on the certified order.

(e) A judgment entered pursuant to this section shall bear the same rate of interest and shall have the same effect as other judgments and shall be given the same preference allowed by law on other judgments rendered for claims for taxes. The clerk shall not charge for the service performed by him or her pursuant to this section.

(f) An awarding body that has withheld funds in response to a civil wage and penalty assessment under this chapter shall, upon receipt of a certified copy of a final order that is no longer subject to judicial review, promptly transmit the withheld funds, up to the amount of the certified order, to the Labor Commissioner.

(g) This section shall provide the exclusive method for review of a civil wage and penalty assessment by the Labor Commissioner under this chapter or the decision of an awarding body to withhold contract payments pursuant to Section 1771.5.

SEC. 2. Section 1742 of the Labor Code, as amended by Section 2 of Chapter 828 of the Statutes of 2006, is repealed.

SEC. 3. Section 1742.1 of the Labor Code is amended to read:

1742.1. (a) After 60 days following the service of a civil wage and penalty assessment under Section 1741 or a notice of withholding under subdivision (a) of Section 1771.6, the affected contractor, subcontractor, and surety on a bond or bonds issued to secure the payment of wages covered by the assessment or notice shall be liable for liquidated damages in an amount equal to the wages, or portion thereof, that still remain unpaid. If the assessment or notice subsequently is overturned or modified after administrative or judicial review, liquidated damages shall be payable only on the wages found to be due and unpaid.

Additionally, if the contractor or subcontractor demonstrates to the satisfaction of the director that he or she had substantial grounds for appealing the assessment or notice with respect to a portion of the unpaid wages covered by the assessment or notice, the director may exercise his or her discretion to waive payment of the liquidated damages with respect to that portion of the unpaid wages. Any liquidated damages shall be distributed to the employee along with the unpaid wages. Section 203.5 shall not apply to claims for prevailing wages under this chapter.

(b) Notwithstanding subdivision (a), there shall be no liability for liquidated damages if the full amount of the assessment or notice, including penalties, has been deposited with the Department of Industrial Relations, within 60 days following service of the assessment or notice, for the department to hold in escrow pending administrative and judicial review. The department shall release such funds, plus any interest earned,

at the conclusion of all administrative and judicial review to the persons and entities who are found to be entitled to such funds.

(c) The Labor Commissioner shall, upon receipt of a request from the affected contractor or subcontractor within 30 days following the service of a civil wage and penalty assessment under Section 1741, afford the contractor or subcontractor the opportunity to meet with the Labor Commissioner or his or her designee to attempt to settle a dispute regarding the assessment without the need for formal proceedings. The awarding body shall, upon receipt of a request from the affected contractor or subcontractor within 30 days following the service of a notice of withholding under subdivision (a) of Section 1771.6, afford the contractor or subcontractor the opportunity to meet with the designee of the awarding body to attempt to settle a dispute regarding the notice without the need for formal proceedings. The settlement meeting may be held in person or by telephone and shall take place before the expiration of the 60-day period for seeking administrative review. No evidence of anything said or any admission made for the purpose of, in the course of, or pursuant to, the settlement meeting is admissible or subject to discovery in any administrative or civil proceeding. No writing prepared for the purpose of, in the course of, or pursuant to, the settlement meeting, other than a final settlement agreement, is admissible or subject to discovery in any administrative or civil proceeding. The assessment or notice shall advise the contractor or subcontractor of the opportunity to request a settlement meeting.

(d) This section shall become operative on January 1, 2007.

CHAPTER 403

An act to amend Section 1371.1 of the Health and Safety Code, and to amend Section 10123.145 of the Insurance Code, relating to health care coverage.

[Approved by Governor September 27, 2008. Filed with Secretary of State September 27, 2008.]

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

SECTION 1. Section 1371.1 of the Health and Safety Code is amended to read:

1371.1. (a) Whenever a health care service plan, including a specialized health care service plan, determines that in reimbursing a claim for provider services an institutional or professional provider has

been overpaid, and then notifies the provider in writing through a separate notice identifying the overpayment and the amount of the overpayment, the provider shall reimburse the health care service plan within 30 working days of receipt by the provider of the notice of overpayment unless the overpayment or portion thereof is contested by the provider in which case the health care service plan shall be notified, in writing, within 30 working days. The notice that an overpayment is being contested shall identify the portion of the overpayment that is contested and the specific reasons for contesting the overpayment.

If the provider does not make reimbursement for an uncontested overpayment within 30 working days after receipt, interest shall accrue at the rate of 10 percent per annum beginning with the first calendar day after the 30 working day period.

(b) (1) This subdivision shall only apply to a health care service plan contract covering dental services or a specialized health care service plan contract covering dental services pursuant to this chapter.

(2) The health care service plan's notice of overpayment shall inform the provider how to access the plan's dispute resolution mechanism offered pursuant to subdivision (h) of Section 1367. The notice shall include the name and address to which the dispute should be submitted and a statement that Section 1371.1 requires a provider to reimburse the plan for an overpayment within 30 working days of receipt by the provider of the notice of overpayment unless the provider contests the overpayment within 30 working days. The notice shall also include information clearly identifying the claim, the name of the patient, the date of service, and a clear explanation of the basis upon which the plan or the plan's capitated provider believes the amount paid on the claim was in excess of the amount due, including interest and penalties on the claim. The notice shall also include a statement that if the provider does not make reimbursement of an uncontested overpayment within 30 working days after receipt of the notice, interest shall accrue at a rate of 10 percent per annum.

SEC. 2. Section 10123.145 of the Insurance Code is amended to read:

10123.145. (a) Whenever an insurer issuing group or individual policies of disability insurance which covers hospital, medical, or surgical expenses determines that in reimbursing a claim for provider services an institutional or professional provider has been overpaid, and then notifies the provider in writing through a separate notice identifying the overpayment and the amount of the overpayment, the provider shall reimburse the insurer within 30 working days of receipt by the provider of the notice of overpayment unless the overpayment or portion thereof is contested by the provider in which case the insurer shall be notified,

in writing, within 30 working days. The notice that an overpayment is being contested shall identify the portion of the overpayment that is contested and the specific reasons for contesting the overpayment.

If the provider does not make reimbursement for an uncontested overpayment within 30 working days after receipt, interest shall accrue at the rate of 10 percent per annum beginning with the first calendar day after the 30 working day period.

(b) (1) This subdivision shall only apply to a health insurance policy covering dental services or a specialized health insurance policy covering dental services.

(2) The insurer's notice of overpayment shall inform the provider how to access the insurer's dispute resolution mechanism offered pursuant to subdivision (a) of Section 10123.137. The notice shall include the name and address to which the dispute should be submitted and a statement that Section 10123.145 requires a provider to reimburse the insurer for an overpayment within 30 working days of receipt by the provider of the notice of overpayment unless the provider contests the overpayment within 30 working days. The notice shall also include information clearly identifying the claim, the name of the patient, the date of service, and a clear explanation of the basis upon which the insurer believes the amount paid on the claim was in excess of the amount due, including interest and penalties on the claim. The notice shall also include a statement that if the provider does not make reimbursement of an uncontested overpayment within 30 working days after receipt of the notice, interest shall accrue at a rate of 10 percent per annum.

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 404

An act to amend Sections 14601.2, 14601.4, and 14601.5 of, and to add Section 23573 to, the Vehicle Code, relating to vehicles.

[Approved by Governor September 27, 2008. Filed with Secretary of State September 27, 2008.]

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

SECTION 1. Section 14601.2 of the Vehicle Code is amended to read:

14601.2. (a) A person shall not drive a motor vehicle at any time when that person's driving privilege is suspended or revoked for a conviction of a violation of Section 23152 or 23153 if the person so driving has knowledge of the suspension or revocation.

(b) Except in full compliance with the restriction, a person shall not drive a motor vehicle at any time when that person's driving privilege is restricted if the person so driving has knowledge of the restriction.

(c) Knowledge of the suspension or revocation of the driving privilege shall be conclusively presumed if mailed notice has been given by the department to the person pursuant to Section 13106. Knowledge of the restriction of the driving privilege shall be presumed if notice has been given by the court to the person. The presumption established by this subdivision is a presumption affecting the burden of proof.

(d) A person convicted of a violation of this section shall be punished as follows:

(1) Upon a first conviction, by imprisonment in the county jail for not less than 10 days or more than six months and by a fine of not less than three hundred dollars ($300) or more than one thousand dollars ($1,000), unless the person has been designated a habitual traffic offender under subdivision (b) of Section 23546, subdivision (b) of Section 23550, or subdivision (d) of Section 23550.5, in which case the person, in addition, shall be sentenced as provided in paragraph (3) of subdivision (e) of Section 14601.3.

(2) If the offense occurred within five years of a prior offense that resulted in a conviction of a violation of this section or Section 14601, 14601.1, or 14601.5, by imprisonment in the county jail for not less than 30 days or more than one year and by a fine of not less than five hundred dollars ($500) or more than two thousand dollars ($2,000), unless the person has been designated a habitual traffic offender under subdivision (b) of Section 23546, subdivision (b) of Section 23550, or subdivision (d) of Section 23550.5, in which case the person, in addition, shall be sentenced as provided in paragraph (3) of subdivision (e) of Section 14601.3.

(e) If a person is convicted of a first offense under this section and is granted probation, the court shall impose as a condition of probation that the person be confined in the county jail for at least 10 days.

(f) If the offense occurred within five years of a prior offense that resulted in a conviction of a violation of this section or Section 14601, 14601.1, or 14601.5 and is granted probation, the court shall impose as

a condition of probation that the person be confined in the county jail for at least 30 days.

(g) If a person is convicted of a second or subsequent offense that results in a conviction of this section within seven years, but over five years, of a prior offense that resulted in a conviction of a violation of this section or Section 14601, 14601.1, or 14601.5 and is granted probation, the court shall impose as a condition of probation that the person be confined in the county jail for at least 10 days.

(h) Pursuant to Section 23575, the court shall require a person convicted of a violation of this section to install a certified ignition interlock device on a vehicle the person owns or operates. Upon receipt of the abstract of a conviction under this section, the department shall not reinstate the privilege to operate a motor vehicle until the department receives proof of either the "Verification of Installation" form as described in paragraph (2) of subdivision (g) of Section 13386 or the Judicial Council Form I.D. 100.

(i) This section does not prohibit a person who is participating in, or has completed, an alcohol or drug rehabilitation program from driving a motor vehicle that is owned or utilized by the person's employer, during the course of employment on private property that is owned or utilized by the employer, except an offstreet parking facility as defined in subdivision (c) of Section 12500.

(j) This section also applies to the operation of an off-highway motor vehicle on those lands that the Chappie-Z'berg Off-Highway Motor Vehicle Law of 1971 (Division 16.5 (commencing with Section 38000)) applies as to off-highway motor vehicles, as described in Section 38001.

(k) If Section 23573 is applicable, then subdivision (h) is not applicable.

SEC. 2. Section 14601.4 of the Vehicle Code is amended to read:

14601.4. (a) It is unlawful for a person, while driving a vehicle with a license suspended or revoked pursuant to Section 14601.2 to do an act forbidden by law or neglect a duty imposed by law in the driving of the vehicle, which act or neglect proximately causes bodily injury to a person other than the driver. In proving the person neglected a duty imposed by law in the driving of the vehicle, it is not necessary to prove that a specific section of this code was violated.

(b) A person convicted under this section shall be imprisoned in the county jail and shall not be released upon work release, community service, or other release program before the minimum period of imprisonment, prescribed in Section 14601.2, is served. If a person is convicted of that offense and is granted probation, the court shall require that the person convicted serve at least the minimum time of

imprisonment, as specified in those sections, as a term or condition of probation.

(c) When the prosecution agrees to a plea of guilty or nolo contendere to a charge of a violation of this section in satisfaction of, or as a substitute for, an original charge of a violation of Section 14601.2, and the court accepts that plea, except, in the interest of justice, when the court finds it should be inappropriate, the court shall, pursuant to Section 23575, require the person convicted, in addition to other requirements, to install a certified ignition interlock device on a vehicle that the person owns or operates for a period not to exceed three years.

(d) This section also applies to the operation of an off-highway motor vehicle on those lands that the Chappie-Z'berg Off-Highway Motor Vehicle Law of 1971 (Division 16.5 (commencing with Section 38000)) applies as to off-highway motor vehicles, as described in Section 38001.

(e) Upon receipt of the abstract of a conviction under this section, the department shall not reinstate the privilege to operate a motor vehicle until the department receives proof of either the "Verification of Installation" form as described in paragraph (2) of subdivision (g) of Section 13386 or the Judicial Council Form I.D. 100.

(f) If Section 23573 is applicable, then subdivisions (c) and (e) are not applicable.

SEC. 3. Section 14601.5 of the Vehicle Code is amended to read:

14601.5. (a) A person shall not drive a motor vehicle at any time when that person's driving privilege is suspended or revoked pursuant to Section 13353, 13353.1, or 13353.2 and that person has knowledge of the suspension or revocation.

(b) Except in full compliance with the restriction, a person shall not drive a motor vehicle at any time when that person's driving privilege is restricted pursuant to Section 13353.7 or 13353.8 and that person has knowledge of the restriction.

(c) Knowledge of suspension, revocation, or restriction of the driving privilege shall be conclusively presumed if notice has been given by the department to the person pursuant to Section 13106. The presumption established by this subdivision is a presumption affecting the burden of proof.

(d) A person convicted of a violation of this section is punishable, as follows:

(1) Upon a first conviction, by imprisonment in the county jail for not more than six months or by a fine of not less than three hundred dollars ($300) or more than one thousand dollars ($1,000), or by both that fine and imprisonment.

(2) If the offense occurred within five years of a prior offense that resulted in a conviction for a violation of this section or Section 14601,

14601.1, 14601.2, or 14601.3, by imprisonment in the county jail for not less than 10 days or more than one year, and by a fine of not less than five hundred dollars ($500) or more than two thousand dollars ($2,000).

(e) In imposing the minimum fine required by subdivision (d), the court shall take into consideration the defendant's ability to pay the fine and may, in the interest of justice, and for reasons stated in the record, reduce the amount of that minimum fine to less than the amount otherwise imposed.

(f) This section does not prohibit a person who is participating in, or has completed, an alcohol or drug rehabilitation program from driving a motor vehicle, that is owned or utilized by the person's employer, during the course of employment on private property that is owned or utilized by the employer, except an offstreet parking facility as defined in subdivision (c) of Section 12500.

(g) When the prosecution agrees to a plea of guilty or nolo contendere to a charge of a violation of this section in satisfaction of, or as a substitute for, an original charge of a violation of Section 14601.2, and the court accepts that plea, except, in the interest of justice, when the court finds it would be inappropriate, the court shall, pursuant to Section 23575, require the person convicted, in addition to other requirements, to install a certified ignition interlock device on a vehicle that the person owns or operates for a period not to exceed three years.

(h) This section also applies to the operation of an off-highway motor vehicle on those lands that the Chappie-Z'berg Off-Highway Motor Vehicle Law of 1971 (Division 16.5 (commencing with Section 38000)) applies as to off-highway motor vehicles, as described in Section 38001.

(i) Upon receipt of the abstract of a conviction under this section, the department shall not reinstate the privilege to operate a motor vehicle until the department receives proof of either the "Verification of Installation" form as described in paragraph (2) of subdivision (g) of Section 13386 or the Judicial Council Form I.D. 100.

(j) If Section 23573 is applicable, then subdivisions (g) and (i) are not applicable.

SEC. 4. Section 23573 is added to the Vehicle Code, to read:

23573. (a) The Department of Motor Vehicles, upon receipt of the court's abstract of conviction for a violation listed in subdivision (j), shall inform the convicted person of the requirements of this section and the term for which the person is required to have a certified ignition interlock device installed. The records of the department shall reflect the mandatory use of the device for the term required and the time when the device is required to be installed pursuant to this code.

(b) The department shall advise the person that installation of an ignition interlock device on a vehicle does not allow the person to drive without a valid driver's license.

(c) A person who is notified by the department pursuant to subdivision (a) shall, within 30 days of notification, complete all of the following:

(1) Arrange for each vehicle owned or operated by the person to be fitted with an ignition interlock device by a certified ignition interlock device provider under Section 13386.

(2) Notify the department and provide to the department proof of installation by submitting the "Verification of Installation" form described in paragraph (2) of subdivision (g) of Section 13386.

(3) Pay to the department a fee sufficient to cover the costs of administration of this section, including startup costs, as determined by the department.

(d) The department shall place a restriction on the driver's license record of the convicted person that states the driver is restricted to driving only vehicles equipped with a certified ignition interlock device.

(e) (1) A person who is notified by the department pursuant to subdivision (a) shall arrange for each vehicle with an ignition interlock device to be serviced by the installer at least once every 60 days in order for the installer to recalibrate and monitor the operation of the device.

(2) The installer shall notify the department if the device is removed or indicates that the person has attempted to remove, bypass, or tamper with the device, or if the person fails three or more times to comply with any requirement for the maintenance or calibration of the ignition interlock device.

(f) The department shall monitor the installation and maintenance of the ignition interlock device installed pursuant to subdivision (a).

(g) (1) A person who is notified by the department, pursuant to subdivision (a), is exempt from the requirements of subdivision (c) if all of the following circumstances occur:

(A) Within 30 days of the notification, the person certifies to the department all of the following:

(i) The person does not own a vehicle.

(ii) The person does not have access to a vehicle at his or her residence.

(iii) The person no longer has access to the vehicle being driven by the person when he or she was arrested for a violation that subsequently resulted in a conviction for a violation listed in subdivision (j).

(iv) The person acknowledges that he or she is only allowed to drive a vehicle that is fitted with an operating ignition interlock device and that he or she is required to have a valid driver's license before he or she can drive.

(v) The person is subject to the requirements of this section when he or she purchases or has access to a vehicle.

(B) The person's driver's license record has been restricted pursuant to subdivision (d).

(C) The person complies with this section immediately upon commencing ownership or operation of a vehicle subject to the required installation of an ignition interlock device.

(2) A person who has been granted an exemption pursuant to this subdivision and who subsequently drives a vehicle in violation of the exemption is subject to the penalties of subdivision (i) in addition to any other applicable penalties in law.

(h) This section does not permit a person to drive without a valid driver's license.

(i) A person who is required under subdivision (c) to install an ignition interlock device who willfully fails to install the ignition interlock device within the time period required under subdivision (c) is guilty of a misdemeanor and shall be punished by imprisonment in the county jail for not more than six months or by a fine of not more than five thousand dollars ($5,000), or by both that fine and imprisonment.

(j) In addition to all other requirements of this code, a person convicted of any of the following violations shall be punished as follows:

(1) Upon a conviction of a violation of Section 14601.2, 14601.4, or 14601.5 subsequent to one prior conviction of a violation of Section 23103.5, 23152, or 23153, within a 10-year period, the person shall immediately install a certified ignition interlock device, pursuant to this section, in all vehicles owned or operated by that person for a term of one year.

(2) Upon a conviction of a violation of Section 14601.2, 14601.4, or 14601.5 subsequent to two prior convictions of a violation of Section 23103.5, 23152, or 23153, within a 10-year period, or one prior conviction of Section 14601.2, 14601.4, or 14601.5, within a 10-year period, the person shall immediately install a certified ignition interlock device, pursuant to this section, in all vehicles owned or operated by that person for a term of two years.

(3) Upon a conviction of a violation of Section 14601.2, 14601.4, or 14601.5 subsequent to three or more prior convictions of a violation of Section 23103.5, 23152, or 23153, within a 10-year period, or two or more prior convictions of Section 14601.2, 14601.4, or 14601.5, within a 10-year period, the person shall immediately install a certified ignition interlock device, pursuant to this section, in all vehicles owned or operated by that person for a term of three years.

(k) The department shall notify the court if a person subject to this section has failed to show proof of installation within 30 days of the

department informing the person he or she is required to install a certified ignition interlock device.

(*l*) Subdivisions (j), (k), (m), (n), and (o) of Section 23575 apply to this section.

(m) The requirements of this section are in addition to any other requirements of law.

(n) This section shall become operative on July 1, 2009.

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 405

An act to amend Section 27388 of the Government Code, relating to local government.

[Approved by Governor September 27, 2008. Filed with Secretary of State September 27, 2008.]

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

SECTION 1. 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 three dollars ($3) 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, a notice of default, a substitution of trustee, a notice of trustee sale, and a notice of recision of declaration 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. The district attorney shall submit the annual report to the board and to the Legislative Analyst's Office on or before September 1 of each year. The Legislative Analyst's Office 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) A county in which a district attorney fails to submit an annual report to the Legislative Analyst's Office pursuant to the requirements of subdivision (d) shall not expend funds held in that county's Real Estate Fraud Prosecution Trust Fund until the district attorney has submitted an annual report for the county's most recent full fiscal year.

(f) Annual reports submitted to the Legislative Analyst's Office pursuant to subdivision (d) shall be made in a standard form and manner determined by the Legislative Analyst's Office, in consultation with participating law enforcement agencies.

(g) 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.

(h) 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.

(i) 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 406

An act to amend Sections 32631, 32634, and 32661 of the Public Resources Code, relating to the San Diego River Conservancy.

[Approved by Governor September 27, 2008. Filed with Secretary of State September 27, 2008.]

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

SECTION 1. Section 32631 of the Public Resources Code is amended to read:

32631. (a) The San Diego River is a natural, historic, and recreational resource in the heart of San Diego. From its headwaters near the town of Julian in east San Diego County, it runs 52 miles through Mission Valley and the first settlement in California at Old Town San Diego before it empties into the Pacific Ocean at Ocean Beach. The river has been subjected to intense development in some parts; it runs through one of San Diego's most populated neighborhoods and is in need of restoration, conservation, and enhancement all along its length. The area presents excellent opportunities for recreation, scientific research, historic preservation of the first aqueduct in the United States, and educational and cultural activities, of value to California and the nation. Reestablishing the cultural and historic connections between the San Diego River, Old Town San Diego State Historic Park, the Military Presidio, and the Kumeyaay Nation will provide the public with the opportunity to appreciate the state's historic beginnings.

(b) Given the opportunities available, the state recognizes the importance of holding this land in trust to be preserved and enhanced for the enjoyment of present and future generations.

SEC. 2. Section 32634 of the Public Resources Code is amended to read:

32634. (a) The governing board of the conservancy shall consist of 11 voting members and two nonvoting members.

(b) The voting members of the board shall consist of the following:

(1) The Secretary of the Resources Agency, or his or her designee.

(2) The Director of Finance, or his or her designee.

(3) The Director of Parks and Recreation, or his or her designee.

(4) Five members of the public at large, three of whom shall be appointed by the Governor, one of whom shall be appointed by the Senate Committee on Rules, and one of whom shall be appointed by the Speaker of the Assembly.

(5) The Mayor of San Diego, or his or her designee.

(6) One member of the City Council of San Diego, elected by a majority of the membership of the council.

(7) One member of the Board of Supervisors of the County of San Diego, whose district includes the preponderance of the San Diego River watershed.

(c) The two nonvoting members shall consist of the following:

(1) The Executive Director of the Wildlife Conservation Board, or his or her designee.

(2) A representative selected by the San Diego Regional Water Quality Control Board.

(d) Two of the three initial appointments by the Governor pursuant to paragraph (4) of subdivision (b) shall be for three-year terms and the third appointment shall be for a two-year term. All subsequent appointments shall be for four-year terms.

(e) No person shall continue as a member of the governing board if that person ceases to hold the office that qualifies that person for membership. Upon the occurrence of those events, the person's membership on the governing board shall automatically terminate.

SEC. 3. Section 32661 of the Public Resources Code is amended to read:

32661. This division shall remain in effect only until January 1, 2020, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2020, deletes or extends that date.

CHAPTER 407

An act to add Section 1063.17 to the Insurance Code, relating to insurance.

[Approved by Governor September 27, 2008. Filed with Secretary of State September 27, 2008.]

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

SECTION 1. Section 1063.17 is added to the Insurance Code, to read:

1063.17. (a) All meetings of the board of governors of the association and its investment and audit committees shall be open and public, and all persons shall be permitted to attend any meeting of the association except as otherwise provided in subdivision (g). This shall apply to meetings conducted in person and via teleconference. Attendance at telephonically conducted meetings by members of the public shall be

made available by the publication by the association in its meeting notices as set forth below of a call-in number and passcode that members of the public may use to participate in the meeting.

(b) As used in this section, "meeting" includes any congregation of a majority of the members of the board of governors or the investment and audit committee, as applicable, at the same time to hear, discuss, or deliberate upon any item that is within the responsibility of the association as set forth in this article or in the association's plan of operations. Notwithstanding the foregoing, a meeting shall not include any of the following:

(1) Individual contacts or conversations between a member of the board of governors and any other person, including, but not limited to, any employee or official of the association, that do not violate subdivision (c).

(2) The attendance of a majority of the members of the board of governors or a committee at an industry conference or other gathering organized by a person or organization other than the association, provided that a majority of the members do not discuss among themselves any item that is within the responsibility of the association as set forth in this article or in the association's plan of operations.

(3) The attendance of a majority of the members, the board of governors, or a committee at a purely social or ceremonial occasion, provided that a majority of the members do not discuss among themselves any item that is within the responsibility of the association as set forth in this article or in the association's plan of operations.

(c) (1) A majority of the members of the board of governors shall not, outside a meeting authorized by this article, use a series of communications of any kind, directly or through intermediaries, to discuss, deliberate, or take action on any item of business that is within the responsibility of the association as set forth in this article or in the association's plan of operations.

(2) Paragraph (1) shall not be construed as preventing any employee or officer of the association from engaging in separate conversations or communications outside of a meeting authorized by this article with members of the board of governors in order to answer questions or provide information regarding matters within the responsibility of the association, if that person does not communicate to members of the board of governors the comments or position of any other member or members of the board.

(d) All meetings of the association authorized under this article shall comply with the protections and prohibitions contained in Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132),

and the federal rules and regulations adopted in implementation of that act.

(e) The association shall provide notice of its meetings that are open and public pursuant to subdivision (a). This notice and an agenda of items to be discussed shall be provided at least 10 days in advance of the meeting via the association's Internet Web site, and the notice shall be published in a newspaper of general circulation in the State of California. In addition, members of the public may request notice by regular mail or by e-mail by making a written request to the association for notice of meetings that are open and public pursuant to subdivision (a). Notice may be waived, or the 10-day period modified with respect to any particular meeting by the board of governors of the association upon request submitted to the commissioner stating the need for a modified notice and exigent circumstances requiring waiver of the notice requirement at least 24 hours in advance of the meeting time set. The approval of the commissioner shall be deemed granted if a written denial of the request for waiver or modification of the notice period is not received at least four hours prior to the commencement of the meeting to be conducted under the modified notice. Notice of a meeting that does not meet the 10-day notice requirement under this subdivision shall be posted on the association's Internet Web site and provided by e-mail to members of the public who have made a written request for e-mail notice to the association of meetings that are open and public pursuant to subdivision (a). A summary agenda shall be included in each such notice, but members of the board of governors may bring additional items of business to any such meeting.

(f) At any meeting where notice is required pursuant to this section, the association shall reserve time for public comment on the issues addressed at the meeting.

(g) Nothing in this section shall be construed to prohibit the board of governors of the association or its investment and audit committees from holding a closed meeting or a closed session of an open and public meeting to discuss any of the following subjects:

(1) Bond issuances or other matters relating to borrowings of the association.

(2) Matters regarding the detection and prevention of insolvency of members of the association as contemplated by this article.

(3) Nonpublic information received from liquidators, receivers, and regulators regarding members of the association.

(4) Nonpublic information received from the California Liquidation Office.

(5) Proprietary information regarding third-party administrators, vendors that provide products and services in connection with claims

administration, or investments made by the association. Proprietary information also includes information which the association and its corresponding out-of-state associations only have access to pursuant to binding contractual confidentiality provisions.

(6) Nonpublic financial information regarding members of the association, including information in support of requests for assessment deferrals.

(7) Statutory interpretations and other advice received from legal counsel to the association, whether in connection with litigation or otherwise.

(8) Appointment, employment, evaluation of performance, or dismissal of any employee or vendor that provides products and services in connection with claims administration of the association.

(9) Deliberations concerning the purchase, sale, exchange, or lease of real or personal property, including investment property.

(10) Matters posing a threat of criminal or terrorist activity against the association, its personnel, or its property.

(11) Covered claims and purported covered claims against the association.

(12) Disputes and purported disputes with or involving members of the association.

(13) Any other matters as permitted by the commissioner under the association's approved plan, provided such matters may be heard in a closed meeting or a closed session consistent with Section 11126 of the Government Code.

(h) With respect to any closed meeting or session held as permitted by subdivision (g), the association shall do both of the following:

(1) Disclose, prior to the closed meeting or the closed session, the general nature of the item or items to be discussed in the closed session. The disclosure may take the form of a reference to the item or items as they are listed by number or letter on the agenda. In the closed session, the board of governors may consider only those matters covered in its disclosure. After any closed session, the board of governors shall reconvene in open session prior to adjournment and shall make any reports, provide any documentation, or make any other disclosures that may be required consistent with this article. The announcements required to be made in open session pursuant to this subdivision may be made at the location announced in the agenda for the closed session, as long as the public is allowed to be present at that location for the purpose of hearing the announcement.

(2) Provide periodic reports to the commissioner identifying the matters covered in each such closed meeting or session and the provision of subdivision (g) pursuant to which the subject was discussed.

(i) Nothing in this section shall require or authorize the disclosure of names or other information that would constitute an invasion of privacy or otherwise unnecessarily divulge the particular facts concerning the closed session or the disclosure of which is prohibited by state or federal law.

(j) The commissioner or his or her designated representative shall be permitted to attend all meetings of the board of governors and its investment and audit committees, specifically including closed meetings and sessions. Any information discussed in closed meetings or sessions shall be treated by the commissioner and his or her designated representatives as confidential pursuant to the provisions of Section 12919.

CHAPTER 408

An act to amend Section 20398 of the Government Code, relating to public employees' retirement, and making an appropriation therefor.

[Approved by Governor September 27, 2008. Filed with Secretary of State September 27, 2008.]

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

SECTION 1. Section 20398 of the Government Code is amended to read:

20398. "State peace officer/firefighter member" also includes:

(a) (1) State officers and employees designated as peace officers as defined in Sections 830.1, 830.2, 830.3, 830.38, 830.4, and 830.5 of the Penal Code, or a firefighter whose principal duties consist of active firefighting/fire suppression, who is either excluded from the definition of state employee in subdivision (c) of Section 3513 or is a nonelected officer or employee of the executive branch of government who is not a member of the civil service, if the majority of his or her duties consists of one of the following:

(A) Responsibility for the direct supervision of state peace officer/firefighter personnel specified in Sections 20391, 20392, 20393, and 20395.

(B) Conducting investigations or audits of investigatory practices and other audits of, or in, the Department of Corrections and Rehabilitation.

(C) Administration of programs of an agency, department, or other organizational unit that is primarily responsible for active law enforcement or active firefighting/fire suppression.

(2) For purposes of this subdivision, "administration" means the actions of the employee designated as a peace officer/firefighter member in a position that is in the direct chain of command over an agency, department, or organizational unit in which the majority of employees are state peace officer/firefighter members as described in Section 20391, 20392, 20393, or 20395.

(b) "State peace officer/firefighter member" shall not include persons whose primary responsibilities are limited to personnel administration, budgeting, public affairs, data processing or information technology, governmental relations, or legal support, or administration or oversight of these responsibilities.

(c) "State peace officer/firefighter member" shall include individuals hired prior to January 1, 2009, who do not meet the criteria in subdivision (a) if those individuals have been continuously employed in positions that were deemed to come within the "state peace officer/firefighter member" classification pursuant to this section prior to January 1, 2009.

(d) The Department of Personnel Administration shall annually determine which classes meet the conditions described in this section and are not classes specified in Sections 20391, 20392, 20393, and 20395, and report its findings to the Legislature and to this system, to be effective July 1 of each year. An agency or department shall not designate a classification as a "state peace officer/firefighter member" classification pursuant to this section without prior approval from the Department of Personnel Administration.

(e) Members who are reclassified pursuant to this section may file an irrevocable election to remain subject to their prior retirement formula and the corresponding rate of contributions. The Secretary of the Department of Corrections and Rehabilitation may, upon appointment to that office on or after January 1, 1999, file an irrevocable election to be subject to the industrial formula and the corresponding rate of contributions. The elections shall be filed within 90 days of notification by the board. Members who so elect shall be subject to the reduced benefit factors specified in Section 21353 or 21354.1, as applicable, only for the service included in the federal system.

CHAPTER 409

An act to add Chapter 7.5 (commencing with Section 104323) to Part 1 of Division 103 of the Health and Safety Code, relating to Amyotrophic Lateral Sclerosis.

[Approved by Governor September 27, 2008. Filed with
Secretary of State September 27, 2008.]

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

SECTION 1. Chapter 7.5 (commencing with Section 104323) is added to Part 1 of Division 103 of the Health and Safety Code, to read:

Chapter 7.5. Amyotrophic Lateral Sclerosis (ALS)

104323. The Legislature finds and declares all of the following:

(a) Amyotrophic Lateral Sclerosis (ALS), more commonly known as Lou Gehrig's disease, is a degenerative disease of the motor nerves that causes progressive weakness of all voluntary muscles. People with ALS become unable to move, swallow, speak, and breathe without assistance, usually remaining fully aware of what is happening to them and to their families.

(b) ALS is a fatal disease. Most ALS patients die within two to five years of symptom onset. Every 90 minutes someone is diagnosed with ALS and every 90 minutes someone dies of the disease. ALS knows no racial, ethnic, or socioeconomic boundaries, often striking people at midlife and at the height of family and financial responsibilities.

(c) The devastating physical, emotional, and financial effects caused by the progression of ALS and the 24 hour a day, seven day a week caregiving required impacts not only the patient, but the entire family. ALS is a family disease.

(d) For many patients, the one drug approved by the federal Food and Drug Administration for the treatment of ALS shows little, if any, efficacy in slowing the progression of the disease. As a result, the focus of intervention for ALS patients is managing the effects of the disease progression. Research has shown that aggressive multidisciplinary care, provided within a collaborative environment, can extend a patient's life, reduce hospital admissions, and improve the quality of life for the patient and family. Ultimately, though, more research is needed to find an effective treatment and cure for ALS.

(e) To significantly extend and improve the quality of life of people living with ALS, the state recognizes the need for the California System of Care for ALS Patients model based upon the principles described in subdivision (f).

(f) According to the American Academy of Neurology (AAN), the mainstay of treatment for ALS patients is symptom management. As a result, the AAN has established a practice parameter for the care of ALS patients. These guidelines establish a foundation on which to develop a

system of care that enables the delivery of a comprehensive array of services critical to the care of ALS patients and their families. The AAN sets this foundation in their four principles of ALS management summarized as follows:

(1) High priority should be placed on patient self-determination and the delivery of both information and care must take into consideration the cultural and psychosocial context of the patient and family.

(2) Patients and families need information that is timed appropriately for decisionmaking.

(3) The physician, in conjunction with other health care professionals, should address the full continuum of care for the patient with ALS.

(4) Discussions regarding advance directives should be introduced and periodically reevaluated to ensure that ALS patients and their families understand the issues to be faced in the terminal phase of the disease.

(g) The services described in subdivision (f), when delivered through a highly coordinated effort, form a model program designed to provide the highest level of care available for the successful management of the needs of ALS patients and their families.

(h) ALS Association Certified Centers (centers) are a vehicle for state-of-the-art multidisciplinary and interdisciplinary care and management of ALS. The centers reflect four main objectives:

(1) The involvement of all necessary health care disciplines in the care of the ALS patient and his or her family.

(2) The offering of multidisciplinary and interdisciplinary care, regardless of the ability to pay.

(3) Collaborative work among centers to enhance ALS patient care techniques.

(i) Centers provide a one-stop shop at which the patient and family have access to a team of health care professionals from every specialty area that they may need during the progression of ALS. Each professional is an expert in ALS as well as his or her own field. The team that assesses and treats patients during their visits to a center includes individuals in all of the following specialty areas:

(1) Physical therapy.
(2) Occupational therapy.
(3) Respiratory therapy.
(4) Nursing.
(5) Registered dietician services.
(6) Psychology or psychiatry.
(7) Speech and language pathology.
(8) Medical social work service.

(j) An ALS Association Certified Center is a "specialty care center" for the purposes of Section 1374.16.

CHAPTER 410

An act to add Sections 241.5 and 243.65 to the Penal Code, relating to crimes against highway workers.

[Approved by Governor September 27, 2008. Filed with Secretary of State September 27, 2008.]

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

SECTION 1. Section 241.5 is added to the Penal Code, to read:

241.5. (a) When an assault is committed against a highway worker engaged in the performance of his or her duties and the person committing the offense knows or reasonably should know that the victim is a highway worker engaged in the performance of his or her duties, the offense shall be punishable by a fine not to exceed two thousand dollars ($2,000) or by imprisonment in a county jail up to one year or by both that fine and imprisonment.

(b) As used in this section, "highway worker" means an employee or contractor of the Department of Transportation who does one or more of the following:

(1) Performs maintenance, repair, or construction of state highway infrastructures and associated rights-of-way in highway work zones.

(2) Operates equipment on state highway infrastructures and associated rights-of-way in highway work zones.

(3) Performs any related maintenance work, as required, on state highway infrastructures in highway work zones.

SEC. 2. Section 243.65 is added to the Penal Code, to read:

243.65. (a) When a battery is committed against the person of a highway worker engaged in the performance of his or her duties and the person committing the offense knows or reasonably should know that the victim is a highway worker engaged in the performance of his or her duties, the offense shall be punished by a fine not exceeding two thousand dollars ($2,000), or by imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment.

(b) As used in this section, "highway worker" means an employee or contractor of the Department of Transportation who does one or more of the following:

(1) Performs maintenance, repair, or construction of state highway infrastructures and associated rights-of-way in highway work zones.

(2) Operates equipment on state highway infrastructures and associated rights-of-way in highway work zones.

(3) Performs any related maintenance work, as required, on state highway infrastructures in highway work zones.

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 411

An act to amend Sections 2109, 2110, 2111, 2115.5, and 13014 of, to add Section 2115.1 to, and to repeal Section 2105 of, the Fish and Game Code, relating to species recovery.

[Approved by Governor September 27, 2008. Filed with Secretary of State September 27, 2008.]

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

SECTION 1. Section 2105 of the Fish and Game Code is repealed.

SEC. 2. Section 2109 of the Fish and Game Code is amended to read:

2109. A recovery strategy for a species shall contain all of the following information:

(a) An explanation of scientific knowledge and assumptions regarding the biology, habitat requirements, and threats to the existence of the species.

(b) An explanation of interim and long-term goals and objectives for the conservation of the species. The recovery goals and objectives shall be specifically stated.

(c) A range of alternative interim and long-term conservation and management goals and activities. An explanation of any recommended activities shall be included in the recovery strategy.

(d) An estimate of the time and costs required to meet the interim recovery goals for the species, including available or anticipated funding sources, and an initial projection of the time and costs associated with

meeting final recovery goals. These costs shall include direct and indirect costs and public and private costs.

(e) Objective measurable criteria to determine whether the goals and objectives of the recovery strategy are being met and that contain procedures for the recognition of successful recovery, that may include commercial use where appropriate, and downlisting or delisting, if applicable.

(f) A description of actions and recommendations to implement the recovery strategy. The implementation plan shall include, if appropriate, recommendations to reduce adverse social and economic impacts of implementation of the recovery strategy. These recommendations shall be consistent with the recovery goals and objectives.

(g) A description of the following elements necessary to achieve the goals of the recovery strategy:

(1) The availability and use of public lands for the conservation, protection, restoration, and enhancement of the species.

(2) Methods of private and public cooperation.

(3) Procedures and programs for notice, education, research, monitoring, and strategy modification.

(h) The expected time necessary to meet the interim recovery goals and provisions and triggers for review and amendment of the strategy.

(i) An implementation schedule.

SEC. 3. Section 2110 of the Fish and Game Code is amended to read:

2110. The department shall include general policies to guide the department's issuance of a permit pursuant to Section 2080.1 or 2081 if the department determines, based on the best available scientific information, that the general policies are consistent with the recommended recovery strategy.

SEC. 4. Section 2111 of the Fish and Game Code is amended to read:

2111. After the department submits the recovery strategy to the commission, the commission shall hold a public hearing to consider approval of the recovery strategy. The commission shall approve the recovery strategy if, considering all relevant evidence, the commission finds that the recovery strategy meets all of the following criteria:

(a) The recovery strategy would conserve, protect, restore, and enhance the species.

(b) The recovery strategy is supported by the best available scientific data.

(c) The recovery strategy would recover a formerly commercially valuable species to a level of abundance that would permit commercial use of that species.

(d) The recovery strategy contains all of the information required by Section 2109.

SEC. 5. Section 2115.1 is added to the Fish and Game Code, to read:

2115.1. This article does not affect the recovery strategy for coho salmon prepared by the department in August 2003. This article does not affect regulations adopted pursuant to Section 2112 by the State Board of Forestry and Fire Protection, or preclude that board from amending those regulations in accordance with the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code). This article does not change the existing requirements for the issuance of incidental take permits pursuant to Section 2081.

SEC. 6. Section 2115.5 of the Fish and Game Code is amended to read:

2115.5. This article shall remain in effect only until January 1, 2014, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 2014, deletes or extends that date. However, this section does not apply to a recovery strategy that is approved or implemented pursuant to this article on or before January 1, 2014, and those recovery strategies, and any permits or memoranda of understanding relating thereto, shall remain effective as if this article had not been repealed.

SEC. 7. Section 13014 of the Fish and Game Code is amended to read:

13014. (a) There are hereby established, initially in the Special Deposit Fund, continued in existence by Section 16370 of the Government Code, both of the following accounts:

(1) The Fish and Game Mitigation and Protection Endowment Principal Account. The department shall deposit in this account the endowment funds received by the department pursuant to an agreement described in subdivision (b) and all earnings generated thereon. The earnings shall be available to the department, upon appropriation by the Legislature, to fund long-term management, enhancement, monitoring, and enforcement activities on habitat lands in a manner consistent with the terms of the underlying agreement.

(2) The Fish and Game Mitigation and Protection Expendable Funds Account. The department shall deposit in this account moneys received pursuant to an agreement described in subdivision (b) that are not endowment funds and that are designated for expenditure for the purposes described in paragraph (2) of that subdivision. Notwithstanding Section 13340 of the Government Code, the moneys in the account established by this paragraph are hereby continuously appropriated to the department for expenditure without regard to fiscal year, for the purposes described in this section.

(b) (1) The department may deposit moneys into the accounts established pursuant to subdivision (a) that it receives pursuant to any of the following, if those moneys are received for the purposes described in paragraph (2):

(A) Agreements or permits pursuant to the Natural Communities Conservation Planning Act (Chapter 10 (commencing with Section 2800) of Division 3).

(B) Conservation bank agreements.

(C) Habitat conservation implementation agreements.

(D) Incidental take permits.

(E) Legal or other written settlements.

(F) Mitigation agreements.

(G) Streambed or lakebed alteration agreements.

(H) Trust agreements.

(2) The department may deposit the moneys received pursuant to an agreement described in paragraph (1) in an account established by this section only if it receives those moneys for at least one of the following purposes:

(A) Mitigating the adverse biological impacts of a specific project, activity, spill, or release.

(B) Protecting, conserving, restoring, enhancing, managing, and maintaining fish, wildlife, native plants, or their habitats.

(c) While the Fish and Game Mitigation and Protection Endowment Principal Account and the Fish and Game Mitigation and Protection Expendable Funds Account are initially established in the Special Deposit Fund within the Pooled Money Investment Account, the Treasurer's office shall, at the department's request, transfer these funds from the Pooled Money Investment Account to another account within the State Treasury system to increase earnings over time while providing adequate liquidity. If either or both of these accounts are transferred from the Pooled Money Investment Account, assets in the transferred account or accounts may be held and invested in any of the investments identified in Section 16430 of the Government Code, except that the maturity date of commercial paper may exceed the limits set forth in Section 16430 of the Government Code. These investments shall be made as determined and directed by the department.

(d) To develop and maintain the investment strategy for these accounts, the department may retain investment advisers deemed acceptable to the Treasurer.

CHAPTER 412

An act to amend Section 25503.22 of the Business and Professions Code, relating to alcoholic beverages, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 27, 2008. Filed with Secretary of State September 27, 2008.]

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

SECTION 1. Section 25503.22 of the Business and Professions Code is amended to read:

25503.22. (a) Nothing in this division shall prohibit the issuance, transfer, or renewal of any retail license to any person with respect to premises which are owned by, or operated by or on behalf of, the licensee, notwithstanding that a wholesaler licensed to sell alcoholic beverages in states other than California has an interest, directly or indirectly, in the premises, in the retail license or in the retail licensee, provided that each of the following conditions are met:

(1) The retail licensee shall purchase no alcoholic beverages for sale in this state other than from a California wholesale licensee, and the retail licensee shall purchase no alcoholic beverages from any manufacturer or wholesale licensee holding the ownership of any interest, directly or indirectly, in the premises, in the retail license or in the retail licensee.

(2) Not more than 40 percent of the gross annual revenues of the retailer are derived from the sale of alcoholic beverages.

(b) The Legislature finds that it is necessary and proper to require a separation between manufacturing interests, wholesale interests, and retail interests in the production and distribution of alcoholic beverages in order to prevent suppliers from dominating local markets through vertical integration and to prevent excessive sales of alcoholic beverages produced by overly aggressive marketing techniques. The Legislature further finds that the exception established by this section to the general prohibition against tied interests must be limited to its expressed terms so as not to undermine the general prohibition, and intends that this section be construed accordingly.

SEC. 2. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to ensure that laws regulating alcoholic beverages are enacted at the earliest possible time, thereby protecting public health, it is necessary that this act take effect immediately.

CHAPTER 413

An act to amend Section 26708 of the Vehicle Code, relating to vehicles.

[Approved by Governor September 27, 2008. Filed with Secretary of State September 27, 2008.]

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

SECTION 1. Section 26708 of the Vehicle Code is amended to read:

26708. (a) (1) A person shall not drive any motor vehicle with any object or material placed, displayed, installed, affixed, or applied upon the windshield or side or rear windows.

(2) A person shall not drive any motor vehicle with any object or material placed, displayed, installed, affixed, or applied in or upon the vehicle that obstructs or reduces the driver's clear view through the windshield or side windows.

(3) This subdivision applies to a person driving a motor vehicle with the driver's clear vision through the windshield, or side or rear windows, obstructed by snow or ice.

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

(1) Rearview mirrors.

(2) Adjustable nontransparent sunvisors that are mounted forward of the side windows and are not attached to the glass.

(3) Signs, stickers, or other materials that are displayed in a 7-inch square in the lower corner of the windshield farthest removed from the driver, signs, stickers, or other materials that are displayed in a 7-inch square in the lower corner of the rear window farthest removed from the driver, or signs, stickers, or other materials that are displayed in a 5-inch square in the lower corner of the windshield nearest the driver.

(4) Side windows that are to the rear of the driver.

(5) Direction, destination, or termini signs upon a passenger common carrier motor vehicle or a schoolbus, if those signs do not interfere with the driver's clear view of approaching traffic.

(6) Rear window wiper motor.

(7) Rear trunk lid handle or hinges.

(8) The rear window or windows, if the motor vehicle is equipped with outside mirrors on both the left- and right-hand sides of the vehicle that are so located as to reflect to the driver a view of the highway through each mirror for a distance of at least 200 feet to the rear of the vehicle.

(9) A clear, transparent lens affixed to the side window opposite the driver on a vehicle greater than 80 inches in width and that occupies an area not exceeding 50 square inches of the lowest corner toward the rear of that window and that provides the driver with a wide-angle view through the lens.

(10) Sun screening devices meeting the requirements of Section 26708.2 installed on the side windows on either side of the vehicle's front seat, if the driver or a passenger in the front seat has in his or her possession a letter or other document signed by a licensed physician and surgeon certifying that the person must be shaded from the sun due to a medical condition, or has in his or her possession a letter or other document signed by a licensed optometrist certifying that the person must be shaded from the sun due to a visual condition. The devices authorized by this paragraph shall not be used during darkness.

(11) An electronic communication device affixed to the center uppermost portion of the interior of a windshield within an area that is not greater than 5 inches square, if the device provides either of the following:

(A) The capability for enforcement facilities of the Department of the California Highway Patrol to communicate with a vehicle equipped with the device.

(B) The capability for electronic toll and traffic management on public or private roads or facilities.

(12) A portable Global Positioning System (GPS), which may be mounted in a 7-inch square in the lower corner of the windshield farthest removed from the driver or in a 5-inch square in the lower corner of the windshield nearest to the driver, if the system is used only for door-to-door navigation while the motor vehicle is being operated and outside of an airbag deployment zone.

(c) Notwithstanding subdivision (a), transparent material may be installed, affixed, or applied to the topmost portion of the windshield if the following conditions apply:

(1) The bottom edge of the material is at least 29 inches above the undepressed driver's seat when measured from a point 5 inches in front of the bottom of the backrest with the driver's seat in its rearmost and lowermost position with the vehicle on a level surface.

(2) The material is not red or amber in color.

(3) There is no opaque lettering on the material and any other lettering does not affect primary colors or distort vision through the windshield.

(4) The material does not reflect sunlight or headlight glare into the eyes of occupants of oncoming or following vehicles to any greater extent than the windshield without the material.

(d) Notwithstanding subdivision (a), clear, colorless, and transparent material may be installed, affixed, or applied to the front side windows, located to the immediate left and right of the front seat if the following conditions are met:

(1) The material has a minimum visible light transmittance of 88 percent.

(2) The window glazing with the material applied meets all requirements of Federal Motor Vehicle Safety Standard No. 205 (49 C.F.R. 571.205), including the specified minimum light transmittance of 70 percent and the abrasion resistance of AS-14 glazing, as specified in that federal standard.

(3) The material is designed and manufactured to enhance the ability of the existing window glass to block the sun's harmful ultraviolet A rays.

(4) The driver has in his or her possession, or within the vehicle, a certificate signed by the installing company certifying that the windows with the material installed meet the requirements of this subdivision and identifies the installing company and the material's manufacturer by full name and street address, or, if the material was installed by the vehicle owner, a certificate signed by the material's manufacturer certifying that the windows with the material installed according to manufacturer's instructions meets the requirements of this subdivision and identifies the material's manufacturer by full name and street address.

(5) If the material described in this subdivision tears or bubbles, or is otherwise worn to prohibit clear vision, it shall be removed or replaced.

CHAPTER 414

An act to amend Sections 55000, 55001, 55002, 55003, 55007, 55011, 55013, 55020, 55020.5, 55021, 55022, 55040, 55047, 55050, 55051, 55052, 55060, 55100, 55105, and 71010 of, to add Sections 55008.5, 55010.6, 55010.7, and 55012.5 to, to add Article 10 (commencing with Section 55110) and Article 11 (commencing with Section 55120) to Chapter 4 of Division 20 of, to repeal Sections 55045, 55046, and 55107 of, and to repeal and add Section 55106 of, the Food and Agricultural Code, relating to the rice industry.

[Approved by Governor September 27, 2008. Filed with
Secretary of State September 27, 2008.]

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

SECTION 1. Section 55000 of the Food and Agricultural Code is amended to read:

55000. The production and processing of rice constitutes an important industry of this state that provides substantial and necessary revenues for the state and employment for its citizens. The California rice industry has the potential to be one of the leading segments of the state's agricultural industry. To realize this potential, there is a need to make domestic and foreign consumers aware of the nutritional value of rice, the high quality of the rice produced and processed in the state, the many varieties of rice produced and processed in the state, the intricacies of rice culture, and the versatility of rice as a part of a well balanced diet.

SEC. 2. Section 55001 of the Food and Agricultural Code is amended to read:

55001. The program established pursuant to this chapter is essential to ensuring the consistently high quality of the rice produced, processed, or handled in the state by informing consumers, maintaining consumer confidence, and enhancing and protecting the reputation of California's rice industry throughout the nation and around the world.

SEC. 3. Section 55002 of the Food and Agricultural Code is amended to read:

55002. This chapter is intended to allow the rice industry to work cooperatively to maintain consumer confidence and the acceptance of rice produced, processed, and handled in the state.

SEC. 4. Section 55003 of the Food and Agricultural Code is amended to read:

55003. There is a growing need to maintain the identity of various types of rice to satisfy increasing consumer demand for specialty rices. This demand requires providing the industry with the ability to establish the terms and conditions for the production, processing, and handling of rice in order to achieve the goal of preventing the potential for the commingling of various types of rice, and in order to prevent commingling where reconditioning is infeasible or impossible.

SEC. 5. Section 55007 of the Food and Agricultural Code is amended to read:

55007. "Records" means books, records, contracts, documents, memoranda, papers, correspondence, or other data, whether in written, magnetic, or electronic form, that pertain to matters relating to this chapter.

SEC. 6. Section 55008.5 is added to the Food and Agricultural Code, to read:

55008.5. "Chapter" means any provision of the California Rice Certification Act of 2000, and includes any amendments to and regulations adopted pursuant to that act.

SEC. 7. Section 55010.6 is added to the Food and Agricultural Code, to read:

55010.6. "Department" means the Department of Food and Agriculture.

SEC. 8. Section 55010.7 is added to the Food and Agricultural Code, to read:

55010.7. "Handle" means to engage in the business of being a handler.

SEC. 9. Section 55011 of the Food and Agricultural Code is amended to read:

55011. "Handler" means any person engaged in this state in the business of offering for sale or selling rice.

SEC. 10. Section 55012.5 is added to the Food and Agricultural Code, to read:

55012.5. "Process" means to harvest, dry, mill, transport, or store rice.

SEC. 11. Section 55013 of the Food and Agricultural Code is amended to read:

55013. "Producer" includes any person who produces rice, or causes rice to be produced.

SEC. 12. Section 55020 of the Food and Agricultural Code is amended to read:

55020. The secretary shall appoint a committee, from nominations received from the commission, to administer Article 4 (commencing with Section 55040) and Article 5 (commencing with Section 55050), except as otherwise specified. The committee shall consist of four producers, four handlers, and one representative each of the California Crop Improvement Association, the California Warehouse Association, and the California Cooperative Rice Research Foundation. The secretary shall also appoint one member from the University of California who shall not be affiliated with the California Crop Improvement Association. If the secretary finds any of those nominated to be unacceptable, he or she shall notify the commission and request that another person be nominated. The commission shall appoint one ex officio member who shall be involved in the handling or breeding of seed, and may appoint any other ex officio members deemed reasonably necessary to implement this chapter.

SEC. 13. Section 55020.5 of the Food and Agricultural Code is amended to read:

55020.5. (a) The committee shall meet periodically for the purposes specified in Article 4 (commencing with Section 55040) and Article 5 (commencing with Section 55050).

(b) A majority of the membership of the committee shall constitute a quorum of the committee. The vote of a majority of the members present at which there is a quorum shall constitute an act of the committee. The committee may continue to transact business at a meeting at which a quorum is initially present, notwithstanding the withdrawal of members, provided any action is approved by the requisite majority of the required quorum.

(c) As a committee of the commission, the committee established pursuant to Section 55020 shall conduct itself according to the bylaws and rules of the commission.

(d) Sections 71051, 71053, 71063, and 71066 shall apply to the committee.

SEC. 14. Section 55021 of the Food and Agricultural Code is amended to read:

55021. All funds received from the assessments levied pursuant to this chapter shall be deposited in banks that the commission may designate and be accounted for in a manner prescribed by the commission, and shall be disbursed by order of the commission through an agent or agents as it may designate for that purpose.

SEC. 15. Section 55022 of the Food and Agricultural Code is amended to read:

55022. (a) Upon receipt of a recommendation from the committee for the promulgation, amendment, or repeal of regulations, the secretary shall within 30 working days do one of the following:

(1) Initiate the rulemaking process with the regulation as recommended by the committee.

(2) Decline to initiate the rulemaking process and provide the committee with a written statement of reasons for the decision.

(3) Request that the committee provide additional information regarding the recommended regulations.

(b) All regulations adopted pursuant to this chapter shall be adopted in compliance with the Administrative Procedure Act, Chapter 3.5 (commencing with Section 11340) of Division 3 of Title 2 of the Government Code and may be subsequently repealed or amended as provided for in that chapter.

SEC. 16. Section 55040 of the Food and Agricultural Code is amended to read:

55040. The powers and duties of the committee shall include, but not be limited to, all of the following:

(a) Identifying rices that have characteristics of commercial impact.

(b) Recommending to the secretary proposed regulations establishing terms and conditions for planting, producing, processing, or handling rice identified pursuant to subdivision (a), including, but not limited to, seed application requirements, field buffer zones, handling requirements, seed testing, and identity preservation requirements. All rice identified pursuant to subdivision (a) shall be subject to an identity preservation program.

(c) Reviewing the efficacy of terms, conditions, and identity preservation programs imposed on the planting, producing, processing, or handling of rice identified pursuant to subdivision (a) using the most current industry standards and generally accepted scientific principles.

(d) Recommending to the secretary on all matters pertaining to this chapter, including, but not limited to, the amendment or repeal of regulations adopted pursuant to this chapter, enforcement of this chapter, and setting the assessment rates.

(e) The committee shall review each rice identified as having characteristics of commercial impact not less often than every two years, or upon receipt of a petition from a handler of rice. A handler of rice identified as having characteristics of commercial impact may not file more than one petition on a particular variety of rice in any two-year period.

(f) Neither the recommendations of the committee nor any regulation adopted pursuant to this chapter shall be construed as establishing any production, processing, or market tolerance.

SEC. 17. Section 55045 of the Food and Agricultural Code is repealed.

SEC. 18. Section 55046 of the Food and Agricultural Code is repealed.

SEC. 19. Section 55047 of the Food and Agricultural Code is amended to read:

55047. The committee shall recommend to the secretary that regulations be adopted, amended, or repealed by the secretary to accomplish all of the following purposes:

(a) Maintain the integrity and prevent the contamination of rice which has not been identified pursuant to subdivision (a) of Section 55040.

(b) Prevent the introduction of diseases, weeds, or other pests.

(c) Ensure that persons handling seed for the production of rice identified pursuant to subdivision (a) of Section 55040, or that persons bringing rice identified pursuant to subdivision (a) of Section 55040 into the state for processing, notify the commission of the location of planting

sites and of the dates and procedures for planting, producing, processing, or handling of rice identified pursuant to subdivision (a) of Section 55040.

(d) Ensure that persons receiving rice having been identified pursuant to subdivision (a) of Section 55040 produced outside the state for processing notify the commission of the location of the receipt and of the procedures for processing or handling the rice to prevent commercial impact to other rice and the spread of weeds, diseases, or other pests.

(e) Ensure enforcement of terms and conditions imposed on the planting, processing, or handling of rice identified pursuant to subdivision (a) of Section 55040.

(f) Encourage research and development of new types of rice.

SEC. 20. Section 55050 of the Food and Agricultural Code is amended to read:

55050. Except as provided for in Section 55052, no person may plant, produce, process, or handle rice identified pursuant to subdivision (a) of Section 55040, except in compliance with this chapter. Regulations shall be adopted by the secretary, in accordance with Section 55022, to accomplish all of the following purposes:

(a) Maintain the integrity and prevent contamination of rice which has not been identified pursuant to subdivision (a) of Section 55040.

(b) Prevent the introduction of disease, weeds, or other pests.

(c) Ensure that persons handling seed for the production of rice identified pursuant to subdivision (a) of Section 55040 or bringing rice identified pursuant to subdivision (a) of Section 55040 into the state for processing notify the commission of the location of planting sites and of the dates and procedures for planting, producing, processing, or handling of rice identified pursuant to subdivision (a) of Section 55040.

(d) Ensure that persons receiving rice having been identified pursuant to subdivision (a) of Section 55040 produced outside the state for processing notify the commission of the location of the receipt and of the procedures for processing or handling the rice to prevent commercial impact to other rice and the spread of weeds, diseases, or other pests.

(e) Enforce the restrictions and conditions imposed on the planting, producing, processing, or handling of rice identified pursuant to subdivision (a) of Section 55040.

(f) Encourage research and development of new types of rice.

SEC. 21. Section 55051 of the Food and Agricultural Code is amended to read:

55051. Except as specified in Section 55052, rice shall not be planted, produced, processed, or handled unless it has been reviewed by the committee for the purposes of making the findings set forth in Section

55040, and if necessary, the establishment of regulations pursuant to Section 55047.

SEC. 22. Section 55052 of the Food and Agricultural Code is amended to read:

55052. (a) Except as set forth in this section, this chapter shall not apply to 50 acres or less of rice of any type planted for research purposes. No one type may be planted on more than 50 acres in the state and be considered research within the meaning of this section. Any person conducting research on 50 acres or less shall notify the committee of the location of the acreage involved, and the proposed procedures for planting, producing, processing, or handling the rice. The committee shall review and approve, modify, or reject the proposed procedures to ensure that the research will not result in commercial impacts to other rice. The committee shall accept any procedures that have been previously approved or accepted by an agency of state or federal government unless the committee provides written justification for modifying or rejecting the procedures.

(b) In addition to the information required pursuant to subdivision (a), the committee may require any person proposing to conduct research using rice brought into the state from another state or country to provide the committee with proposed procedures to ensure that the introduced rice is free of diseases, weeds, or other pests. The committee shall review and approve, modify, or reject the proposed procedures. The committee shall accept any procedures that have been previously approved or accepted by an agency of state or federal government unless the committee provides written justification for modifying or rejecting the procedures.

(c) The notice required pursuant to this section shall not require specific information regarding the attributes of the rice that is the subject of the research.

(d) The notice required by this section shall be provided in the time and manner specified by the committee.

(e) This chapter shall not apply to research conducted by the University of California except for rice produced directly from the research that enters the channels of trade.

SEC. 23. Section 55060 of the Food and Agricultural Code is amended to read:

55060. (a) Handlers of seed for the production of rice identified pursuant to subdivision (a) of Section 55040, shall annually pay to the commission an assessment in an amount not to exceed five dollars ($5) per hundredweight (cwt.).

(b) The first in-state handler of paddy or brown rice identified pursuant to subdivision (a) of Section 55040, or of seed for the production of rice

identified pursuant to subdivision (a) of Section 55040, brought into the state from outside California, shall report to the commission prior to the receipt of the rice or seed and pay an assessment to the commission in an amount not to exceed ten cents ($0.10) per hundredweight (cwt.). The report and payment shall be made in the time and manner specified by the commission.

SEC. 24. Section 55100 of the Food and Agricultural Code is amended to read:

55100. (a) It is unlawful for any person to handle, advertise, or label rice in violation of this chapter.

(b) Notwithstanding subdivision (a), a person engaged in business as a retailer of rice who in good faith handles, labels, or advertises any rice in reliance on the representations of a producer or handler that the rice may be sold as certified, shall not be found to violate this chapter, except under any of the following circumstances:

(1) The retailer knew or should have known that the rice could not be sold as certified.

(2) The retailer was engaged in producing or handling the rice.

(3) The retailer prescribed or specified the manner in which the rice was produced or handled.

SEC. 25. Section 55105 of the Food and Agricultural Code is amended to read:

55105. It is unlawful for any person to plant, produce, process, or handle rice, except in compliance with this chapter.

SEC. 26. Section 55106 of the Food and Agricultural Code is repealed.

SEC. 27. Section 55106 is added to the Food and Agricultural Code, to read:

55106. All remedies provided by this chapter are cumulative and not exclusive of any other remedy, whether initiated by the commission or the department.

SEC. 28. Section 55107 of the Food and Agricultural Code is repealed.

SEC. 29. Article 10 (commencing with Section 55110) is added to Chapter 4 of Division 20 of the Food and Agricultural Code, to read:

Article 10. Investigations and Actions by the Commission

55110. The commission may receive and investigate complaints regarding alleged violations of this chapter. The commission may refer cases to the department for action.

55111. (a) The commission shall provide notice to the person or persons, and to the secretary, alleged to have violated the provisions of

this chapter informing him or her of the commission's decision to take further action pursuant to this article. The person may seek a review of the commission's decision by the secretary and thereafter may seek judicial relief.

(b) Notwithstanding subdivision (a) and Section 55111.5, the commission may immediately seek injunctive relief, as specified in Section 55112. Any injunction obtained by the commission shall remain in full force and effect pending any review by the secretary.

55111.5. The commission may enter into a written agreement with any person alleged to have violated this chapter that will cause the cessation of any alleged violation and avoidance of future violations.

55112. (a) The commission may commence civil actions and utilize all remedies provided in law or equity for the collection of assessments and for obtaining a writ of attachment, specific performance, or injunctive relief regarding this chapter. The commission may seek a writ of attachment or injunctive relief, including, but not limited to, a temporary restraining order, preliminary injunction, or a permanent injunction, in order to prevent any violation or threatened violation of this chapter.

(b) The commission shall provide notice to the person alleged to have violated this chapter prior to commencing a civil action.

(c) 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, or has threatened to violate, this chapter. No bond shall be required to be posted by the commission as a condition for the issuance of the requested writ of attachment or injunctive relief.

(d) A writ of attachment shall be issued pursuant to Chapter 5 (commencing with Section 485.010) 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 shall not be 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 shall not be required.

(e) 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 rice until there is full compliance and satisfaction of the judgment. Venue for these actions may be established at the domicile or place of business of the defendant or in the county of the principal place of business of the commission. The commission may be sued only in the county of its principal office.

(f) Prior to bringing an action for injunctive relief pursuant to this section, the commission shall review all available information, recommend specific enforcement action to the secretary, and allow the secretary the opportunity to respond. Notwithstanding the secretary's response, nothing in this section shall be construed as preventing the commission from bringing the action.

55113. The commission shall be entitled to receive reimbursement for any reasonable attorney's fees and other related costs, including, but not limited to, investigative costs, involved in enforcement of this chapter.

SEC. 30. Article 11 (commencing with Section 55120) is added to Chapter 4 of Division 20 of the Food and Agricultural Code, to read:

Article 11. Investigations and Actions by the Department

55120. The department may investigate complaints referred to it by the commission regarding alleged violations of this chapter. The department may enter and inspect the premises of any person subject to this chapter for the purpose of inspecting rice, rice processing, or handling activities governed by this chapter. If the department determines that violations have occurred, the department may take action authorized by this chapter, including, but not limited to, seizing and destroying rice. Rice may not be destroyed by the department without due notice to the person whose rice was seized and an informal hearing before the secretary pursuant to procedures adopted by the department.

55121. The department may commence civil actions and utilize all remedies provided in law or equity for obtaining a writ of attachment, specific performance, or injunctive relief for violations of this chapter.

55122. (a) The department may levy a civil penalty against any person who is grossly negligent or willfully violates this chapter in an amount of not more than fifteen thousand dollars ($15,000) for each violation. Each day a grossly negligent or willful violation of this chapter continues, for a period that shall not exceed 10 days, may be a separate violation. The amount of the penalty assessed for each violation shall be based upon the nature of the violation, the seriousness of the effect of the violation upon the effectuation of the purposes and provisions of this chapter, and the impact of the penalty on the violator, including the deterrent effect on future violations. If the secretary determines, based on evidence submitted, that the grossly negligent or willful violation has the potential to seriously impact the ability of California rice producers to produce or market rice without characteristics of commercial impact, each day shall be considered a separate violation and the period of time shall not exceed a total of 20 days.

(b) Upon a finding that a violation was negligent or unintentional, the secretary may levy a civil penalty of not more than two thousand five hundred dollars ($2,500) for each violation.

(c) For a first offense, and upon a finding that the violation is minor and negligent or unintentional, in lieu of a civil penalty as prescribed in subdivision (b), the secretary may issue a notice of violation.

(d) A person against whom a civil penalty is levied shall be afforded an opportunity for a hearing before the secretary, upon a request made within 30 days after the date of issuance of the notice of penalty. At the hearing, the person shall be given the right to present evidence on his or her own behalf. If no hearing is requested, the civil penalty shall constitute a final and nonreviewable order.

(e) If a hearing is held, review of the decision of the secretary may be sought by the person against whom the civil penalty is levied within 30 days of the date of the final order of the secretary pursuant to Section 1094.5 of the Code of Civil Procedure.

(f) A civil penalty levied by the department pursuant to this section may be recovered in a civil action brought in the name of the state.

55123. (a) The department shall be entitled to receive reimbursement for any reasonable attorney's fees and other related costs, including, but not limited to, investigative costs, involved in enforcement of this chapter.

(b) The department shall use all funds received pursuant to this chapter for the purposes of this chapter.

SEC. 31. Section 71010 of the Food and Agricultural Code is amended to read:

71010. The commission form of administration created by this chapter is uniquely situated to provide those engaged in the production and milling of rice the opportunity to avail themselves of the benefits of collective action of the broad fields of development, maintenance, and expansion of markets, marketing research, education, advertising and promotion, and production and processing research necessary to achieve the purposes stated herein, and any activity authorized in Chapter 4 (commencing with Section 55000) of Division 20.

SEC. 32. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

CHAPTER 415

An act to add Section 32132.5 to the Health and Safety Code, relating to health care districts.

[Approved by Governor September 27, 2008. Filed with Secretary of State September 27, 2008.]

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

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

(1) Utilizing a design-build contract requires a clear understanding of the roles and responsibilities of each participant in the process.

(2) Cost benefits for health care districts are achieved by shifting the liability and risk for cost containment and project completion to the design-build entity.

(b) It is the intent of the Legislature that the design-build process be used by health care districts solely for buildings associated with hospitals and health care and not for other infrastructure, including, but not limited to, streets, highways, public rail transit, roads, bridges, other water resources facilities, and related infrastructure.

SEC. 2. Section 32132.5 is added to the Health and Safety Code, to read:

32132.5. (a) Notwithstanding Section 32132 or any other provision of law, upon approval by the board of directors of the Sonoma Valley Health Care District, the design-build procedure described in Section 20133 of the Public Contract Code may be used to assign contracts for the construction of a building or improvements directly related to construction of a hospital or health facility building at the Sonoma Valley Hospital.

(b) For purposes of this section, all references in Section 20133 of the Public Contract Code to "county" and "board of supervisors" shall mean the Sonoma Valley Health Care District and its board of directors.

(c) A hospital building project utilizing the design-build process authorized by subdivision (a) shall be reviewed and inspected in accordance with the standards and requirements of the Alfred E. Alquist Hospital Facilities Seismic Safety Act of 1983 (Chapter 1 (commencing with Section 129675) of Part 7 of Division 107).

SEC. 3. Due to the unique circumstances of the Sonoma Valley Health Care District, the Legislature hereby finds and declares that a general statute cannot be made applicable within the meaning of Section 16 of Article IV of the California Constitution. Therefore, the special

legislation contained in Section 2 of this act is necessarily applicable only to the Sonoma Valley Health Care District.

CHAPTER 416

An act to amend Sections 1170 and 1170.3 of the Penal Code, relating to sentencing.

[Approved by Governor September 27, 2008. Filed with Secretary of State September 27, 2008.]

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

SECTION 1. Section 1170 of the Penal Code, as amended by Section 1 of Chapter 740 of the Statutes of 2007, is amended to read:

1170. (a) (1) The Legislature finds and declares that the purpose of imprisonment for crime is punishment. This purpose is best served by terms proportionate to the seriousness of the offense with provision for uniformity in the sentences of offenders committing the same offense under similar circumstances. The Legislature further finds and declares that the elimination of disparity and the provision of uniformity of sentences can best be achieved by determinate sentences fixed by statute in proportion to the seriousness of the offense as determined by the Legislature to be imposed by the court with specified discretion.

(2) Notwithstanding paragraph (1), the Legislature further finds and declares that programs should be available for inmates, including, but not limited to, educational programs, that are designed to prepare nonviolent felony offenders for successful reentry into the community. The Legislature encourages the development of policies and programs designed to educate and rehabilitate nonviolent felony offenders. In implementing this section, the Department of Corrections and Rehabilitation is encouraged to give priority enrollment in programs to promote successful return to the community to an inmate with a short remaining term of commitment and a release date that would allow him or her adequate time to complete the program.

(3) In any case in which the punishment prescribed by statute for a person convicted of a public offense is a term of imprisonment in the state prison of any specification of three time periods, the court shall sentence the defendant to one of the terms of imprisonment specified unless the convicted person is given any other disposition provided by law, including a fine, jail, probation, or the suspension of imposition or execution of sentence or is sentenced pursuant to subdivision (b) of

Section 1168 because he or she had committed his or her crime prior to July 1, 1977. In sentencing the convicted person, the court shall apply the sentencing rules of the Judicial Council. The court, unless it determines that there are circumstances in mitigation of the punishment prescribed, shall also impose any other term that it is required by law to impose as an additional term. Nothing in this article shall affect any provision of law that imposes the death penalty, that authorizes or restricts the granting of probation or suspending the execution or imposition of sentence, or expressly provides for imprisonment in the state prison for life. In any case in which the amount of preimprisonment credit under Section 2900.5 or any other provision of law is equal to or exceeds any sentence imposed pursuant to this chapter, the entire sentence shall be deemed to have been served and the defendant shall not be actually delivered to the custody of the secretary. The court shall advise the defendant that he or she shall serve a period of parole and order the defendant to report to the parole office closest to the defendant's last legal residence, unless the in-custody credits equal the total sentence, including both confinement time and the period of parole. The sentence shall be deemed a separate prior prison term under Section 667.5, and a copy of the judgment and other necessary documentation shall be forwarded to the secretary.

(b) When a judgment of imprisonment is to be imposed and the statute specifies three possible terms, the choice of the appropriate term shall rest within the sound discretion of the court. At least four days prior to the time set for imposition of judgment, either party or the victim, or the family of the victim if the victim is deceased, may submit a statement in aggravation or mitigation. In determining the appropriate term, the court may consider the record in the case, the probation officer's report, other reports including reports received pursuant to Section 1203.03 and statements in aggravation or mitigation submitted by the prosecution, the defendant, or the victim, or the family of the victim if the victim is deceased, and any further evidence introduced at the sentencing hearing. The court shall select the term which, in the court's discretion, best serves the interests of justice. The court shall set forth on the record the reasons for imposing the term selected and the court may not impose an upper term by using the fact of any enhancement upon which sentence is imposed under any provision of law. A term of imprisonment shall not be specified if imposition of sentence is suspended.

(c) The court shall state the reasons for its sentence choice on the record at the time of sentencing. The court shall also inform the defendant that as part of the sentence after expiration of the term he or she may be on parole for a period as provided in Section 3000.

(d) When a defendant subject to this section or subdivision (b) of Section 1168 has been sentenced to be imprisoned in the state prison and has been committed to the custody of the secretary, the court may, within 120 days of the date of commitment on its own motion, or at any time upon the recommendation of the secretary or the Board of Parole Hearings, recall the sentence and commitment previously ordered and resentence the defendant in the same manner as if he or she had not previously been sentenced, provided the new sentence, if any, is no greater than the initial sentence. The resentence under this subdivision shall apply the sentencing rules of the Judicial Council so as to eliminate disparity of sentences and to promote uniformity of sentencing. Credit shall be given for time served.

(e) (1) Notwithstanding any other law and consistent with paragraph (1) of subdivision (a), if the secretary or the Board of Parole Hearings or both determine that a prisoner satisfies the criteria set forth in paragraph (2), the secretary or the board may recommend to the court that the prisoner's sentence be recalled.

(2) The court shall have the discretion to resentence or recall if the court finds that the facts described in subparagraph (A) and (B) or subparagraphs (B) and (C) exist:

(A) The prisoner is terminally ill with an incurable condition caused by an illness or disease that would produce death within six months, as determined by a physician employed by the department.

(B) The conditions under which the prisoner would be released or receive treatment do not pose a threat to public safety.

(C) The prisoner is permanently medically incapacitated with a medical condition that renders him or her permanently unable to perform activities of basic daily living, and results in the prisoner requiring 24-hour total care, including, but not limited to, coma, persistent vegetative state, brain death, ventilator-dependency, loss of control of muscular or neurological function, and that incapacitation did not exist at the time of the original sentencing.

The Board of Parole Hearings shall make findings pursuant to this subdivision before making a recommendation for resentence or recall to the court. This subdivision does not apply to a prisoner sentenced to death or a term of life without the possibility of parole.

(3) Within 10 days of receipt of a positive recommendation by the secretary or the board, the court shall hold a hearing to consider whether the prisoner's sentence should be recalled.

(4) Any physician employed by the department who determines that a prisoner has six months or less to live shall notify the chief medical officer of the prognosis. If the chief medical officer concurs with the prognosis, he or she shall notify the warden. Within 48 hours of receiving

notification, the warden or the warden's representative shall notify the prisoner of the recall and resentencing procedures, and shall arrange for the prisoner to designate a family member or other outside agent to be notified as to the prisoner's medical condition and prognosis, and as to the recall and resentencing procedures. If the inmate is deemed mentally unfit, the warden or the warden's representative shall contact the inmate's emergency contact and provide the information described in paragraph (2).

(5) The warden or the warden's representative shall provide the prisoner and his or her family member, agent, or emergency contact, as described in paragraph (4), updated information throughout the recall and resentencing process with regard to the prisoner's medical condition and the status of the prisoner's recall and resentencing proceedings.

(6) Notwithstanding any other provisions of this section, the prisoner or his or her family member or designee may independently request consideration for recall and resentencing by contacting the chief medical officer at the prison or the secretary. Upon receipt of the request, the chief medical officer and the warden or the warden's representative shall follow the procedures described in paragraph (4). If the secretary determines that the prisoner satisfies the criteria set forth in paragraph (2), the secretary or board may recommend to the court that the prisoner's sentence be recalled. The secretary shall submit a recommendation for release within 30 days in the case of inmates sentenced to determinate terms and, in the case of inmates sentenced to indeterminate terms, the secretary shall make a recommendation to the Board of Parole Hearings with respect to the inmates who have applied under this section. The board shall consider this information and make an independent judgment pursuant to paragraph (2) and make findings related thereto before rejecting the request or making a recommendation to the court. This action shall be taken at the next lawfully noticed board meeting.

(7) Any recommendation for recall submitted to the court by the secretary or the Board of Parole Hearings shall include one or more medical evaluations, a postrelease plan, and findings pursuant to paragraph (2).

(8) If possible, the matter shall be heard before the same judge of the court who sentenced the prisoner.

(9) If the court grants the recall and resentencing application, the prisoner shall be released by the department within 48 hours of receipt of the court's order, unless a longer time period is agreed to by the inmate. At the time of release, the warden or the warden's representative shall ensure that the prisoner has each of the following in his or her possession: a discharge medical summary, full medical records, state identification, parole medications, and all property belonging to the

prisoner. After discharge, any additional records shall be sent to the prisoner's forwarding address.

(10) The secretary shall issue a directive to medical and correctional staff employed by the department that details the guidelines and procedures for initiating a recall and resentencing procedure. The directive shall clearly state that any prisoner who is given a prognosis of six months or less to live is eligible for recall and resentencing consideration, and that recall and resentencing procedures shall be initiated upon that prognosis.

(f) Any sentence imposed under this article shall be subject to the provisions of Sections 3000 and 3057 and any other applicable provisions of law.

(g) A sentence to state prison for a determinate term for which only one term is specified, is a sentence to state prison under this section.

(h) 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 that date, deletes or extends that date.

SEC. 2. Section 1170 of the Penal Code, as amended by Section 2 of Chapter 740 of the Statutes of 2007, is amended to read:

1170. (a) (1) The Legislature finds and declares that the purpose of imprisonment for crime is punishment. This purpose is best served by terms proportionate to the seriousness of the offense with provision for uniformity in the sentences of offenders committing the same offense under similar circumstances. The Legislature further finds and declares that the elimination of disparity and the provision of uniformity of sentences can best be achieved by determinate sentences fixed by statute in proportion to the seriousness of the offense as determined by the Legislature to be imposed by the court with specified discretion.

(2) Notwithstanding paragraph (1), the Legislature further finds and declares that programs should be available for inmates, including, but not limited to, educational programs, that are designed to prepare nonviolent felony offenders for successful reentry into the community. The Legislature encourages the development of policies and programs designed to educate and rehabilitate nonviolent felony offenders. In implementing this section, the Department of Corrections and Rehabilitation is encouraged to give priority enrollment in programs to promote successful return to the community to an inmate with a short remaining term of commitment and a release date that would allow him or her adequate time to complete the program.

(3) In any case in which the punishment prescribed by statute for a person convicted of a public offense is a term of imprisonment in the state prison of any specification of three time periods, the court shall sentence the defendant to one of the terms of imprisonment specified

unless the convicted person is given any other disposition provided by law, including a fine, jail, probation, or the suspension of imposition or execution of sentence or is sentenced pursuant to subdivision (b) of Section 1168 because he or she had committed his or her crime prior to July 1, 1977. In sentencing the convicted person, the court shall apply the sentencing rules of the Judicial Council. The court, unless it determines that there are circumstances in mitigation of the punishment prescribed, shall also impose any other term that it is required by law to impose as an additional term. Nothing in this article shall affect any provision of law that imposes the death penalty, that authorizes or restricts the granting of probation or suspending the execution or imposition of sentence, or expressly provides for imprisonment in the state prison for life. In any case in which the amount of preimprisonment credit under Section 2900.5 or any other provision of law is equal to or exceeds any sentence imposed pursuant to this chapter, the entire sentence shall be deemed to have been served and the defendant shall not be actually delivered to the custody of the secretary. The court shall advise the defendant that he or she shall serve a period of parole and order the defendant to report to the parole office closest to the defendant's last legal residence, unless the in-custody credits equal the total sentence, including both confinement time and the period of parole. The sentence shall be deemed a separate prior prison term under Section 667.5, and a copy of the judgment and other necessary documentation shall be forwarded to the secretary.

(b) When a judgment of imprisonment is to be imposed and the statute specifies three possible terms, the court shall order imposition of the middle term, unless there are circumstances in aggravation or mitigation of the crime. At least four days prior to the time set for imposition of judgment, either party or the victim, or the family of the victim if the victim is deceased, may submit a statement in aggravation or mitigation to dispute facts in the record or the probation officer's report, or to present additional facts. In determining whether there are circumstances that justify imposition of the upper or lower term, the court may consider the record in the case, the probation officer's report, other reports including reports received pursuant to Section 1203.03 and statements in aggravation or mitigation submitted by the prosecution, the defendant, or the victim, or the family of the victim if the victim is deceased, and any further evidence introduced at the sentencing hearing. The court shall set forth on the record the facts and reasons for imposing the upper or lower term. The court may not impose an upper term by using the fact of any enhancement upon which sentence is imposed under any provision of law. A term of imprisonment shall not be specified if imposition of sentence is suspended.

(c) The court shall state the reasons for its sentence choice on the record at the time of sentencing. The court shall also inform the defendant that as part of the sentence after expiration of the term he or she may be on parole for a period as provided in Section 3000.

(d) When a defendant subject to this section or subdivision (b) of Section 1168 has been sentenced to be imprisoned in the state prison and has been committed to the custody of the secretary, the court may, within 120 days of the date of commitment on its own motion, or at any time upon the recommendation of the secretary or the Board of Parole Hearings, recall the sentence and commitment previously ordered and resentence the defendant in the same manner as if he or she had not previously been sentenced, provided the new sentence, if any, is no greater than the initial sentence. The resentence under this subdivision shall apply the sentencing rules of the Judicial Council so as to eliminate disparity of sentences and to promote uniformity of sentencing. Credit shall be given for time served.

(e) (1) Notwithstanding any other law and consistent with paragraph (1) of subdivision (a), if the secretary or the Board of Parole Hearings or both determine that a prisoner satisfies the criteria set forth in paragraph (2), the secretary or the board may recommend to the court that the prisoner's sentence be recalled.

(2) The court shall have the discretion to resentence or recall if the court finds that the facts described in subparagraphs (A) and (B) or subparagraphs (B) and (C) exist:

(A) The prisoner is terminally ill with an incurable condition caused by an illness or disease that would produce death within six months, as determined by a physician employed by the department.

(B) The conditions under which the prisoner would be released or receive treatment do not pose a threat to public safety.

(C) The prisoner is permanently medically incapacitated with a medical condition that renders him or her permanently unable to perform activities of basic daily living, and results in the prisoner requiring 24-hour total care, including, but not limited to, coma, persistent vegetative state, brain death, ventilator-dependency, loss of control of muscular or neurological function, and that incapacitation did not exist at the time of the original sentencing.

The Board of Parole Hearings shall make findings pursuant to this subdivision before making a recommendation for resentence or recall to the court. This subdivision does not apply to a prisoner sentenced to death or a term of life without the possibility of parole.

(3) Within 10 days of receipt of a positive recommendation by the secretary or the board, the court shall hold a hearing to consider whether the prisoner's sentence should be recalled.

(4) Any physician employed by the department who determines that a prisoner has six months or less to live shall notify the chief medical officer of the prognosis. If the chief medical officer concurs with the prognosis, he or she shall notify the warden. Within 48 hours of receiving notification, the warden or the warden's representative shall notify the prisoner of the recall and resentencing procedures, and shall arrange for the prisoner to designate a family member or other outside agent to be notified as to the prisoner's medical condition and prognosis, and as to the recall and resentencing procedures. If the inmate is deemed mentally unfit, the warden or the warden's representative shall contact the inmate's emergency contact and provide the information described in paragraph (2).

(5) The warden or the warden's representative shall provide the prisoner and his or her family member, agent, or emergency contact, as described in paragraph (4), updated information throughout the recall and resentencing process with regard to the prisoner's medical condition and the status of the prisoner's recall and resentencing proceedings.

(6) Notwithstanding any other provisions of this section, the prisoner or his or her family member or designee may independently request consideration for recall and resentencing by contacting the chief medical officer at the prison or the secretary. Upon receipt of the request, the chief medical officer and the warden or the warden's representative shall follow the procedures described in paragraph (4). If the secretary determines that the prisoner satisfies the criteria set forth in paragraph (2), the secretary or board may recommend to the court that the prisoner's sentence be recalled. The secretary shall submit a recommendation for release within 30 days in the case of inmates sentenced to determinate terms and, in the case of inmates sentenced to indeterminate terms, the secretary shall make a recommendation to the Board of Parole Hearings with respect to the inmates who have applied under this section. The board shall consider this information and make an independent judgment pursuant to paragraph (2) and make findings related thereto before rejecting the request or making a recommendation to the court. This action shall be taken at the next lawfully noticed board meeting.

(7) Any recommendation for recall submitted to the court by the secretary or the Board of Parole Hearings shall include one or more medical evaluations, a postrelease plan, and findings pursuant to paragraph (2).

(8) If possible, the matter shall be heard before the same judge of the court who sentenced the prisoner.

(9) If the court grants the recall and resentencing application, the prisoner shall be released by the department within 48 hours of receipt of the court's order, unless a longer time period is agreed to by the

inmate. At the time of release, the warden or the warden's representative shall ensure that the prisoner has each of the following in his or her possession: a discharge medical summary, full medical records, state identification, parole medications, and all property belonging to the prisoner. After discharge, any additional records shall be sent to the prisoner's forwarding address.

(10) The secretary shall issue a directive to medical and correctional staff employed by the department that details the guidelines and procedures for initiating a recall and resentencing procedure. The directive shall clearly state that any prisoner who is given a prognosis of six months or less to live is eligible for recall and resentencing consideration, and that recall and resentencing procedures shall be initiated upon that prognosis.

(f) Any sentence imposed under this article shall be subject to the provisions of Sections 3000 and 3057 and any other applicable provisions of law.

(g) A sentence to state prison for a determinate term for which only one term is specified, is a sentence to state prison under this section.

(h) This section shall become operative on January 1, 2011.

SEC. 3. Section 1170.3 of the Penal Code, as amended by Section 4 of Chapter 3 of the Statutes of 2007, is amended to read:

1170.3. The Judicial Council shall seek to promote uniformity in sentencing under Section 1170, by:

(a) The adoption of rules providing criteria for the consideration of the trial judge at the time of sentencing regarding the court's decision to:

(1) Grant or deny probation.

(2) Impose the lower, middle, or upper prison term.

(3) Impose concurrent or consecutive sentences.

(4) Determine whether or not to impose an enhancement where that determination is permitted by law.

(b) The adoption of rules standardizing the minimum content and the sequential presentation of material in probation officer reports submitted to the court.

(c) This section shall remain in effect only until January 1, 2011, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2011, deletes or extends that date.

SEC. 4. Section 1170.3 of the Penal Code, as added by Section 5 of Chapter 3 of the Statutes of 2007, is amended to read:

1170.3. The Judicial Council shall seek to promote uniformity in sentencing under Section 1170, by:

(a) The adoption of rules providing criteria for the consideration of the trial judge at the time of sentencing regarding the court's decision to:

(1) Grant or deny probation.

(2) Impose the lower or upper prison term.

(3) Impose concurrent or consecutive sentences.

(4) Determine whether or not to impose an enhancement where that determination is permitted by law.

(b) The adoption of rules standardizing the minimum content and the sequential presentation of material in probation officer reports submitted to the court.

(c) This section shall become operative on January 1, 2011.

CHAPTER 417

An act to amend Section 4463 of the Vehicle Code, relating to vehicles.

[Approved by Governor September 27, 2008. Filed with Secretary of State September 27, 2008.]

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

SECTION 1. Section 4463 of the Vehicle Code is amended to read:

4463. (a) A person who, with intent to prejudice, damage, or defraud, commits any of the following acts is guilty of a felony and upon conviction thereof shall be punished by imprisonment in the state prison for 16 months or two or three years, or by imprisonment in a county jail for not more than one year:

(1) Alters, forges, counterfeits, or falsifies a certificate of ownership, registration card, certificate, license, license plate, device issued pursuant to Section 4853, special plate, or permit provided for by this code or a comparable certificate of ownership, registration card, certificate, license, license plate, device comparable to that issued pursuant to Section 4853, special plate, or permit provided for by any foreign jurisdiction, or alters, forges, counterfeits, or falsifies the document, device, or plate with intent to represent it as issued by the department, or alters, forges, counterfeits, or falsifies with fraudulent intent an endorsement of transfer on a certificate of ownership or other document evidencing ownership, or with fraudulent intent displays or causes or permits to be displayed or have in his or her possession a blank, incomplete, canceled, suspended, revoked, altered, forged, counterfeit, or false certificate of ownership,

registration card, certificate, license, license plate, device issued pursuant to Section 4853, special plate, or permit.

(2) Utters, publishes, passes, or attempts to pass, as true and genuine, a false, altered, forged, or counterfeited matter listed in paragraph (1) knowing it to be false, altered, forged, or counterfeited.

(b) A person who, with intent to prejudice, damage, or defraud, commits any of the following acts is guilty of a misdemeanor, and upon conviction thereof shall be punished by imprisonment in a county jail for six months or by a fine of not less than five hundred dollars ($500) or more than one thousand dollars ($1,000), or by both that fine and imprisonment, which penalty shall not be suspended:

(1) Forges, counterfeits, or falsifies a disabled person placard or a comparable placard relating to parking privileges for disabled persons provided for by a foreign jurisdiction, or forges, counterfeits, or falsifies a disabled person placard with intent to represent it as issued by the department.

(2) Passes, or attempts to pass, as true and genuine, a false, forged, or counterfeit disabled person placard knowing it to be false, forged, or counterfeited.

(3) Acquires, possesses, sells, or offers for sale a genuine or counterfeit disabled person placard.

(c) A person who, with fraudulent intent, displays or causes or permits to be displayed any forged, counterfeit, or false disabled person placard, is guilty of a misdemeanor, and upon conviction thereof shall be punished by imprisonment in a county jail for six months or by a fine of not less than five hundred dollars ($500) or more than one thousand dollars ($1,000), or by both that fine and imprisonment, which penalty shall not be suspended.

(d) For purposes of subdivision (b) or (c), "disabled person placard" means a placard issued pursuant to Section 22511.55 or 22511.59.

(e) A person who, with intent to prejudice, damage, or defraud, commits any of the following acts is guilty of an infraction, and upon conviction thereof shall be punished by a fine of not less than one hundred dollars ($100) or more than two hundred fifty dollars ($250) for a first offense, not less than two hundred fifty dollars ($250) or more than five hundred dollars ($500) for a second offense, and not less than five hundred dollars ($500) or more than one thousand dollars ($1,000) for a third or subsequent offense, which penalty shall not be suspended:

(1) Forges, counterfeits, or falsifies a Clean Air Sticker or a comparable clean air sticker relating to high occupancy vehicle lane privileges provided for by any foreign jurisdiction, or forges, counterfeits, or falsifies a Clean Air Sticker with intent to represent it as issued by the department.

(2) Passes, or attempts to pass, as true and genuine, a false, forged, or counterfeit Clean Air Sticker knowing it to be false, forged, or counterfeited.

(3) Acquires, possesses, sells, or offers for sale a counterfeit Clean Air Sticker.

(4) Acquires, possesses, sells, or offers for sale a genuine Clean Air Sticker separate from the vehicle for which the department issued that sticker.

(f) As used in this section, "Clean Air Sticker" means a label or decal issued pursuant to Sections 5205.5 and 21655.9.

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 418

An act to amend Section 82015 of the Government Code, relating to the Political Reform Act of 1974.

[Approved by Governor September 27, 2008. Filed with Secretary of State September 27, 2008.]

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

SECTION 1. Section 82015 of the Government Code is amended to read:

82015. (a) "Contribution" means a payment, a forgiveness of a loan, a payment of a loan by a third party, or an enforceable promise to make a payment except to the extent that full and adequate consideration is received, unless it is clear from the surrounding circumstances that it is not made for political purposes.

(b) (1) A payment made at the behest of a committee as defined in subdivision (a) of Section 82013 is a contribution to the committee unless full and adequate consideration is received from the committee for making the payment.

(2) A payment made at the behest of a candidate is a contribution to the candidate unless the criteria in either subparagraph (A) or (B) are satisfied:

(A) Full and adequate consideration is received from the candidate.

(B) It is clear from the surrounding circumstances that the payment was made for purposes unrelated to his or her candidacy for elective office. The following types of payments are presumed to be for purposes unrelated to a candidate's candidacy for elective office:

(i) A payment made principally for personal purposes, in which case it may be considered a gift under the provisions of Section 82028. Payments that are otherwise subject to the limits of Section 86203 are presumed to be principally for personal purposes.

(ii) A payment made by a state, local, or federal governmental agency or by a nonprofit organization that is exempt from taxation under Section 501(c)(3) of the Internal Revenue Code.

(iii) A payment not covered by clause (i), made principally for legislative, governmental, or charitable purposes, in which case it is neither a gift nor a contribution. However, payments of this type that are made at the behest of a candidate who is an elected officer shall be reported within 30 days following the date on which the payment or payments equal or exceed five thousand dollars ($5,000) in the aggregate from the same source in the same calendar year in which they are made. The report shall be filed by the elected officer with the elected officer's agency and shall be a public record subject to inspection and copying pursuant to subdivision (a) of Section 81008. The report shall contain the following information: name of payor, address of payor, amount of the payment, date or dates the payment or payments were made, the name and address of the payee, a brief description of the goods or services provided or purchased, if any, and a description of the specific purpose or event for which the payment or payments were made. Once the five-thousand-dollar ($5,000) aggregate threshold from a single source has been reached for a calendar year, all payments for the calendar year made by that source must be disclosed within 30 days after the date the threshold was reached or the payment was made, whichever occurs later. Within 30 days after receipt of the report, state agencies shall forward a copy of these reports to the Fair Political Practices Commission, and local agencies shall forward a copy of these reports to the officer with whom elected officers of that agency file their campaign statements.

(C) For purposes of subparagraph (B), a payment is made for purposes related to a candidate's candidacy for elective office if all or a portion of the payment is used for election-related activities. For purposes of this subparagraph, "election-related activities" shall include, but are not limited to, the following:

(i) Communications that contain express advocacy of the nomination or election of the candidate or the defeat of his or her opponent.

(ii) Communications that contain reference to the candidate's candidacy for elective office, the candidate's election campaign, or the candidate's or his or her opponent's qualifications for elective office.

(iii) Solicitation of contributions to the candidate or to third persons for use in support of the candidate or in opposition to his or her opponent.

(iv) Arranging, coordinating, developing, writing, distributing, preparing, or planning of any communication or activity described in clause (i), (ii), or (iii).

(v) Recruiting or coordinating campaign activities of campaign volunteers on behalf of the candidate.

(vi) Preparing campaign budgets.

(vii) Preparing campaign finance disclosure statements.

(viii) Communications directed to voters or potential voters as part of activities encouraging or assisting persons to vote if the communication contains express advocacy of the nomination or election of the candidate or the defeat of his or her opponent.

(D) A contribution made at the behest of a candidate for a different candidate or to a committee not controlled by the behesting candidate is not a contribution to the behesting candidate.

(3) A payment made at the behest of a member of the Public Utilities Commission, made principally for legislative, governmental, or charitable purposes, is not a contribution. However, payments of this type shall be reported within 30 days following the date on which the payment or payments equal or exceed five thousand dollars ($5,000) in the aggregate from the same source in the same calendar year in which they are made. The report shall be filed by the member with the Public Utilities Commission and shall be a public record subject to inspection and copying pursuant to subdivision (a) of Section 81008. The report shall contain the following information: name of payor, address of payor, amount of the payment, date or dates the payment or payments were made, the name and address of the payee, a brief description of the goods or services provided or purchased, if any, and a description of the specific purpose or event for which the payment or payments were made. Once the five-thousand-dollar ($5,000) aggregate threshold from a single source has been reached for a calendar year, all payments for the calendar year made by that source must be disclosed within 30 days after the date the threshold was reached or the payment was made, whichever occurs later. Within 30 days after receipt of the report, the Public Utilities Commission shall forward a copy of these reports to the Fair Political Practices Commission.

(c) "Contribution" includes the purchase of tickets for events such as dinners, luncheons, rallies, and similar fundraising events; the candidate's own money or property used on behalf of his or her candidacy other than personal funds of the candidate used to pay either a filing fee for a declaration of candidacy or a candidate statement prepared pursuant to Section 13307 of the Elections Code; the granting of discounts or rebates not extended to the public generally or the granting of discounts or rebates by television and radio stations and newspapers not extended on an equal basis to all candidates for the same office; the payment of compensation by any person for the personal services or expenses of any other person if the services are rendered or expenses incurred on behalf of a candidate or committee without payment of full and adequate consideration.

(d) "Contribution" further includes any transfer of anything of value received by a committee from another committee, unless full and adequate consideration is received.

(e) "Contribution" does not include amounts received pursuant to an enforceable promise to the extent those amounts have been previously reported as a contribution. However, the fact that those amounts have been received shall be indicated in the appropriate campaign statement.

(f) "Contribution" does not include a payment made by an occupant of a home or office for costs related to any meeting or fundraising event held in the occupant's home or office if the costs for the meeting or fundraising event are five hundred dollars ($500) or less.

(g) Notwithstanding the foregoing definition of "contribution," the term does not include volunteer personal services or payments made by any individual for his or her own travel expenses if the payments are made voluntarily without any understanding or agreement that they shall be, directly or indirectly, repaid to him or her.

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

SEC. 3. The Legislature finds and declares that this bill furthers the purposes of the Political Reform Act of 1974 within the meaning of subdivision (a) of Section 81012 of the Government Code.

CHAPTER 419

An act to amend Sections 4521 and 4521.5 of the Welfare and Institutions Code, relating to developmental disabilities.

[Approved by Governor September 27, 2008. Filed with Secretary of State September 27, 2008.]

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

SECTION 1. Section 4521 of the Welfare and Institutions Code is amended to read:

4521. (a) All references to "state council" in this part shall be a reference to the State Council on Developmental Disabilities.

(b) There shall be 31 voting members on the state council appointed by the Governor, as follows:

(1) One member from each of the 13 area boards on developmental disabilities described in Article 6 (commencing with Section 4543), nominated by the area board to serve as a council member, who shall be persons with a developmental disability, as defined in Section 15002(8) of Title 42 of the United States Code, or parents or guardians of minors with developmental disabilities or conservators of adults with developmental disabilities residing in California. Five of these members shall be persons with a developmental disability, as defined in Section 15002(8) of Title 42 of the United States Code, three shall be parents, immediate relatives, guardians, or conservators of persons with developmental disabilities, and five shall be either a person with a developmental disability or a parent, immediate relatives, guardian, or conservator of a person with a developmental disability. The nominee from each area board shall be an area board member who was appointed by the Governor.

(2) Eleven members of the council shall include the following:

(A) The Secretary of California Health and Human Services, or his or her designee, who shall represent the agency and the state agency that administers funds under Title XIX of the Social Security Act for people with developmental disabilities.

(B) The Director of Developmental Services or his or her designee.

(C) The Director of Rehabilitation or his or her designee.

(D) The Superintendent of Public Instruction or his or her designee.

(E) A representative from a nongovernmental agency or group concerned with the provision of services to persons with developmental disabilities.

(F) One representative from each of the three university centers for excellence in the state, pursuant to Section 15061 et seq. of Title 42 of the United States Code, providing training in the field of developmental services. These individuals shall have expertise in the field of developmental disabilities.

(G) The Director of Health Care Services or his or her designee.

(H) The executive director of the agency established in California to fulfill the requirements and assurance of Title I, Subtitle C, of the federal Developmental Disabilities Assistance and Bill of Rights Act of 2000 for a system to protect and advocate the rights of persons with developmental disabilities, or his or her designee.

(I) The Director of Aging or his or her designee.

(3) Seven members at large, appointed by the Governor, as follows:

(A) Three shall be persons with developmental disabilities, as defined in Section 15002(8) of Title 42 of the United States Code.

(B) One shall be a person who is a parent, immediate relative, guardian, or conservator of a resident of a developmental center.

(C) One shall be a person who is a parent, immediate relative, guardian, or conservator of a person with a developmental disability living in the community.

(D) One shall be a person who is a parent, immediate relative, guardian, or conservator of a person with a developmental disability living in the community, nominated by the Speaker of the Assembly.

(E) One shall be a person with developmental disabilities, as defined in Section 15002(8) of Title 42 of the United States Code, nominated by the Senate Committee on Rules.

(c) Prior to appointing the 31 members pursuant to this section, the Governor shall request and consider recommendations from organizations representing, or providing services to, or both, persons with developmental disabilities, and shall take into account socioeconomic, ethnic, and geographic considerations of the state.

(d) The term of each member described in paragraph (1) of, subparagraphs (E) and (H) of paragraph (2) of, and paragraph (3) of, subdivision (b) shall be for three years; provided, however, of the members first appointed by the Governor pursuant to paragraph (1) of subdivision (b), five shall hold office for three years, four shall hold office for two years, and four shall hold office for one year. In no event shall any member described in paragraph (1) of, subparagraphs (E) and (H) of paragraph (2) of, and paragraph (3) of, subdivision (b) serve for more than a total of six years of service. Service by any individual on any state council on developmental disabilities existing on and after January 1, 2003, shall be included in determining the total length of service.

(e) Members appointed to the state council prior to June 1, 2002, shall continue to serve until the term to which they were appointed expires. Members appointed on June 1, 2002, or thereafter shall have their terms expire on January 1, 2003.

(f) Notwithstanding subdivision (c) of Section 4546, members described in subdivision (b) shall continue to serve on the area board following the expiration of their term on the area board until their term on the state council has expired.

(g) A member may continue to serve following the expiration of his or her term until the Governor appoints that member's successor. The state council shall notify the Governor regarding membership requirements of the council and shall notify the Governor at least 60 days before a member's term expires, and when a vacancy on the council remains unfilled for more than 60 days.

SEC. 2. Section 4521.5 of the Welfare and Institutions Code is amended to read:

4521.5. Notwithstanding Section 7.5 of the Government Code, each designee shall act as the member in his or her place and stead to all intents and purposes as though the director or secretary were personally present, including the right of the designee to be counted in constituting a quorum to participate in the proceeding of the state council and to vote upon any and all matters.

Each designee shall have the right to represent the director or secretary who appointed him or her regardless of the number of other designees representing directors or secretaries at a particular meeting or session of the state council. Each designee shall represent only one director or secretary at any meeting or session of the state council.

CHAPTER 420

An act to amend Section 4750.1 of, and to add and repeal Section 9565 of, the Vehicle Code, relating to vehicles.

[Approved by Governor September 27, 2008. Filed with Secretary of State September 27, 2008.]

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

SECTION 1. (a) It is the intent of the Legislature in enacting a vehicle registration amnesty program to improve compliance with state vehicle registration laws and accelerate and increase collections of certain owed state fees and taxes.

(b) The Legislature finds and declares that a public purpose is served by the waiver of criminal prosecution in return for the immediate reporting and payment of previously underreported, nonreported, or certain nonpaid vehicle registration fees and taxes. The benefits gained by an amnesty program include, among other things, accelerated receipt of certain owed fees and taxes, permanently bringing into the vehicle registration system vehicles that have been previously misidentified to avoid appropriative state taxes and fees, and providing an opportunity for vehicle owners to correct their vehicle registration requirements and satisfy tax and fee obligations before stepped-up vehicle registration enforcement programs take effect.

(c) Further, the legislative intent of enacting this amnesty program is that the program is a one-time occurrence that shall not be repeated in the future, because any expectations of future amnesty programs could have a counterproductive effect on current compliance.

SEC. 2. Section 4750.1 of the Vehicle Code is amended to read:

4750.1. (a) If the department receives an application for registration of a specially constructed passenger vehicle or pickup truck after it has registered 500 specially constructed vehicles during that calendar year pursuant to Section 44017.4 of the Health and Safety Code, and the vehicle has not been previously registered, the vehicle shall be assigned the same model-year as the calendar year in which the application is submitted, for purposes of determining emissions inspection requirements for the vehicle.

(b) If the department receives an application for registration of a specially constructed passenger vehicle or pickup truck that has been previously registered after it has registered 500 specially constructed vehicles during that calendar year pursuant to Section 44017.4 of the Health and Safety Code, and the application requests a model-year determination different from the model-year assigned in the previous registration, the application for registration shall be denied and the vehicle owner is subject to the emission control and inspection requirements applicable to the model-year assigned in the previous registration. For a vehicle that participated in the amnesty program pursuant to Section 9565, the model-year of the previous registration shall be the calendar year of the year in which the vehicle owner applied for amnesty. However, a denial of an application for registration issued pursuant to this subdivision does not preclude the vehicle owner from applying for a different model-year determination and application for registration under Section 44017.4 of the Health and Safety Code in a subsequent calendar year.

SEC. 3. Section 9565 is added to the Vehicle Code, to read:

9565. (a) (1) The department shall develop and administer a vehicle registration amnesty program, which shall be in effect from January 1, 2010, until December 31, 2010, for vehicles that have been previously registered or classified incorrectly and that are correctly registered in accordance with this section.

(2) Except as provided in subdivision (b), a criminal action for false statements relating to the value, make, model, or a failure to register the vehicle shall not be brought against a current vehicle owner who has been granted amnesty under this section.

(b) This section does not apply to violations of this code for which, as of January 1, 2010, either of the following applies:

(1) The current vehicle owner is on notice of a criminal investigation by a complaint having been filed against him or her, or by written notice having been mailed to him or her, that he or she is under criminal investigation.

(2) A criminal court proceeding involving the vehicle has already been initiated against the current vehicle owner.

(c) The department shall grant amnesty to a vehicle owner if all of the following conditions have been met by December 31, 2010:

(1) The vehicle owner has filed a completed amnesty application with the department attesting, under penalty of perjury, to the owner's eligibility to participate in the vehicle registration amnesty program.

(2) Specially constructed vehicles participating in the amnesty program shall be assigned the model year of the calendar year in which the vehicle owner applied for amnesty under this section.

(3) The vehicle owner has correctly registered the vehicle or has been issued a certificate of ownership without registration, pursuant to Section 4452.

(d) Vehicle license fee revenue derived from the vehicle registration amnesty program shall be allocated in the same manner as required by Section 11001.5 of the Revenue and Taxation Code.

(e) Specially constructed vehicles that apply for amnesty under this section shall not be exempted from the requirement to obtain a certificate of compliance as provided in subparagraph (B) of paragraph (4) of subdivision (a) of Section 44011 of the Health and Safety Code.

(f) (1) This section shall not become operative until July 1, 2009.

(2) 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.

(g) For the purposes of this section, "correctly registered" means that all of the following have been completed:

(1) The vehicle owner has disclosed to the department the make, model, and the true cost of the vehicle including parts and labor.

(2) The vehicle owner has paid to the department all fees and penalties owed for the underreporting of the vehicle's value and the nonpayment of taxes or fees previously determined or proposed to be determined.

(3) The vehicle has been issued a certificate of compliance in accordance with Section 44015 of the Health and Safety Code, as appropriate.

SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

CHAPTER 421

An act to add Section 149.8 to the Streets and Highways Code, relating to transportation.

[Approved by Governor September 27, 2008. Filed with Secretary of State September 27, 2008.]

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

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

(a) The Riverside County Transportation Commission (RCTC) has submitted an application to the California Transportation Commission (CTC) to develop a high-occupancy toll (HOT) lane, including a value pricing program, pursuant to Section 149.7 of the Streets and Highways Code, in the State Highway Route 15 (I-15) corridor in Riverside County.

(b) The proposal submitted by RCTC was based on an extensive quantitative analysis of the potential for successful implementation of HOT lanes on I-15.

(c) Pursuant to Section 149.7 of the Streets and Highways Code, the CTC has reviewed the application under guidelines it promulgated.

(d) The CTC has conducted two public hearings in accordance with Section 149.7 of the Streets and Highways Code.

(e) The CTC has determined that the application submitted by RCTC is eligible and, accordingly, has submitted the application and pertinent public comments obtained at the public hearings on this matter to the Legislature for approval.

SEC. 2. Section 149.8 is added to the Streets and Highways Code, to read:

149.8. (a) Pursuant to Section 149.7, the Legislature hereby authorizes a value pricing and transit program involving high-occupancy toll (HOT) lanes to be developed and operated on State Highway Route 15 in Riverside County by the Riverside County Transportation Commission, as one of two toll lane projects in southern California authorized by subdivision (c) of Section 149.7.

(b) The Riverside County Transportation Commission shall carry out the program in cooperation with the department pursuant to a cooperative agreement that addresses all matters related to design, construction, maintenance, and operation of state highway program facilities in connection with the value pricing and transit program. With the assistance of the department, the Riverside County Transportation Commission shall establish appropriate traffic flow guidelines for the purpose of ensuring optimal use of the express lanes by high-occupancy vehicles without adversely affecting other traffic on the state highway system. The commission shall operate the HOT lane facilities in a manner consistent with the minimum level of service standards established in subdivision (b) of Sections 149.4, 149.5, and 149.6.

(c) (1) Pursuant to Section 149.7, the Riverside County Transportation Commission shall have the authority to set, levy, and collect tolls, user fees, or other similar charges payable for the use of the State Highway Route 15 HOT lanes, and any other incidental or related fees or charges, in amounts as required for the following expenditures relative to State Highway Route 15 and for purposes of paragraph (2):

(A) Capital outlay, including the costs of design, construction, right-of-way acquisition, and utility adjustment.

(B) Operations and maintenance, including, but not limited to, toll collection and enforcement.

(C) Repair and rehabilitation.

(D) Indebtedness incurred, including related financing costs.

(E) Reserves.

(F) Administration, which shall not exceed 3 percent of toll and associated facility revenues.

(2) Excess toll revenues beyond the expenditure needs of paragraph (1) may be expended for the following purposes:

(A) To enhance transit service designed to reduce traffic congestion on State Highway Route 15 or to expand travel options along the State Highway Route 15 corridor. Eligible expenditures include, but are not limited to, transit operating assistance, the acquisition of transit vehicles, and the transit capital improvements otherwise eligible to be funded

under the state transportation improvement program pursuant to Section 164.

(B) To make operational or capacity improvements designed to reduce congestion or improve the flow of traffic on State Highway Route 15. Eligible expenditures may include any phase of project delivery to make capital improvements to onramps, connector roads, roadways, bridges, or other structures that are related to the tolled or nontolled facilities on State Highway Route 15.

(3) The Riverside County Transportation Commission is authorized to issue bonds to finance the costs of the HOT lane facilities on State Highway Route 15, including the costs of issuing the bonds and paying credit enhancement and other fees related to the bonds, which bonds are payable from the tolls authorized in paragraph (1), and any other sources of revenue available to the Riverside County Transportation Commission that may be used for these purposes, including, but not limited to, sales tax revenue, development impact fees, or state and federal grant funds. The bonds may be sold pursuant to the terms and conditions set forth in a resolution adopted by the governing board of the Riverside County Transportation Commission. Bonds shall be issued pursuant to a resolution adopted by a two-thirds vote of the governing board. Any bond issued pursuant to this paragraph shall not constitute a debt or liability of the state and shall contain on its face a statement to the following effect:

"Neither the full faith and credit nor the taxing power of the State of California is pledged to the payment of principal or interest of this bond."

(4) The Riverside County Transportation Commission shall make available for public review and comment the proposed toll schedule, or any changes to the schedule, a minimum of 30 days prior to its adoption by the Riverside County Transportation Commission.

(d) The Riverside County Transportation Commission, in consultation with the department, shall issue a plan of transportation improvements for the State Highway Route 15 corridor, which shall include projected costs, the use of toll revenues, and a proposed completion schedule. This plan shall be updated annually. The plan and each annual update shall be made available for public review and comment no less than 30 days prior to its adoption by the Riverside County Transportation Commission.

(e) This section shall not prevent the department or any local agency from constructing facilities within the State Highway Route 15 corridor that compete with the HOT lane transportation project, and in no event shall the Riverside County Transportation Commission be entitled to

compensation for the adverse effects on toll revenue due to those facilities.

(f) If any provision of this section or the application thereof is held invalid, that invalidity shall not affect other provisions or applications of this section that can be given effect without the invalid provision or application, and to this extent the provisions of this section are severable.

CHAPTER 422

An act to amend Section 12556 of the Penal Code, relating to imitation firearms.

[Approved by Governor September 27, 2008. Filed with Secretary of State September 27, 2008.]

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

SECTION 1. Section 12556 of the Penal Code is amended to read:

12556. (a) No person may openly display or expose any imitation firearm, as defined in Section 12550, in a public place.

(b) Violation of this section, except as provided in subdivision (c), is an infraction punishable by a fine of one hundred dollars ($100) for the first offense, and three hundred dollars ($300) for a second offense.

(c) A third or subsequent violation of this section is punishable as a misdemeanor.

(d) Subdivision (a) shall not apply to the following, when the imitation firearm is:

(1) Packaged or concealed so that it is not subject to public viewing.

(2) Displayed or exposed in the course of commerce, including commercial film or video productions, or for service, repair, or restoration of the imitation firearm.

(3) Used in a theatrical production, a motion picture, video, television, or stage production.

(4) Used in conjunction with a certified or regulated sporting event or competition.

(5) Used in conjunction with lawful hunting, or lawful pest control activities.

(6) Used or possessed at certified or regulated public or private shooting ranges.

(7) Used at fairs, exhibitions, expositions, or other similar activities for which a permit has been obtained from a local or state government.

(8) Used in military, civil defense, or civic activities, including flag ceremonies, color guards, parades, award presentations, historical reenactments, and memorials.

(9) Used for public displays authorized by public or private schools or displays that are part of a museum collection.

(10) Used in parades, ceremonies, or other similar activities for which a permit has been obtained from a local or state government.

(11) Displayed on a wall plaque or in a presentation case.

(12) Used in areas where the discharge of a firearm is lawful.

(13) A device where the entire exterior surface of the device is white, bright red, bright orange, bright yellow, bright green, bright blue, bright pink, or bright purple, either singly or as the predominant color in combination with other colors in any pattern, or where the entire device is constructed of transparent or translucent materials which permits unmistakable observation of the device's complete contents. Merely having an orange tip as provided in federal law and regulations does not satisfy this requirement. The entire surface must be colored or transparent or translucent.

(e) For purposes of this section, the term "public place" means an area open to the public and includes streets, sidewalks, bridges, alleys, plazas, parks, driveways, front yards, parking lots, automobiles, whether moving or not, and buildings open to the general public, including those that serve food or drink, or provide entertainment, and the doorways and entrances to buildings or dwellings, and shall include public schools.

(f) Nothing in this section shall be construed to preclude prosecution for a violation of Section 171b, 171.5, or 626.10.

SEC. 1.5. Section 12556 of the Penal Code is amended to read:

12556. (a) No person may openly display or expose any imitation firearm, as defined in Section 12550, in a public place.

(b) Violation of this section, except as provided in subdivision (c), is an infraction punishable by a fine of one hundred dollars ($100) for the first offense, and three hundred dollars ($300) for a second offense.

(c) A third or subsequent violation of this section is punishable as a misdemeanor.

(d) Subdivision (a) shall not apply to the following, when the imitation firearm is:

(1) Packaged or concealed so that it is not subject to public viewing.

(2) Displayed or exposed in the course of commerce, including commercial film or video productions, or for service, repair, or restoration of the imitation firearm.

(3) Used in a theatrical production, a motion picture, video, television, or stage production.

(4) Used in conjunction with a certified or regulated sporting event or competition.

(5) Used in conjunction with lawful hunting, or lawful pest control activities.

(6) Used or possessed at certified or regulated public or private shooting ranges.

(7) Used at fairs, exhibitions, expositions, or other similar activities for which a permit has been obtained from a local or state government.

(8) Used in military, civil defense, or civic activities, including flag ceremonies, color guards, parades, award presentations, historical reenactments, and memorials.

(9) Used for public displays authorized by public or private schools or displays that are part of a museum collection.

(10) Used in parades, ceremonies, or other similar activities for which a permit has been obtained from a local or state government.

(11) Displayed on a wall plaque or in a presentation case.

(12) Used in areas where the discharge of a firearm is lawful.

(13) A device where the entire exterior surface of the device is white, bright red, bright orange, bright yellow, bright green, bright blue, bright pink, or bright purple, either singly or as the predominant color in combination with other colors in any pattern, or where the entire device is constructed of transparent or translucent materials which permits unmistakable observation of the device's complete contents. Merely having an orange tip as provided in federal law and regulations does not satisfy this requirement. The entire surface must be colored or transparent or translucent.

(e) For purposes of this section, the term "public place" means an area open to the public and includes streets, sidewalks, bridges, alleys, plazas, parks, driveways, front yards, parking lots, automobiles, whether moving or not, and buildings open to the general public, including those that serve food or drink, or provide entertainment, and the doorways and entrances to buildings or dwellings, and shall include public schools and a public or private college or university.

(f) Nothing in this section shall be construed to preclude prosecution for a violation of Section 171b, 171.5, or 626.10.

SEC. 2. Section 1.5 of this bill incorporates amendments to Section 12556 of the Penal Code proposed by both this bill and AB 2470. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2009, (2) each bill amends Section 12556 of the Penal Code, and (3) this bill is enacted after AB 2470, 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 423

An act to add Section 273i to the Penal Code, relating to crimes against children.

[Approved by Governor September 27, 2008. Filed with Secretary of State September 27, 2008.]

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

SECTION 1. Section 273i is added to the Penal Code, to read:

273i. (a) Any person who publishes information describing or depicting a child, the physical appearance of a child, the location of a child, or locations where children may be found with the intent that another person imminently use the information to commit a crime against a child and the information is likely to aid in the imminent commission of a crime against a child, is guilty of a misdemeanor, punishable by imprisonment in a county jail for not more than one year, a fine of not more than one thousand dollars ($1,000), or by both a fine and imprisonment.

(b) For purposes of this section, "publishes" means making the information available to another person through any medium, including, but not limited to, the Internet, the World Wide Web, or e-mail.

(c) For purposes of this section, "child" means a person who is 14 years of age or younger.

(d) For purposes of this section, "information" includes, but is not limited to, an image, film, filmstrip, photograph, negative, slide, photocopy, videotape, video laser disc, or any other computer-generated image.

(e) Any parent or legal guardian of a child about whom information is published in violation of subdivision (a) may seek a preliminary injunction enjoining any further publication of that information.

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 424

An act to add Article 2.6 (commencing with Section 52300) to Chapter 2 of Division 18 of the Food and Agricultural Code, relating to liability.

[Approved by Governor September 27, 2008. Filed with Secretary of State September 27, 2008.]

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

SECTION 1. Article 2.6 (commencing with Section 52300) is added to Chapter 2 of Division 18 of the Food and Agricultural Code, to read:

Article 2.6. Genetically Engineered Plants

52300. For purposes of this article only, the following definitions apply:

(a) "Farmer" means the person responsible for planting a crop, managing the crop, and harvesting the crop from land on which a breach of contract or patent infringement is alleged to have occurred.

(b) "Genetically engineered plant" means a plant or any plant part or material, including, but not limited to, seeds and pollen, in which the genetic material has been changed through modern biotechnology in a way that does not occur naturally by multiplication or natural recombination.

(c) "Modern biotechnology" means the application of either of the following:

(1) In vitro nucleic acid techniques, including recombinant deoxyribonucleic acid (DNA) and direct injection of nucleic acid into cells or organelles.

(2) Fusion of cells beyond the taxonomic family that overcome natural physiological reproductive or recombinant barriers and that are not techniques used in traditional breeding and selection.

52301. (a) Before a person or his or her agent holding a patent on a genetically engineered plant, may enter upon any land farmed by another for the purpose of obtaining crop samples to determine whether breach

of contract or patent infringement has occurred, the person holding the patent or his or her agent shall do all of the following:

(1) Notify the farmer in writing of the allegation that breach of contract or patent infringement has occurred and request permission to enter upon the farmer's land.

(2) Provide a copy of that notification to the secretary.

(3) Obtain the written permission of the farmer.

(4) Provide notice to the farmer of the following procedures which shall be applicable as provided:

(A) If the farmer withholds permission, the person holding a patent may petition the superior court in the county in which the alleged breach of contract or patent infringement has occurred for an order granting permission to enter upon the farmer's land.

(B) If the person holding a patent believes that the crop from which samples are to be taken may be subject to intentional damage or destruction, the person may seek a protective order from the superior court. The protective order shall be crafted to minimize interruption or interference with normal farming practices, including harvest and tillage.

(C) The procedures described in Section 52302.

(b) The farmer shall grant or deny access in writing within 10 days of receipt of a request to enter the land pursuant to subdivision (a).

52302. If requested by either party, the secretary or his or her designee shall be present for the sampling, provide for the collection of samples, or conduct any other aspect of the sampling or analysis process as requested. The secretary shall designate an employee or enter into an agreement with an employee or agent of the State of California or a third party unaffiliated with either party to carry out the specified sampling activity as provided in regulations adopted pursuant to Article 2 (commencing with Section 52251) of Division 18. The patentholder shall pay the fee charged by the department under regulations adopted pursuant to that article. The farmer or the agent of the farmer and the person holding the patent may be present at any collection of samples conducted pursuant to this article, and each shall be notified of the time and location of the sample taking at least 24 hours in advance.

52303. Samples for analysis may be taken from a standing crop, from representative standing plants in the field, or from crop residue remaining in the field after harvest.

52304. The results of any testing conducted pursuant to this article shall be sent by registered letter by the testing party to all parties involved in the investigation within 30 days after the results are reported from the testing laboratory.

52305. A farmer shall not be liable based on the presence or possession of a patented genetically engineered plant on real property

owned or occupied by the farmer when the farmer did not knowingly buy or otherwise knowingly acquire the genetically engineered plant, the farmer acted in good faith and without knowledge of the genetically engineered nature of the plant, and when the genetically engineered plant is detected at a de minimis level. The authority of a court to determine the presence of de minimis levels of a genetically engineered plant is intended solely for the purpose of assisting in adjudicating claims relating to the possession or use of a patented genetically engineered plant in which the seed labeler, patentholder, or licensee, has rights. Nothing in this section is intended to do any of the following:

(a) Establish, or be used as the basis for establishing, an acceptable level at which a patented genetically engineered plant may be present.

(b) Be used to alter or limit liabilities or remedies for personal injury or wrongful death.

(c) Be used outside or beyond the scope or context of a legal dispute regarding genetically engineered plants.

52306. The provisions of this part are severable. If any provision of this part or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

SEC. 2. It is the intent of the Legislature to clarify, as needed, the role and responsibility of the Department of Food and Agriculture in the oversight of regulated agricultural biotechnology.

CHAPTER 425

An act to amend Section 52324 of the Food and Agricultural Code, relating to agriculture.

[Approved by Governor September 27, 2008. Filed with Secretary of State September 27, 2008.]

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

SECTION 1. Section 52324 of the Food and Agricultural Code is amended to read:

52324. The subvention program under Section 52323 is an optional program available to counties. The subvention to counties under Section 52323 shall be annually apportioned as follows:

(a) At the discretion of the secretary and upon recommendation of the Seed Advisory Board, counties with no registered seed labelers may annually receive one hundred dollars ($100).

(b) Counties with registered seed labeler operations shall receive subventions based upon units of enforcement activity generated by the registered seed labeler operations within the county and upon the performance of enforcement activities necessary to carry out this chapter. The units of activity shall be determined by the secretary, taking into consideration the number of lots and kinds of seed labeled by each registered seed labeler operation within the county. The rate per unit of activity shall be established by dividing the total statewide units of activity into the annual funds available to the counties under Section 52323 after deducting the amount required for subventions in subdivision (a). Apportionment to individual counties shall be based upon the county's total units of activity performed times the established rate.

This section shall remain in effect only until January 1, 2010, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2010, deletes or extends that date.

CHAPTER 426

An act to amend Section 128401 of the Health and Safety Code, relating to nursing.

[Approved by Governor September 27, 2008. Filed with Secretary of State September 27, 2008.]

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

SECTION 1. Section 128401 of the Health and Safety Code is amended to read:

128401. (a) The Office of Statewide Health Planning and Development shall adopt regulations establishing the statewide Associate Degree Nursing (A.D.N.) Scholarship Pilot Program.

(b) Scholarships under the pilot program shall be available only to students in counties determined to have the most need. Need in a county shall be established based on consideration of all the following factors:

(1) Counties with a registered nurse-to-population ratio equal or less than 500 registered nurses per 100,000 individuals.

(2) County unemployment rate.

(3) County level of poverty.

(c) A scholarship recipient shall be required to complete, at a minimum, an associate degree in nursing and work in a medically underserved area in California upon obtaining his or her license from the Board of Registered Nursing.

(d) The Health Professions Education Foundation shall consider the following factors when selecting recipients for the A.D.N. Scholarship Pilot Program:

(1) An applicant's economic need, as established by the federal poverty index.

(2) Applicants who demonstrate cultural and linguistic skills and abilities.

(e) The pilot program shall be funded from the Registered Nurse Education Fund established pursuant to Section 128400 and administered by the Health Professions Education Foundation within the office. The Health Professions Education Foundation shall allocate a portion of the moneys in the fund for the pilot program established pursuant to this section, in addition to moneys otherwise allocated pursuant to this article for scholarships and loans for associate degree nursing students.

(f) No additional staff or General Fund operating costs shall be expended for the pilot program.

(g) The Health Professions Education Foundation may accept private or federal funds for purposes of the A.D.N. Scholarship Pilot Program.

(h) This section shall remain in effect only until January 1, 2014, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2014, deletes or extends that date.

CHAPTER 427

An act to amend Section 1635.1 of the Health and Safety Code, relating to tissue banks, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 27, 2008. Filed with Secretary of State September 27, 2008.]

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

SECTION 1. Section 1635.1 of the Health and Safety Code is amended to read:

1635.1. (a) Except as provided in subdivision (b), every tissue bank operating in California on or after July 1, 1992, shall have a current and valid tissue bank license issued or renewed by the department pursuant to Section 1639.2 or 1639.3.

(b) This chapter shall not apply to any of the following:

(1) The collection, processing, storage, or distribution of human whole blood or its derivatives by blood banks licensed pursuant to Chapter 4

(commencing with Section 1600) or any person exempt from licensure under that chapter.

(2) The collection, processing, storage, or distribution of tissue for autopsy, biopsy, training, education, or for other medical or scientific research or investigation, where transplantation of the tissue is not intended or reasonably foreseeable.

(3) The collection of tissue by an individual physician and surgeon from his or her patient or the implantation of tissue by an individual physician and surgeon into his or her patient. This exemption shall not be interpreted to apply to any processing or storage of the tissue, except for the processing and storage of semen by an individual physician and surgeon when the semen was collected by that physician and surgeon from a semen donor or obtained by that physician and surgeon from a tissue bank licensed under this chapter.

(4) The collection, processing, storage, or distribution of fetal tissue or tissue derived from a human embryo or fetus.

(5) The collection, processing, storage, or distribution by an organ procurement organization (OPO), as defined in Section 485.302 of Title 42 of the Code of Federal Regulations, if the OPO, at the time of collection, processing, storage, and distribution of the organ, has been designated by the Secretary of Health and Human Services as an OPO, pursuant to Section 485.305 of Title 42 of the Code of Federal Regulations, and meets the requirements of Sections 485.304 and 485.306 of Title 42 of the Code of Federal Regulations, as applicable.

(6) The storage of prepackaged, freeze-dried bone by a general acute care hospital.

(7) The storage of freeze-dried bone and dermis by any licensed dentist practicing in a lawful practice setting, providing that the freeze-dried bone and dermis has been obtained from a licensed tissue bank and is stored in strict accordance with a kit's package insert and any other manufacturer instructions and guidelines and is used for the express purpose of implantation into a patient.

SEC. 2. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to ensure that licensed dentists continue practicing without violating the provisions governing licensure of tissue banks, it is necessary that this act take effect immediately.

CHAPTER 428

An act to amend Section 742.245 of the Insurance Code, relating to multiple employer welfare arrangements.

[Approved by Governor September 27, 2008. Filed with Secretary of State September 27, 2008.]

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

SECTION 1. Section 742.245 of the Insurance Code is amended to read:

742.245. (a) A self-funded or partially self-funded multiple employer welfare arrangement shall maintain at least 25 percent of the surplus required by subdivision (n) of Section 742.24 in investments specified in Article 3 (commencing with Section 1170) of Chapter 2 of Part 2 of Division 1 and in Section 1192.5.

(b) The balance of the assets of a self-funded or partially self-funded multiple employer welfare arrangement may be invested in the following:

(1) An open-ended diversified management company, as defined in the federal Investment Company Act of 1940 (15 U.S.C. 80a-1 et seq.), that meets all of the following requirements:

(A) It is registered with, and reports to, the Securities and Exchange Commission.

(B) It is domiciled in the United States.

(C) Substantially all of its investments consist of investment grade debt instruments and cash.

(D) All of its assets are held in the United States by a bank, trust company, or other custodian chartered by the United States, its states, or territories.

(2) An amount not to exceed 75 percent of any excess of invested assets over the sum of the reserves and related actuarial items held in support of policies and contracts, plus the surplus required by subdivision (n) of Section 742.24, may be invested in the following:

(A) An open-ended diversified management company, as defined in the federal Investment Company Act of 1940 (15 U.S.C. 80a-1 et seq.), that meets all of the following requirements:

(i) It is registered with, and reports to, the Securities and Exchange Commission.

(ii) It is domiciled in the United States.

(iii) Its investments consist of common and preferred stocks and cash.

(iv) All of its assets are held in the United States by a bank, trust company, or other custodian chartered by the United States, its states, or territories.

(B) Corporate notes, bonds, and preferred stocks that meet all of the following requirements:

(i) The issuer is domiciled in the United States or Canada.

(ii) The investments are rated investment grade or better by at least two of the following rating agencies, or their successors:

(I) Standard & Poor's.

(II) Moody's.

(III) Fitch.

(iii) The investments are exchange-traded. "Exchange-traded" as used in this clause means listed and traded on the National Market System of the NASDAQ Stock Market or on a securities exchange subject to regulation, supervision, or control under a statute of the United States and acceptable to the commissioner.

(C) An investment in a single issuer made pursuant to subparagraph (B) shall not exceed in the aggregate 10 percent of the multiple employer welfare arrangement's funds described in this paragraph.

(3) An investment made pursuant to paragraph (1) or subparagraph (A) of paragraph (2) shall be made in, at minimum, three of the companies described in those provisions.

(4) An office building or buildings that will be used for the multiple employer welfare arrangement's principal operations and business if both of the following requirements are met:

(A) The multiple employer welfare arrangement obtains prior written approval from the commissioner.

(B) The office building or buildings are treated on the financial statements filed with the commissioner pursuant to Section 742.31 as nonadmitted assets.

(c) The commissioner may, in his or her discretion and after a hearing, require by written order disposal of an investment made either in violation of, or no longer in compliance with, this section. The commissioner may also, after a hearing, require the disposal of any investment made pursuant to paragraph (2) of subdivision (b) if the multiple employer welfare arrangement has failed to maintain cash or liquid assets sufficient to meet its claims and any other contractual obligations. The commissioner may also for good cause and after a hearing, by written order require the disposal of an investment described in subdivision (b).

CHAPTER 429

An act to amend Section 5205.5 of the Vehicle Code, relating to vehicles.

[Approved by Governor September 27, 2008. Filed with Secretary of State September 27, 2008.]

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

SECTION 1. Section 5205.5 of the Vehicle Code is amended to read:

5205.5. (a) For the purposes of implementing Section 21655.9, the department shall make available for issuance, for a fee determined by the department to be sufficient to reimburse the department for the actual costs incurred pursuant to this section, distinctive decals, labels, and other identifiers that clearly distinguish the following vehicles from other vehicles:

(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 vehicle that was produced during the 2004 model-year or earlier and meets California ultra-low emission vehicle (ULEV) standard for exhaust emissions and the federal ILEV standard.

(3) 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 and has a 45 miles per gallon or greater fuel economy highway rating.

(4) A hybrid vehicle that was produced during the 2004 model-year or earlier and has a 45 miles per gallon or greater fuel economy highway rating, and meets California's ULEV, SULEV, or partial zero-emission vehicle (PZEV) standards.

(b) Neither an owner of a hybrid vehicle that meets the AT PZEV standard, with the exception of a vehicle that meets the federal ILEV standard, nor an owner of a hybrid vehicle described in paragraph (4) of subdivision (a), is entitled to a decal, label, or other identifier pursuant to this section unless, and until, the federal government acts to approve the use of high-occupancy vehicle (HOV) lanes by vehicles of the types identified in paragraph (3) or (4) of subdivision (a), regardless of the number of occupants.

(c) The department shall include a summary of the provisions of this section on each motor vehicle registration renewal notice, or on a separate

insert, if space is available and the summary can be included without incurring additional printing or postage costs.

(d) The Department of Transportation shall remove individual HOV lanes, or portions of those lanes, during periods of peak congestion from the access provisions provided in subdivision (a), following a finding by the Department of Transportation as follows:

(1) The lane, or portion thereof, exceeds a level of service C, as discussed in subdivision (b) of Section 65089 of the Government Code.

(2) The operation or projected operation of the vehicles described in subdivision (a) in these lanes, or portions thereof, will significantly increase congestion.

The finding also shall demonstrate the infeasibility of alleviating the congestion by other means, including, but not limited to, reducing the use of the lane by noneligible vehicles, or further increasing vehicle occupancy.

(e) The State Air Resources Board shall publish and maintain a listing of all vehicles eligible for participation in the programs described in this section. The board shall provide that listing to the department.

(f) For purposes of subdivision (a), the Department of the California Highway Patrol and the department, in consultation with the Department of Transportation, shall design and specify the placement of the decal, label, or other identifier on the vehicle. Each decal, label, or other identifier issued for a vehicle shall display a unique number, which number shall be printed on, or affixed to, the vehicle registration.

(g) (1) (A) Except as provided in subparagraph (B), for purposes of subdivision (a), the department shall issue no more than 85,000 distinctive decals, labels, or other identifiers that clearly distinguish the vehicles specified in paragraphs (3) and (4) of subdivision (a).

(B) The department may issue a decal, label, or other identifier for a vehicle that satisfies all of the following conditions:

(i) The vehicle is of a type identified in paragraph (3) or (4) of subdivision (a).

(ii) The owner of the vehicle is the owner of a vehicle for which a decal, label, or identifier described in subparagraph (A) was previously issued and that vehicle for which the decal, label, or identifier was previously issued is determined by the department, on the basis of satisfactory proof submitted by the owner to the department, to be a nonrepairable vehicle or a total loss salvage vehicle.

(iii) The owner of the vehicle applied for a decal, label, or other identifier pursuant to this subparagraph on or before March 31, 2009, or within six months of the date on which the vehicle for which a decal, label, or identifier was previously issued is declared to be a nonrepairable vehicle or a total loss salvage vehicle, whichever date is later.

(2) The department shall notify the Department of Transportation immediately after the date on which the department has issued 50,000 decals, labels, and other identifiers under this section for the vehicles described in paragraphs (3) and (4) of subdivision (a).

(3) The Department of Transportation shall determine whether significant HOV lane breakdown has occurred throughout the state, in accordance with the following timeline:

(A) For lanes that are nearing capacity, the Department of Transportation shall make the determination not later than 90 days after the date provided by the department under paragraph (2).

(B) For lanes that are not nearing capacity, the Department of Transportation shall make the determination not later than 180 days after the date provided by the department under paragraph (2).

(4) In making the determination that significant HOV lane breakdown has occurred, the Department of Transportation shall consider the following factors in the HOV lane:

(A) Reduction in level of service.

(B) Sustained stop-and-go conditions.

(C) Slower than average speed than the adjacent mixed-flow lanes.

(D) Consistent increase in travel time.

(5) After making the determinations pursuant to subparagraphs (A) and (B) of paragraph (3), if the Department of Transportation determines that significant HOV lane breakdown has occurred throughout the state, the Department of Transportation shall immediately notify the department of that determination, and the department, on the date of receiving that notification, shall discontinue issuing the decals, labels, or other identifiers for the vehicles described in paragraphs (3) and (4) of subdivision (a).

(h) If the Metropolitan Transportation Commission, serving as the Bay Area Toll Authority, grants toll-free and reduced-rate passage on toll bridges under its jurisdiction to any vehicle pursuant to Section 30102.5 of the Streets and Highways Code, it shall also grant the same toll-free and reduced-rate passage to a vehicle displaying an identifier issued by the department pursuant to paragraph (1) or (2) of subdivision (a) and to a vehicle displaying a valid identifier issued by the department pursuant to paragraph (3) or (4) of subdivision (a) if the vehicle is registered to an address outside of the region identified in Section 66502 of the Government Code.

(i) An owner of a vehicle specified in paragraph (3) or (4) of subdivision (a) whose vehicle is registered to an address in the region identified in Section 66502 of the Government Code and who seeks a vehicle identifier under subdivision (a) in order to have access to a HOV

lane within the jurisdiction of the Bay Area Toll Authority shall do both of the following:

(1) Obtain and maintain an active account to operate within the automatic vehicle identification system described in Section 27565 of the Streets and Highways Code and shall submit to the department a form, approved by the department and issued by the Bay Area Toll Authority, that contains the vehicle owner's name, the license plate number and vehicle identification number of the vehicle, the vehicle make and year model, and the automatic vehicle identification system account number, as a condition to obtaining a vehicle identifier pursuant to subdivision (a) that allows for the use of that vehicle in HOV lanes regardless of the number of occupants.

(2) Be eligible for toll-free or reduced-rate passage on toll bridges within the jurisdiction of the Bay Area Toll Authority only if, at time of passage, the vehicle meets the passenger occupancy rate requirement established for that toll-free or reduced-rate passage.

(j) If the Director of Transportation determines that federal law does not authorize the state to allow vehicles that are identified by distinctive decals, labels, or other identifiers on vehicles described in subdivision (a) to use highway lanes or highway access ramps for high-occupancy vehicles regardless of vehicle occupancy, the Director of Transportation shall submit a notice of that determination to the Secretary of State.

(k) This section shall remain in effect only until January 1, 2011, or only until the date the Secretary of State receives the notice described in subdivision (j), whichever occurs first, and as of that date is repealed.

CHAPTER 430

An act to amend Sections 19601.2 and 19605.77 of the Business and Professions Code, relating to horse racing.

[Approved by Governor September 27, 2008. Filed with Secretary of State September 27, 2008.]

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

SECTION 1. Section 19601.2 of the Business and Professions Code is amended to read:

19601.2. (a) During calendar periods when the San Mateo County Fair, or other fair or thoroughbred association, and the Humboldt County Fair simultaneously conduct race meetings in the northern zone, the San Mateo County Fair, or other fair or thoroughbred association, shall be

the association authorized to distribute the signal and accept wagers on out-of-zone, out-of-state, and out-of-country races if it complies with the conditions specified in subdivision (a) of Section 19601. The amounts deducted from these wagers shall be distributed as provided in Section 19601, and license fees on races conducted by the Humboldt County Fair and on out-of-zone, out-of-state, or out-of-country races shall be as specified in subdivision (h) of Section 19601. Additionally, from, and to the extent of, license fees generated from the total handle of the San Mateo County Fair, or other fair or thoroughbred association, during the overlap, the San Mateo County Fair, or other fair or thoroughbred association, shall distribute to the Humboldt County Fair, not less than seven days after the close of the racing meeting, an amount equal to 0.75 percent of the out-of-zone, out-of-state, and out-of-country handle. From the amount remaining, if any, 50 percent shall be retained by the San Mateo County Fair, or other fair or thoroughbred association, to be distributed equally as commissions and purses, and 50 percent shall be paid to the state as a license fee.

(b) During calendar periods when the Fresno District Fair and any thoroughbred association in the northern zone both conduct race meetings, the thoroughbred association shall be the association authorized to distribute the signal and accept wagers on out-of-zone, out-of-state, and out-of-country races, if it complies with the conditions specified in subdivision (a) of Section 19601. The amounts deducted from these wagers shall be distributed as provided in Section 19601, and license fees on races conducted by the Fresno District Fair and on out-of-zone, out-of-state, or out-of-country races shall be as specified in subdivision (h) of Section 19601. Additionally, from, and to the extent of, license fees generated from the total handle of the thoroughbred association during the overlap, the thoroughbred association shall distribute to the Fresno District Fair, not less than seven days after the close of the racing meeting, an amount equal to 0.75 percent of the out-of-zone, out-of-state, and out-of-country handle. From the amount remaining, if any, 50 percent shall be retained by the thoroughbred association to be distributed equally as commissions and purses, and 50 percent shall be paid to the state as a license fee.

SEC. 2. Section 19605.77 of the Business and Professions Code is amended to read:

19605.77. (a) Notwithstanding Section 19610, a harness racing association may deduct an additional 1 percent of the total amount handled in conventional parimutuel pools of harness races. This additional deduction shall only be permitted with the approval of the organization representing harness horsemen and horsewomen at the applicable racing association meeting.

(b) Any funds collected pursuant to subdivision (a) from conventional parimutuel pools on harness races within the inclosure of a racetrack, at satellite wagering facilities within this state, and through advance deposit wagering by residents of this state, shall be distributed to the organization described in subdivision (e) to be used in accordance with subdivision (d).

(c) Any harness racing association that authorizes a betting system located outside of this state to accept conventional wagers on its races and to combine those wagers in the association's conventional parimutuel pools, including, but not limited to, a multijurisdictional wagering hub as to conventional wagers made by residents other than those of this state, may deduct the amount specified in subdivision (a) in addition to any other applicable deductions specified in law. Any amount deducted pursuant to this subdivision shall be distributed to the organization described in subdivision (e) to be used in accordance with the provisions of subdivision (d). This additional deduction shall not be included in the amount on which license fees are determined pursuant to Section 19602.

(d) The amounts distributed to the organization described in subdivision (e) shall be deposited by that organization in a separate account and used to reduce the workers' compensation insurance costs for trainers who are racing horses at the applicable harness racing association meet. Any funds not expended for this purpose in the calendar year in which they are collected may either be used for the following year's workers' compensation costs, as specified above, or to benefit the harness purse pool at the track where the funds are generated.

(e) The harness racing association and the organization representing harness horsemen and horsewomen shall form an organization to which any funds deducted pursuant to subdivisions (b) and (c) shall be distributed. The harness associations collectively shall have representation equal to that of the organization representing harness horsemen and horsewomen on the governing board of the organization formed pursuant to this subdivision.

(f) If the harness racing association and the organization representing harness horsemen and horsewomen cannot agree on the manner for distributing these funds to defray the costs of workers' compensation insurance, the matter shall be submitted to the California Horse Racing Board for a decision consistent with subdivision (d), and the decision of the board shall be final.

(g) This section shall remain in effect only until January 1, 2014, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2014, deletes or extends that date.

CHAPTER 431

An act to amend Section 350 of the Penal Code, relating to counterfeiting.

[Approved by Governor September 27, 2008. Filed with Secretary of State September 27, 2008.]

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

SECTION 1. Section 350 of the Penal Code is amended to read:

350. (a) Any person who willfully manufactures, intentionally sells, or knowingly possesses for sale any counterfeit mark registered with the Secretary of State or registered on the Principal Register of the United States Patent and Trademark Office, shall, upon conviction, be punishable as follows:

(1) When the offense involves less than 1,000 of the articles described in this subdivision, with a total retail or fair market value less than that required for grand theft as defined in Section 487, and if the person is an individual, he or she shall be punished by a fine of not more than five thousand dollars ($5,000), or by imprisonment in a county jail for not more than one year, or by both that fine and imprisonment; or, if the person is a business entity, by a fine of not more than one hundred thousand dollars ($100,000).

(2) When the offense involves 1,000 or more of the articles described in this subdivision, or has a total retail or fair market value equal to or greater than that required for grand theft as defined in Section 487, and if the person is an individual, he or she shall be punished by imprisonment in a county jail not to exceed one year, or in the state prison for 16 months, or two or three years, or by a fine not to exceed two hundred fifty thousand dollars ($250,000), or by both that imprisonment and fine; or, if the person is a business entity, by a fine not to exceed five hundred thousand dollars ($500,000).

(b) Any person who has been convicted of a violation of either paragraph (1) or (2) of subdivision (a) shall, upon a subsequent conviction of paragraph (1) of subdivision (a), if the person is an individual, be punished by a fine of not more than fifty thousand dollars ($50,000), or by imprisonment in a county jail for not more than one year, or in the state prison for 16 months, or two or three years, or by both that fine and imprisonment; or, if the person is a business entity, by a fine of not more than two hundred thousand dollars ($200,000).

(c) Any person who has been convicted of a violation of subdivision (a) and who, by virtue of the conduct that was the basis of the conviction,

has directly and foreseeably caused death or great bodily injury to another through reliance on the counterfeited item for its intended purpose shall, if the person is an individual, be punished by a fine of not more than fifty thousand dollars ($50,000), or by imprisonment in the state prison for two, three, or four years, or by both that fine and imprisonment; or, if the person is a business entity, by a fine of not more than two hundred thousand dollars ($200,000).

(d) In any action brought under this section resulting in a conviction or a plea of nolo contendere, the court shall order the forfeiture and destruction of all of those marks and of all goods, articles, or other matter bearing the marks, and the forfeiture and destruction or other disposition of all means of making the marks, and any and all electrical, mechanical, or other devices for manufacturing, reproducing, transporting, or assembling these marks, that were used in connection with, or were part of, any violation of this section. Forfeiture of the proceeds of the crime shall be subject to Chapter 9 (commencing with Section 186) of Title 7 of Part 1. However, no vehicle shall be forfeited under this section that may be lawfully driven on the highway with a class 3 or 4 license, as prescribed in Section 12804 of the Vehicle Code, and that is any of the following:

(1) A community property asset of a person other than the defendant.

(2) The sole class 3 or 4 vehicle available to the immediate family of that person or of the defendant.

(3) Reasonably necessary to be retained by the defendant for the purpose of lawfully earning a living, or for any other reasonable and lawful purpose.

(e) For the purposes of this section, the following definitions shall apply:

(1) 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 number of "articles" shall be equivalent to the number of completed computer software packages that could have been made from those components.

(2) "Business entity" includes, but is not limited to, a corporation, limited liability company, or partnership. "Business entity" does not include a sole proprietorship.

(3) "Counterfeit mark" means a spurious mark that is identical with, or confusingly similar to, a registered mark and is used, or intended to be used, on or in connection with the same type of goods or services for which the genuine mark is registered. It is not necessary for the mark to be displayed on the outside of an article for there to be a violation. For articles containing digitally stored information, it shall be sufficient to

constitute a violation if the counterfeit mark appears on a video display when the information is retrieved from the article. The term "spurious mark" includes genuine marks used on or in connection with spurious articles and includes identical articles containing identical marks, where the goods or marks were reproduced without authorization of, or in excess of any authorization granted by, the registrant. When counterfeited but unassembled components of any articles described under subdivision (a) are recovered, including, but not limited to, labels, patches, fabric, stickers, wrappers, badges, emblems, medallions, charms, boxes, containers, cans, cases, hangtags, documentation, or packaging, or any other components of any type or nature that are designed, marketed, or otherwise intended to be used on or in connection with any articles described under subdivision (a), the number of "articles" shall be equivalent to the number of completed articles that could have been made from those components.

(4) "Knowingly possess" means that the person possessing an article knew or had reason to believe that it was spurious, or that it was used on or in connection with spurious articles, or that it was reproduced without authorization of, or in excess of any authorization granted by, the registrant.

(5) Notwithstanding Section 7, "person" includes, but is not limited to, a business entity.

(6) "Registrant" means any person to whom the registration of a mark is issued and that person's legal representatives, successors, or assigns.

(7) "Sale" includes resale.

(8) "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 or any other articles described under subdivision (a) are recovered, including, but not limited to, counterfeited digital disks, instruction manuals, licensing envelopes, labels, patches, fabric, stickers, wrappers, badges, emblems, medallions, charms, boxes, containers, cans, cases, hangtags, documentation, or packaging, or any other components of any type or nature that are designed, marketed, or otherwise intended to be used on or in connection with any articles described under subdivision (a), the "value" of those components shall be equivalent to the retail price or fair market value of the number of completed computer software packages or other completed articles described under subdivision (a) that could have been made from those components.

(C) "Retail or fair market value" of a counterfeit article means a value equivalent to the retail price or fair market value, as of the last day of

the charged crime, of a completed similar genuine article containing a genuine mark.

(f) This section shall not be enforced against any party who has adopted and lawfully used the same or confusingly similar mark in the rendition of like services or the manufacture or sale of like goods in this state from a date prior to the earliest effective date of registration of the service mark or trademark either with the Secretary of State or on the Principle Register of the United States Patent and Trademark Office.

(g) An owner, officer, employee, or agent who provides, rents, leases, licenses, or sells real property upon which a violation of subdivision (a) occurs shall not be subject to a criminal penalty pursuant to this section, unless he or she sells, or possesses for sale, articles bearing a counterfeit mark in violation of this section. This subdivision shall not be construed to abrogate or limit any civil rights or remedies for a trademark violation.

(h) This section shall not be enforced against any party who engages in fair uses of a mark, as specified in Section 14247 of the Business and Professions Code.

(i) When a person is convicted of an offense under this section, the court shall order the person to pay restitution to the trademark owner and any other victim of the offense pursuant to Section 1202.4.

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 432

An act to amend Section 24976 of, and to add Section 24950.5 to, the Education Code, relating to state teachers' retirement, and making an appropriation therefor.

[Approved by Governor September 27, 2008. Filed with Secretary of State September 27, 2008.]

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

SECTION 1. Section 24950.5 is added to the Education Code, to read:

24950.5. (a) The system may administer an individual retirement plan as described in Section 408A of Title 26 of the United States Code for the purpose of accepting a rollover from an annuity contract or custodial account offered by the system pursuant to this chapter to the extent the rollover complies with Title 26 of the United States Code.

(b) The system may provide for the administration of the individual retirement plan described in subdivision (a) by a qualified third-party administrator who shall, by agreement with the system, provide custodial, investment, recordkeeping, or administrative services, or any combination thereof.

SEC. 2. Section 24976 of the Education Code is amended to read:

24976. (a) (1) The Teachers' Deferred Compensation Fund is hereby established to serve as the repository of funds received by the system pursuant to this chapter, Chapter 36 (commencing with Section 24950) or Chapter 39 (commencing with Section 25100).

(2) Except as described in paragraph (7), premium and fee revenues received by the system pursuant to Chapter 36 (commencing with Section 24950), except Section 24950.5, shall be deposited into the 403(b) Services Operating Account within the Teachers' Deferred Compensation Fund, and shall only be used to carry out the purposes of that chapter, excluding Section 24950.5.

(3) Premium and fee revenues received by the system pursuant to Section 24950.5 of Chapter 36 shall be deposited into the Roth IRA Operating Account within the Teachers' Deferred Compensation Fund, and shall only be used to carry out the purposes of that section.

(4) Premium and fee revenues received by the system pursuant to this chapter shall be deposited into the Deferred Compensation Services Operating Account within the Teachers' Deferred Compensation Fund, and shall only be used to carry out the purposes of this chapter.

(5) Compensation deferrals received by the system pursuant to this chapter shall be deposited into the Deferred Compensation Investment Account within the Teachers' Deferred Compensation Fund, and shall only be used to carry out the purposes of this chapter.

(6) Fee revenues received by the system pursuant to Chapter 39 (commencing with Section 25100) shall be deposited into the 403(b) Vendor Registry Operating Account within the Teachers' Deferred Compensation Fund, and shall only be used to carry out the purposes of that chapter.

(7) Fee revenues received by the system pursuant to Sections 24953 and 24977, and any assets in the Teachers' Retirement Program Development Fund pursuant to Section 22307.5 as of January 1, 2008, shall be deposited into the Deferred Compensation Administrative and Compliance Services Operating Account within the Teachers' Deferred

Compensation Fund, and shall only be used to carry out the purposes of Sections 24953 and 24977.

(8) Notwithstanding Section 13340 of the Government Code, all moneys in the Teachers' Deferred Compensation Fund shall be continuously appropriated without regard to fiscal year to carry out the purposes of this chapter, Chapter 36 (commencing with Section 24950), and Chapter 39 (commencing with Section 25100).

(b) With respect to deferred compensation plans administered pursuant to this chapter, and notwithstanding any other provision of law, the system may retain a bank or trust company, or a credit union, to serve as custodian of the moneys of the Teachers' Deferred Compensation Fund and to provide for safekeeping, recordkeeping, delivery, securities valuation, or investment performance reporting services, or services in connection with investment of the Teachers' Deferred Compensation Fund.

(c) With respect to deferred compensation plans administered pursuant to this chapter, the Teachers' Deferred Compensation Fund shall consist of the following sources and receipts, and disbursements shall be accounted for as set forth below:

(1) Premiums determined by the system and paid by participating employers and employees for the cost of administering the deferred compensation plan.

(2) Asset management fees as determined by the system assessed against investment earnings of investment option or of other investment funds. These fees shall be disclosed to employees participating in the deferred compensation plan.

(3) Compensation deferrals to be paid in monthly installments by employers sponsoring deferred compensation plans described in Section 24975 for investment by the system. The moneys shall be deposited in the investment corpus account within the Teachers' Deferred Compensation Fund and invested in accordance with the investment options selected by the participating employee.

(4) Disbursements to participating employees shall be paid from a disbursement account within the Teachers' Deferred Compensation Fund in accordance with applicable federal law pertaining to deferred compensation plans.

(5) Income, of whatever nature, earned on the Teachers' Deferred Compensation Fund shall be credited to the appropriate account. The accounts of participating employees of the employer shall be individually posted to reflect amounts of compensation deferred and investment gains and losses. A periodic statement shall be given to each participating employee.

(6) The system shall have exclusive control of the administration and investment of the Teachers' Deferred Compensation Fund.

(7) All of the system's costs of administering the deferred compensation plans pursuant to this chapter shall be recovered from the employees who participate in the plans or assets of the Teachers' Deferred Compensation Fund in a manner acceptable to the board.

CHAPTER 433

An act to amend Section 103526.5 of the Health and Safety Code, relating to vital records.

[Approved by Governor September 27, 2008. Filed with Secretary of State September 27, 2008.]

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

SECTION 1. 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) 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.

(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.

CHAPTER 434

An act to amend Sections 13350, 13356, and 13357 of the Business and Professions Code, relating to point-of-sale systems.

[Approved by Governor September 27, 2008. Filed with Secretary of State September 27, 2008.]

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

SECTION 1. Section 13350 of the Business and Professions Code is amended to read:

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 10 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 25 items for a retail establishment with 4 to 9 POS checkout registers.

(4) The initial standard inspection shall be performed by testing a minimum random sample of 50 items for retail establishments with 10 or more POS checkout registers.

(5) 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.

(6) The minimum random sample size shall not apply to inspections of any establishment at which fewer items than the number specified as the minimum sample size are marked or displayed with a posted or advertised item price.

(7) The maximum percentage of sale item restriction in paragraph (1) shall not apply to inspections of any establishment at which a marketing or promotional practice does not enable the sampling of the minimum required percentage of nonsale items, such as "Everything In Store 50 percent Off" or the like.

(8) 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 the prior 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.

SEC. 2. Section 13356 of the Business and Professions Code is amended to read:

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 six months.

SEC. 3. Section 13357 of the Business and Professions Code is amended to read:

13357. This article shall remain in effect only until January 1, 2014, and as of that date is repealed, unless a later enacted statute that is enacted before January 1, 2014, deletes or extends that date.

SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution 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 435

An act to add Section 16001.7 to the Business and Professions Code, relating to business licensing.

[Approved by Governor September 27, 2008. Filed with Secretary of State September 27, 2008.]

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

SECTION 1. Section 16001.7 is added to the Business and Professions Code, to read:

16001.7. Every person who is honorably discharged or honorably relieved from the military, naval, or air service of the United States and who is a resident of this state, may distribute circulars, and hawk, peddle and vend any goods, wares, or merchandise owned by him or her, except spiritous, malt, or vinous, or other intoxicating liquor, without payment of any business license fee, whether municipal, county, or state, and the legislative body shall issue to that person, without cost, a license therefor.

CHAPTER 436

An act to amend Sections 42356, 42357, 42359.5, and 42359.6 of, and to add Sections 42356.1 and 42359.7 to, the Public Resources Code, relating to solid waste.

[Approved by Governor September 27, 2008. Filed with Secretary of State September 27, 2008.]

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

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

(a) Littered plastic bags and plastic containers have caused and continue to cause significant environmental harm and have burdened local governments with significant environmental cleanup costs.

(b) It is the intent of the Legislature to ensure that environmental marketing claims, including claims of biodegradation, do not lead to an increase in environmental harm associated with plastic bag and plastic

container litter by providing consumers with a false belief that certain bags and containers are less harmful to the environment if littered.

(c) The ability of a plastic bag or a plastic container to biodegrade is a function of both the physical and chemical makeup of the bag or the container as well as the environmental conditions that the bag or container is subjected to.

(d) Use of the term "degradable," "biodegradable," "decomposable," or other similar terms on plastic bags and plastic containers is inherently misleading unless the claim includes a thorough disclaimer providing necessary qualifying details including, but not limited to, the environments and timeframes in which the claimed action will take place.

(e) Given the complex nature of biodegradation and the fact that most plastic bags and plastic containers will travel through multiple environments from the time of manufacture to the time of final disposition, and given the intrinsic constraints of marketing claims, including the space on the packaging container or bag, there is no reasonable ability for plastic bag and plastic container manufacturers to provide an adequate disclaimer qualifying the use of these and like terms without relying on an established scientific standard specification for the action claimed.

(f) Given these and other constraints, and the significant environmental harm that is caused by plastic bag and container litter, the use of these terms must be prohibited unless, or until such time as, there is a standard for the term claimed that has been approved by the Legislature.

SEC. 2. Section 42356 of the Public Resources Code is amended to read:

42356. For purposes of this chapter, the following definitions apply:

(a) "ASTM" means the American Society for Testing and Materials.

(b) (1) "ASTM standard specification" means one of the following:

(A) The ASTM Standard Specification for Compostable Plastics D6400, as published in September 2004, except as provided in subdivision (c) of Section 42356.1.

(B) The ASTM Standard Specification for Non-Floating Biodegradable Plastics in the Marine Environment D7081, as published in August 2005, except as provided in subdivision (c) of Section 42356.1.

(2) "ASTM standard specification" does not include an ASTM Standard Guide, a Standard Practice, or a Standard Test Method.

(c) "Manufacturer" means a person, firm, association, partnership, or corporation that produces a plastic bag.

(d) "Supplier" means a person who does one or more of the following:

(1) Sells, offers for sale, or offers for promotional purposes, a plastic bag that is used by a person to contain a product.

(2) Takes title to a plastic bag produced either domestically or in a foreign country, that is purchased for resale or promotional purposes.

SEC. 3. Section 42356.1 is added to the Public Resources Code, to read:

42356.1. (a) If an ASTM standard specification specified in paragraph (1) of subdivision (b) of Section 42356 is subsequently revised, the board shall review the new ASTM standard specification as follows:

(1) If the board determines that the new standard is more stringent and more protective of the public health, safety, and the environment, and is reflective of and consistent with state policies and programs, the board may adopt the new standard.

(2) If the board determines that the new standard is not as stringent and does not protect the public health, safety, and the environment, and is not reflective of and consistent with state policies and programs, the board shall not adopt the new standard.

(b) If the ASTM, or any other entity, develops a new standard specification or other applicable standard for any of the terms prohibited under subdivision (a) of Section 42357, the board may review the new standard and, if the board determines that the new standard for the prohibited term is more stringent and more protective of the public health, safety, and the environment, and is reflective of and consistent with state policies and programs, the board may make a recommendation to the Legislature.

(c) Compliance with a standard adopted pursuant to paragraph (1) of subdivision (a) shall be deemed to be in compliance with this chapter.

SEC. 4. Section 42357 of the Public Resources Code is amended to read:

42357. (a) (1) A person shall not sell a plastic bag in this state that is labeled with the term "compostable" or "marine degradable," unless, at the time of sale, the plastic bag meets the applicable ASTM standard specification, as specified in paragraph (1) of subdivision (b) of Section 42356.

(2) Compliance with only a section or a portion of a section of an applicable ASTM standard specification does not constitute compliance with paragraph (1).

(b) Except as provided in subdivision (a), a person shall not sell a plastic bag in this state that is labeled with the term "biodegradable," "degradable," or "decomposable," or any form of those terms, or in any way imply that the bag will break down, fragment, biodegrade, or decompose in a landfill or other environment.

(c) A manufacturer or supplier, upon the request of a member of the public, shall submit to that member, within 90 days of the request,

information and documentation demonstrating compliance with this chapter, in a format that is easy to understand and scientifically accurate.

SEC. 5. Section 42359.5 of the Public Resources Code is amended to read:

42359.5. For purposes of this chapter, the following definitions apply:

(a) "ASTM" means the American Society for Testing and Materials.

(b) "ASTM standard specification" means one of the following:

(1) The ASTM Standard Specification for Compostable Plastics D6400, as published in September 2004, except as specified in subdivision (c) of Section 42359.7.

(2) The ASTM Standard Specification for Non-Floating Biodegradable Plastics in the Marine Environment D7081, as published in August 2005, except as specified in subdivision (c) of Section 42359.7.

(3) The ASTM Standard Specification for Biodegradable Plastics Used as Coatings on Paper and Other Compostable Substrates D6868, as published in August 2003, except as specified in subdivision (c) of Section 42359.7.

(c) "Food or beverage container" means a product that contains food or drink items, or utensils, for retail sale and is composed of one or more of the following:

(1) Plastic.

(2) Paper with plastic coatings.

(3) Paper with plastic modifiers.

(4) Molded fiber.

(d) "Manufacturer" means a person, firm, association, partnership, or corporation that produces a food or beverage container.

(e) "Supplier" means a person who does one or more of the following:

(1) Sells, offers for sale, or offers for promotional purposes, a food or beverage container that is used by a person to contain a product.

(2) Takes title to a food or beverage container produced either domestically or in a foreign country, that is purchased for resale or promotional purposes.

SEC. 6. Section 42359.6 of the Public Resources Code is amended to read:

42359.6. (a) (1) A person shall not sell a food or beverage container in this state that is labeled with the term "compostable" or "marine degradable," unless, at the time of sale, the food or beverage container meets the applicable ASTM standard specification, as specified in subdivision (b) of Section 42359.5.

(2) Compliance with only a section or a portion of a section of an applicable ASTM standard specification does not constitute compliance with paragraph (1).

(b) Except as provided in subdivision (a), a person shall not sell a food or beverage container in this state that is labeled with the term "biodegradable," "degradable," or "decomposable," or any form of those terms, or in any way imply that the food or beverage container will break down, fragment, biodegrade, or decompose in a landfill or other environment.

(c) A manufacturer or supplier, upon the request of a member of the public, shall submit to that member, within 90 days of the request, information and documentation demonstrating compliance with this chapter, in a format that is easy to understand and scientifically accurate.

SEC. 7. Section 42359.7 is added to the Public Resources Code, to read:

42359.7. (a) If an ASTM standard specification specified in subdivision (b) of Section 42359.5 is subsequently revised, the board shall review the new ASTM standard specification as follows:

(1) If the board determines that the new standard is more stringent and more protective of the public health, safety, and the environment, and is reflective of and consistent with state policies and programs, the board may adopt the new standard.

(2) If the board determines that the new standard is not as stringent and does not protect the public health, safety, and the environment, and is not reflective of and consistent with state policies and programs, the board shall not adopt the new standard.

(b) If the ASTM, or any other entity, develops a new standard specification, or another applicable standard, for any of the terms prohibited under subdivision (a) of Section 42359.6, the board may review the new standard and, if the board determines that the new standard for that prohibited term is more stringent and more protective of the public health, safety, and the environment, and is reflective of and consistent with state policies and programs, the board may make a recommendation to the Legislature.

(c) Compliance with a standard adopted pursuant to paragraph (1) of subdivision (a) shall be deemed to be in compliance with this chapter.

CHAPTER 437

An act to add Section 1031.2 to the Government Code, relating to peace officers.

[Approved by Governor September 27, 2008. Filed with Secretary of State September 27, 2008.]

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

SECTION 1. Section 1031.2 is added to the Government Code, to read:

1031.2. Consistent with the Americans with Disabilities Act of 1990 (Public Law 101-336) and paragraph (3) of subdivision (e) of Section 12940, the collection of nonmedical or nonpsychological information of peace officers, in accordance with a thorough background investigation, as required by subdivision (d) of Section 1031, may be deferred until after a conditional offer of employment is issued if the employer can demonstrate that the information could not reasonably have been collected prior to the offer.

CHAPTER 438

An act to amend Sections 4799.07, 4799.08, 4799.09, 4799.10, 4799.11, and 4799.12 of the Public Resources Code, relating to forestry.

[Approved by Governor September 27, 2008. Filed with Secretary of State September 27, 2008.]

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

SECTION 1. Section 4799.07 of the Public Resources Code is amended to read:

4799.07. The Legislature finds and declares that:

(a) Trees are a vital resource in the urban environment and as an important psychological link with nature for the urban dweller.

(b) Trees are a valuable economic asset in our cities. They help maintain or increase property values and attract business and new residents in urban areas.

(c) Trees play an important role in energy conservation by modifying temperature extremes with shade and humidity, and by influencing wind direction and velocity. This role is particularly important in reducing the amount of energy consumed in heating and cooling buildings and homes, and potentially in producing a local fuel and energy source.

(d) Trees directly reduce air pollution by removing airborne particulates from the atmosphere and helping to purify the air.

(e) Trees also help reduce noise, provide habitat for songbirds and other wildlife, reduce surface runoff and protect urban water resources, and enhance the aesthetic quality of life in urban communities.

(f) Trees planted in urban settings play a significant role in meeting the state's greenhouse gas emission reduction targets by sequestering carbon as well as reducing energy consumption.

(g) Maximizing the benefits of trees through multiple-objective projects that provide environmental services can provide cost-effective solutions to the needs of urban communities and local agencies, including, but not limited to, increased water supply, clean air and water, reduced energy use, flood and stormwater management, recreation, and urban revitalization.

(h) Growing conditions in urban areas for trees and associated plants have worsened so that many of California's urban communities are now losing more trees than are replaced.

SEC. 2. Section 4799.08 of the Public Resources Code is amended to read:

4799.08. The purpose of this chapter is to:

(a) Promote the use of urban forest resources for purposes of increasing integrated projects with multiple benefits in urban communities.

(b) Arrest the decline of our urban forest resources, facilitate the planting of trees in urban communities, and improve the quality of the environment in urban areas through the establishment and improved management of urban forest resources.

(c) Facilitate the creation of permanent jobs in tree maintenance and related urban forestry activities in neighborhood, local, and regional urban areas.

(d) Optimize the potential of tree and vegetative cover in reducing energy consumption and producing fuel and other products.

(e) Encourage the coordination of state and local agency activities in urban forestry and related programs and encourage maximum citizen participation in their development and implementation.

(f) Prevent the introduction and spread within this state of known and potentially damaging or devastating pests and diseases, including, but not limited to, Dutch elm disease, pine pitch canker, sudden oak death disease, the Asian long-horned beetle, and mistletoe.

(g) Reduce or eliminate tree loss resulting from these diseases and others that are identified.

SEC. 3. Section 4799.09 of the Public Resources Code is amended to read:

4799.09. As used in this chapter:

(a) "Disadvantaged community" means a community with a median household income less than 80 percent of the statewide average.

(b) "Severely disadvantaged community" means a community with a median household income less than 60 percent of the statewide average.

(c) "Urban forestry" means the cultivation and management of trees in urban areas for their present and potential contribution to the economic, physiological, sociological, and ecological well-being of urban society.

(d) "Urban forest" means those native or introduced trees and related vegetation in the urban and near-urban areas including, but not limited to, urban watersheds, soils and related habitats, street trees, park trees, residential trees, natural riparian habitats, and trees on other private and public properties.

(e) "Urban area" means an urban place, as that term is defined by the United States Department of Commerce, of 2,500 or more persons.

SEC. 4. Section 4799.10 of the Public Resources Code is amended to read:

4799.10. (a) (1) The department may implement a program in urban forestry to encourage better tree management and planting in urban areas to increase integrated, multibenefit projects by assisting urban areas with innovative solutions to problems, including greenhouse gas emissions, public health impacts of poor air and water quality, urban heat island effect, stormwater management, water shortages, lack of green space, lack of urban parks that are accessible to pedestrians, vandalism, and insufficient tree maintenance, and to otherwise accomplish the purposes of this chapter.

(2) The department shall encourage demonstration projects that maximize the benefits of urban forests in conjunction with state and local agency programs to improve water conservation, energy conservation, stormwater capture and reuse, urban parks and river parkways, school construction and improvements, school greening or sun-safe schoolyards, air quality, water quality, flood management, urban revitalization, solid waste prevention, and other projects.

(3) The department shall assume the primary responsibility in carrying out the intent of this chapter in cooperation with statewide and regional urban forestry organizations or associations and arboricultural organizations or associations, other private and public entities or persons, and appropriate local, state, and federal agencies, including the Department of Water Resources, the California Environmental Protection Agency, the Department of Fish and Game, regional water quality control boards, regional and local air districts, the University of California Cooperative Extension, the Department of Parks and Recreation, the Department of Transportation, resource conservation districts, and the United States Forest Service.

(b) (1) The department shall be the agent of the state and shall have full power to cooperate with those agencies of the federal government that have powers and duties concerning urban forestry and shall perform

all things necessary to secure the benefits of federal urban forestry programs.

(2) To facilitate implementation of this chapter, the director may enter into agreements and contracts with a public or private organization including a local agency that has urban forestry-related jurisdictional responsibilities and an established and operating urban forestry program. The director shall consult with those agencies when carrying out this chapter in their respective areas.

(c) The director shall take all feasible steps to prevent or retard the introduction, establishment, and spread of known or potentially damaging or devastating pests and diseases. Any agreement shall ensure that the department will not need additional funds to participate in the program.

(d) The department and the Department of Food and Agriculture shall cooperate in setting quarantine boundary lines and in enforcing the provisions relating to quarantine and pest abatement contained in Division 4 (commencing with Section 5001) of the Food and Agricultural Code when a quarantine is established to prevent the spread of introduced pests and diseases affecting the state's urban forests.

(e) Whenever it is feasible to do so, the department may utilize inmates and wards assigned to conservation camps or the California Conservation Corps or certified Community Conservation Corps in implementing this chapter.

(f) The department may utilize available recipients of the Aid to Families with Dependent Children or General Assistance Program, who are participating in state or county work experience programs for carrying out the purposes of this chapter. The participation of registrants for the welfare-to-work program under the CalWORKs program, under Article 3.2 (commencing with Section 11320) of Chapter 2 of Part 3 of Division 9 of the Welfare and Institutions Code, shall be consistent with their participant contract requirements. A person being utilized by the department pursuant to this subdivision shall not be placed in the same crew as persons utilized pursuant to subdivision (e).

SEC. 5. Section 4799.11 of the Public Resources Code is amended to read:

4799.11. (a) The department shall provide technical assistance to urban areas with respect to:

(1) Planning for regional, county, and local land use analysis projects related to urban forestry.

(2) Preparation of urban tree plans and the selection of trees in large-scale landscaping and reforestation efforts.

(3) Development and coordination of training programs for neighborhood and local agency tree planting and maintenance crews.

(4) Advice to cities, counties, districts, and regional entities, homeowner neighborhood groups, and nonprofit organizations on tree disease, insect problems, tree planting, and maintenance.

(5) The role of forest ecology in planning for the future of urban areas, including climate change and greenhouse gas emission reductions, air quality, watershed problems, and energy conservation.

(6) Retention of native trees and riparian habitats.

(7) Any other matter relating to the purposes of this chapter.

(b) The department and other state agencies are also authorized to assist local tree maintenance programs by making surplus equipment available on loan where feasible for regional and local urban forestry efforts, including nonprofit organizations involved in urban tree care.

SEC. 6. Section 4799.12 of the Public Resources Code is amended to read:

4799.12. The director, with advice from other appropriate state agencies and interested parties, may make grants to provide assistance of 25 to 90 percent of costs for projects meeting guidelines established by the board upon recommendation by the director. The director may waive the cost share requirement for projects that are in disadvantaged and severely disadvantaged communities. Grants may be made to cities, counties, districts, and nonprofit organizations. Contributions required as a condition of grants made pursuant to this section may be made in the form of material, services, or equipment, or funds. Authorized assistance may include, but is not limited to, any of the following needs:

(a) Funding for development of urban tree plans that include coordination of local agency efforts and citizen involvement.

(b) Funding for development of urban tree plans that include coordination of multiple jurisdictions, multiple agency efforts, and citizen involvement.

(c) Funding for development of urban forest master plans or similar plans designed to provide comprehensive protection, maintenance, and management of the urban forest.

(d) Provision of seedling and tree stock.

(e) Tree planting projects.

(f) Funding and other assistance to local agencies and nonprofit organizations for partnerships as follows:

(1) Energy saving urban forest programs similar to the Los Angeles Department of Water and Power's Trees for Green LA program and the Sacramento Municipal Utility District's Sacramento Shade Tree program.

(2) Developing projects or programs that use urban forests for water conservation, improving water quality, or stormwater capture.

(3) Developing projects or programs that use urban forests for air quality improvement, reduction in greenhouse gas emissions, or reduction of heat island effect.

(4) Developing community education and engagement programs on the benefits and proper care of trees.

(g) Funding for the development of training and educational materials on the benefits of the urban forest.

(h) Funding for the development of training and educational materials on proper care and maintenance of trees and the urban forest, including young and mature tree care.

(i) Funding and other assistance, based on criteria developed by the department, for management of urban forests to ensure their survival and ability to optimize the benefits that urban forests provide the community and the environment.

(j) Funding and other assistance for demonstration projects in urban forestry with special attention given to projects or programs assisting the state in meeting the requirements of the Global Warming Solutions Act of 2006 (Division 25.5 (commencing with Section 38500) of the Health and Safety Code), improving energy and water conservation, capturing and filtering urban stormwater, improving water quality, reducing the urban heat island effect, improving air quality, and wood and fiber utilization projects, including, but not limited to, biofuel and bioenergy.

(k) Other categories of projects recommended by the director and approved by the board.

CHAPTER 439

An act to amend Sections 19596.1 and 19605.76 of the Business and Professions Code, relating to horse racing, and making an appropriation therefor.

[Approved by Governor September 27, 2008. Filed with Secretary of State September 27, 2008.]

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

SECTION 1. Section 19596.1 of the Business and Professions Code is amended to read:

19596.1. (a) Notwithstanding any other provision of law, the board may authorize a harness or quarter horse association conducting a race meeting to accept wagers on the results of out-of-state or out-of-country

harness or quarter horse races and, with the board's approval and with the concurrence of the horsemen's organization contracting with the association, other designated harness or quarter horse races during the period it is conducting the racing meeting, if all of the following conditions are met:

(1) The authorization complies with federal laws, including, but not limited to, Chapter 57 (commencing with Section 3001) of Title 15 of the United States Code.

(2) Wagering is offered only within the racing inclosure and only within 36 hours of the running of the out-of-state feature race.

(3) The association conducts at least seven live races, and imports not more than eight races on those days during a racing meeting when live races are being run, except as provided in subdivision (b).

(4) If only one breed of horse specified in this section is being raced on a given day, then the association conducting the live racing may import those races which would otherwise be simulcast by the association which is not racing, provided that the total number of harness or quarter horse races imported in a calendar year does not exceed the number of night races imported in 1998 after 5:30 p.m. After the usual deductions, including the portion for the racing association, the portion remaining for purses from these races shall be distributed equally for purses for harness horsemen and quarter horse horsemen.

(5) No quarter horse or harness racing association shall accept wagers on out-of-state or out-of-country quarter horse or harness races commencing before 5:30 p.m., Pacific standard time, without the consent of any thoroughbred association or fair that is then conducting a live racing meeting in this state.

(b) An association that is authorized to import races pursuant to subdivision (a) may, at its sole discretion, import fewer than the maximum number of harness or quarter horse races authorized in paragraph (3) of subdivision (a). For up to two races per night, for each race that is not imported under the maximum authorized by paragraph (3) of subdivision (a) on a particular night of racing, the association may add a race to the number of races allowable under the maximum authorization on another night of racing. However, no more than two races may be added under this subdivision to the number allowable on a single night, and the total number of imported races over a calendar year may not exceed the total number of imported races authorized pursuant to paragraphs (3) and (4) of subdivision (a).

SEC. 2. Section 19605.76 of the Business and Professions Code is amended to read:

19605.76. (a) Notwithstanding Section 19610, a quarter horse racing association may deduct an additional 0.5 percent of the total amount

handled in its exotic parimutuel pools. This additional deduction shall only be permitted with the approval of the organization representing quarter horsemen and horsewomen at the applicable racing association meet.

(b) Any funds collected pursuant to subdivision (a) from exotic parimutuel pools on races within the inclosure of a racetrack, at satellite wagering facilities within this state, and through advance deposit wagering by residents of this state, shall be distributed to the organization described in subdivision (e) to be used in accordance with subdivision (d).

(c) Any quarter horse racing association that authorizes a betting system located outside of this state to accept exotic wagers on its races and to combine those wagers in the association's exotic parimutuel pools, including, but not limited to, a multijurisdictional wagering hub as to exotic wagers made by residents other than those of this state, may deduct the amount specified in subdivision (a) in addition to any other applicable deductions specified in law. Any amount deducted pursuant to this subdivision shall be distributed to the organization described in subdivision (e) to be used in accordance with the provisions of subdivision (d). This additional deduction shall not be included in the amount on which license fees are determined pursuant to Section 19602.

(d) The amounts distributed to the organization described in subdivision (e) shall be deposited by that organization in a separate account to defray workers' compensation insurance costs for trainers and owners who are racing horses at the applicable quarter horse racing association meet. Any funds not expended for this purpose in the calendar year in which they are collected may either be used for the following year's workers' compensation costs, as specified above, or to benefit the purse pools at the track where the funds are generated. Funds to benefit purse pools shall be allocated by breed, in the same proportions as each breed generated in deductions under this section at the track in the year the funds were collected.

(e) The quarter horse racing association and the organization representing quarter horsemen and horsewomen shall form an organization to which any funds deducted pursuant to subdivisions (b) and (c) shall be distributed. The quarter horse associations collectively shall have representation equal to that of the organization representing quarter horsemen and horsewomen on the governing board of the organization formed pursuant to this subdivision.

(f) If the quarter horse racing association and the organization representing quarter horsemen and horsewomen cannot agree on the manner for distributing these funds to defray the costs of workers' compensation insurance, the matter shall be submitted to the California

Horse Racing Board for a decision consistent with subdivision (d), and the decision of the board shall be final.

(g) This section shall remain in effect only until January 1, 2014, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2014, deletes or extends that date.

SEC. 3. Due to a decrease in handle at several satellite wagering facilities, the California Horse Racing Board shall review the regulations governing the operation of satellite wagering facilities, in an attempt to reduce the cost of operating these facilities.

CHAPTER 440

An act to add Section 1946.7 to the Civil Code, and to amend, repeal, and add Section 1161 of the Code of Civil Procedure, relating to tenancies, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 27, 2008. Filed with Secretary of State September 27, 2008.]

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

SECTION 1. Section 1946.7 is added to the Civil Code, to read:

1946.7. (a) A tenant may notify the landlord that he or she or a household member was a victim of an act that constitutes an act of domestic violence as defined in Section 6211 of the Family Code, sexual assault as defined in Sections 261, 261.5, 262, 286, 288a, or 289 of the Penal Code, or stalking as defined in Section 1708.7, and that the tenant intends to terminate the tenancy.

(b) A notice to terminate a tenancy under this section shall be in writing, with one of the following attached to the notice:

(1) A copy of a temporary restraining order or emergency protective order lawfully issued pursuant to Part 3 (commencing with Section 6300) or Part 4 (commencing with Section 6400) of the Family Code, Section 136.2 of the Penal Code, Section 527.6 of the Code of Civil Procedure, or Section 213.5 of the Welfare and Institutions Code that protects the tenant or household member from further domestic violence, sexual assault, or stalking.

(2) A copy of a written report by a peace officer employed by a state or local law enforcement agency acting in his or her official capacity, stating that the tenant or household member has filed a report alleging that he or she or the household member is a victim of domestic violence, sexual assault, or stalking.

(c) The notice to terminate the tenancy shall be given within 60 days of the date that any order described in paragraph (1) of subdivision (b) was issued, within 60 days of the date that any written report described in paragraph (2) of subdivision (b) was made, or within the time period described in Section 1946.

(d) If notice to terminate the tenancy is provided to the landlord under this section, the tenant shall be responsible for payment of rent for 30 days following the giving of the notice, or within the appropriate period as described in Section 1946, and thereafter shall be released from any rent payment obligation under the rental agreement without penalty. Existing law governing the security deposit shall apply.

(e) If within the 30 days following the giving of the notice under this section the tenant quits the premises and the premises are rented to another party, the rent due on the premises for that 30-day period shall be prorated. Existing law governing the security deposit shall apply.

(f) Nothing in this section relieves a tenant, other than the tenant who is, or who has a household member who is, a victim of domestic violence, sexual assault, or stalking and members of that tenant's household, from their obligations under the rental agreement.

(g) "Household member" as used in this section means a member of the tenant's family who lives in the same household as the tenant.

SEC. 2. Section 1161 of the Code of Civil Procedure is amended to read:

1161. A tenant of real property, for a term less than life, or the executor or administrator of his or her estate heretofore qualified and now acting or hereafter to be qualified and act, is guilty of unlawful detainer:

1. When he or she continues in possession, in person or by subtenant, of the property, or any part thereof, after the expiration of the term for which it is let to him or her; provided the expiration is of a nondefault nature however brought about without the permission of his or her landlord, or the successor in estate of his or her landlord, if applicable; including the case where the person to be removed became the occupant of the premises as a servant, employee, agent, or licensee and the relation of master and servant, or employer and employee, or principal and agent, or licensor and licensee, has been lawfully terminated or the time fixed for occupancy by the agreement between the parties has expired; but nothing in this subdivision shall be construed as preventing the removal of the occupant in any other lawful manner; but in case of a tenancy at will, it must first be terminated by notice, as prescribed in the Civil Code.

2. When he or she continues in possession, in person or by subtenant, without the permission of his or her landlord, or the successor in estate of his or her landlord, if applicable, after default in the payment of rent,

pursuant to the lease or agreement under which the property is held, and three days' notice, in writing, requiring its payment, stating the amount which is due, the name, telephone number, and address of the person to whom the rent payment shall be made, and, if payment may be made personally, the usual days and hours that person will be available to receive the payment (provided that, if the address does not allow for personal delivery, then it shall be conclusively presumed that upon the mailing of any rent or notice to the owner by the tenant to the name and address provided, the notice or rent is deemed received by the owner on the date posted, if the tenant can show proof of mailing to the name and address provided by the owner), or the number of an account in a financial institution into which the rental payment may be made, and the name and street address of the institution (provided that the institution is located within five miles of the rental property), or if an electronic funds transfer procedure has been previously established, that payment may be made pursuant to that procedure, or possession of the property, shall have been served upon him or her and if there is a subtenant in actual occupation of the premises, also upon the subtenant.

The notice may be served at any time within one year after the rent becomes due. In all cases of tenancy upon agricultural lands, where the tenant has held over and retained possession for more than 60 days after the expiration of the term without any demand of possession or notice to quit by the landlord or the successor in estate of his or her landlord, if applicable, he or she shall be deemed to be holding by permission of the landlord or successor in estate of his or her landlord, if applicable, and shall be entitled to hold under the terms of the lease for another full year, and shall not be guilty of an unlawful detainer during that year, and the holding over for that period shall be taken and construed as a consent on the part of a tenant to hold for another year.

3. When he or she continues in possession, in person or by subtenant, after a neglect or failure to perform other conditions or covenants of the lease or agreement under which the property is held, including any covenant not to assign or sublet, than the one for the payment of rent, and three days' notice, in writing, requiring the performance of such conditions or covenants, or the possession of the property, shall have been served upon him or her, and if there is a subtenant in actual occupation of the premises, also, upon the subtenant. Within three days after the service of the notice, the tenant, or any subtenant in actual occupation of the premises, or any mortgagee of the term, or other person interested in its continuance, may perform the conditions or covenants of the lease or pay the stipulated rent, as the case may be, and thereby save the lease from forfeiture; provided, if the conditions and covenants of the lease, violated by the lessee, cannot afterward be performed, then

no notice, as last prescribed herein, need be given to the lessee or his or her subtenant, demanding the performance of the violated conditions or covenants of the lease.

A tenant may take proceedings, similar to those prescribed in this chapter, to obtain possession of the premises let to a subtenant or held by a servant, employee, agent, or licensee, in case of his or her unlawful detention of the premises underlet to him or her or held by him or her.

4. Any tenant, subtenant, or executor or administrator of his or her estate heretofore qualified and now acting, or hereafter to be qualified and act, assigning or subletting or committing waste upon the demised premises, contrary to the conditions or covenants of his or her lease, or maintaining, committing, or permitting the maintenance or commission of a nuisance upon the demised premises or using the premises for an unlawful purpose, thereby terminates the lease, and the landlord, or his or her successor in estate, shall upon service of three days' notice to quit upon the person or persons in possession, be entitled to restitution of possession of the demised premises under this chapter. For purposes of this subdivision, a person who commits an offense included in paragraph (1) of subdivision (c) of Section 11571.1 of the Health and Safety Code, or subdivision (c) of Section 3485 of the Civil Code, or uses the premises to further the purpose of that offense shall be deemed to have committed a nuisance upon the premises. For purposes of this subdivision, if a person commits an act of domestic violence as defined in Section 6211 of the Family Code, sexual assault as defined in Section 261, 261.5, 262, 286, 288a, or 289 of the Penal Code, or stalking as defined in Section 1708.7, against another tenant or subtenant on the premises there is a rebuttable presumption affecting the burden of proof that the person has committed a nuisance upon the premises, provided, however, that this shall not apply if the victim of the act of domestic violence, sexual assault, or stalking, or a household member of the victim, other than the perpetrator, has not vacated the premises. This subdivision shall not be construed to supersede the provisions of the Violence Against Women and Department of Justice Reauthorization Act of 2005 (Public Law 109-162) that permit the removal from a lease of a tenant who engages in criminal acts of physical violence against cotenants.

5. When he or she gives written notice as provided in Section 1946 of the Civil Code of his or her intention to terminate the hiring of the real property, or makes a written offer to surrender which is accepted in writing by the landlord, but fails to deliver possession at the time specified in that written notice, without the permission of his or her landlord, or the successor in estate of the landlord, if applicable.

As used in this section, tenant includes any person who hires real property except those persons whose occupancy is described in subdivision (b) of Section 1940 of the Civil Code.

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.

SEC. 3. Section 1161 is added to the Code of Civil Procedure, to read:

1161. A tenant of real property, for a term less than life, or the executor or administrator of his or her estate heretofore qualified and now acting or hereafter to be qualified and act, is guilty of unlawful detainer:

1. When he or she continues in possession, in person or by subtenant, of the property, or any part thereof, after the expiration of the term for which it is let to him or her; provided the expiration is of a nondefault nature however brought about without the permission of his or her landlord, or the successor in estate of his or her landlord, if applicable; including the case where the person to be removed became the occupant of the premises as a servant, employee, agent, or licensee and the relation of master and servant, or employer and employee, or principal and agent, or licensor and licensee, has been lawfully terminated or the time fixed for occupancy by the agreement between the parties has expired; but nothing in this subdivision shall be construed as preventing the removal of the occupant in any other lawful manner; but in case of a tenancy at will, it must first be terminated by notice, as prescribed in the Civil Code.

2. When he or she continues in possession, in person or by subtenant, without the permission of his or her landlord, or the successor in estate of his or her landlord, if applicable, after default in the payment of rent, pursuant to the lease or agreement under which the property is held, and three days' notice, in writing, requiring its payment, stating the amount which is due, the name, telephone number, and address of the person to whom the rent payment shall be made, and, if payment may be made personally, the usual days and hours that person will be available to receive the payment (provided that, if the address does not allow for personal delivery, then it shall be conclusively presumed that upon the mailing of any rent or notice to the owner by the tenant to the name and address provided, the notice or rent is deemed received by the owner on the date posted, if the tenant can show proof of mailing to the name and address provided by the owner), or the number of an account in a financial institution into which the rental payment may be made, and the name and street address of the institution (provided that the institution is located within five miles of the rental property), or if an electronic funds transfer procedure has been previously established, that payment

may be made pursuant to that procedure, or possession of the property, shall have been served upon him or her and if there is a subtenant in actual occupation of the premises, also upon the subtenant.

The notice may be served at any time within one year after the rent becomes due. In all cases of tenancy upon agricultural lands, where the tenant has held over and retained possession for more than 60 days after the expiration of the term without any demand of possession or notice to quit by the landlord or the successor in estate of his or her landlord, if applicable, he or she shall be deemed to be holding by permission of the landlord or successor in estate of his or her landlord, if applicable, and shall be entitled to hold under the terms of the lease for another full year, and shall not be guilty of an unlawful detainer during that year, and the holding over for that period shall be taken and construed as a consent on the part of a tenant to hold for another year.

3. When he or she continues in possession, in person or by subtenant, after a neglect or failure to perform other conditions or covenants of the lease or agreement under which the property is held, including any covenant not to assign or sublet, than the one for the payment of rent, and three days' notice, in writing, requiring the performance of such conditions or covenants, or the possession of the property, shall have been served upon him or her, and if there is a subtenant in actual occupation of the premises, also, upon the subtenant. Within three days after the service of the notice, the tenant, or any subtenant in actual occupation of the premises, or any mortgagee of the term, or other person interested in its continuance, may perform the conditions or covenants of the lease or pay the stipulated rent, as the case may be, and thereby save the lease from forfeiture; provided, if the conditions and covenants of the lease, violated by the lessee, cannot afterward be performed, then no notice, as last prescribed herein, need be given to the lessee or his or her subtenant, demanding the performance of the violated conditions or covenants of the lease.

A tenant may take proceedings, similar to those prescribed in this chapter, to obtain possession of the premises let to a subtenant or held by a servant, employee, agent, or licensee, in case of his or her unlawful detention of the premises underlet to him or her or held by him or her.

4. Any tenant, subtenant, or executor or administrator of his or her estate heretofore qualified and now acting, or hereafter to be qualified and act, assigning or subletting or committing waste upon the demised premises, contrary to the conditions or covenants of his or her lease, or maintaining, committing, or permitting the maintenance or commission of a nuisance upon the demised premises or using the premises for an unlawful purpose, thereby terminates the lease, and the landlord, or his or her successor in estate, shall upon service of three days' notice to quit

upon the person or persons in possession, be entitled to restitution of possession of the demised premises under this chapter. For purposes of this subdivision, a person who commits an offense included in paragraph (1) of subdivision (c) of Section 11571.1 of the Health and Safety Code, or subdivision (c) of Section 3485 of the Civil Code, or uses the premises to further the purpose of that offense shall be deemed to have committed a nuisance upon the premises.

5. When he or she gives written notice as provided in Section 1946 of the Civil Code of his or her intention to terminate the hiring of the real property, or makes a written offer to surrender which is accepted in writing by the landlord, but fails to deliver possession at the time specified in that written notice, without the permission of his or her landlord, or the successor in estate of the landlord, if applicable.

As used in this section, tenant includes any person who hires real property except those persons whose occupancy is described in subdivision (b) of Section 1940 of the Civil Code.

This section shall become operative on January 1, 2012.

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 victims of domestic violence, sexual assault, and stalking may avail themselves of the protections afforded by this act as soon as possible, it is necessary that this act take effect immediately.

CHAPTER 441

An act to add Section 24045.19 to the Business and Professions Code, relating to alcoholic beverages.

[Approved by Governor September 27, 2008. Filed with Secretary of State September 27, 2008.]

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

SECTION 1. Section 24045.19 is added to the Business and Professions Code, to read:

24045.19. (a) The department may issue a special temporary on-sale wine license to a nonprofit corporation, exempt from payment of income taxes under Section 23701a or 23701e of the Revenue and Taxation Code and Section 501(c)(5) or 501(c)(6) of the Internal Revenue Code,

if a majority of whose members are either licensed winegrowers, winegrape growers, or professionals in the fields of enology or viticulture. The license shall authorize the sale of wine for consumption on the premises where sold, and no off-sale privileges shall be exercised under this license. An applicant for this license shall accompany the application with a fee equal to the actual cost of issuing the license, but not to exceed seventy-five dollars ($75) per day.

(b) This special license shall only entitle the licensee to sell to the general public wine bought by, or donated to, the licensee under either of the following conditions:

(1) The wine is sold as part of a class, seminar, or other instructional event organized by the licensee to educate the general public on topics related to enology or viticulture. The instruction may include, without limitation, the history, nature, values, and characteristics of the wines and grapes that were used to make the wines. A single tasting of wine shall not exceed one ounce. The licensee shall remove any wine not consumed during the instruction that the licensee provided following the instruction.

(2) The wine is sold at a winetasting event organized by the licensee to educate and instruct the general public with respect to the uses and value of winegrapes from a particular agricultural region that is related to the licensee's exempt purpose. A single tasting of wine shall not exceed one ounce. If the licensee's name, or any name under which the licensee does business, includes the designation of an American appellation of origin, as defined in Section 4.25 of Title 27 of the Code of Federal Regulations, the wines sold by the licensee pursuant to this license shall be labeled with the named appellation of origin, or an appellation of origin located entirely within the named appellation of origin. The licensee shall remove any wine not consumed during the winetasting event that the licensee provided following the winetasting event.

(c) A class, seminar, instructional event, or winetasting event organized pursuant to this section shall not be directed toward a specific private brand or trade name, although private brands and trade names may be used at the events.

(d) Only six special licenses authorized by this section shall be issued to any single nonprofit corporation in any one calendar year. The special license shall be for a period not to exceed two consecutive days.

(e) Notwithstanding any other provision of this division, licensees may donate wine or sell wine to a nonprofit corporation that obtains a special temporary on-sale license under this section, provided the donation is not made in connection with a sale of an alcoholic beverage.

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 442

An act to amend Section 66536.1 of, and to add Sections 66536.2 and 66646.2 to, the Government Code, relating to regional planning.

[Approved by Governor September 27, 2008. Filed with Secretary of State September 27, 2008.]

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

SECTION 1. Section 66536.1 of the Government Code is amended to read:

66536.1. (a) The joint policy committee shall prepare a report analyzing the feasibility of consolidating functions separately performed by ABAG and MTC. The report shall be reviewed and approved by MTC and the ABAG executive board and submitted to the Legislature by January 1, 2006.

(b) The combined membership of the joint policy committee shall include at least one representative from each of the nine regional counties: Alameda, Contra Costa, Marin, Napa, Sonoma, San Mateo, San Francisco, Santa Clara, and Solano. Effective January 1, 2011, a majority of the representatives appointed to the joint policy committee by the San Francisco Bay Conservation and Development Commission shall be locally elected officials.

(c) The joint policy committee shall coordinate the development and drafting of major planning documents prepared by ABAG, MTC, the Bay Area Air Quality Management District, and the San Francisco Bay Conservation and Development Commission, including reviewing and commenting on major interim work products and the final draft comments prior to action by ABAG, MTC, the Bay Area Air Quality Management District, and the San Francisco Bay Conservation and Development Commission. These documents include, but are not limited to, the following:

(1) Beginning with the next plan update scheduled to be adopted in 2008, the regional transportation plan prepared by MTC and described in Section 66508 of the Government Code.

(2) The ABAG Housing Element planning process for regional housing needs pursuant to Article 10.6 (commencing with Section 65580) of Chapter 3 of Division 1 of Title 7.

(3) The Bay Area Air Quality Management District's Ozone Attainment Plan and Clean Air Plan.

(4) The San Francisco Bay Plan and related documents.

SEC. 2. Section 66536.2 is added to the Government Code, to read:

66536.2. (a) The Legislature finds and declares:

(1) The Association of Bay Area Governments, the Bay Area Air Quality Management District, and the Metropolitan Transportation Commission have been working together through a joint policy committee to coordinate and improve the quality of land use, transportation, and air quality planning in the Bay Area.

(2) The San Francisco Bay Conservation and Development Commission has comprehensive planning and regulatory authority in all nine Bay Area counties for the San Francisco Bay, Suisun Marsh, their respective shorelines, certain waterways, salt ponds, and managed wetlands, and through that authority plays a critical role in the land use and transportation future of the Bay Area.

(3) The San Francisco Bay Conservation and Development Commission has an active interest in regional planning, as it has expressed a desire to join the joint policy committee, and the joint policy committee has determined it would benefit by adding the San Francisco Bay Conservation and Development Commission as a member.

(b) The joint policy committee shall include the San Francisco Bay Conservation and Development Commission as a represented agency with an equal number of committee members as other represented agencies by January 1, 2009.

SEC. 3. Section 66646.2 is added to the Government Code, to read:

66646.2. The San Francisco Bay Conservation and Development Commission, in coordination with local governments, regional councils of government, and other agencies and interested parties, may develop regional strategies, as needed, for addressing the impacts of, and adapting to, the effects of sea level rise and other impacts of global climate change on the San Francisco Bay and affected shoreline areas. These regional strategies may include, but are not limited to, the following:

(a) Identification of areas that may be subject to erosion, inundation, or other impacts from sea level rise and climate change.

(b) Economic and environmental analyses of the benefits and costs of protecting the areas likely to be impacted.

(c) A plan that describes how to mitigate and adapt to projected sea level rise and other climate-change impacts on the bay and shoreline, including protecting resources from erosion and inundation, and maintaining, restoring, or enhancing the productivity of bay and shoreline environments.

SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district are the result of a program for which legislative authority was requested by that local agency or school district, within the meaning of Section 17556 of the Government Code and Section 6 of Article XIII B of the California Constitution.

CHAPTER 443

An act to amend Section 19605.75 of the Business and Professions Code, relating to horse racing.

[Approved by Governor September 27, 2008. Filed with Secretary of State September 27, 2008.]

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

SECTION 1. Section 19605.75 of the Business and Professions Code is amended to read:

19605.75. (a) The Legislature finds and declares that the existence of high caliber thoroughbred racing in California is important to this state's agricultural economy. The California horse racing industry is being threatened by the escalating costs of doing business in California, including, but not limited to, workers' compensation insurance costs, in that these costs are not only causing thoroughbred horses and trainers to leave this state, but are also discouraging owners and trainers from bringing horses into this state to compete. It is the intent of the Legislature to provide some relief from these escalating costs through the redistribution of the parimutuel handle on exotic wagers.

(b) Notwithstanding Section 19610, every thoroughbred association and fair that conducts a racing meet shall deduct an additional 0.5 percent of the total amount handled in exotic parimutuel pools of thoroughbred races.

(c) The funds collected pursuant to subdivision (b) from exotic parimutuel pools on thoroughbred races within the inclosure of a thoroughbred association or fair conducting a race meeting, at satellite

wagering facilities within this state, and through advance deposit wagering by residents of this state, shall be distributed to the organization described in subdivision (f) to be used in accordance with subdivision (e).

(d) Any thoroughbred association or fair that authorizes a betting system located outside of this state to accept exotic wagers on its races and to combine those wagers in the association's or fair's exotic parimutuel pools, including, but not limited to, a multijurisdictional wagering hub as to exotic wagers made by residents other than those of this state, shall deduct the amount specified in subdivision (b) in addition to any other applicable deductions specified in law. The amount deducted pursuant to this subdivision shall be distributed to the organization described in subdivision (f) to be used in accordance with subdivision (e). This additional deduction shall not be included in the amount on which license fees are determined pursuant to Section 19602.

(e) The amounts distributed to the organization described in subdivision (f) shall be deposited by that organization in a separate account to defray the costs of workers' compensation insurance incurred in connection with thoroughbred horses that race in this state at thoroughbred associations and racing fairs through the payment of supplemental premiums that reduce rates, payment to or for the benefit of trainers and owners of such thoroughbreds, based on the number of such thoroughbreds they start, in order to reimburse them for the costs of workers' compensation insurance directly or indirectly incurred by them, and other appropriate payments. Any funds that are not used for the purposes set forth in this subdivision shall, after an affirmative vote of at least 25 of the voting interests of the organization described in subdivision (f), either be carried forward to the subsequent year, or be used to reimburse racing associations for the actual cost of health and safety programs, research or safety equipment, or making capital improvements that are designed to prevent workplace accidents and increase the safety of jockeys, exercise riders, backstretch employees, and other racetrack personnel. Those capital improvements shall include, but not be limited to, safety improvements to racing and training surfaces. All requests for reimbursements shall be approved by the board. In developing proposals for approval by the board, the association shall confer with their horsemen's organizations and all affected labor organizations or associations.

(f) The thoroughbred racing associations and the owners' organization described in subdivision (b) of Section 19613 shall form an organization to which funds shall be distributed pursuant to subdivisions (c) and (d). This organization shall have a total of 34 voting interests, of which 16 shall be allocated to the organization representing thoroughbred owners

pursuant to Section 19613, one shall be allocated to the official registering agency for thoroughbreds in California, and one shall be allocated to the organization representing thoroughbred trainers pursuant to Section 19613. The remaining 16 votes shall be allocated among the licensed racing associations and racing fairs in the state. Each racing association and fair shall receive the portion of these remaining votes represented by the sum of exotic wagering on its races divided by the statewide total of exotic wagering in the preceding calendar year, excluding Breeders Cup races. Fractional voting shall be permitted. Any decision of this organization with respect to the allocation of funds pursuant to subdivisions (c) and (d) shall require the affirmative vote of 25 of these voting interests. In the event that the required number of affirmative votes cannot be obtained, the matter shall be submitted to the board for a decision consistent with subdivision (e), and the decision of the board shall be final.

(g) (1) The organization formed pursuant to this section shall account annually to the board with respect to the expenditure and distribution of funds received by the organization pursuant to subdivisions (c) and (d), and shall obtain an independent audit of fund generation and distribution. A copy of the completed audit shall be forwarded to the board within 45 days of its receipt by the organization.

(2) No earlier than 18 months and no later than two years following the effective date of this section, the organization described in subdivision (f) shall commission an independent evaluation of the effectiveness of the distributions under this section along with recommendations for any improvements or modifications regarding the program created in this section. A copy of that evaluation along with a report detailing the organization's response to the evaluation shall be filed with the board within 30 days of the receipt of the final evaluation.

(h) Between January 1, 2014, and July 1, 2014, any unexpended funds collected under this section shall be distributed to organizations formed and operated pursuant to Sections 19607 and 19607.2 based upon the total thoroughbred handle in their respective zones in the year 2013.

(i) Except for subdivision (h), this section shall become inoperative on January 1, 2014, and as of January 1, 2015, this entire section is repealed, unless a later enacted statute, that is enacted before January 1, 2015, deletes or extends that date.

CHAPTER 444

An act to amend Section 10108.5 of the Public Contract Code, relating to public contracts.

[Approved by Governor September 27, 2008. Filed with
Secretary of State September 27, 2008.]

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

SECTION 1. Section 10108.5 of the Public Contract Code is amended to read:

10108.5. (a) When the nature of the work by departments, boards, commissions, or conservancies within the Resources Agency, in the opinion of the Department of General Services, is such that its services in connection therewith are not required, it may authorize the carrying out of the project directly by the department within the Resources Agency concerned therewith if the estimated cost does not exceed five hundred thousand dollars ($500,000). This limit shall be adjusted pursuant to subdivision (b) of Section 10105.

(b) If the estimated total cost of any construction project or work carried out under this section exceeds fifty thousand dollars ($50,000), the Department of Forestry and Fire Protection shall solicit bids in writing and shall award the work to the lowest responsible bidder or reject all bids. However, the Director of General Services may authorize the Department of Forestry and Fire Protection to carry out work in excess of fifty thousand dollars ($50,000) under this section by day labor if he or she deems that the award of a contract, the acceptance of bids, or the acceptance of further bids is not in the best interests of the state. However, in no event shall the amount of work performed by day labor under this section exceed the sum of one hundred thousand dollars ($100,000). This limit shall be adjusted pursuant to subdivision (b) of Section 10105.

(c) Notwithstanding the cost limitation of subdivision (a), the State Coastal Conservancy may, if authorized by the Department of General Services as described in subdivision (a), directly carry out a public works project involving habitat or wetlands restoration and related pedestrian or cycling access improvements, not including buildings or other nonaccess related structures on the following state-owned lands: Bel Marin Keys Unit V in Marin County, Eden Landing Ecological Reserve (a part of the South Bay Salt Pond Restoration Project) in Alameda County, Bair Island Ecological Reserve in San Mateo County, Napa Sonoma Marshes State Wildlife Area in Napa, Solano, and Sonoma Counties, Ballona Wetlands Ecological Reserve in Los Angeles County, Buena Vista Lagoon Ecological Reserve in San Diego County, Los Peñasquitos Marsh in Torrey Pines State Natural Reserve in San Diego County, and Tijuana Estuary State Park in San Diego County. In carrying out a public works project pursuant to this subdivision, the State Coastal

Conservancy shall comply with the provisions of, and regulations adopted pursuant to, this chapter.

CHAPTER 445

An act to amend Section 1874.8 of the Insurance Code, relating to insurance.

[Approved by Governor September 27, 2008. Filed with Secretary of State September 27, 2008.]

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

SECTION 1. Section 1874.8 of the Insurance Code is amended to read:

1874.8. (a) Each insurer doing business in this state shall pay an annual special assessment to be determined by the commissioner, but not to exceed fifty cents ($0.50) annually for each vehicle insured under an insurance policy it issues in this state, in order to fund the Fraud Division and an Organized Automobile Fraud Activity Interdiction Program. The commissioner shall award 3 to 10 grants for a coordinated program targeted at the successful prosecution and elimination of organized automobile fraud activity. The grants may only be awarded to district attorneys.

(b) In determining whether to award a district attorney a grant, the commissioner shall consider factors indicating organized automobile fraud activity in the district attorney's county, including, but not limited to, the county's level of general criminal activity, population density, automobile insurance claims frequency, number of suspected fraudulent claims, and prior and current evidence of organized automobile fraud activity. Funding priority shall be given to those grant applications with the potential to have the greatest impact on organized automobile insurance fraud activity.

(c) All participants of a grant referred to in subdivision (a) shall coordinate their efforts and work in conjunction with the bureau, other participating agencies, and all interested insurers in this regard. Of the funds collected pursuant to this section, 42.5 percent shall be distributed to district attorneys, 42.5 percent shall be distributed to the Fraud Division, and 15 percent shall be distributed to the Department of the California Highway Patrol. Funds distributed pursuant to this section to the Fraud Division and to the Department of the California Highway Patrol shall be used to fund bureau and Department of the California

Highway Patrol investigators who shall be assigned to work solely in conjunction with district attorneys who are awarded grants. Each grantee shall be notified by the Fraud Division of the investigators assigned to work with the grantee. Nothing shall prohibit the referral of any cases developed by the Fraud Division to any appropriate prosecutorial entity.

(d) A grant under this section shall be awarded on the basis of a single application for a period of three years and shall be subject where applicable to the requirements of subdivision (b) of Section 1872.8, except for the requirement that grants be awarded according to population. Continued funding of a grant shall be contingent upon a grantee's successful performance as determined by an annual review by the commissioner. Any redirection of grant funds under this section shall be made only for good cause. The Department of the California Highway Patrol shall submit to the commissioner, for informational purposes only, an annual report on its expenditure of funds under this section in the same format as is required of grantees under this section.

(e) There shall be no prohibition against a joint application by two or more district attorneys for a grant award under this section.

(f) The Fraud Division shall report to the Governor, the Legislature, and to the committees of the Senate and Assembly having jurisdiction over insurance on the results of the grant program established by this section, including funding distributed to the Department of the California Highway Patrol in the annual report submitted pursuant to Section 12922.

(g) For purposes of this section, "organized automobile fraud activity" means two or more persons who conspire, aid and abet, or in any other manner act together, to engage in economic automobile theft as defined in subdivision (f) of Section 1872.8, or to violate any of the following provisions in relation to an automobile insurance claim:

(1) Section 650 or 6152 of the Business and Professions Code.

(2) Section 750 of the Insurance Code.

(3) Section 549, 550, or 551 of the Penal Code.

(h) This section shall remain in effect only until January 1, 2015, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2015, deletes or extends that date.

CHAPTER 446

An act relating to tidelands and submerged lands granted by the state to the City of Long Beach, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 27, 2008. Filed with
Secretary of State September 27, 2008.]

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

SECTION 1. The Legislature finds and declares that the provisions of this act are necessary for the promotion of the public interest and are of statewide concern.

SEC. 2. The State Lands Commission is authorized to negotiate and execute on behalf of the State of California a contract with the City of Long Beach and its tidelands oil operating contractor, that provides financial incentives for the contractor to explore for and develop additional oil reserves beneath the tidelands and submerged lands, whether unitized or nonunitized, covered by the Long Beach Harbor Tidelands Parcel and Parcel "A" Oil Contract and beneath the uplands parcels in the Fault Block II Unit, the Fault Block III Unit, the Fault Block IV Unit, and the Fault Block V Ranger Zone Unit in the Wilmington oil field. This act and any contract entered into pursuant to this act shall not supersede or amend the Long Beach Harbor Tidelands Parcel and Parcel "A" Oil Contract except to extend its term as provided in Section 4. Furthermore, neither this act nor any contract entered into pursuant to this act shall supersede or amend the Unit Agreements or Unit Operating Agreements for the Fault Block II Unit, the Fault Block III Unit, the Fault Block IV Unit, or the Fault Block V Ranger Zone Unit, or any other contract relating to the drilling for, developing, extracting, processing, taking, or removing of oil, gas, and other hydrocarbons from the tide and submerged lands and uplands parcels referred to in this section.

SEC. 3. The contract entered into pursuant to Section 2 shall provide for the preservation of the current method for sharing among the contractor, the State of California, and the City of Long Beach of revenues from the sale of production under the Long Beach Harbor Tidelands Parcel and Parcel "A" Oil Contract with regard to all current oil reserves. The contract shall provide a means responsive to the market price of crude oil for determining the additional oil reserves and a method for sharing the revenues from the development of these additional oil reserves among the State of California, the City of Long Beach, and the contractor that will provide both an economic incentive to the contractor to pursue the development of these additional oil reserves and a fair and equitable return to the State of California and the City of Long Beach. The contract shall require the contractor to spend an amount to be negotiated for geologic and engineering evaluation and development in any oil and gas zones beneath the tide and submerged lands covered by

the Long Beach Harbor Tidelands Parcel and Parcel "A" Oil Contract. The contractor shall be required to prepare, on a regular and continuing basis, plans and budgets for the exploration for and development of the additional oil reserves. The staff of the State Lands Commission shall be permitted to review these plans and budgets for consistency with good oil field practice, compliance with the goals of the program for the development of additional oil reserves, and responsiveness to environmental and safety concerns. The contract shall permit the City of Long Beach, the State Lands Commission staff, and the contractor to take whatever actions may be necessary to secure the approval of the working interest owners of the determinations sought in furtherance of the exploration and development plans pursuant to the terms of the Unit Agreements and Unit Operating Agreements for the Fault Block II, Fault Block III, Fault Block IV, and Fault Block V Ranger Zone Units.

SEC. 4. The term of the Long Beach Harbor Tidelands Parcel and Parcel "A" Oil Contract may be extended upon the execution of the contract authorized in Section 2 to the time when oil, gas, or other hydrocarbons from the zones beneath the tide and submerged lands covered by the contract no longer can be produced in paying quantities, notwithstanding the termination of any or all of the Fault Block II, Fault Block III, Fault Block IV, and Fault Block V Ranger Zone Units, or anything to the contrary in Chapter 1163 of the Statutes of 1991, or the Long Beach City Charter.

SEC. 5. Any revenue payable to the City of Long Beach solely from the sale of production of additional oil reserves under the contract authorized by Section 2 shall be paid to the City of Long Beach before the distribution of "remaining oil revenue," as defined in Section 4 of Chapter 138 of the Statutes of 1964, First Extraordinary Session. This additional revenue, when received by the City of Long Beach, shall be used for the purposes and in the manner set forth in Section 6 of Chapter 138 of the Statutes of 1964, First Extraordinary Session, as amended by Section 8 of Chapter 941 of the Statutes of 1991.

SEC. 6. The contractor under the contract authorized in Section 2 may use any means of enhanced oil recovery consistent with good oil field practice to develop additional oil reserves. Notwithstanding anything to the contrary in Chapter 941 of the Statutes of 1991, the contractor under the contract authorized by Section 1 of Chapter 941 of the Statutes of 1991 may use all types of enhanced oil recovery applications that are consistent with good oil field practice to increase oil recovery in the course of implementing the optimized waterflood program for the Long Beach Unit.

SEC. 7. Any oil extracted pursuant to Section 2 shall maintain the same environmental footprint that exists as of July 1, 2008, including

limiting any new wells to the industrialized area of the Port of Long Beach or the Port of Los Angeles, and requiring that any wells drilled pursuant to Section 2 shall be drilled from an onshore location.

SEC. 8. To the extent any provision of this act conflicts with Chapter 138 of the Statutes of 1964 (First Extraordinary Session), Chapter 29 of the Statutes of 1956 (First Extraordinary Session), the Long Beach City Charter, or any law or ordinance of the City of Long Beach, the provisions of this act shall prevail.

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

In order to implement as soon as possible the exploration for and development of additional oil reserves that should produce more oil, prevent waste of oil and gas resources, and bring additional money to the State Treasury, it is necessary that this act take effect immediately.

CHAPTER 447

An act to amend Sections 47000, 47001, 47002, and 47003 of, to add the heading of Article 1.5 (commencing with Section 47004) to Chapter 10.5 of Division 17 of, and to add Article 5 (commencing with Section 47030) to Chapter 10.5 of Division 17 of, the Food and Agricultural Code, and to amend Sections 113789, 113877, and 113880 of, to add Section 113778.2 to, and to add Chapter 12.5 (commencing with Section 114375) to Part 7 of Division 104 of, the Health and Safety Code, relating to farm stands.

[Approved by Governor September 27, 2008. Filed with Secretary of State September 27, 2008.]

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

SECTION 1. Section 47000 of the Food and Agricultural Code is amended to read:

47000. The Legislature finds and declares all of the following with regard to the direct marketing of agricultural products:

(a) Direct marketing of agricultural products benefits the agricultural community and the consumer by, among other things, providing an alternative method for growers to sell their products while benefiting the consumer by supplying quality produce at reasonable prices.

(b) Direct marketing is a good public relations tool for the agricultural industry that brings the farmer face-to-face with consumers.

(c) The marketing potential of a wide variety of California-produced agricultural products should be maximized.

(d) Farm stands allow farmers to sell fresh produce and eggs grown on their farm as well as other food products made with ingredients produced on or near the farm, thus enhancing their income and the local economy.

(e) The department should maintain a direct marketing program and the industry should continue to encourage the sale of California-grown fresh produce.

(f) It is the intent of the state to promote the consumption of California-grown produce and to promote access to California-produced agricultural products. Restaurants and nonprofit organizations can provide assistance in bringing California-grown products to all Californians.

(g) A regulatory scheme should be developed that provides the flexibility that will make direct marketing a viable marketing system.

(h) The department should assist producers in organizing certified farmers' markets, field retail stands, farms stands, and other forms of direct marketing by providing technical advice on marketing methods and in complying with the regulations that affect direct marketing programs.

(i) The department is encouraged to establish an ad hoc advisory committee to assist the department in establishing regulations affecting direct marketing of products and to advise the secretary in all matters pertaining to direct marketing.

SEC. 2. Section 47001 of the Food and Agricultural Code is amended to read:

47001. (a) The secretary may adopt regulations to encourage the direct sale by farmers to the public of all types of California agricultural products.

(b) These regulations may include provisions to ensure and maintain quality and wholesomeness of the products, and to ensure that the selling activities are conducted without fraud, deception, or misrepresentation.

SEC. 3. Section 47002 of the Food and Agricultural Code is amended to read:

47002. California farmers may transport for sale and sell California-grown fresh fruits, nuts, and vegetables that they produce, directly to the public, which produce shall be exempt from size, standard pack, container, and labeling requirements, at a certified farmers' market, as defined in Section 47004, a field retail stand, as defined in Section 47030, or a farm stand, as defined in Section 47050, subject to the following conditions:

(a) All fresh fruits, nuts, and vegetables sold shall comply with the California Code of Regulations governing maturity and quality.

(b) No exemption granted by this section supersedes the provisions of federal marketing orders, state marketing orders, or any health and safety laws, regulations, or ordinances.

(c) All fresh fruits, nuts, and vegetables sold in closed consumer containers shall be labeled with the name, address, and ZIP Code of the producer, and a declaration of identity and net quantity of the commodity in the package.

(d) If a farmer selling produce pursuant to this section implements any exemption to size, standard pack, container, or labeling requirements as provided by this section, those sales may only be conducted as direct sales to the following:

(1) Consumers who are end users.

(2) Individuals, organizations, or entities that subsequently sell the produce directly to end users.

(3) Individuals, organizations, or entities that distribute the produce directly to end users at no cost to those end users.

(e) A farmer selling produce under paragraph (2) or (3) of subdivision (d) shall provide the individual, organization, or entity a memorandum that lists the identity of the producer, the address of the producer, and the identity and quantity of the produce purchased. A bill of sale or a container label including this information shall meet the requirements of this subdivision.

SEC. 4. Section 47003 of the Food and Agricultural Code is amended to read:

47003. The secretary may establish qualifications for persons selling products directly to the public whenever the sales involve the use of any exemption granted by this chapter. Certified farmers' markets and other direct marketing outlets and distributors may likewise be subject to qualifications.

SEC. 5. The heading of Article 1.5 (commencing with Section 47004) is added to Chapter 10.5 of Division 17 of the Food and Agricultural Code, to read:

Article 1.5. Certified Farmers' Markets

SEC. 6. Article 5 (commencing with Section 47030) is added to Chapter 10.5 of Division 17 of the Food and Agricultural Code, to read:

Article 5. Other Direct Marketing Outlets and Distributions

47030. Field retail stands are producer-owned and operated premises located at or near the point of production established in accordance with local ordinances and land use codes.

47050. Farm stands arefield retail stands, as defined in Section 47030, that sell or offer for sale California agricultural products grown or produced by the producer, and also sell or offer for sale nonpotentially hazardous prepackaged food products from an approved source or bottled water or soft drinks. All agricultural products, processed or otherwise, sold at a farm stand shall be consistent in manner and character with the intent of this chapter.

SEC. 7. Section 113778.2 is added to the Health and Safety Code, to read:

113778.2. "Farm stands" are premises, established in accordance with local ordinances and land use codes, defined under and operated pursuant to Chapter 10.5 (commencing with Section 47000) of Division 17 of the Food and Agricultural Code and regulations adopted and enforced pursuant to that chapter, operating within the requirements set forth in Sections 113789 and 114375.

SEC. 8. Section 113789 of the Health and Safety Code is amended to read:

113789. (a) "Food facility" means an operation that stores, prepares, packages, serves, vends, or otherwise provides food for human consumption at the retail level, including, but not limited to, the following:

(1) An operation where food is consumed on or off the premises, regardless of whether there is a charge for the food.

(2) Any place used in conjunction with the operations described in this subdivision, including, but not limited to, storage facilities for food-related utensils, equipment, and materials.

(b) "Food facility" includes permanent and nonpermanent food facilities, including, but not limited to, the following:

(1) Public and private school cafeterias.

(2) Restricted food service facilities.

(3) Licensed health care facilities.

(4) Commissaries.

(5) Mobile food facilities.

(6) Mobile support units.

(7) Temporary food facilities.

(8) Vending machines.

(9) Certified farmers' markets, for purposes of permitting and enforcement pursuant to Section 114370.

(10) Farm stands, for purposes of permitting and enforcement pursuant to Section 114375.

(c) "Food facility" does not include any of the following:

(1) A cooperative arrangement wherein no permanent facilities are used for storing or handling food.

(2) A private home.

(3) A church, private club, or other nonprofit association that gives or sells food to its members and guests, and not to the general public, at an event that occurs not more than three days in any 90-day period.

(4) A for-profit entity that gives or sells food at an event that occurs not more than three days in a 90-day period for the benefit of a nonprofit association, if the for-profit entity receives no monetary benefit, other than that resulting from recognition from participating in an event.

(5) Premises set aside for wine tasting, as that term is used in Section 23356.1 of the Business and Professions Code and in the regulations adopted pursuant to that section, if no food or beverage is offered for sale for onsite consumption.

(6) Premises operated by a producer, selling or offering for sale only whole produce grown by the producer, or shell eggs, or both, provided the sales are conducted on premises controlled by the producer.

(7) A commercial food processing plant as defined in Section 111955.

SEC. 8.5. Section 113789 of the Health and Safety Code is amended to read:

113789. (a) "Food facility" means an operation that stores, prepares, packages, serves, vends, or otherwise provides food for human consumption at the retail level, including, but not limited to, the following:

(1) An operation where food is consumed on or off the premises, regardless of whether there is a charge for the food.

(2) Any place used in conjunction with the operations described in this subdivision, including, but not limited to, storage facilities for food-related utensils, equipment, and materials.

(b) "Food facility" includes permanent and nonpermanent food facilities, including, but not limited to, the following:

(1) Public and private school cafeterias.

(2) Restricted food service facilities.

(3) Licensed health care facilities.

(4) Commissaries.

(5) Mobile food facilities.

(6) Mobile support units.

(7) Temporary food facilities.

(8) Vending machines.

(9) Certified farmers' markets, for purposes of permitting and enforcement pursuant to Section 114370.

(10) Farm stands, for purposes of permitting and enforcement pursuant to Section 114375.

(c) "Food facility" does not include any of the following:

(1) A cooperative arrangement wherein no permanent facilities are used for storing or handling food.

(2) A private home.

(3) A church, private club, or other nonprofit association that gives or sells food to its members and guests, and not to the general public, at an event that occurs not more than three days in any 90-day period.

(4) A for-profit entity that gives or sells food at an event that occurs not more than three days in a 90-day period for the benefit of a nonprofit association, if the for-profit entity receives no monetary benefit, other than that resulting from recognition from participating in an event.

(5) Premises set aside for wine tasting, as that term is used in Section 23356.1 of the Business and Professions Code and in the regulations adopted pursuant to that section, if no food or beverage, except for bottles of wine and prepackaged nonpotentially hazardous beverages, is offered for sale for onsite consumption and no food, except for crackers, is served.

(6) Premises operated by a producer, selling or offering for sale only whole produce grown by the producer, or shell eggs, or both, provided the sales are conducted on premises controlled by the producer.

(7) A commercial food processing plant as defined in Section 111955.

(8) A child day care facility, as defined in Section 1596.750.

(9) A community care facility, as defined in Section 1502.

(10) A residential care facility for the elderly, as defined in Section 1569.2.

(11) A residential care facility for the chronically ill, which has the same meaning as a residential care facility, as defined in Section 1568.01.

SEC. 9. Section 113877 of the Health and Safety Code is amended to read:

113877. "Produce" means any whole edible portion of a plant in its raw and natural state.

SEC. 10. Section 113880 of the Health and Safety Code is amended to read:

113880. "Producer" means a person or entity who produces shell eggs or edible plants by practice of the agricultural arts upon land that the person or entity controls.

SEC. 11. Chapter 12.5 (commencing with Section 114375) is added to Part 7 of Division 104 of the Health and Safety Code, to read:

Chapter 12.5. Farm Stands

114375. Farm stands shall be in conformity with the definition and provisions of Section 113778.2 and meet all of the following requirements:

(a) Food preparation is prohibited at farm stands with the exception of food samples which may only occur if conducted in accordance with paragraphs (1) to (8), inclusive, of subdivision (b) of Section 114371.

(b) Approved toilet and handwashing facilities consistent with Article 4 (commencing with Section 113310) of Chapter 11 of Part 6 shall be available for use by farm stand operators or their employees when food sampling is conducted pursuant to subdivision (a).

(c) Food sales from farm stands shall be limited to the following:

(1) Whole produce and shell eggs as described in paragraph (6) of subdivision (c) of Section 113789.

(2) Nonpotentially hazardous prepackaged food products from an approved source that were grown or produced in close proximity to the farm stand and in a manner consistent with the intent of Chapter 10.5 (commencing with Section 47000) of Division 17 of the Food and Agricultural Code.

(3) Any nonpotentially hazardous prepackaged food products, including bottled water and soft drinks, from an approved source that has not been grown or produced in close proximity to the farm stand shall be limited to a 50-square-foot storage and sales area.

(d) No live animals, birds, or fowl shall be kept or allowed within 20 feet of any area where food is stored or held for sale. This subdivision does not apply to guide dogs, signal dogs, or service dogs when used in the manner specified in Section 54.1 of the Civil Code.

(e) All garbage and refuse shall be stored and disposed of in an appropriate manner.

(f) All prepackaged processed food products shall meet the applicable requirements provided in Section 113980 and be stored in an approved vermin proof area or container when the farm stand facility is closed.

SEC. 12. Section 8.5 of this bill incorporates amendments to Section 113789 of the Health and Safety Code proposed by both this bill and SB 1359. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2009, (2) each bill amends Section 113789 of the Health and Safety Code, and (3) this bill is enacted after SB 1359, in which case Section 8 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 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 448

An act to add Section 19532.1 to the Business and Professions Code, relating to horse racing.

[Approved by Governor September 27, 2008. Filed with Secretary of State September 27, 2008.]

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

SECTION 1. Section 19532.1 is added to the Business and Professions Code, to read:

19532.1. (a) Notwithstanding any other provision of law, excluding venues under construction for the purpose of expanded year-round stabling and training for thoroughbred race horses, if a venue used for thoroughbred racing by an association or racing fair licensed to conduct thoroughbred racing in the central zone in 2008 is not available for racing in 2009 or thereafter, the dates formerly allocated to that venue shall be available for allocation by the board to licensed associations or racing fairs in the southern or central zone.

(b) Upon allocation of dates pursuant to this section, no association or racing fair licensed to conduct thoroughbred racing in the southern or central zones may receive more than 25 weeks of thoroughbred racing when aggregated among the combined southern and central zones.

(c) Notwithstanding subdivisions (a) and (b), the aggregate allocation of racing weeks conducted in the southern and central zones shall not exceed the total aggregate racing weeks permitted to be run in the southern and central zones by Section 19531.

CHAPTER 449

An act to amend Section 1627.5 of the Business and Professions Code, relating to dentistry.

[Approved by Governor September 27, 2008. Filed with
Secretary of State September 27, 2008.]

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

SECTION 1. Section 1627.5 of the Business and Professions Code is amended to read:

1627.5. (a) No person licensed under this chapter, who in good faith renders emergency care at the scene of an emergency occurring outside the place of that person's practice, or who, upon the request of another person so licensed, renders emergency care to a person for a complication arising from prior care of another person so licensed, shall be liable for any civil damages as a result of any acts or omissions by that person in rendering the emergency care.

(b) A person licensed under this chapter who voluntarily and without compensation or expectation of compensation, and consistent with the dental education and emergency training that he or she receives, provides emergency medical care to a person during a state of emergency declared pursuant to a proclamation issued pursuant to Section 8588, 8625, or 8630 of the Government Code or a declaration of health emergency issued pursuant to Section 101080 of the Health and Safety Code shall not be liable in negligence for any personal injury, wrongful death, or property damage caused by the licensee's good faith but negligent act or omission. This subdivision shall not provide immunity for acts or omissions of gross negligence or willful misconduct. This subdivision shall not limit any immunity provided under subdivision (a).

(c) Notwithstanding any other provision of law, for the duration of a declared state of emergency, pursuant to a proclamation of emergency issued pursuant to Section 8625 of the Government Code, the board may suspend compliance with any provision of this chapter or regulation adopted thereunder that would adversely affect a licensee's ability to provide emergency services.

CHAPTER 450

An act to amend Sections 8698, 8698.1, and 8698.6 of the Business and Professions Code, relating to structural fumigation.

[Approved by Governor September 27, 2008. Filed with
Secretary of State September 27, 2008.]

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

SECTION 1. Section 8698 of the Business and Professions Code is amended to read:

8698. The Director of the Department of Pesticide Regulation shall be designated by the board as its agent for the purposes of carrying out Section 8698.1. The Los Angeles County Agricultural Commissioner, the Orange County Agricultural Commissioner, the Santa Clara County Agricultural Commissioner, or the San Diego County Agricultural Commissioner may each contract with the director to perform increased structural fumigation, inspection, and enforcement activities. These activities shall be funded by the moneys collected pursuant to this chapter.

SEC. 2. Section 8698.1 of the Business and Professions Code is amended to read:

8698.1. (a) If the county has contracted pursuant to Section 8698, any person who performs a structural fumigation in Los Angeles County, Orange County, Santa Clara County, or San Diego County shall pay to the county agricultural commissioner a fee of five dollars ($5) for each treatment conducted at a specific building or structure.

(b) The fees shall be submitted by the 10th day of the month following the month in which the treatment was performed. The fees shall be accompanied by a copy of a monthly pesticide use report showing the addresses, including the department number if applicable, of all structural fumigations. The report shall be in a form required by the director, shall identify the name and address of the person or company performing the fumigation, and shall include any other information requested by the director.

SEC. 3. Section 8698.6 of the Business and Professions Code is amended to read:

8698.6. This chapter shall remain in effect only until January 1, 2011, and as of that date is repealed, unless a later enacted statute, which is chaptered before January 1, 2011, deletes or extends that date.

CHAPTER 451

An act to amend Section 4156 of, and to add Section 9257.5 to, the Vehicle Code, relating to vehicles.

[Approved by Governor September 27, 2008. Filed with Secretary of State September 27, 2008.]

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

SECTION 1. Section 4156 of the Vehicle Code is amended to read:

4156. (a) Other provisions of this code notwithstanding, and except as provided in subdivision (b), the department in its discretion may issue a temporary permit to operate a vehicle when a payment of fees has been accepted in an amount to be determined by, and paid to the department, by the owner or other person in lawful possession of the vehicle. The permit shall be subject to the terms and conditions, and shall be valid for the period of time, that the department shall deem appropriate under the circumstances.

(b) (1) The department shall not issue a temporary permit pursuant to subdivision (a) to operate a vehicle for which a certificate of compliance is required pursuant to Section 4000.3, and for which that certificate of compliance has not been issued, unless the department is presented with sufficient evidence, as determined by the department, that the vehicle has failed its most recent smog check inspection.

(2) Not more than one temporary permit may be issued pursuant to this subdivision to a vehicle owner in a two-year period.

(3) A temporary permit issued pursuant to paragraph (1) is valid for either 60 days after the expiration of the registration of the vehicle or 60 days after the date that vehicle is removed from nonoperation, whichever is applicable at the time that the temporary permit is issued.

(4) A temporary permit issued pursuant to paragraph (1) is subject to Section 9257.5.

SEC. 2. Section 9257.5 is added to the Vehicle Code, to read:

9257.5. (a) Except as provided in subdivision (c), a fee of fifty dollars ($50) shall be paid for each temporary permit issued pursuant to Section 4156 when a certificate of compliance is required pursuant to Section 4000.3.

(b) After deducting its administrative costs, the department shall deposit fees collected pursuant to subdivision (a) in the High Polluter Repair or Removal Account in the Vehicle Inspection and Repair Fund.

(c) The department shall not charge a fee pursuant to subdivision (a) if the department is presented at the time the temporary permit is issued with sufficient evidence, as determined by the department, that the owner of the vehicle is an income eligible applicant who had his or her vehicle accepted into the Bureau of Automotive Repair Consumer Assistance Program as established pursuant to Chapter 5 (commencing with Section 44000) of Part 5 of Division 26 of the Health and Safety Code.

CHAPTER 452

An act to add Section 4060 to the Food and Agricultural Code, and to amend Section 18000.5 of the Government Code, relating to public employment.

[Approved by Governor September 27, 2008. Filed with Secretary of State September 27, 2008.]

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

SECTION 1. Section 4060 is added to the Food and Agricultural Code, to read:

4060. (a) Any compensation to any officer or employee of the state by any nonprofit corporation formed exclusively to aid and assist an association, as provided for in Section 18000.5 of the Government Code, shall be approved by the Division of Fairs and Expositions prior to payment. The nonprofit corporation shall notify the division of the compensation.

(b) The department shall, during regular audits, review the payments from the nonprofit corporation to any state employees and those state employees' responsibilities to the nonprofit corporation. The financial information from the nonprofit corporation shall be made available to the department for the audit. Any compensation shall be justified by related work that is not the normal responsibility of the state officer or employee through his or her employment by an association, including his or her normal duties and working hours. The audit shall also determine if any board member serving on an association is also serving on the board of directors of the related nonprofit corporation and determine if there are any conflicts of interest regarding the payment to the association employees. The audit shall also determine if any officer or employee is receiving compensation from the nonprofit corporation in violation of subdivision (c).

(c) Pursuant to Section 1090 of the Government Code, a state officer or employee of an association shall not be compensated by the nonprofit corporation when that state officer or employee acts in an official capacity with regard to any contract made with the nonprofit corporation.

SEC. 2. Section 18000.5 of the Government Code is amended to read:

18000.5. (a) Notwithstanding Sections 18000 and 19990, any officer or employee of the state may receive for his or her personal use compensation from any nonprofit corporation formed exclusively to aid and assist an entity described in subdivision (b) for services rendered to

the nonprofit corporation and for his or her expenses of performing these services, provided that the nonprofit corporation obtains the prior written approval of the Department of Personnel Administration to provide the compensation to any officer or employee and files with the Controller and the Department of Personnel Administration by September 30 of each year a statement disclosing the names of state officers and employees compensated and their respective amounts of compensation for the preceding fiscal year, and the giving or receipt of the compensation is not in violation of any state or federal law. Any subsequent changes to the compensation for any officer or employee provided under this section must be approved by the Department of Personnel Administration.

The board of directors of the entities described in subdivision (b) shall determine whether the services are incompatible with the state responsibilities of the officer or employee and whether the services rendered to the nonprofit corporation interfere with the officer's or employee's full-time obligation to the state. The board of directors of the entities described in subdivision (b) also shall review any issues of compliance of the nonprofit corporation with the terms of any contractual arrangements with the state independently of the officer's or employee's receiving compensation from the nonprofit corporation.

(b) Any officer or employee of the state may be compensated, as described in subdivision (a), by a nonprofit corporation formed to aid and assist any of the following entities:

(1) A state museum.

(2) A district agricultural association, as provided for in Section 3951 of the Food and Agricultural Code.

CHAPTER 453

An act to amend Section 19616.51 of the Business and Professions Code, relating to horse racing, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 27, 2008. Filed with Secretary of State September 27, 2008.]

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

SECTION 1. Section 19616.51 of the Business and Professions Code is amended to read:

19616.51. Notwithstanding any other provision of law, if the total amount paid to the state as license fees by racing associations and fairs pursuant to this chapter is less than forty million dollars ($40,000,000) in any calendar year, beginning January 1, 2001, and thereafter, all associations and fairs that conducted live racing during the year of the shortfall shall remit to the state, on a pro rata basis according to the amount paid as license fees by each association or fair, the amount necessary to bring the total amount paid to the state as license fees to forty million dollars ($40,000,000). The amounts due under this section, if any, shall be paid from the amount available for commissions, purses, and breeder awards, and shall be paid to the board prior to March 1 of the year following the year of the shortfall.

SEC. 2. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to ensure that the California Horse Racing Board can properly account for, and collect all license fees paid to, the state by racing associations and fairs in the 2008 calendar year and collect any shortfall due from the 2008 horse racing season by March 1, 2009, in compliance with statute, it is necessary for this act to take effect immediately.

CHAPTER 454

An act to amend Section 65915 of the Government Code, relating to housing.

[Approved by Governor September 27, 2008. Filed with Secretary of State September 27, 2008.]

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

SECTION 1. 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 with 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.

Failure to adopt an ordinance shall not relieve a city, county, or city and county from complying with this section.

(b) (1) A city, county, or city and county shall grant one density bonus, the amount of which shall be as specified in subdivision (f), 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).

(3) For the purposes of this section, "total units" or "total dwelling units" does not include units added by a density bonus awarded pursuant to this section or any local law granting a greater density bonus.

(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, as defined in subparagraph (B), and its proportionate share of appreciation, as defined in subparagraph (C), which amount shall be used within five years for any of the purposes described in subdivision (e) of Section 33334.2 of the Health and Safety Code that promote home ownership.

(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 local government's 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 any 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.

(C) The concession or incentive would be contrary to state or federal law.

(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.

(e) (1) In no case may a city, county, or city and county apply any development standard that will have the effect of physically 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 that will have the effect of physically precluding the construction of a development meeting the criteria of subdivision (b) at the densities or with the concessions or incentives permitted under this section, 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, or to grant any waiver or reduction that would be contrary to state or federal law.

(2) A proposal for the waiver or reduction of development standards pursuant to this subdivision shall neither reduce nor increase the number of incentives or concessions to which the applicant is entitled pursuant to subdivision (d).

(f) For the purposes of this chapter, "density bonus" means a density increase over the otherwise maximum allowable residential density 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

Percentage Low-Income Units	Percentage Density Bonus
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 of the number of senior housing units.

(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
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.

(g) (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 in accordance with this subdivision, the applicant shall be entitled to a 15-percent increase above the otherwise maximum allowable residential density 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
24	29
25	30

Percentage Very Low Income	Percentage Density Bonus
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 an increase pursuant to both 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 with appropriate development standards for development at the density described in paragraph (3) of subdivision (c) of Section 65583.2, and is or will be served by adequate public facilities and infrastructure.

(D) 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, not later than the date of approval of the final subdivision map, parcel map, or residential development application, 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.

(E) 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 the transfer.

(F) 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.

(G) 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.

(H) A proposed source of funding for the very low income units shall be identified not later than the date of approval of the final subdivision map, parcel map, or residential development application.

(h) (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.

(i) "Housing development," as used in this section, means a development project for five or more residential units. 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 shall be on contiguous sites that are the subject of one development application, but 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.

(j) 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.

(k) 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.

(*l*) Subdivision (k) 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) If permitted by local ordinance, 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 a site or construction condition, including, but not limited to, a height limitation, a setback requirement, a floor area ratio, an onsite open-space requirement, or a parking ratio that applies to a residential development pursuant to any ordinance, general plan element, specific plan, charter, or other local condition, law, policy, resolution, or regulation.

(2) "Maximum allowable residential density" means the density allowed under the zoning ordinance and land use element of the general plan, or if a range of density is permitted, means the maximum allowable density for the specific zoning range and land use element of the general plan applicable to the project. Where the density allowed under the zoning ordinance is inconsistent with the density allowed under the land use element of the general plan, the general plan density shall prevail.

(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 bedroom: 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 parking incentives or concessions beyond those provided in this subdivision pursuant to subdivision (d).

CHAPTER 455

An act to amend Section 22820 of the Government Code, relating to firefighters' benefits.

[Approved by Governor September 27, 2008. Filed with Secretary of State September 27, 2008.]

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

SECTION 1. Section 22820 of the Government Code is amended to read:

22820. (a) Upon the death, on or after January 1, 2002, of a firefighter employed by a county, city, city and county, district, or other political subdivision of the state, a firefighter employed by the Department of Forestry and Fire Protection, a firefighter employed by the federal government who was a resident of this state and whose regular duty assignment was to perform firefighting services within this state, or a peace officer as defined in Section 830.1, 830.2, 830.3, 830.31, 830.32, 830.33, 830.34, 830.35, 830.36, 830.37, 830.38, 830.39, 830.4, 830.5, 830.55, or 830.6 of the Penal Code, if the death occurred as a result of injury or disease arising out of and in the course of his or her official duties, the surviving spouse or other eligible family member of the deceased firefighter or peace officer, if uninsured, is deemed to be an annuitant under Section 22760 for purposes of enrollment. All eligible family members of the deceased firefighter or peace officer who are uninsured may enroll in a health benefit plan of the surviving spouse's choice. However, an unmarried child of the surviving spouse is not eligible to enroll in a health benefit plan under this section if the child was not a family member under Section 22775 and regulations pertinent thereto prior to the firefighter's or peace officer's date of death. The employer of the deceased firefighter or peace officer shall notify the board within 10 business days of the death of the employee if a spouse or family member may be eligible for enrollment in a health benefit plan under this section.

(b) Upon notification, the board shall promptly determine eligibility and shall forward to the eligible spouse or family member the materials necessary for enrollment. In the event of a dispute regarding whether a firefighter's or peace officer's death occurred as a result of injury or disease arising out of and in the course of his or her official duties as required under subdivision (a), that dispute shall be determined by the Workers' Compensation Appeals Board, subject to the same procedures and standards applicable to hearings relating to claims for workers'

compensation benefits. The jurisdiction of the Workers' Compensation Appeals Board under this section is limited to the sole issue of industrial causation and this section does not authorize the Workers' Compensation Appeals Board to award costs against the system.

(c) (1) Notwithstanding any other provision of law, and except as otherwise provided in subdivision (d), the state shall pay the employer contribution required for enrollment under this part for the uninsured surviving spouse of a deceased firefighter or peace officer for life, and the other uninsured eligible family members of a deceased firefighter or peace officer, provided the family member meets the eligibility requirements of Section 22775 and regulations pertinent thereto.

(2) The contribution payable by the state for each uninsured surviving spouse and other uninsured eligible family members shall be adjusted annually and be equal to the amount specified in Section 22871.

(3) The state's contribution under this section shall commence on the effective date of enrollment of the uninsured surviving spouse or other uninsured eligible family members. The contribution of each surviving spouse and eligible family member shall be the total cost per month of the benefit coverage afforded him or her under the plan less the portion contributed by the state pursuant to this section.

(d) The cancellation of coverage by an annuitant, as defined in this section, shall be final without option to reenroll, unless coverage is canceled because of enrollment in an insurance plan from another source.

(e) For purposes of this section, "surviving spouse" means a spouse who was married to the deceased firefighter or peace officer on the deceased's date of death and either was married for a continuous period of at least one year prior to the date of death or was married to the deceased prior to the date the deceased firefighter or peace officer sustained the injury or disease resulting in death.

(f) For purposes of this section, "uninsured" means that the surviving spouse is not enrolled in an employer-sponsored health plan under which the employer contribution covers 100 percent of the cost of health care premiums.

(g) The board has no duty to identify, locate, or notify any surviving spouse or eligible family member who may be or may become eligible for benefits under this section.

CHAPTER 456

An act to amend Section 11165.7 of the Penal Code, relating to child abuse reporting.

[Approved by Governor September 27, 2008. Filed with
Secretary of State September 27, 2008.]

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

SECTION 1. Section 11165.7 of the Penal Code is amended to read:

11165.7. (a) As used in this article, "mandated reporter" is defined as any of the following:

(1) A teacher.

(2) An instructional aide.

(3) A teacher's aide or teacher's assistant employed by any public or private school.

(4) A classified employee of any public school.

(5) An administrative officer or supervisor of child welfare and attendance, or a certificated pupil personnel employee of any public or private school.

(6) An administrator of a public or private day camp.

(7) An administrator or employee of a public or private youth center, youth recreation program, or youth organization.

(8) An administrator or employee of a public or private organization whose duties require direct contact and supervision of children.

(9) Any employee of a county office of education or the State Department of Education, whose duties bring the employee into contact with children on a regular basis.

(10) A licensee, an administrator, or an employee of a licensed community care or child day care facility.

(11) A Head Start program teacher.

(12) A licensing worker or licensing evaluator employed by a licensing agency as defined in Section 11165.11.

(13) A public assistance worker.

(14) An employee of a child care institution, including, but not limited to, foster parents, group home personnel, and personnel of residential care facilities.

(15) A social worker, probation officer, or parole officer.

(16) An employee of a school district police or security department.

(17) Any person who is an administrator or presenter of, or a counselor in, a child abuse prevention program in any public or private school.

(18) A district attorney investigator, inspector, or local child support agency caseworker unless the investigator, inspector, or caseworker is working with an attorney appointed pursuant to Section 317 of the Welfare and Institutions Code to represent a minor.

(19) A peace officer, as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2, who is not otherwise described in this section.

(20) A firefighter, except for volunteer firefighters.

(21) A physician, surgeon, psychiatrist, psychologist, dentist, resident, intern, podiatrist, chiropractor, licensed nurse, dental hygienist, optometrist, marriage, family and child counselor, clinical social worker, or any other person who is currently licensed under Division 2 (commencing with Section 500) of the Business and Professions Code.

(22) Any emergency medical technician I or II, paramedic, or other person certified pursuant to Division 2.5 (commencing with Section 1797) of the Health and Safety Code.

(23) A psychological assistant registered pursuant to Section 2913 of the Business and Professions Code.

(24) A marriage, family, and child therapist trainee, as defined in subdivision (c) of Section 4980.03 of the Business and Professions Code.

(25) An unlicensed marriage, family, and child therapist intern registered under Section 4980.44 of the Business and Professions Code.

(26) A state or county public health employee who treats a minor for venereal disease or any other condition.

(27) A coroner.

(28) A medical examiner, or any other person who performs autopsies.

(29) A commercial film and photographic print processor, as specified in subdivision (e) of Section 11166. As used in this article, "commercial film and photographic print processor" means any person who develops exposed photographic film into negatives, slides, or prints, or who makes prints from negatives or slides, for compensation. The term includes any employee of such a person; it does not include a person who develops film or makes prints for a public agency.

(30) A child visitation monitor. As used in this article, "child visitation monitor" means any person who, for financial compensation, acts as monitor of a visit between a child and any other person when the monitoring of that visit has been ordered by a court of law.

(31) An animal control officer or humane society officer. For the purposes of this article, the following terms have the following meanings:

(A) "Animal control officer" means any person employed by a city, county, or city and county for the purpose of enforcing animal control laws or regulations.

(B) "Humane society officer" means any person appointed or employed by a public or private entity as a humane officer who is qualified pursuant to Section 14502 or 14503 of the Corporations Code.

(32) A clergy member, as specified in subdivision (d) of Section 11166. As used in this article, "clergy member" means a priest, minister,

rabbi, religious practitioner, or similar functionary of a church, temple, or recognized denomination or organization.

(33) Any custodian of records of a clergy member, as specified in this section and subdivision (d) of Section 11166.

(34) Any employee of any police department, county sheriff's department, county probation department, or county welfare department.

(35) An employee or volunteer of a Court Appointed Special Advocate program, as defined in Rule 1424 of the California Rules of Court.

(36) A custodial officer as defined in Section 831.5.

(37) Any person providing services to a minor child under Section 12300 or 12300.1 of the Welfare and Institutions Code.

(38) An alcohol and drug counselor. As used in this article, an "alcohol and drug counselor" is a person providing counseling, therapy, or other clinical services for a state licensed or certified drug, alcohol, or drug and alcohol treatment program. However, alcohol or drug abuse, or both alcohol and drug abuse, is not in and of itself a sufficient basis for reporting child abuse or neglect.

(b) Except as provided in paragraph (35) of subdivision (a), volunteers of public or private organizations whose duties require direct contact with and supervision of children are not mandated reporters but are encouraged to obtain training in the identification and reporting of child abuse and neglect and are further encouraged to report known or suspected instances of child abuse or neglect to an agency specified in Section 11165.9.

(c) Employers are strongly encouraged to provide their employees who are mandated reporters with training in the duties imposed by this article. This training shall include training in child abuse and neglect identification and training in child abuse and neglect reporting. Whether or not employers provide their employees with training in child abuse and neglect identification and reporting, the employers shall provide their employees who are mandated reporters with the statement required pursuant to subdivision (a) of Section 11166.5.

(d) School districts that do not train their employees specified in subdivision (a) in the duties of mandated reporters under the child abuse reporting laws shall report to the State Department of Education the reasons why this training is not provided.

(e) Unless otherwise specifically provided, the absence of training shall not excuse a mandated reporter from the duties imposed by this article.

(f) Public and private organizations are encouraged to provide their volunteers whose duties require direct contact with and supervision of children with training in the identification and reporting of child abuse and neglect.

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 457

An act to amend Sections 361.5 and 388 of the Welfare and Institutions Code, relating to minors.

[Approved by Governor September 27, 2008. Filed with Secretary of State September 27, 2008.]

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

SECTION 1. Section 361.5 of the Welfare and Institutions Code 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. Family reunification services, when provided, shall be provided as follows:

(1) Except as otherwise provided in paragraph (3), 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 be provided during the period of time beginning with the dispositional hearing and ending with the date of the hearing set pursuant to subdivision (f) of Section 366.21, unless the child is returned to the home of the parent or guardian.

(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 be provided during the period of time beginning with the dispositional hearing and ending with the date of the hearing set pursuant to subdivision (e) of Section 366.21, unless the child is returned to the home of the parent or guardian.

(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.

Any motion to terminate court-ordered reunification services prior to the hearing set pursuant to subdivision (f) of Section 366.21 for a child described by paragraph (1), or within six months of the initial dispositional hearing for a child described by paragraph (2) or this paragraph, shall be made pursuant to the requirements set forth in subdivision (c) of Section 388.

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 and Rehabilitation 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, and shall consider in-state and out-of-state placement options. 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)(1) 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:

(A) Current search efforts for an absent parent or parents.

(B) 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 subparagraph shall include, but not be limited to, the child's siblings, grandparents, aunts, and uncles.

(C) An evaluation of the child's medical, developmental, scholastic, mental, and emotional status.

(D) 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 subparagraph, "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.

(E) 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.

(F) An analysis of the likelihood that the child will be adopted if parental rights are terminated.

(2) (A) A relative caregiver's preference for legal guardianship over adoption, if it is due to circumstances that do not include an unwillingness to accept legal or financial responsibility for the child, shall not constitute the sole basis for recommending removal of the child from the relative caregiver for purposes of adoptive placement.

(B) A relative caregiver shall be given information regarding the permanency options of guardianship and adoption, including the long-term benefits and consequences of each option, prior to establishing legal guardianship or pursuing adoption.

(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. 1.5. Section 361.5 of the Welfare and Institutions Code 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.

(1) Family reunification services, when provided, shall be provided as follows:

(A) Except as otherwise provided in subparagraph (C), 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 be provided during the period of time beginning with the dispositional hearing and ending with the date of the hearing set pursuant to subdivision (f) of Section 366.21, unless the child is returned to the home of the parent or guardian.

(B) For a child who, on the date of initial removal from the physical custody of his or her parent or guardian, was under three years of age, court-ordered services shall be provided during the period of time beginning with the dispositional hearing and ending with the date of the hearing set pursuant to subdivision (e) of Section 366.21, unless the child is returned to the home of the parent or guardian.

(C) 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 three years of age 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.

Any motion to terminate court-ordered reunification services prior to the hearing set pursuant to subdivision (f) of Section 366.21 for a child described by paragraph (1), or within six months of the initial dispositional hearing for a child described by paragraph (2) or this paragraph, shall be made pursuant to the requirements set forth in subdivision (c) of Section 388.

(2) Notwithstanding subparagraphs (A), (B), and (C) of paragraph (1), 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. In determining whether court-ordered services may be extended, the court shall consider the special circumstances of an incarcerated or institutionalized parent or parents, or parent or parents court-ordered to a residential substance abuse treatment program, including, but not limited to, barriers to the parent's or guardian's access to services and ability to maintain contact with his or her child. The court shall also consider, among other factors, good faith efforts that the parent or guardian has made to maintain contact with the child. 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, or unless a parent or guardian is incarcerated and the corrections facility in which he or she is incarcerated does not provide access to the treatment services ordered by the court. Physical custody of the child by the parents or guardians during the applicable time period under subparagraph (A), (B), or (C) of paragraph (1) 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 three years of age 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 subparagraph (C) of paragraph (1), 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 subparagraph (C) of paragraph (1).

(3) Notwithstanding paragraph (2), court-ordered services may be extended up to a maximum time period not to exceed 24 months after the date the child was originally removed from physical custody of his or her parent or guardian if it is shown, at the hearing held pursuant to subdivision (b) of Section 366.22, 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 it is in the child's best interest to have the time period extended and that there is a substantial probability that the child will be returned to the physical custody of his or her parent or guardian who is described in subdivision (b) of Section 366.22 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, in order for substantial probability to be found. Physical custody of the child by the parents or guardians during the applicable time period under subparagraph (A), (B), or (C) of paragraph (1) shall not serve to interrupt the running of the period. If at the end of the applicable time period, the 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.

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 length and 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, the likelihood of the parent's discharge from incarceration or institutionalization within the reunification time limitations described in subdivision (a), and any other appropriate factors. In determining the content of reasonable services, the court shall consider the particular barriers to an incarcerated or otherwise institutionalized parent's access to those court-mandated

services and ability to maintain contact with his or her child, and shall document this information in the child's case plan. 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 reunification service plan if actual access to these services is provided. The social worker shall document in the child's case plan the particular barriers to an incarcerated or institutionalized parent's access to those court-mandated services and ability to maintain contact with his or her child.

(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. The county welfare department shall utilize the prisoner locator system developed by the Department of Corrections and Rehabilitation to facilitate timely and effective notice of hearings for incarcerated parents.

(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 and Rehabilitation 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, and shall consider in-state and

out-of-state placement options. 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) (1) 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:

(A) Current search efforts for an absent parent or parents.

(B) 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 subparagraph shall include, but not be limited to, the child's siblings, grandparents, aunts, and uncles.

(C) An evaluation of the child's medical, developmental, scholastic, mental, and emotional status.

(D) 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 subparagraph, "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.

(E) 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.

(F) An analysis of the likelihood that the child will be adopted if parental rights are terminated.

(2) (A) A relative caregiver's preference for legal guardianship over adoption, if it is due to circumstances that do not include an unwillingness to accept legal or financial responsibility for the child, shall not constitute the sole basis for recommending removal of the child from the relative caregiver for purposes of adoptive placement.

(B) A relative caregiver shall be given information regarding the permanency options of guardianship and adoption, including the long-term benefits and consequences of each option, prior to establishing legal guardianship or pursuing adoption.

(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. 2. Section 388 of the Welfare and Institutions Code is amended to read:

388. (a) Any parent or other person having an interest in a child who is a dependent child of the juvenile court or the child himself or herself through a properly appointed guardian may, upon grounds of change of circumstance or new evidence, petition the court in the same action in which the child was found to be a dependent child of the juvenile court or in which a guardianship was ordered pursuant to Section 360 for a hearing to change, modify, or set aside any order of court previously

made or to terminate the jurisdiction of the court. The petition shall be verified and, if made by a person other than the child, shall state the petitioner's relationship to or interest in the child and shall set forth in concise language any change of circumstance or new evidence which are alleged to require the change of order or termination of jurisdiction.

(b) Any person, including a child who is a dependent of the juvenile court, may petition the court to assert a relationship as a sibling related by blood, adoption, or affinity through a common legal or biological parent to a child who is, or is the subject of a petition for adjudication as, a dependent of the juvenile court, and may request visitation with the dependent child, placement with or near the dependent child, or consideration when determining or implementing a case plan or permanent plan for the dependent child or make any other request for an order which may be shown to be in the best interest of the dependent child. The court may appoint a guardian ad litem to file the petition for the dependent child asserting the sibling relationship if the court determines that the appointment is necessary for the best interests of the dependent child. The petition shall be verified and shall set forth the following:

(1) Through which parent he or she is related to the dependent child.

(2) Whether he or she is related to the dependent child by blood, adoption, or affinity.

(3) The request or order that the petitioner is seeking.

(4) Why that request or order is in the best interest of the dependent child.

(c) (1) Any party, including a child who is a dependent of the juvenile court, may petition the court, prior to the hearing set pursuant to subdivision (f) of Section 366.21 for a child described by paragraph (1) of subdivision (a) of Section 361.5, or within six months of the initial dispositional hearing for a child described by paragraph (2) or (3) of subdivision (a) of Section 361.5, to terminate court-ordered reunification services provided under subdivision (a) of Section 361.5 only if one of the following conditions exists:

(A) It appears that a change of circumstance or new evidence exists that satisfies a condition set forth in subdivision (b) or (e) of Section 361.5 justifying termination of court-ordered reunification services.

(B) The action or inaction of the parent or guardian creates a substantial likelihood that reunification will not occur, including, but not limited to, the parent or guardian's failure to visit the child, or the failure of the parent or guardian to participate regularly and make substantive progress in a court-ordered treatment plan.

(2) In determining whether the parent or guardian has failed to visit the child or participate regularly or make progress in the treatment plan,

the court shall consider factors including, but not limited to, the parent or guardian's incarceration, institutionalization, or participation in a residential substance abuse treatment program.

(3) The court shall terminate reunification services during the above-described time periods only upon a finding by a preponderance of evidence that reasonable services have been offered or provided, and upon a finding of clear and convincing evidence that one of the conditions in subparagraph (A) or (B) of paragraph (1) exists.

(4) If the court terminates reunification services, it shall order that a hearing pursuant to Section 366.26 be held within 120 days.

(d) If it appears that the best interests of the child may be promoted by the proposed change of order, recognition of a sibling relationship, termination of jurisdiction, or clear and convincing evidence supports revocation or termination of court-ordered reunification services, the court shall order that a hearing be held and shall give prior notice, or cause prior notice to be given, to the persons and by the means prescribed by Section 386, and, in those instances in which the means of giving notice is not prescribed by those sections, then by means the court prescribes.

SEC. 3. Section 1.5 of this bill incorporates amendments to Section 361.5 of the Welfare and Institutions Code proposed by both this bill and AB 2070. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2009, (2) each bill amends Section 361.5 of the Welfare and Institutions Code, and (3) this bill is enacted after AB 2070, in which case Section 1 of this bill shall not become operative.

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 458

An act to amend Section 65054.3 of, and to add and repeal Article 2.6 (commencing with Section 14137) of Chapter 2 of Part 5 of Division 3 of Title 2 of, the Government Code, relating to contractors.

[Approved by Governor September 27, 2008. Filed with Secretary of State September 27, 2008.]

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

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

(a) With the approval by the voters of Propositions 1B, 1C, 1D, and 1E at the November 7, 2006, statewide general election, the state will be embarking upon a massive public works construction program expansion. In order to expeditiously complete the many construction projects that will be awarded, an increase in the number of construction contractors who are eligible to participate in this construction program is necessary.

(b) Many small contractors are new entrants who are emerging into the field of public works contracting and are also minority-owned, women-owned, and disadvantaged business enterprises that are located in areas of the state that are economically challenged, have higher rates of unemployment, and incomes below the statewide median. Increasing the participation of small and emerging contractors in public works construction projects will assist economic growth and job creation statewide and in economically targeted areas of the state.

(c) More than 50 percent of small and emerging contractors have difficulty in winning bids for public works construction projects or being included as subcontractors in public works construction contracts because they cannot secure the required surety bonds and liability insurance coverage.

(d) In order to increase small and emerging contractor participation rates in public works contracting and to satisfy state small business contracting participation goals and federal goals for participation of minority-owned, women-owned, and disadvantaged business enterprises, it is in the state's interest to develop a program to provide small and emerging contractors with technical assistance that will give them the knowledge and skills to overcome barriers to securing surety bonds and purchasing liability insurance.

SEC. 2. Article 2.6 (commencing with Section 14137) is added to Chapter 2 of Part 5 of Division 3 of Title 2 of the Government Code, to read:

Article 2.6. Small Business Technical Assistance Act of 2008

14137. (a) The department, in consultation with the Office of Small Business Advocate, may establish a Small and Emerging Contractor Technical Assistance Program. The purpose of the program is to provide training and technical assistance to small contractors to improve their ability to secure surety bond guarantees, offered by the federal Small Business Administration. Surety bond guarantees can assist small

contractors in obtaining surety bonds that are necessary to qualify for public works construction projects awarded by state and local governments.

(b) For purposes of this article:

(1) "Program" means the Small and Emerging Contractor Technical Assistance Program.

(2) "Small contractor" means a small business, as defined in paragraph (1) of subdivision (d) of Section 14837 of the Government Code, that is a contractor doing business in this state and is licensed by the Contractors' State License Board pursuant to Article 5 (commencing with Section 7065) of Chapter 9 of Division 3 of the Business and Professions Code.

14137.1. (a) The program shall include small contractor training and technical assistance throughout the state. Training shall be scheduled for locations that are reasonably accessible to people in all areas of the state but are not required to be scheduled in every district of the department.

(b) The department, in consultation with the Office of Small Business Advocate, shall conduct outreach efforts to inform small contractors about the program and recruit them to the training. In conducting outreach activities, the department shall coordinate with its existing outreach efforts for disadvantaged business enterprises. The department shall also consult with its statewide and district small business councils, statewide and regional contracting and engineering trade groups, and the Department of General Services' Small Business Advisory Council. The department shall also coordinate outreach efforts with the administrators of enterprise zones established pursuant to Chapter 12.8 (commencing with Section 7070) of Division 7 of Title 2.

14137.2. For the purpose of providing training under the program, the department may use up to two hundred thousand dollars ($200,000) of state funds if those funds are available to the department. The department may charge a fee to program participants not to exceed fifty dollars ($50) to offset technical assistance counseling in the program.

14137.4. This article shall remain in effect only until January 1, 2013, and as of that date is repealed, unless a later enacted statute that is enacted before January 1, 2013, deletes or extends that date.

SEC. 3. Section 65054.3 of the Government Code is amended to read:

65054.3. (a) The Director of the Office of Small Business Advocate shall be appointed by, and shall serve at the pleasure of, the Governor.

(b) The Governor shall appoint the employees that are needed to accomplish the purposes of Section 65054, this section, and Section 65054.4.

(c) The duties and functions of the advocate shall include all of the following:

(1) Serve as the principal advocate in the state on behalf of small businesses, including, but not limited to, advisory participation in the consideration of all legislation and administrative regulations that affect small businesses, and advocacy on state policy and programs related to small businesses on disaster preparedness and recovery including providing technical assistance.

(2) Represent the views and interests of small businesses before other state agencies whose policies and activities may affect small business.

(3) Enlist the cooperation and assistance of public and private agencies, businesses, and other organizations in disseminating information about the programs and services provided by state government that are of benefit to small businesses, and information on how small businesses can participate in, or make use of, those programs and services.

(4) Issue a report every two years evaluating the efforts of state agencies and, where appropriate, specific departments that significantly regulate small businesses to assist minority and other small business enterprises, and making recommendations that may be appropriate to assist the development and strengthening of minority and other small business enterprises.

(5) Consult with experts and authorities in the fields of small business investment, venture capital investment, and commercial banking and other comparable financial institutions involved in the financing of business, and with individuals with regulatory, legal, economic, or financial expertise, including members of the academic community, and individuals who generally represent the public interest.

(6) Determine the desirability of developing a set of rational, objective criteria to be used to define small business, and develop that criteria, if appropriate.

(7) Seek the assistance and cooperation of all state agencies and departments providing services to, or affecting, small business, including the small business liaison designated pursuant to Section 14846, to ensure coordination of state efforts.

(8) Receive and respond to complaints from small businesses concerning the actions of state agencies and the operative effects of state laws and regulations adversely affecting those businesses.

(9) Counsel small businesses on how to resolve questions and problems concerning the relationship of small business to state government.

(10) Maintain, publicize, and distribute an annual list of persons serving as small business ombudsmen throughout state government.

(11) Consult with the Department of Transportation in the development and administration of the Small and Emerging Contractor Technical Assistance Program established pursuant to Article 2.6 (commencing with Section 14137) of Chapter 2 of Part 5 of Division 3 of Title 2.

CHAPTER 459

An act to add Section 1255.25 to the Health and Safety Code, relating to health care.

[Approved by Governor September 27, 2008. Filed with Secretary of State September 27, 2008.]

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

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

(a) A hospital is one means for ensuring quality and access to health care for all Californians.

(b) While there are other means for health care access, a hospital remains an essential institution for the entire health care system in California and for providing quality and affordable care.

(c) The closure of a hospital presents a severe burden for the residents of the community served by that hospital.

(d) The residents should not be deprived of medical attention or access to affordable health care due to the closure of a hospital.

(e) The closure of a hospital presents the state with a financial and health emergency that requires extraordinary measures as a response.

(f) Dramatic changes are underway in the delivery of health care, including numerous proposals to restructure the number and proportion of health care professionals and workers performing direct patient care, as well as changes in the level and type of services provided.

(g) Changes in delivery of care affect the health of the community and may have profound social consequences. For example, discharge from a health facility of new mothers within hours of giving birth, or of surgical patients in a few days or even hours, and treatment of cardiac, diabetic, and asthmatic patients in the outpatient setting, all shift the burden of care from the health provider to family and friends, or to unpaid caregivers who often lack the expertise to care for patients with complex needs.

(h) Many of these changes in the delivery of health care are occurring without public disclosure or discussion. If these changes were publicly

disclosed, affected communities and groups, physicians, other interested health professionals, and public bodies could provide input about how best to maintain the safety of patient care and access to needed care while maximizing cost-effectiveness.

(i) It is the intent of the Legislature in enacting this act that those health providers proposing to restructure the delivery of health care shall disclose to the public the expected impact of the changes.

SEC. 2. Section 1255.25 is added to the Health and Safety Code, to read:

1255.25. (a) (1) Not less than 30 days prior to closing a health facility, as defined in subdivision (a) or (b) of Section 1250, or eliminating a supplemental service, as defined in Section 70067 of Chapter 1 of Division 5 of Title 22 of the California Code of Regulations, the facility shall provide public notice of the proposed closure or elimination of the supplemental service, including a notice posted at the entrance to all affected facilities and a notice to the department and the board of supervisors of the county in which the health facility is located.

(2) Not less than 30 days prior to relocating the provision of supplemental services to a different campus, a health facility, as defined in subdivision (a) or (b) of Section 1250, shall provide public notice of the proposed relocation of supplemental services, including a notice posted at the entrance to all affected facilities and notice to the department and the board of supervisors of the county in which the health facility is located.

(b) The notice required by paragraph (1) or (2) of subdivision (a) shall include all of the following:

(1) A description of the proposed closure, elimination, or relocation. The description shall be limited to publicly available data, including the number of beds eliminated, if any, the probable decrease in the number of personnel, and a summary of any service that is being eliminated, if applicable.

(2) A description of the three nearest available comparable services in the community. If the health facility closing these services serves Medi-Cal or Medicare patients, this health facility shall specify if the providers of the nearest available comparable services serve these patients.

(3) A telephone number and address for each of the following, where interested parties may offer comments:

(A) The health facility.

(B) The parent entity, if any, or contracted company, if any, that acts as the corporate administrator of the health facility.

(C) The chief executive officer.

(c) Notwithstanding subdivisions (a) and (b), this section shall not apply to county facilities subject to Section 1442.5.

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 460

An act to amend Section 22651 of the Vehicle Code, relating to vehicles.

[Approved by Governor September 27, 2008. Filed with Secretary of State September 27, 2008.]

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

SECTION 1. Section 22651 of the Vehicle Code, as amended by Chapter 749 of the Statutes of 2007, is amended to read:

22651. A peace officer, as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code, or a regularly employed and salaried employee, who is engaged in directing traffic or enforcing parking laws and regulations, of a city, county, or jurisdiction of a state agency in which a vehicle is located, may remove a vehicle located within the territorial limits in which the officer or employee may act, under the following circumstances:

(a) When a vehicle is left unattended upon a bridge, viaduct, or causeway or in a tube or tunnel where the vehicle constitutes an obstruction to traffic.

(b) When a vehicle is parked or left standing upon a highway in a position so as to obstruct the normal movement of traffic or in a condition so as to create a hazard to other traffic upon the highway.

(c) When a vehicle is found upon a highway or public land and a report has previously been made that the vehicle is stolen or a complaint has been filed and a warrant thereon is issued charging that the vehicle is embezzled.

(d) When a vehicle is illegally parked so as to block the entrance to a private driveway and it is impractical to move the vehicle from in front of the driveway to another point on the highway.

(e) When a vehicle is illegally parked so as to prevent access by firefighting equipment to a fire hydrant and it is impracticable to move the vehicle from in front of the fire hydrant to another point on the highway.

(f) When a vehicle, except highway maintenance or construction equipment, is stopped, parked, or left standing for more than four hours upon the right-of-way of a freeway that has full control of access and no crossings at grade and the driver, if present, cannot move the vehicle under its own power.

(g) When the person in charge of a vehicle upon a highway or public land is, by reason of physical injuries or illness, incapacitated to an extent so as to be unable to provide for its custody or removal.

(h) (1) When an officer arrests a person driving or in control of a vehicle for an alleged offense and the officer is, by this code or other law, required or permitted to take, and does take, the person into custody.

(2) When an officer serves a notice of an order of suspension or revocation pursuant to Section 13388 or 13389.

(i) (1) When a vehicle, other than a rented vehicle, is found upon a highway or public land, or is removed pursuant to this code, and it is known that the vehicle has been issued five or more notices of parking violations to which the owner or person in control of the vehicle has not responded within 21 calendar days of notice of citation issuance or citation issuance or 14 calendar days of the mailing of a notice of delinquent parking violations to the agency responsible for processing notices of parking violation or the registered owner of the vehicle is known to have been issued five or more notices for failure to pay or failure to appear in court for traffic violations for which a certificate has not been issued by the magistrate or clerk of the court hearing the case showing that the case has been adjudicated or concerning which the registered owner's record has not been cleared pursuant to Chapter 6 (commencing with Section 41500) of Division 17, the vehicle may be impounded until that person furnishes to the impounding law enforcement agency all of the following:

(A) Evidence of his or her identity.

(B) An address within this state at which he or she can be located.

(C) Satisfactory evidence that all parking penalties due for the vehicle and all other vehicles registered to the registered owner of the impounded vehicle, and all traffic violations of the registered owner, have been cleared.

(2) The requirements in subparagraph (C) of paragraph (1) shall be fully enforced by the impounding law enforcement agency on and after the time that the Department of Motor Vehicles is able to provide access to the necessary records.

(3) A notice of parking violation issued for an unlawfully parked vehicle shall be accompanied by a warning that repeated violations may result in the impounding of the vehicle. In lieu of furnishing satisfactory evidence that the full amount of parking penalties or bail has been deposited, that person may demand to be taken without unnecessary delay before a magistrate, for traffic offenses, or a hearing examiner, for parking offenses, within the county in which the offenses charged are alleged to have been committed and who has jurisdiction of the offenses and is nearest or most accessible with reference to the place where the vehicle is impounded. Evidence of current registration shall be produced after a vehicle has been impounded, or, at the discretion of the impounding law enforcement agency, a notice to appear for violation of subdivision (a) of Section 4000 shall be issued to that person.

(4) A vehicle shall be released to the legal owner, as defined in Section 370, if the legal owner does all of the following:

(A) Pays the cost of towing and storing the vehicle.

(B) Submits evidence of payment of fees as provided in Section 9561.

(C) Completes an affidavit in a form acceptable to the impounding law enforcement agency stating that the vehicle was not in possession of the legal owner at the time of occurrence of the offenses relating to standing or parking. A vehicle released to a legal owner under this subdivision is a repossessed vehicle for purposes of disposition or sale. The impounding agency shall have a lien on any surplus that remains upon sale of the vehicle to which the registered owner is or may be entitled, as security for the full amount of the parking penalties for all notices of parking violations issued for the vehicle and for all local administrative charges imposed pursuant to Section 22850.5. The legal owner shall promptly remit to, and deposit with, the agency responsible for processing notices of parking violations from that surplus, on receipt of that surplus, the full amount of the parking penalties for all notices of parking violations issued for the vehicle and for all local administrative charges imposed pursuant to Section 22850.5.

(5) The impounding agency that has a lien on the surplus that remains upon the sale of a vehicle to which a registered owner is entitled pursuant to paragraph (4) has a deficiency claim against the registered owner for the full amount of the parking penalties for all notices of parking violations issued for the vehicle and for all local administrative charges imposed pursuant to Section 22850.5, less the amount received from the sale of the vehicle.

(j) When a vehicle is found illegally parked and there are no license plates or other evidence of registration displayed, the vehicle may be impounded until the owner or person in control of the vehicle furnishes the impounding law enforcement agency evidence of his or her identity and an address within this state at which he or she can be located.

(k) When a vehicle is parked or left standing upon a highway for 72 or more consecutive hours in violation of a local ordinance authorizing removal.

(*l*) When a vehicle is illegally parked on a highway in violation of a local ordinance forbidding standing or parking and the use of a highway, or a portion thereof, is necessary for the cleaning, repair, or construction of the highway, or for the installation of underground utilities, and signs giving notice that the vehicle may be removed are erected or placed at least 24 hours prior to the removal by a local authority pursuant to the ordinance.

(m) Wherever the use of the highway, or a portion of the highway, is authorized by a local authority for a purpose other than the normal flow of traffic or for the movement of equipment, articles, or structures of unusual size, and the parking of a vehicle would prohibit or interfere with that use or movement, and signs giving notice that the vehicle may be removed are erected or placed at least 24 hours prior to the removal by a local authority pursuant to the ordinance.

(n) Whenever a vehicle is parked or left standing where local authorities, by resolution or ordinance, have prohibited parking and have authorized the removal of vehicles. A vehicle shall not be removed unless signs are posted giving notice of the removal.

(o) (1) When a vehicle is found or operated upon a highway, public land, or an offstreet parking facility under the following circumstances:

(A) With a registration expiration date in excess of six months before the date it is found or operated on the highway, public lands, or the offstreet parking facility.

(B) Displaying in, or upon, the vehicle, a registration card, identification card, temporary receipt, license plate, special plate, registration sticker, device issued pursuant to Section 4853, or permit that was not issued for that vehicle, or is not otherwise lawfully used on that vehicle under this code.

(C) Displaying in, or upon, the vehicle, an altered, forged, counterfeit, or falsified registration card, identification card, temporary receipt, license plate, special plate, registration sticker, device issued pursuant to Section 4853, or permit.

(2) When a vehicle described in paragraph (1) is occupied, only a peace officer, as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code, may remove the vehicle.

(3) For the purposes of this subdivision, the vehicle shall be released to the owner or person in control of the vehicle only after the owner or person furnishes the storing law enforcement agency with proof of current registration and a currently valid driver's license to operate the vehicle.

(4) As used in this subdivision, "offstreet parking facility" means an offstreet facility held open for use by the public for parking vehicles and includes a publicly owned facility for offstreet parking, and a privately owned facility for offstreet parking if a fee is not charged for the privilege to park and it is held open for the common public use of retail customers.

(p) When the peace officer issues the driver of a vehicle a notice to appear for a violation of Section 12500, 14601, 14601.1, 14601.2, 14601.3, 14601.4, 14601.5, or 14604 and the vehicle is not impounded pursuant to Section 22655.5. A vehicle so removed from the highway or public land, or from private property after having been on a highway or public land, shall not be released to the registered owner or his or her agent, except upon presentation of the registered owner's or his or her agent's currently valid driver's license to operate the vehicle and proof of current vehicle registration, or upon order of a court.

(q) Whenever a vehicle is parked for more than 24 hours on a portion of highway that is located within the boundaries of a common interest development, as defined in subdivision (c) of Section 1351 of the Civil Code, and signs, as required by Section 22658, have been posted on that portion of highway providing notice to drivers that vehicles parked thereon for more than 24 hours will be removed at the owner's expense, pursuant to a resolution or ordinance adopted by the local authority.

(r) When a vehicle is illegally parked and blocks the movement of a legally parked vehicle.

(s) (1) When a vehicle, except highway maintenance or construction equipment, an authorized emergency vehicle, or a vehicle that is properly permitted or otherwise authorized by the Department of Transportation, is stopped, parked, or left standing for more than eight hours within a roadside rest area or viewpoint.

(2) Notwithstanding paragraph (1), when a commercial motor vehicle, as defined in paragraph (1) of subdivision (b) of Section 15210, is stopped, parked, or left standing for more than 10 hours within a roadside rest area or viewpoint.

(3) For purposes of this subdivision, a roadside rest area or viewpoint is a publicly maintained vehicle parking area, adjacent to a highway, utilized for the convenient, safe stopping of a vehicle to enable motorists to rest or to view the scenery. If two or more roadside rest areas are located on opposite sides of the highway, or upon the center divider, within seven miles of each other, then that combination of rest areas is considered to be the same rest area.

(t) When a peace officer issues a notice to appear for a violation of Section 25279.

SEC. 2. Section 22651 of the Vehicle Code, as amended by Chapter 749 of the Statutes of 2007, is amended to read:

22651. A peace officer, as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code, or a regularly employed and salaried employee, who is engaged in directing traffic or enforcing parking laws and regulations, of a city, county, or jurisdiction of a state agency in which a vehicle is located, may remove a vehicle located within the territorial limits in which the officer or employee may act, under the following circumstances:

(a) When a vehicle is left unattended upon a bridge, viaduct, or causeway or in a tube or tunnel where the vehicle constitutes an obstruction to traffic.

(b) When a vehicle is parked or left standing upon a highway in a position so as to obstruct the normal movement of traffic or in a condition so as to create a hazard to other traffic upon the highway.

(c) When a vehicle is found upon a highway or public land and a report has previously been made that the vehicle is stolen or a complaint has been filed and a warrant thereon is issued charging that the vehicle is embezzled.

(d) When a vehicle is illegally parked so as to block the entrance to a private driveway and it is impractical to move the vehicle from in front of the driveway to another point on the highway.

(e) When a vehicle is illegally parked so as to prevent access by firefighting equipment to a fire hydrant and it is impracticable to move the vehicle from in front of the fire hydrant to another point on the highway.

(f) When a vehicle, except highway maintenance or construction equipment, is stopped, parked, or left standing for more than four hours upon the right-of-way of a freeway that has full control of access and no crossings at grade and the driver, if present, cannot move the vehicle under its own power.

(g) When the person in charge of a vehicle upon a highway or public land is, by reason of physical injuries or illness, incapacitated to an extent so as to be unable to provide for its custody or removal.

(h) (1) When an officer arrests a person driving or in control of a vehicle for an alleged offense and the officer is, by this code or other law, required or permitted to take, and does take, the person into custody.

(2) When an officer serves a notice of an order of suspension or revocation pursuant to Section 13388 or 13389.

(i) (1) When a vehicle, other than a rented vehicle, is found upon a highway or public land, or is removed pursuant to this code, and it is

known that the vehicle has been issued five or more notices of parking violations to which the owner or person in control of the vehicle has not responded within 21 calendar days of notice of citation issuance or citation issuance or 14 calendar days of the mailing of a notice of delinquent parking violation to the agency responsible for processing notices of parking violations or the registered owner of the vehicle is known to have been issued five or more notices for failure to pay or failure to appear in court for traffic violations for which a certificate has not been issued by the magistrate or clerk of the court hearing the case showing that the case has been adjudicated or concerning which the registered owner's record has not been cleared pursuant to Chapter 6 (commencing with Section 41500) of Division 17, the vehicle may be impounded until that person furnishes to the impounding law enforcement agency all of the following:

(A) Evidence of his or her identity.

(B) An address within this state at which he or she can be located.

(C) Satisfactory evidence that all parking penalties due for the vehicle and all other vehicles registered to the registered owner of the impounded vehicle, and all traffic violations of the registered owner, have been cleared.

(2) The requirements in subparagraph (C) of paragraph (1) shall be fully enforced by the impounding law enforcement agency on and after the time that the Department of Motor Vehicles is able to provide access to the necessary records.

(3) A notice of parking violation issued for an unlawfully parked vehicle shall be accompanied by a warning that repeated violations may result in the impounding of the vehicle. In lieu of furnishing satisfactory evidence that the full amount of parking penalties or bail has been deposited, that person may demand to be taken without unnecessary delay before a magistrate, for traffic offenses, or a hearing examiner, for parking offenses, within the county in which the offenses charged are alleged to have been committed and who has jurisdiction of the offenses and is nearest or most accessible with reference to the place where the vehicle is impounded. Evidence of current registration shall be produced after a vehicle has been impounded, or, at the discretion of the impounding law enforcement agency, a notice to appear for violation of subdivision (a) of Section 4000 shall be issued to that person.

(4) A vehicle shall be released to the legal owner, as defined in Section 370, if the legal owner does all of the following:

(A) Pays the cost of towing and storing the vehicle.

(B) Submits evidence of payment of fees as provided in Section 9561.

(C) Completes an affidavit in a form acceptable to the impounding law enforcement agency stating that the vehicle was not in possession

of the legal owner at the time of occurrence of the offenses relating to standing or parking. A vehicle released to a legal owner under this subdivision is a repossessed vehicle for purposes of disposition or sale. The impounding agency shall have a lien on any surplus that remains upon sale of the vehicle to which the registered owner is or may be entitled, as security for the full amount of the parking penalties for all notices of parking violations issued for the vehicle and for all local administrative charges imposed pursuant to Section 22850.5. The legal owner shall promptly remit to, and deposit with, the agency responsible for processing notices of parking violations from that surplus, on receipt of that surplus, the full amount of the parking penalties for all notices of parking violations issued for the vehicle and for all local administrative charges imposed pursuant to Section 22850.5.

(5) The impounding agency that has a lien on the surplus that remains upon the sale of a vehicle to which a registered owner is entitled pursuant to paragraph (4) has a deficiency claim against the registered owner for the full amount of the parking penalties for all notices of parking violations issued for the vehicle and for all local administrative charges imposed pursuant to Section 22850.5, less the amount received from the sale of the vehicle.

(j) When a vehicle is found illegally parked and there are no license plates or other evidence of registration displayed, the vehicle may be impounded until the owner or person in control of the vehicle furnishes the impounding law enforcement agency evidence of his or her identity and an address within this state at which he or she can be located.

(k) When a vehicle is parked or left standing upon a highway for 72 or more consecutive hours in violation of a local ordinance authorizing removal.

(*l*) When a vehicle is illegally parked on a highway in violation of a local ordinance forbidding standing or parking and the use of a highway, or a portion thereof, is necessary for the cleaning, repair, or construction of the highway, or for the installation of underground utilities, and signs giving notice that the vehicle may be removed are erected or placed at least 24 hours prior to the removal by a local authority pursuant to the ordinance.

(m) Wherever the use of the highway, or a portion of the highway, is authorized by a local authority for a purpose other than the normal flow of traffic or for the movement of equipment, articles, or structures of unusual size, and the parking of a vehicle would prohibit or interfere with that use or movement, and signs giving notice that the vehicle may be removed are erected or placed at least 24 hours prior to the removal by a local authority pursuant to the ordinance.

(n) Whenever a vehicle is parked or left standing where local authorities, by resolution or ordinance, have prohibited parking and have authorized the removal of vehicles. A vehicle shall not be removed unless signs are posted giving notice of the removal.

(o) (1) When a vehicle is found or operated upon a highway, public land, or an offstreet parking facility under the following circumstances:

(A) With a registration expiration date in excess of six months before the date it is found or operated on the highway, public lands, or the offstreet parking facility.

(B) Displaying in, or upon, the vehicle, a registration card, identification card, temporary receipt, license plate, special plate, registration sticker, device issued pursuant to Section 4853, or permit that was not issued for that vehicle, or is not otherwise lawfully used on that vehicle under this code.

(C) Displaying in, or upon, the vehicle, an altered, forged, counterfeit, or falsified registration card, identification card, temporary receipt, license plate, special plate, registration sticker, device issued pursuant to Section 4853, or permit.

(2) When a vehicle described in paragraph (1) is occupied, only a peace officer, as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code, may remove the vehicle.

(3) For the purposes of this subdivision, the vehicle shall be released to the owner or person in control of the vehicle only after the owner or person furnishes the storing law enforcement agency with proof of current registration and a currently valid driver's license to operate the vehicle.

(4) As used in this subdivision, "offstreet parking facility" means an offstreet facility held open for use by the public for parking vehicles and includes a publicly owned facility for offstreet parking, and a privately owned facility for offstreet parking if a fee is not charged for the privilege to park and it is held open for the common public use of retail customers.

(p) When the peace officer issues the driver of a vehicle a notice to appear for a violation of Section 12500, 14601, 14601.1, 14601.2, 14601.3, 14601.4, 14601.5, or 14604 and the vehicle is not impounded pursuant to Section 22655.5. A vehicle so removed from the highway or public land, or from private property after having been on a highway or public land, shall not be released to the registered owner or his or her agent, except upon presentation of the registered owner's or his or her agent's currently valid driver's license to operate the vehicle and proof of current vehicle registration, or upon order of a court.

(q) Whenever a vehicle is parked for more than 24 hours on a portion of highway that is located within the boundaries of a common interest development, as defined in subdivision (c) of Section 1351 of the Civil Code, and signs, as required by paragraph (1) of subdivision (a) of

Section 22658, have been posted on that portion of highway providing notice to drivers that vehicles parked thereon for more than 24 hours will be removed at the owner's expense, pursuant to a resolution or ordinance adopted by the local authority.

(r) When a vehicle is illegally parked and blocks the movement of a legally parked vehicle.

(s) (1) When a vehicle, except highway maintenance or construction equipment, an authorized emergency vehicle, or a vehicle that is properly permitted or otherwise authorized by the Department of Transportation, is stopped, parked, or left standing for more than eight hours within a roadside rest area or viewpoint.

(2) Notwithstanding paragraph (1), when a commercial motor vehicle, as defined in paragraph (1) of subdivision (b) of Section 15210, is stopped, parked, or left standing for more than 10 hours within a roadside rest area or viewpoint.

(3) For purposes of this subdivision, a roadside rest area or viewpoint is a publicly maintained vehicle parking area, adjacent to a highway, utilized for the convenient, safe stopping of a vehicle to enable motorists to rest or to view the scenery. If two or more roadside rest areas are located on opposite sides of the highway, or upon the center divider, within seven miles of each other, then that combination of rest areas is considered to be the same rest area.

(t) When a peace officer issues a notice to appear for a violation of Section 25279.

(u) When a peace officer issues a citation for a violation of Section 11700 and the vehicle is being offered for sale.

SEC. 3. Section 2 of this bill incorporates amendments to Section 22651 of the Vehicle Code proposed by both this bill and AB 2042. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2009, (2) each bill amends Section 22651 of the Vehicle Code, and (3) this bill is enacted after AB 2042, in which case Section 1 of this bill shall not become operative.

CHAPTER 461

An act to add Section 25503.41 to the Business and Professions Code, relating to alcoholic beverages.

[Approved by Governor September 27, 2008. Filed with Secretary of State September 27, 2008.]

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

SECTION 1. Section 25503.41 is added to the Business and Professions Code, to read:

25503.41. (a) Notwithstanding any other provision of this division, any person that both operates a winery in another state and produces distilled spirits in another state may hold an interest in no more than 12 brewpub-restaurant licenses, provided that all of the following conditions are met:

(1) The out-of-state distilling operations occur only on premises where the licensee also conducts brewpub-restaurant operations, and do not exceed 12,000 gallons of distilled spirits annually at any licensed location.

(2) The out-of-state winery operations occur only on premises where the licensee also conducts brewpub-restaurant operations.

(3) The distilled spirits and wine that are manufactured out of state by the licensee are not imported into or sold in this state. If the licensee imports beer into this state that is produced in its out-of-state brewpub, it shall do so only through a licensed beer and wine wholesaler.

(b) The Legislature finds that it is necessary and proper to require a separation between manufacturing interests, wholesale interests, and retail interests in the production and distribution of alcoholic beverages in order to prevent suppliers from dominating local markets through vertical integration and to prevent excessive sales of alcoholic beverages produced by overly aggressive marketing techniques. The Legislature further finds that the exception established by this section to the general prohibition against tied interests must be limited to its expressed terms so as not to undermine the general prohibition, and intends that this section be construed accordingly.

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 462

An act to add Article 6 (commencing with Section 68630) to Chapter 2 of Title 8 of, and to repeal Section 68511.3 of, the Government Code, relating to the courts.

[Approved by Governor September 27, 2008. Filed with
Secretary of State September 27, 2008.]

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

SECTION 1. Section 68511.3 of the Government Code is repealed.

SEC. 2. Article 6 (commencing with Section 68630) is added to Chapter 2 of Title 8 of the Government Code, to read:

Article 6. Waiver of Court Fees and Costs

68630. The Legislature finds and declares all of the following:

(a) That our legal system cannot provide "equal justice under law" unless all persons have access to the courts without regard to their economic means. California law and court procedures should ensure that court fees are not a barrier to court access for those with insufficient economic means to pay those fees.

(b) That fiscal responsibility should be tempered with concern for litigants' rights to access the justice system. The procedure for allowing the poor to use court services without paying ordinary fees must be one that applies rules fairly to similarly situated persons, is accessible to those with limited knowledge of court processes, and does not delay access to court services. The procedure for determining if a litigant may file a lawsuit without paying a fee must not interfere with court access for those without the financial means to do so.

(c) That those who are able to pay court fees should do so, and that courts should be allowed to recover previously waived fees if a litigant has obtained a judgment or substantial settlement.

68631. An initial fee waiver shall be granted by the court at any stage of the proceedings at both the appellate and trial court levels if an applicant meets the standards of eligibility and application requirements under Sections 68632 and 68633. An initial fee waiver excuses the applicant from paying fees for the first pleading or other paper, and other court fees and costs as specified in rules adopted by the Judicial Council, unless the court orders the applicant to make partial payments under subdivision (c) of Section 68632, subdivision (d) of Section 68636, or subdivision (e) of Section 68637. Under circumstances set forth in Section 68636, the court may reconsider the initial fee waiver and order the fee waiver withdrawn for future fees and costs or deny the fee waiver retroactively. At the end of the case, the court may recover fees and costs that were initially waived under circumstances set forth in Section 68637.

68632. Permission to proceed without paying court fees and costs because of an applicant's financial condition shall be granted initially to all of the following persons:

(a) A person who is receiving public benefits under one or more of the following programs:

(1) Supplemental Security Income (SSI) and State Supplementary Payment (SSP) (Article 5 (commencing with Section 12200) of Chapter 3 of Part 3 of Division 9 of the Welfare and Institutions Code).

(2) California Work Opportunity and Responsibility to Kids Act (CalWORKs) (Chapter 2 (commencing with Section 11200) of Part 3 of Division 9 of the Welfare and Institutions Code) or a federal Tribal Temporary Assistance for Needy Families (Tribal TANF) grant program (Section 10553.25 of the Welfare and Institutions Code).

(3) Food Stamps (Chapter 51 (commencing with Section 2011) of Title 7 of the United States Code) or the California Food Assistance Program (Chapter 10.1 (commencing with Section 18930) of Part 6 of Division 9 of the Welfare and Institutions Code).

(4) County Relief, General Relief (GR), or General Assistance (GA) (Part 5 (commencing with Section 17000) of Division 9 of the Welfare and Institutions Code).

(5) Cash Assistance Program for Aged, Blind, and Disabled Legal Immigrants (CAPI) (Chapter 10.3 (commencing with Section 18937) of Part 6 of Division 9 of the Welfare and Institutions Code).

(6) In-Home Supportive Services (IHSS) (Article 7 (commencing with Section 12300) of Chapter 3 of Part 3 of Division 9 of the Welfare and Institutions Code).

(7) Medi-Cal (Chapter 7 (commencing with Section 14000) of Part 3 of Division 9 of the Welfare and Institutions Code).

(b) A person whose monthly income is 125 percent or less of the current poverty guidelines updated periodically in the Federal Register by the United States Department of Health and Human Services under the authority of paragraph (2) of Section 9902 of Title 42 of the United States Code.

(c) A person who, as individually determined by the court, cannot pay court fees without using moneys that normally would pay for the common necessaries of life for the applicant and the applicant's family. Only if a trial court finds that an applicant under this subdivision can pay a portion of court fees, or can pay court fees over a period of time, or under some other equitable arrangement, without using moneys that normally would pay for the common necessaries of life for the applicant and the applicant's family, the court may grant a partial initial fee waiver using the notice and hearing procedures set forth in paragraph (5) of subdivision (e) of Section 68634. "Common necessaries of life," as used

in this article, shall be interpreted consistently with the use of that term in paragraph (1) of subdivision (c) of Section 706.051 of the Code of Civil Procedure.

68633. (a) An applicant for an initial fee waiver under subdivision (a) of Section 68632 shall complete, under penalty of perjury, a Judicial Council application form requiring the applicant to list his or her current street address, or another address where the court can contact the applicant, occupation, employer, and the type of public benefits that he or she is receiving. At the time the application is submitted, the applicant shall not be required to provide documents supporting receipt of public benefits, to provide evidence of identity, to submit to interviews regarding the applicant's financial circumstances, to be physically present to file the application, or to fill out additional parts of the application form.

(b) An applicant for an initial fee waiver under subdivision (b) of Section 68632 shall complete, under penalty of perjury, both of the following:

(1) A Judicial Council application form requiring the applicant to provide his or her current street address, or another address where the court can contact the applicant, occupation, and employer.

(2) A financial statement showing monthly or yearly income as determined under rules, and on forms, adopted by the Judicial Council. At the time the application is submitted, the applicant shall not be required to provide documents to prove income, dependents, or expenses, to provide evidence of identity, to submit to interviews regarding the applicant's financial circumstances, to be physically present to file the application, or to fill out additional parts of the application form.

(c) An applicant for an initial fee waiver under subdivision (c) of Section 68632 shall complete, under penalty of perjury, both of the following:

(1) A Judicial Council application form requiring the applicant to provide his or her current street address, or another address where the court can contact the applicant, occupation, and employer.

(2) A financial statement showing monthly or yearly income and expenses and a summary of assets and liabilities as determined under rules, and on forms, adopted by the Judicial Council. At the time the application is submitted, the applicant shall not be required to provide documents to prove income, dependents, or expenses, to provide evidence of identity, to submit to interviews regarding the applicant's financial circumstances, or to be physically present to file the application.

(d) The clerk shall provide forms adopted by the Judicial Council pursuant to this article without charge to any person who requests those forms or indicates that he or she is unable to pay any court fees or costs. An applicant shall not be required to complete any form as part of his

or her application under this article other than those forms adopted by the Judicial Council.

(e) An applicant for an initial fee waiver shall be informed that, at a later date, the court may require proof of receipt of benefits or financial information to verify eligibility, as provided in Section 68636, and that a trial court may seek reimbursement of initially waived fees under circumstances set forth in Section 68637. This notice requirement is satisfied if the information is provided on the Judicial Council fee waiver application form.

(f) Financial information provided by an applicant shall be kept confidential by the court. No person shall have access to the application except the court, authorized court personnel, and any person authorized by the applicant. No person shall reveal any information contained in the application except as authorized by law. Any hearing regarding whether to grant or deny a fee waiver request shall be held in camera, and the court shall exclude all persons except court staff, the applicant, those present with the applicant's consent, and any witness being examined. The fact that an applicant's fees and costs have been initially waived and the amount of the waived fees and costs are not confidential. The Judicial Council shall adopt procedures to keep the financial information confidential and to consider a request seeking that confidential information.

(g) Counsel representing an applicant who is filing in a general jurisdiction civil case pursuant to an agreement that counsel will advance litigation costs shall indicate that agreement on the application form. The court shall set a hearing to determine whether or not the applicant is able to pay court fees without using moneys that normally would pay for the common necessaries of life. This subdivision does not apply if the applicant is represented by counsel for, or affiliated with, a qualified legal services project, as defined in Section 6213 of the Business and Professions Code.

68634. (a) This section applies to the processing and determination of fee waiver applications in the trial courts.

(b) All applications for an initial fee waiver shall be accepted for filing. If an applicant submits an application without providing all required information to complete the form, the clerk may request that the applicant supply the omitted information, but shall not refuse to file the application, or refuse to file any pleadings accompanying the application, on the ground that the fee has not been paid. The clerk shall not request that the applicant furnish information that is not required on the Judicial Council fee waiver application form. At the time the application is submitted, the clerk shall not request that the applicant

provide documents to support the information other than those required under Section 68633.

(c) If a person has filed an application for an initial fee waiver, the person shall be permitted to file his or her pleading or other papers immediately, without paying any fees.

(d) The court may delegate to the clerk the authority to grant applications for an initial fee waiver that meet the standards of eligibility and application requirements set forth in Sections 68632 and 68633. The court shall not delegate to a clerk the authority to deny or to partially grant an application for an initial fee waiver.

(e) The fee waiver application shall be determined without regard to the substance of the applicant's pleading or other paper filed, if any. On review of an application for an initial fee waiver the court shall take the following actions, as applicable:

(1) Grant the application if the information provided on the application establishes that the applicant meets the criteria for eligibility and application requirements set forth in Sections 68632 and 68633.

(2) Deny the application if the application is incomplete. If the application is denied on this basis, the applicant shall be given notice of the specific reason for denial and a reasonable opportunity to submit a revised application.

(3) Deny the application if the information provided on the application conclusively establishes that the applicant is not eligible for an initial fee waiver under Section 68632 on the grounds requested. If the application is denied on this basis, the applicant shall be given notice of the specific reason for denial and a reasonable opportunity to request a hearing. The applicant may submit additional information at the hearing.

(4) Set an eligibility hearing if the court has good reason to doubt the veracity of the factual statements in the application. The applicant shall be given 10 days' notice of the hearing and the specific reason the court doubts the veracity of the factual statements. The court may require that specified, reasonably available, additional information be provided concerning the truthfulness of the factual statements in the application, but shall not require submission of information that is not related to the criteria for eligibility and application requirements set forth in Sections 68632 and 68633.

(5) Set an eligibility hearing if the information provided on the application does not establish that the applicant meets the criteria for eligibility and application requirements set forth in Sections 68632 and 68633, but that information does not conclusively establish that the applicant is not eligible for an initial fee waiver on the grounds requested. The applicant shall be given 10 days' notice of the hearing and the specific reason why the court has not granted the application. The court

may require that specified, reasonably available, additional information be provided, but shall not require submission of information that is not related to the criteria for eligibility and application requirements set forth in Sections 68632 and 68633.

After notice and an opportunity to be heard, the court may require an applicant under subdivision (c) of Section 68632 to pay a portion of court fees, or to pay court fees over a period of time or under some other equitable arrangement that meets the criteria of subdivision (c) of Section 68632. The court shall give a written statement of reasons if an application is denied in whole or in part.

(f) An application for an initial fee waiver is deemed granted five court days after it is filed, unless before that time, the court gives notice of action on the application as provided in subdivision (e). Any delay by the court in processing an application to initially waive court fees and costs does not count against any time limits affecting the pleadings or other papers that the applicant timely filed.

(g) If an application is denied in whole or in part, the applicant shall pay the court fees and costs that ordinarily would be charged, or make the partial payment as ordered by the court, within 10 days after the clerk gives notice of the denial, unless within that time the applicant submits a new application or requests a hearing under subdivision (e). If the applicant does not pay on time, the clerk shall void the papers that were filed without payment of the court fees and costs.

(h) A person who applies for an initial fee waiver shall indicate whether he or she has filed a prior application for an initial fee waiver in the same case within the previous six months and shall attach a copy, if one is reasonably available.

68634.5. (a) This section applies to the processing and determination of fee waiver applications in the appellate courts.

(b) All completed applications for a fee waiver shall be accepted for filing. If an application is submitted without all required information filled out on the form, the clerk may return the application to the applicant and request that the applicant supply the omitted information, but shall not refuse to file any paper accompanying the application on the ground that the application is incomplete or the fee has not been paid. The clerk shall not request that the applicant furnish information that is not required on the Judicial Council fee waiver application form. At the time the application is submitted, the clerk shall not request that the applicant provide documents to support the information other than those required under Section 68633.

(c) A person shall be permitted to file his or her papers immediately, even if the person does not present the filing fee, or an application for, or order granting, a fee waiver.

(d) The court may delegate to the clerk the authority to grant applications for a fee waiver that meet the standards of eligibility and application requirements set forth in Sections 68632 and 68633. The court shall not delegate to a clerk the authority to deny an application for a fee waiver.

(e) The fee waiver application shall be determined without regard to the substance of any other paper filed by the applicant. On review of an application for a fee waiver, the court shall take the following actions, as applicable:

(1) Grant the application if the information provided on the application establishes that the applicant meets the criteria for eligibility and application requirements set forth in Sections 68632 and 68633.

(2) Deny the application if the application is incomplete. If the application is denied on this basis, the applicant shall be given notice of the specific reason for denial and a reasonable opportunity to submit a revised application.

(3) Deny the application if the information provided on the application conclusively establishes that the applicant is not eligible for a fee waiver under Section 68632 on the grounds requested. If the application is denied on this basis, the applicant shall be given notice of the specific reason for denial and a reasonable opportunity to submit additional information related to the criteria for eligibility and application requirements.

(4) If the court concludes that there is a substantial evidentiary question regarding the applicant's eligibility, the court:

(A) May require the applicant to provide specified, reasonably available, additional information concerning the factual statements in the application, but shall not require submission of information that is not related to the criteria for eligibility and application requirements set forth in Sections 68632 and 68633.

(B) May set a hearing to consider evidence concerning the applicant's eligibility.

(C) Shall give a written statement of reasons if an application is denied.

(f) An application for a fee waiver is deemed granted five court days after it is filed, unless before that time, the court gives notice of action on the application as provided in subdivision (e).

(g) If an application is denied, the applicant shall pay the court fees and costs that ordinarily would be charged within 10 days after the clerk gives notice of the denial, unless within that time, the court grants a fee waiver based on a new application or additional information provided by the applicant under subdivision (e). The clerk shall notify the applicant of the consequences for failure to pay the court fees.

(h) A person who applies for an initial fee waiver shall indicate whether he or she has filed a prior application for a fee waiver in the same case and shall attach a copy, if one is reasonably available.

68635. (a) This section applies only to waivers of trial court fees.

(b) Notwithstanding any other provision of this article, a person who is sentenced to the state prison or confined in a county jail shall pay the full amount of the trial court filing fees and costs to the extent provided in this section.

(c) To apply for an initial fee waiver, a person who is sentenced to the state prison or confined in a county jail shall complete, under penalty of perjury, a Judicial Council application form giving the current address of the inmate and a statement that he or she is incarcerated, together with a statement of account for any moneys due to the inmate for the six-month period immediately preceding the application. The form shall be certified by the appropriate official of the Department of Corrections and Rehabilitation or a county jail.

(d) When the pleadings or other papers are filed, the court shall assess and, if funds exist, collect as partial payment, a partial filing fee of 20 percent of the greater of either of the following:

(1) The average monthly deposits to the inmate's account.

(2) The average monthly balance in the inmate's account for the six-month period immediately preceding the application.

(e) After the initial filing fee is partially paid, the inmate shall make monthly payments of 20 percent of the preceding month's income credited to the inmate's account. The Department of Corrections and Rehabilitation, or a county jail, shall forward payments from this account to the clerk of the court each time the amount in the account exceeds ten dollars ($10) until the filing fees are paid in full.

(f) The fees collected by the court under this section shall not exceed the amount of the fees that would be charged to a person who is not incarcerated.

(g) The court may delegate to a clerk the authority to process requests for fee waivers from inmates under this section.

(h) An inmate shall not be prohibited from filing pleadings or other papers solely because the inmate has no assets and no means to partially pay the initial filing fee.

68636. (a) After the court has granted an initial fee waiver in whole or in part, and before final disposition of the case, the person who received the initial fee waiver shall notify the court within five days of any change in financial circumstances that affects his or her ability to pay all or a portion of the court fees and costs that were initially waived.

(b) If, before or at the time of final disposition of the case, the court obtains information, including information derived from the court file,

suggesting that a person whose fees and costs were initially waived is not entitled to a fee waiver, or that the person's financial condition has changed so that he or she is no longer eligible for a fee waiver, the court may require the person to appear at a court hearing by giving the applicant no less than 10 days' written notice of the hearing and the specific reasons why the initial fee waiver might be reconsidered. The court may require the person to provide reasonably available evidence, including financial information, to support his or her eligibility for the fee waiver, but shall not require submission of information that is not related to the criteria for eligibility and application requirements set forth in Sections 68632 and 68633. The court shall not conduct a hearing pursuant to this subdivision more often than once every six months.

(c) At the time of final disposition of the case, the court may give notice that a person whose fees and costs were initially waived is required to appear at a court hearing by giving the applicant no less than 10 days' written notice of the hearing. The court may require the person to provide reasonably available evidence, including financial information, to support his or her eligibility for the fee waiver, but shall not require submission of information that is not related to the criteria for eligibility and application requirements set forth in Sections 68632 and 68633.

(d) In conducting a hearing under subdivision (b) or (c), if the court determines that the person was not entitled to the initial fee waiver at the time it was granted, the court may order the waiver withdrawn retroactively. The court may order the person to pay to the court immediately, or over a period of time, all or part of the fees that were initially waived. The court shall give the person a minimum of 10 court days to begin paying the full or partial fees.

(e) In conducting a hearing under subdivision (a), (b), or (c), if the court determines that the person's financial circumstances have changed since the grant of the initial fee waiver or partial initial fee waiver, the court may order the fee waiver withdrawn prospectively from the time that the person no longer was eligible for a fee waiver. The court may order the person to pay to the court immediately, or over a period of time, all or part of the fees that were waived since the time that the person no longer was eligible for a fee waiver. The court may order the person to begin paying all or part of the court fees assessed for future activities in the case. The court shall give the person a minimum of 10 court days to begin paying the full or partial fees.

(f) If the court obtains information suggesting that a litigant whose fees and costs were initially waived is obtaining court services in bad faith, or for an improper purpose such as to harass or cause unnecessary delay, or to needlessly increase the costs of litigation, the court may give notice that the litigant is required to appear at a court hearing to consider

whether limitations should be placed on court services for which fees were initially waived.

68637. (a) This section applies only to waivers of trial court fees.

(b) (1) If a party whose trial court fees and costs were initially waived is a prevailing party within the meaning of Section 1032 of the Code of Civil Procedure, the judgment or dismissal entered in favor of the party whose fees and costs were initially waived shall include an order requiring that the party against whom judgment or dismissal has been entered pay to the court the waived fees and costs. The court may refuse to enter a partial or full satisfaction of a judgment until an accompanying order requiring payment of waived fees and costs has been satisfied.

(2) A party petitioning the court to enter satisfaction of judgment shall declare, under penalty of perjury, that any order requiring payment of waived fees and costs has been satisfied.

(3) This subdivision does not apply to any of the following:

(A) Unlawful detainer cases.

(B) Family law matters, for which recovery of fees is subject to subdivisions (d) and (e).

(C) Cases in which the judgment or dismissal is entered against a party whose fees and costs were initially waived.

(c) If a party in a civil case whose trial court fees and costs were initially waived recovers ten thousand dollars ($10,000) or more in value by way of settlement, compromise, arbitration award, mediation settlement, or other recovery, the waived fees and costs shall be paid to the court out of the settlement, compromise, award, or other recovery.

(1) The court shall have a lien on any settlement, compromise, award, or other recovery in the amount of all the court fees and costs initially waived.

(2) The waived fees and costs shall first be paid to the court before the party whose fees and costs were initially waived receives anything of value under the settlement, compromise, award, or other recovery.

(3) Notice of the lien shall be given to the parties under rules and on forms adopted by the Judicial Council, and the Judicial Council shall provide by rule the procedures by which a party subject to a lien may determine the amount of the lien.

(4) The court may refuse to enter a petition for dismissal in the case until the lien is satisfied. A party filing a petition for dismissal shall declare, under penalty of perjury, that the lien has been paid, or that any settlement, compromise, award, or other recovery has a value of less than ten thousand dollars ($10,000).

(5) In a case in which an initial waiver of fees and costs was granted, or if a petition to dismiss the case is filed without the declaration, the court may issue an order to show cause why the lien should not be

enforced and why the court should not enter a judgment making the parties jointly and severally liable to the court for initially waived fees and costs.

(d) If a judgment or an order to pay support is entered in a family law case, the trial court shall consider, based on the information in the court file, whether a party who did not receive a fee waiver has the ability to pay all or part of the other party's waived fees. Any order for the payment of the other party's waived fees shall be made payable only after all current support and all accrued arrears owed by the party who did not receive the fee waiver have been paid. If the court orders payment of the other party's waived fees, and the party required to pay is not present in court at the time judgment is entered, the party required to pay shall be given notice and an opportunity for a hearing to request that the court set aside the order to pay fees. A request for a hearing shall be made in writing within 30 days after service of the notice of the court order. If a request for hearing is made, the order for payment of initially waived fees shall not be enforced until after the hearing.

(e) If a judgment is entered in a family law case, the trial court shall consider, based on the information in the court file, whether a party's circumstances have changed so that it is reasonable to require a party who received an initial fee waiver to pay all or part of the fees that were initially waived. In making this determination, the court shall use the criteria for eligibility set forth in Section 68632. In considering whether a child or spousal support order constitutes a change of circumstances allowing the party to pay fees, the court also shall consider the likelihood that the support obligor will remit the payments ordered by the court. If a support order is the primary basis for the court's finding of changed circumstances, the court shall order the support obligor to pay the previously waived fees subject to the provisions of subdivision (d). When the court orders the party to pay all or part of the fees that were initially waived, the party required to pay shall be given notice and an opportunity for a hearing to request that the court set aside the order to pay fees. A request for a hearing shall be made in writing within 30 days after service of the notice of the court order. If a request for hearing is made, the order for payment of initially waived fees shall not be enforced until after the hearing.

68638. (a) The trial court may execute on any order for payment of initially waived fees and costs in the same manner as on a judgment in a civil action. The court may issue an abstract of judgment, a writ of execution, or both, for all of the following:

(1) Recovery of the initially waived fees and costs as ordered.

(2) Fees for issuing the abstract of judgment, writ of execution, or both.

(3) A twenty-five-dollar ($25) fee for administering this subdivision.

(4) An amount due to levying officers for serving and collecting on the judgment that will all be added to the writ of execution.

(b) Upon collection, the initially waived fees and costs, the fees for issuing the abstract of judgment and writ of execution, and the twenty-five-dollar ($25) administrative fee shall be remitted to the court. Thereafter, the amount due to the levying officers for serving and collecting on the judgment shall be paid.

68639. An initial fee waiver shall expire 60 days after the judgment, dismissal, or other final disposition of the case.

68640. The Judicial Council may adopt a rule of court to allow litigants who are not eligible for a fee waiver to pay court fees in installments.

68641. The Judicial Council shall adopt rules and forms to establish uniform procedures to implement this article, including, but not limited to, procedures for all of the following:

(a) Considering and determining applications to proceed without paying court fees and costs at every stage of the proceedings, including at the trial and appellate levels of the court.

(b) Prescribing the court fees and costs that may be waived at every stage of the proceedings.

(c) Giving notice of lien and hearings for reconsideration and recovery of initially waived fees and costs.

(d) Collecting waived fees and costs.

(e) Requesting a hearing when an application is denied.

(f) Any other procedures necessary to implement the provisions of this article.

SEC. 3. This act shall become operative on July 1, 2009.

SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

CHAPTER 463

An act to amend Section 10509.3 of the Insurance Code, relating to insurance.

[Approved by Governor September 27, 2008. Filed with
Secretary of State September 27, 2008.]

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

SECTION 1. Section 10509.3 of the Insurance Code is amended to read:

10509.3. (a) Unless otherwise specifically included, this article does not apply to the following:

(1) Credit life insurance.

(2) Group life insurance or group annuities.

(3) An application to the existing insurer that issued the existing life insurance when a contractual change or a conversion privilege is being exercised, or when a term conversion privilege is exercised among corporate affiliates.

(4) Proposed life insurance that is to replace life insurance under a binding or conditional receipt issued by the same insurer.

(5) Transactions where the replacing insurer and the existing insurer are the same; provided, however, that agents proposing replacement shall:

(A) Comply with the requirements of subdivisions (a) and (d) of Section 10509.4.

(B) Provide and leave with the applicant a written statement containing information relating to premiums, cash values, death benefits, and outstanding indebtedness, and dividends and dividend accumulations, if any, for the existing policy, both immediately before and after replacement, and for the proposed life insurance or annuity.

(b) Registered contracts shall be exempt from the requirements of paragraphs (2) and (3) of subdivision (b) of Section 10509.6 requiring provision of policy summary or ledger statement information; however, premium or contract contribution amounts and identification of the appropriate prospectus or offering circular shall be required in lieu thereof.

(c) "Term conversion privilege" means an option afforded by contract to certain holders of term life insurance policies that permits the policy to be converted into permanent insurance, including whole life insurance, universal life insurance, or variable life insurance, regardless of the insured's physical condition and without a medical examination. The holder of a term life insurance policy with a term conversion privilege shall not be denied coverage or charged an additional premium for any health problems and premiums for the permanent policy shall be based on the same underwriting class as the term policy, regardless of any changes of health since the term policy was issued.

(d) "Corporate affiliate" means the same as "affiliate" as defined in Section 1215.

CHAPTER 464

An act to amend Sections 14132.44 and 14132.47 of the Welfare and Institutions Code, relating to Medi-Cal.

[Approved by Governor September 27, 2008. Filed with Secretary of State September 27, 2008.]

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

SECTION 1. Section 14132.44 of the Welfare and Institutions Code is amended to read:

14132.44. (a) Targeted case management (TCM), pursuant to Section 1915(g) of the Social Security Act as amended by Public Law 99-272 (42 U.S.C. Sec. 1396n(g)), shall be covered as a benefit, effective January 1, 1995. Nothing in this section shall be construed to require any local governmental agency to implement TCM.

(b) A local governmental agency may contract with the department to provide TCM services. The department shall not contract with local education agencies to provide case management services under this section.

(c) A local governmental agency may contract with any private or public entity to provide TCM services on its behalf under the conditions specified by the department in regulations.

(d) Each local governmental agency that provides TCM services shall have all of the following:

(1) Established procedures for performance monitoring.

(2) A countywide system to prevent duplication of services and to ensure coordination and continuity of care among providers of case management services provided to beneficiaries who are eligible to receive case management services from two or more programs.

(3) A fee mechanism effective January 1, 1995, specific to TCM services provided, which may vary by program.

(e) Subject to the requirements of federal law and regulations, a local governmental agency or an entity under contract with a local governmental agency may provide TCM services to one or all of the following groups of Medi-Cal beneficiaries, which shall be defined in regulation:

(1) High-risk persons.

(2) Persons who have language or other comprehension barriers.

(3) Persons on probation.

(4) Persons who have exhibited an inability to handle personal, medical, or other affairs.

(5) Persons abusing alcohol or drugs, or both.

(6) Adults at risk of institutionalization.

(7) Adults at risk of abuse or neglect.

(f) (1) A local governmental agency that elects to provide TCM services to the groups specified in subdivision (e) shall, for each fiscal year, for the purpose of obtaining federal Medicaid reimbursement, submit an annual cost report as prescribed by the department that certifies all of the following:

(A) The expenditure of 100 percent of the costs incurred for the provision of TCM services from the local governmental agency's general fund or from any other funds allowed under federal law and regulation.

(B) The amount of funds expended on allowable TCM services.

(C) Its expenditures represent costs that are eligible for federal financial participation.

(D) The costs reflected in the annual cost reports used to determine TCM rates are developed in compliance with the definitions contained in the Office of Management and Budget (OMB) Circular A-87.

(E) Case management services provided in accordance with Section 1396n(g) of Title 42 of the United States Code will not duplicate case management services provided under any home- and community-based services waiver.

(F) Claims for providing case management services pursuant to this section will not duplicate claims made to public agencies or private entities under other program authorities for the same purposes.

(G) The requirements of subdivision (d) have been met.

(2) The department shall deny any claim if it determines that any certification required by this subdivision is not adequately supported for purposes of federal financial participation.

(3) (A) A city that is not a local governmental agency, or any other local public entity that contracts with a local governmental agency pursuant to subdivision (c) and that is located within a county that is a participating local governmental agency pursuant to this section, may submit certification to the local governmental agency of amounts expended for TCM services in accordance with Section 433.51 of Title 42 of the Code of Federal Regulations.

(B) A city or other local public entity that submits certification pursuant to this paragraph shall comply with the requirements of paragraph (1), with other requirements applicable to local governmental

agencies that the department determines, in regulations, to be applicable, and with all applicable federal requirements.

(C) The local governmental agency shall forward the city's or local public entity's certification to the department for purposes of claiming federal financial participation.

(D) As applicable, the local governmental agency shall obtain and retain appropriate certifications from the expending city or local public entity, together with documentation of the underlying expenditures, as required by the department.

(g) Except as otherwise provided in paragraph (3) of subdivision (f), only a local governmental agency may submit TCM service claims to the department for the performance of TCM services.

(h) The department, in consultation with local governmental agencies, and consistent with federal regulations, and the State Medicaid Manual of the Department of Health and Human Services, Centers for Medicare and Medicaid Services, shall adopt regulations that define TCM services, establish the standards under which TCM services qualify as a Medi-Cal reimbursable service, prescribe the methodology for determining the rate of reimbursement, and establish a claims submission and processing system and method to certify local expenditures.

(i) (1) Notwithstanding any other provision of this section, the state shall be held harmless, in accordance with paragraphs (2) and (3) from any federal audit disallowance and interest resulting from payments made by the federal Medicaid Program as reimbursement for claims for providing TCM services pursuant to this section, for the disallowed claim.

(2) To the extent that a federal audit disallowance and interest results from a claim or claims for which any local governmental agency has received reimbursement for TCM services, the department shall recoup from the local governmental agency that submitted that disallowed claim, through offsets or by a direct billing, amounts equal to the amount of the disallowance and interest, in that fiscal year, for the disallowed claim. All subsequent claims submitted to the department applicable to any previously disallowed claim, may be held in abeyance, with no payment made, until the federal disallowance issue is resolved.

(3) Notwithstanding paragraphs (1) and (2), to the extent that a federal audit disallowance and interest results from a claim or claims for which the local governmental agency has received reimbursement for TCM services performed by an entity under contract with, and on behalf of, the participating local governmental agency, the department shall be held harmless by that particular local governmental agency for 100 percent of the amount of any such federal audit disallowance and interest, for the disallowed claim.

(j) The expenditure of local funds required by this section shall not create, lead to, or expand the health care funding obligations or service obligations for current or future years for each local governmental agency, except as required by this section or as may be required by federal law.

(k) Subject to the requirements of federal law and regulations, TCM services are services which assist beneficiaries to gain access to needed medical, social, educational, and other services. Services provided by local governmental agencies, and their subcontractors, shall be defined in regulation, and shall include at least one of the following:

(1) Assessment.

(2) Plan development.

(3) Linkage and consultation.

(4) Assistance in accessing services.

(5) Periodic review.

(6) Crisis assistance planning.

(*l*) As a condition of participation and in consideration of the joint effort of the local governmental agencies and the department in implementing this section and the ongoing need of local governmental agencies to receive technical support from the department, as well as assistance in claims processing and program monitoring, the local governmental agencies shall cover the costs of the administrative activities performed by the department. Each local governmental agency shall annually pay a portion of the total costs of administrative activities performed by the department through a mechanism agreed to by the department and the local governmental agencies, or if no agreement is reached by August 1 of each year, directly to the state. The department shall determine and report the staffing requirements upon which projected costs will be based. Projected costs shall include the anticipated salaries, benefits, and operating expenses necessary to administer targeted case management.

(m) For the purposes of this section a "local governmental agency" means a county or chartered city.

(n) Nothing in this section or in Section 14132.47 shall be construed to prevent any state agency from providing TCM services or from contracting with others to provide these services.

SEC. 2. Section 14132.47 of the Welfare and Institutions Code is amended to read:

14132.47. (a) It is the intent of the Legislature to provide local governmental agencies the choice of participating in either or both of the Targeted Case Management (TCM) and Administrative Claiming process programs at their option, subject to the requirements of this section and Section 14132.44.

(b) The department may contract with each participating local governmental agency or each local educational consortium to assist with the performance of administrative activities necessary for the proper and efficient administration of the Medi-Cal program, pursuant to Section 1396b(a) of Title 42 of the United States Code, Section 1903a of the federal Social Security Act, and this activity shall be known as the Administrative Claiming process.

(c) (1) Subject to the requirements of paragraph (2) of subdivision (f), as a condition for participation in the Administrative Claiming process, each participating local governmental agency or each local educational consortium shall, for the purpose of claiming federal Medicaid reimbursement, enter into a contract with the department and shall certify to the department the total amount the local governmental agency or each local educational consortium expended on the allowable administrative activities.

(2) The department shall deny the claim if it determines that the certification is not adequately supported, or does not otherwise comply with federal requirements, for purposes of claiming federal financial participation.

(d) Each participating local governmental agency or local educational consortium may subcontract with private or public entities to assist with the performance of administrative activities necessary for the proper and efficient administration of the Medi-Cal program under the conditions specified by the department in regulations.

(e) Each Administrative Claiming process contract shall include a requirement that each participating local governmental agency or each local educational consortium submit a claiming plan in a manner that shall be prescribed by the department in regulations, developed in consultation with local governmental agencies.

(f) (1) The department shall require that each participating local governmental agency or each local educational consortium certify to the department both of the following:

(A) The expenditure of 100 percent of the cost of performing Administrative Claiming process activities. The funds expended for this purpose shall be from the local governmental agency's general fund or the general funds of local educational agencies or from any other funds allowed under federal law and regulation.

(B) In each fiscal year that its expenditures represent costs that are eligible for federal financial participation for that fiscal year. The department shall deny the claim if it determines that the certification is not adequately supported for purposes of federal financial participation.

(2) (A) (i) A city that is not a participating local governmental agency, or any other local public entity, that contracts with a local

governmental agency pursuant to subdivision (d) and that is located within a county that is a participating local governmental agency pursuant to this section, may submit certification to the local governmental agency of amounts expended for Administrative Claiming services in accordance with Section 433.51 of Title 42 of the Code of Federal Regulations.

(ii) A city or other local public entity that submits certification pursuant to this paragraph shall comply with the requirements of paragraph (1), with other requirements applicable to local governmental agencies that the department determines, in regulations, to be applicable, and with all applicable federal requirements.

(iii) The local governmental agency shall forward the city's or local public entity's certification to the department for the purposes of claiming federal financial participation.

(iv) As applicable, the local governmental agency shall obtain and retain appropriate certifications from the expending city or local public entity, together with documentation of the underlying expenditures, as required by the department.

(B) A tribe or tribal organization, as defined in subdivision (n), that is not participating in Administrative Claiming process activities as a local governmental agency, may contract with, and submit to a tribe or tribal organization that is contracting with, the department pursuant to subdivision (b) amounts expended for Administrative Claiming process activities that it is certifying in accordance with Section 433.51 of Title 42 of the Code of Federal Regulations and other applicable federal law and regulations. The tribe or tribal organization receiving the certification shall forward it to the department for purposes of claiming federal financial participation. Such certification shall comply with all of the requirements for certification set forth in subparagraph (A).

(g) (1) Notwithstanding any other provision of this section, the state shall be held harmless, in accordance with paragraphs (2) and (3), from any federal audit disallowance and interest resulting from payments made to a participating local governmental agency or local educational consortium pursuant to this section, for the disallowed claim.

(2) To the extent that a federal audit disallowance and interest results from a claim or claims for which any participating local governmental agency or local educational consortium has received reimbursement for Administrative Claiming process activities, the department shall recoup from the local governmental agency or local educational consortium that submitted the disallowed claim, through offsets or by a direct billing, amounts equal to the amount of the disallowance and interest, in that fiscal year, for the disallowed claim. All subsequent claims submitted to the department applicable to any previously disallowed administrative

activity or claim, may be held in abeyance, with no payment made, until the federal disallowance issue is resolved.

(3) Notwithstanding paragraph (2), to the extent that a federal audit disallowance and interest results from a claim or claims for which the participating local governmental agency or local educational consortium has received reimbursement for Administrative Claiming process activities performed by an entity under contract with, and on behalf of, the participating local governmental agency or local educational consortium, the department shall be held harmless by that particular participating local governmental agency or local educational consortium for 100 percent of the amount of the federal audit disallowance and interest, for the disallowed claim.

(h) The use of local funds required by this section shall not create, lead to, or expand the health care funding obligations or service obligations for current or future years for any participating local governmental agency or local educational consortium, except as required by this section or as may be required by federal law.

(i) The department shall deny any claim from a participating local governmental agency or local educational consortium if the department determines that the claim is not adequately supported in accordance with criteria established pursuant to this subdivision and implementing regulations before it forwards the claim for reimbursement to the federal Medicaid Program. In consultation with local government agencies and local educational consortia, the department shall adopt regulations that prescribe the requirements for the submission and payment of claims for administrative activities performed by each participating local governmental agency and local educational consortium.

(j) Administrative activities shall be those determined by the department to be necessary for the proper and efficient administration of the state's Medicaid plan and shall be defined in regulation.

(k) If the department denies any claim submitted under this section, the affected participating local governmental agency or local educational consortium may, within 30 days after receipt of written notice of the denial, request that the department reconsider its action. The participating local governmental agency or local educational consortium may request a meeting with the director or his or her designee within 30 days to present its concerns to the department after the request is filed. If the director or his or her designee cannot meet, the department shall respond in writing indicating the specific reasons for which the claim is out of compliance to the participating local governmental agency or local educational consortium in response to its appeal. Thereafter, the decision of the director shall be final.

(*l*) To the extent consistent with federal law and regulations, participating local governmental agencies or local educational consortium may claim the actual costs of nonemergency, nonmedical transportation of Medi-Cal eligibles to Medi-Cal covered services, under guidelines established by the department, to the extent that these costs are actually borne by the participating local governmental agency or local educational consortium. A local educational consortium may only claim for nonemergency, nonmedical transportation of Medi-Cal eligibles for Medi-Cal covered services, through the Medi-Cal administrative activities program. Medi-Cal medical transportation services shall be claimed under the local educational agency Medi-Cal billing option, pursuant to Section 14132.06.

(m) As a condition of participation in the Administrative Claiming process and in recognition of revenue generated to each participating local governmental agency and each local educational consortium in the Administrative Claiming process, each participating local governmental agency and each local educational consortium shall pay an annual participation fee through a mechanism agreed to by the state and local governmental agencies and local educational consortia, or, if no agreement is reached by August 1 of each year, directly to the state. The participation fee shall be used to cover the cost of administering the Administrative Claiming process, including, but not limited to, claims processing, technical assistance, and monitoring. The department shall determine and report staffing requirements upon which projected costs will be based. The amount of the participation fee shall be based upon the anticipated salaries, benefits, and operating expenses, to administer the Administrative Claiming process and other costs related to that process.

(n) For the purposes of this section, "participating local governmental agency" means a county, chartered city, Native American Indian tribe, tribal organization, or subgroup of a Native American Indian tribe or tribal organization, under contract with the department pursuant to subdivision (b).

(o) For purposes of this section, "local educational agency" means a local educational agency, as defined in subdivision (h) of Section 14132.06, that participates under the Administrative Claiming process as a subcontractor to the local educational consortium in its service region.

(p) (1) For purposes of this section, "local educational consortium" means a local agency that is one of the service regions of the California County Superintendent Educational Services Association.

(2) Each local educational consortium shall contract with the department pursuant to paragraph (1) of subdivision (c).

(q) (1) Each participating local educational consortium shall be responsible for the local educational agencies in its service region that participate in the Administrative Claiming process. This responsibility includes, but is not limited to, the preparation and submission of all administrative claiming plans, training of local educational agency staff, overseeing the local educational agency time survey process, and the submission of detailed quarterly invoices on behalf of any participating local educational agency.

(2) Each participating local educational consortium shall ensure local educational agency compliance with all requirements of the Administrative Claiming process established for local governmental agencies.

(3) Ninety days prior to the initial participation in the Administrative Claiming process, each local educational consortium shall notify the department of its intent to participate in the process, and shall identify each local educational agency that will be participating as its subcontractor.

(r) (1) Each local educational agency that elects to participate in the Administrative Claiming process shall submit claims through its local educational consortium or through the local governmental agency, but not both.

(2) Each local educational agency participating as a subcontractor to a local educational consortium shall comply with all requirements of the Administrative Claiming process established for local governmental agencies.

(s) A participating local governmental agency or a local educational consortium may charge an administrative fee to any entity claiming Administrative Claiming through that agency.

(t) The department shall continue to administer the Administrative Claiming process in conformity with federal requirements.

(u) The department shall provide technical assistance to all participating local governmental agencies and local educational consortia in order to maximize federal financial participation in the Administrative Claiming process.

(v) This section shall be applicable to Administrative Claiming process activities performed, and to moneys paid to participating local governmental agencies for those activities in the 1994–95 fiscal year and thereafter, and to local educational consortia in the 1998–99 fiscal year and thereafter.

(w) Nothing in this section or Section 14132.44 shall be construed to prevent any state agency from participating in the Administrative

Claiming process or from contracting with others to engage in these activities.

CHAPTER 465

An act to add Section 1254.4 to the Health and Safety Code, relating to health facilities.

[Approved by Governor September 27, 2008. Filed with Secretary of State September 27, 2008.]

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

SECTION 1. Section 1254.4 is added to the Health and Safety Code, to read:

1254.4. (a) A general acute care hospital shall adopt a policy for providing family or next of kin with a reasonably brief period of accommodation, as described in subdivision (b), from the time that a patient is declared dead by reason of irreversible cessation of all functions of the entire brain, including the brain stem, in accordance with Section 7180, through discontinuation of cardiopulmonary support for the patient. During this reasonably brief period of accommodation, a hospital is required to continue only previously ordered cardiopulmonary support. No other medical intervention is required.

(b) For purposes of this section, a "reasonably brief period" means an amount of time afforded to gather family or next of kin at the patient's bedside.

(c) (1) A hospital subject to this section shall provide the patient's legally recognized health care decisionmaker, if any, or the patient's family or next of kin, if available, with a written statement of the policy described in subdivision (a), upon request, but no later than shortly after the treating physician has determined that the potential for brain death is imminent.

(2) If the patient's legally recognized health care decisionmaker, family, or next of kin voices any special religious or cultural practices and concerns of the patient or the patient's family surrounding the issue of death by reason of irreversible cessation of all functions of the entire brain of the patient, the hospital shall make reasonable efforts to accommodate those religious and cultural practices and concerns.

(d) For purposes of this section, in determining what is reasonable, a hospital shall consider the needs of other patients and prospective patients in urgent need of care.

(e) There shall be no private right of action to sue pursuant to 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 466

An act to amend Section 104601 of the Health and Safety Code, relating to public health.

[Approved by Governor September 27, 2008. Filed with Secretary of State September 27, 2008.]

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

SECTION 1. Section 104601 of the Health and Safety Code is amended to read:

104601. (a) The department, in consultation with the Department of Food and Agriculture, shall develop a "Healthy Food Purchase" pilot program to increase the sale and purchase of fresh fruits and vegetables in low-income communities.

(b) The total number of counties included in the pilot program shall not exceed seven.

(c) The department, in consultation with the Department of Food and Agriculture, shall design the program to include the following two components:

(1) Strategies aimed at small grocers in targeted low-income neighborhoods to increase the offerings of fresh fruits and vegetables in those communities. In selected pilot program communities, the department shall provide targeted food retailers with support or assistance to obtain refrigerated produce display cases through the assessment of the feasibility of a variety of financing methods, including, but not limited to, leasing, lending, small business and economic development support, and other time-limited strategies. The department shall also provide technical assistance to targeted retailers on the purchase, storage,

marketing, and display of fresh produce. The department shall use available federal funds for this technical assistance, where appropriate.

(2) Strategies aimed at food stamp recipients to increase their purchase of fresh fruits and vegetables by making those products more affordable, including the development and implementation of financial incentives. The department, in consultation with the State Department of Social Services, shall seek any necessary federal government approvals to allow use of the Food Stamp Electronic Benefits Card, as provided in Chapter 3 (commencing with Section 10065) of Part 1 of Division 9 of the Welfare and Institutions Code, to provide those incentives, and to implement the pilot program.

(d) In developing the pilot program, the department shall include all of the following:

(1) At least one county that is above the food stamp average county participation.

(2) At least one county that is below the food stamp average county participation.

(3) At least one county with high above-average rates of poverty, food insecurity, or obesity.

(4) At least one urban county.

(5) At least one rural county.

(e) The department shall consider all of the following in choosing counties to participate in the program:

(1) The level of need in the community.

(2) The size of the food stamp population.

(3) The need for geographic diversity.

(4) The availability of technology in targeted food retailers to collect the data necessary to evaluate the pilot program.

(f) The department shall seek all necessary approvals to establish the pilot program, and shall apply for available federal matching funds to support the work of the pilot program.

(g) The department shall develop, in consultation with the United States Department of Agriculture's Economic Research Service, a process for evaluating the effectiveness of the pilot program. The evaluation shall examine the impact of the various strategies employed in the pilot program on the purchase of fresh produce and on any increase in retailer space devoted to the sale of fresh fruits and vegetables, and the effect this has on retailer profitability. The evaluation also shall test alternatives to the reliance on uniform product codes for identification of fresh produce deemed eligible for financial incentives. The department shall contract with an independent external evaluator to conduct this evaluation. The department shall make recommendations to the Legislature regarding the continuation of the pilot program, and any

state and federal policy changes needed to support the goals of the pilot program.

(h) The department may, on or after July 1, 2009, implement this article to the extent that the Department of Finance determines that there are sufficient funds available for that purpose from any source, including state funds, federal funds, excluding federal block grant funds awarded to California pursuant to the Specialty Crops Competitiveness Act of 2004 (Public Law 108-465), and future awards of block grant funds intended to improve the competitiveness of the specialty crop industry, or funds from grants or private donations.

(i) Notwithstanding any other provision of law, no General Fund moneys shall be used to fund the program.

(j) This article shall remain in effect only until January 1, 2013, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2013, deletes or extends that date.

CHAPTER 467

An act to amend Section 2782 of, and to add Sections 2782.9, 2782.95, and 2782.96 to, the Civil Code, relating to indemnity.

[Approved by Governor September 27, 2008. Filed with Secretary of State September 27, 2008.]

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

SECTION 1. Section 2782 of the Civil Code is amended to read:

2782. (a) Except as provided in Sections 2782.1, 2782.2, 2782.5, and 2782.6, provisions, clauses, covenants, or agreements contained in, collateral to, or affecting any construction contract and that purport to indemnify the promisee against liability for damages for death or bodily injury to persons, injury to property, or any other loss, damage or expense arising from the sole negligence or willful misconduct of the promisee or the promisee's agents, servants, or independent contractors who are directly responsible to the promisee, or for defects in design furnished by those persons, are against public policy and are void and unenforceable; provided, however, that this section shall not affect the validity of any insurance contract, workers' compensation, or agreement issued by an admitted insurer as defined by the Insurance Code.

(b) Except as provided in Sections 2782.1, 2782.2, and 2782.5, provisions, clauses, covenants, or agreements contained in, collateral to, or affecting any construction contract with a public agency that purport

to impose on the contractor, or relieve the public agency from, liability for the active negligence of the public agency are void and unenforceable.

(c) For all construction contracts, and amendments thereto, entered into after January 1, 2009, for residential construction, as used in Title 7 (commencing with Section 895) of Part 2 of Division 2, all provisions, clauses, covenants, and agreements contained in, collateral to, or affecting any construction contract, and amendments thereto, that purport to insure or indemnify, including the cost to defend, the builder, as defined in Section 911, or the general contractor or contractor not affiliated with the builder, as described in subdivision (b) of Section 911, by a subcontractor against liability for claims of construction defects are unenforceable to the extent the claims arise out of, pertain to, or relate to the negligence of the builder or contractor or the builder's or contractor's other agents, other servants, or other independent contractors who are directly responsible to the builder, or for defects in design furnished by those persons, or to the extent the claims do not arise out of, pertain to, or relate to the scope of work in the written agreement between the parties. This section shall not be waived or modified by contractual agreement, act, or omission of the parties. Contractual provisions, clauses, covenants, or agreements not expressly prohibited herein are reserved to the agreement of the parties. Nothing in this subdivision shall prevent any party from exercising its rights under subdivision (a) of Section 910. This subdivision shall not affect the obligations of an insurance carrier under the holding of Presley Homes, Inc. v. American States Insurance Company (2001) 90 Cal.App.4th 571. Nor shall this subdivision affect the obligations of a builder or subcontractor pursuant to Title 7 (commencing with Section 895) of Part 2 of Division 2.

(d) Subdivision (c) does not prohibit a subcontractor and builder or general contractor from mutually agreeing to the timing or immediacy of the defense and provisions for reimbursement of defense fees and costs, so long as that agreement does not waive or modify the provisions of subdivision (c) subject, however, to paragraphs (1) and (2). A subcontractor shall owe no defense or indemnity obligation to a builder or general contractor for a construction defect claim unless and until the builder or general contractor provides a written tender of the claim, or portion thereof, to the subcontractor which includes all of the information provided to the builder or general contractor by the claimant or claimants, including, but not limited to, information provided pursuant to subdivision (a) of Section 910, relating to claims caused by that subcontractor's scope of work. This written tender shall have the same force and effect as a notice of commencement of a legal proceeding. If a builder or general contractor tenders a claim for construction defects,

or a portion thereof, to a subcontractor in the manner specified by this provision, the subcontractor shall elect to perform either of the following, the performance of which shall be deemed to satisfy the subcontractor's defense obligation to the builder or general contractor:

(1) Defend the claim with counsel of its choice, and the subcontractor shall maintain control of the defense for any claim or portion of claim to which the defense obligation applies. If a subcontractor elects to defend under this paragraph, the subcontractor shall provide written notice of the election to the builder or general contractor within a reasonable time period following receipt of the written tender, and in no event later than 90 days following that receipt. Consistent with subdivision (c), the defense by the subcontractor shall be a complete defense of the builder or general contractor of all claims or portions thereof to the extent alleged to be caused by the subcontractor, including any vicarious liability claims against the builder or general contractor resulting from the subcontractor's scope of work, but not including claims resulting from the scope of work, actions, or omissions of the builder, general contractor, or any other party. Any vicarious liability imposed upon a builder or general contractor for claims caused by the subcontractor electing to defend under this paragraph shall be directly enforceable against the subcontractor by the builder, general contractor, or claimant.

(2) Pay, within 30 days of receipt of an invoice from the builder or general contractor, no more than a reasonable allocated share of the builder's or general contractor's defense fees and costs, on an ongoing basis during the pendency of the claim, subject to reallocation consistent with subdivision (c), and including any amounts reallocated upon final resolution of the claim, either by settlement or judgment. The builder or general contractor shall allocate a share to itself to the extent a claim or claims are alleged to be caused by its work, actions, or omissions, and a share to each subcontractor to the extent a claim or claims are alleged to be caused by the subcontractor's work, actions, or omissions, regardless of whether the builder or general contractor actually tenders the claim to any particular subcontractor, and regardless of whether that subcontractor is participating in the defense. Any amounts not collected from any particular subcontractor may not be collected from any other subcontractor.

(e) Notwithstanding any other provision of law, if a subcontractor fails to timely and adequately perform its obligations under paragraph (1) of subdivision (d), the builder or general contractor shall have the right to pursue a claim against the subcontractor for any resulting compensatory damages, consequential damages, and reasonable attorney's fees. If a subcontractor fails to timely perform its obligations under paragraph (2) of subdivision (d), the builder or general contractor

shall have the right to pursue a claim against the subcontractor for any resulting compensatory and consequential damages, as well as for interest on defense and indemnity costs, from the date incurred, at the rate set forth in subdivision (g) of Section 3260, and for the builder's or general contractor's reasonable attorney's fees incurred to recover these amounts. The builder or general contractor shall bear the burden of proof to establish both the subcontractor's failure to perform under either paragraph (1) or (2) of subdivision (d) and any resulting damages. If, upon request by a subcontractor, a builder or general contractor does not reallocate defense fees to subcontractors within 30 days following final resolution of the claim as described above, the subcontractor shall have the right to pursue a claim against the builder or general contractor for any resulting compensatory and consequential damages, as well as for interest on the fees, from the date of final resolution of the claim, at the rate set forth in subdivision (g) of Section 3260, and the subcontractor's reasonable attorney's fees incurred in connection therewith. The subcontractor shall bear the burden of proof to establish both the failure to reallocate the fees and any resulting damages. Nothing in this section shall prohibit the parties from mutually agreeing to reasonable contractual provisions for damages if any party fails to elect for or perform its obligations as stated in this section.

(f) A builder, general contractor, or subcontractor shall have the right to seek equitable indemnity for any claim governed by this section.

(g) Nothing in this section limits, restricts, or prohibits the right of a builder, general contractor, or subcontractor to seek equitable indemnity against any supplier, design professional, or product manufacturer.

(h) As used in this section, "construction defect" means a violation of the standards set forth in Sections 896 and 897.

SEC. 2. Section 2782.9 is added to the Civil Code, to read:

2782.9. (a) All contracts, provisions, clauses, amendments, or agreements contained therein entered into after January 1, 2009, for a residential construction project on which a wrap-up insurance policy, as defined in subdivision (b) of Section 11751.82 of the Insurance Code, or other consolidated insurance program, is applicable, that require an enrolled and participating subcontractor or other participant to indemnify, hold harmless, or defend another for any claim or action covered by that program, arising out of that project are unenforceable.

(b) To the extent any contractual provision is deemed unenforceable pursuant to this section, any party may pursue an equitable indemnity claim against another party for a claim or action unless there is coverage for the claim or action under the wrap-up policy or policies. Nothing in this section shall prohibit a builder or general contractor from requiring a reasonably allocated contribution from a subcontractor or other

participant to the self-insured retention or deductible required under the wrap-up policy or other consolidated insurance program, if the maximum amount and method of collection of the participant's contribution is disclosed in the contract with the participant and the contribution is reasonably limited so that each participant may have some financial obligation in the event of a claim alleged to be caused by that participant's scope of work. The contribution shall only be collected when and as any such self-insured retention or deductible is incurred by the builder or general contractor and in an amount that bears a reasonable and proportionate relationship to the alleged liability arising from the claim or claims alleged to be caused by the participant's scope of work, when viewed in the context of the entirety of the alleged claim or claims. Any contribution shall only be collected from a participant after written notice to the participant of the amount of and basis for the contribution. In no event shall the total amount of contributions collected from participants exceed the amount of any self-insured retention or deductible due and payable by the builder or general contractor for the claim or claims. However, this requirement does not prohibit any legally permissible recovery of costs and legal fees to collect a participant's contribution if the contribution satisfies the requirements of this subdivision and is not paid by the participant when due.

(c) This section shall not be waived or modified by contractual agreement, act, or omission of the parties.

SEC. 3. Section 2782.95 is added to the Civil Code, to read:

2782.95. For any wrap-up insurance policy or other consolidated insurance program that insures a private residential (as that term is used in Title 7 (commencing with Section 895) of Part 2 of Division 2) work of improvement that first commences construction after January 1, 2009, the following shall apply:

(a) The owner, builder, or general contractor obtaining the wrap-up insurance policy or other consolidated insurance program shall disclose the total amount or method of calculation of any credit or compensation for premium required from a subcontractor or other participant for that wrap-up policy in the contract documents.

(b) The contract documents shall disclose, if and to the extent known:

(1) The policy limits.

(2) The scope of policy coverage.

(3) The policy term.

(4) The basis upon which the deductible or occurrence is triggered by the insurance carrier.

(5) If the policy covers more than one work of improvement, the number of units, if any, indicated on the application for the insurance policy.

(6) A good faith estimate of the amount of available limits remaining under the policy as of a date indicated in the disclosure obtained from the insurer.

(7) Disclosures made pursuant to paragraphs (5) and (6) are recognized to be based upon information at a given moment in time and may not accurately reflect the actual number of units covered by the policy nor the amount of insurance available, if any, when a later claim is made. These disclosures are presumptively made in good faith if the disclosure pursuant to paragraph (5) is the same as that contained in the application to the wrap-up insurer and the disclosure pursuant to paragraph (6) was obtained from the wrap-up insurer or broker. The presumptions stated above shall be overcome only by a showing that the insurer, broker, builder, or general contractor intentionally misrepresented the facts identified in paragraphs (5) or (6).

(c) Upon the written request of any participant, a copy of the insurance policy shall be provided, if available, that shows the coverage terms and items in paragraphs (1) to (4), inclusive, of subdivision (b) above. If the policy is not available at the time of the request, a copy of the insurance binder or declaration of coverage may be provided in lieu of the actual policy. Paragraphs (1) to (4), inclusive, of subdivision (b) may be satisfied by providing the participant with a copy of the binder or declaration. Any party receiving a copy of the policy, binder, or declaration shall not disclose it to third parties other than the participant's insurance broker or attorney unless required to do so by law. The participant's insurance broker or attorney may not disclose the policy, binder, or declaration to any third party unless required to do so by law.

(d) If the owner, builder, or general contractor obtaining the wrap-up insurance policy or other consolidated insurance program does not disclose the total amount or method of calculation of the premium credit or compensation to be charged to the participant prior to the time the participant submits its bid, the participant shall not be legally bound by the bid unless that participant has the right to increase the bid up to the amount equal to the difference between the amount the participant included, if any, for insurance in the original bid and the amount of the actual bid credit required by the owner, builder, or general contractor obtaining the wrap-up insurance policy or other consolidated insurance program. This subdivision shall not apply if the owner, builder, or general contractor obtaining the wrap-up insurance policy or other consolidated insurance program did not require the subcontractor to offset the original bid amount with a deduction for the wrap-up insurance policy or program.

SEC. 4. Section 2782.96 is added to the Civil Code, to read:

2782.96. If an owner, builder, or general contractor obtains a wrap-up insurance policy or other consolidated insurance program for a public

work as defined in Section 1720 of the Labor Code or any other project other than residential construction, as that term is used in Title 7 (commencing with Section 895) of Part 2 of Division 2, that is put out for bid after January 1, 2009, the following shall apply:

(a) The total amount or method of calculation of any credit or compensation for premium required from the subcontractor or other participant for that policy shall be clearly delineated in the bid documents.

(b) The named insured, to the extent known, shall disclose to the subcontractor or other participant in the contract documents the policy limits, known exclusions, and the length of time the policy is intended to remain in effect. In addition, upon written request, once available the named insured shall provide copies of insurance policies to all those who are covered by the policy. Until such time as the policies are available, the named insured may also satisfy the disclosure requirements of this subdivision by providing the subcontractor or other participant with a copy of the insurance binder or declaration of coverage. Any party receiving a copy of the policy, binder, or declaration shall not disclose it to third parties other than the participant's insurance broker or attorney unless required to do so by law. The participant's insurance broker or attorney may not disclose the policy, binder, or declaration to any third party unless required to do so by law.

(c) The disclosure requirements in subdivisions (a) and (b) do not apply to an insurance policy purchased by an owner, builder, or general contractor that provides additional coverage beyond what was contained in the original wrap-up policy or other consolidated insurance program if no credit or compensation for premium is required of the subcontractor for the additional insurance policy.

CHAPTER 468

An act to amend Section 1202.4 of the Penal Code, relating to music piracy.

[Approved by Governor September 27, 2008. Filed with Secretary of State September 27, 2008.]

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

SECTION 1. Section 1202.4 of the Penal Code is amended to read:

1202.4. (a) (1) It is the intent of the Legislature that a victim of crime who incurs any economic loss as a result of the commission of a

crime shall receive restitution directly from any defendant convicted of that crime.

(2) Upon a person being convicted of any crime in the State of California, the court shall order the defendant to pay a fine in the form of a penalty assessment in accordance with Section 1464.

(3) The court, in addition to any other penalty provided or imposed under the law, shall order the defendant to pay both of the following:

(A) A restitution fine in accordance with subdivision (b).

(B) Restitution to the victim or victims, if any, in accordance with subdivision (f), which shall be enforceable as if the order were a civil judgment.

(b) In every case where a person is convicted of a crime, the court shall impose a separate and additional restitution fine, unless it finds compelling and extraordinary reasons for not doing so, and states those reasons on the record.

(1) The restitution fine shall be set at the discretion of the court and commensurate with the seriousness of the offense, but shall not be less than two hundred dollars ($200), and not more than ten thousand dollars ($10,000), if the person is convicted of a felony, and shall not be less than one hundred dollars ($100), and not more than one thousand dollars ($1,000), if the person is convicted of a misdemeanor.

(2) In setting a felony restitution fine, the court may determine the amount of the fine as the product of two hundred dollars ($200) multiplied by the number of years of imprisonment the defendant is ordered to serve, multiplied by the number of felony counts of which the defendant is convicted.

(c) The court shall impose the restitution fine unless it finds compelling and extraordinary reasons for not doing so, and states those reasons on the record. A defendant's inability to pay shall not be considered a compelling and extraordinary reason not to impose a restitution fine. Inability to pay may be considered only in increasing the amount of the restitution fine in excess of the two hundred-dollar ($200) or one hundred-dollar ($100) minimum. The court may specify that funds confiscated at the time of the defendant's arrest, except for funds confiscated pursuant to Section 11469 of the Health and Safety Code, be applied to the restitution fine if the funds are not exempt for spousal or child support or subject to any other legal exemption.

(d) In setting the amount of the fine pursuant to subdivision (b) in excess of the two hundred-dollar ($200) or one hundred-dollar ($100) minimum, the court shall consider any relevant factors including, but not limited to, the defendant's inability to pay, the seriousness and gravity of the offense and the circumstances of its commission, any economic gain derived by the defendant as a result of the crime, the extent to which

any other person suffered any losses as a result of the crime, and the number of victims involved in the crime. Those losses may include pecuniary losses to the victim or his or her dependents as well as intangible losses, such as psychological harm caused by the crime. Consideration of a defendant's inability to pay may include his or her future earning capacity. A defendant shall bear the burden of demonstrating his or her inability to pay. Express findings by the court as to the factors bearing on the amount of the fine shall not be required. A separate hearing for the fine shall not be required.

(e) The restitution fine shall not be subject to penalty assessments authorized in Section 1464 or Chapter 12 (commencing with Section 76000) of Title 8 of the Government Code, or the state surcharge authorized in Section 1465.7, and shall be deposited in the Restitution Fund in the State Treasury.

(f) Except as provided in subdivisions (q) and (r), in every case in which a victim has suffered economic loss as a result of the defendant's conduct, the court shall require that the defendant make restitution to the victim or victims in an amount established by court order, based on the amount of loss claimed by the victim or victims or any other showing to the court. If the amount of loss cannot be ascertained at the time of sentencing, the restitution order shall include a provision that the amount shall be determined at the direction of the court. The court shall order full restitution unless it finds compelling and extraordinary reasons for not doing so, and states them on the record. The court may specify that funds confiscated at the time of the defendant's arrest, except for funds confiscated pursuant to Section 11469 of the Health and Safety Code, be applied to the restitution order if the funds are not exempt for spousal or child support or subject to any other legal exemption.

(1) The defendant has the right to a hearing before a judge to dispute the determination of the amount of restitution. The court may modify the amount, on its own motion or on the motion of the district attorney, the victim or victims, or the defendant. If a motion is made for modification of a restitution order, the victim shall be notified of that motion at least 10 days prior to the proceeding held to decide the motion.

(2) Determination of the amount of restitution ordered pursuant to this subdivision shall not be affected by the indemnification or subrogation rights of any third party. Restitution ordered pursuant to this subdivision shall be ordered to be deposited to the Restitution Fund to the extent that the victim, as defined in subdivision (k), has received assistance from the Victim Compensation Program pursuant to Chapter 5 (commencing with Section 13950) of Part 4 of Division 3 of Title 2 of the Government Code.

(3) To the extent possible, the restitution order shall be prepared by the sentencing court, shall identify each victim and each loss to which it pertains, and shall be of a dollar amount that is sufficient to fully reimburse the victim or victims for every determined economic loss incurred as the result of the defendant's criminal conduct, including, but not limited to, all of the following:

(A) Full or partial payment for the value of stolen or damaged property. The value of stolen or damaged property shall be the replacement cost of like property, or the actual cost of repairing the property when repair is possible.

(B) Medical expenses.

(C) Mental health counseling expenses.

(D) Wages or profits lost due to injury incurred by the victim, and if the victim is a minor, wages or profits lost by the minor's parent, parents, guardian, or guardians, while caring for the injured minor. Lost wages shall include any commission income as well as any base wages. Commission income shall be established by evidence of commission income during the 12-month period prior to the date of the crime for which restitution is being ordered, unless good cause for a shorter time period is shown.

(E) Wages or profits lost by the victim, and if the victim is a minor, wages or profits lost by the minor's parent, parents, guardian, or guardians, due to time spent as a witness or in assisting the police or prosecution. Lost wages shall include any commission income as well as any base wages. Commission income shall be established by evidence of commission income during the 12-month period prior to the date of the crime for which restitution is being ordered, unless good cause for a shorter time period is shown.

(F) Noneconomic losses, including, but not limited to, psychological harm, for felony violations of Section 288.

(G) Interest, at the rate of 10 percent per annum, that accrues as of the date of sentencing or loss, as determined by the court.

(H) Actual and reasonable attorney's fees and other costs of collection accrued by a private entity on behalf of the victim.

(I) Expenses incurred by an adult victim in relocating away from the defendant, including, but not limited to, deposits for utilities and telephone service, deposits for rental housing, temporary lodging and food expenses, clothing, and personal items. Expenses incurred pursuant to this section shall be verified by law enforcement to be necessary for the personal safety of the victim or by a mental health treatment provider to be necessary for the emotional well-being of the victim.

(J) Expenses to install or increase residential security incurred related to a crime, as defined in subdivision (c) of Section 667.5, including, but

not limited to, a home security device or system, or replacing or increasing the number of locks.

(K) Expenses to retrofit a residence or vehicle, or both, to make the residence accessible to or the vehicle operational by the victim, if the victim is permanently disabled, whether the disability is partial or total, as a direct result of the crime.

(4) (A) If, as a result of the defendant's conduct, the Restitution Fund has provided assistance to or on behalf of a victim or derivative victim pursuant to Chapter 5 (commencing with Section 13950) of Part 4 of Division 3 of Title 2 of the Government Code, the amount of assistance provided shall be presumed to be a direct result of the defendant's criminal conduct and shall be included in the amount of the restitution ordered.

(B) The amount of assistance provided by the Restitution Fund shall be established by copies of bills submitted to the California Victim Compensation and Government Claims Board reflecting the amount paid by the board and whether the services for which payment was made were for medical or dental expenses, funeral or burial expenses, mental health counseling, wage or support losses, or rehabilitation. Certified copies of these bills provided by the board and redacted to protect the privacy and safety of the victim or any legal privilege, together with a statement made under penalty of perjury by the custodian of records that those bills were submitted to and were paid by the board, shall be sufficient to meet this requirement.

(C) If the defendant offers evidence to rebut the presumption established by this paragraph, the court may release additional information contained in the records of the board to the defendant only after reviewing that information in camera and finding that the information is necessary for the defendant to dispute the amount of the restitution order.

(5) Except as provided in paragraph (6), in any case in which an order may be entered pursuant to this subdivision, the defendant shall prepare and file a disclosure identifying all assets, income, and liabilities in which the defendant held or controlled a present or future interest as of the date of the defendant's arrest for the crime for which restitution may be ordered. The financial disclosure statements shall be made available to the victim and the board pursuant to Section 1214. The disclosure shall be signed by the defendant upon a form approved or adopted by the Judicial Council for the purpose of facilitating the disclosure. Any defendant who willfully states as true any material matter that he or she knows to be false on the disclosure required by this subdivision is guilty of a misdemeanor, unless this conduct is punishable as perjury or another provision of law provides for a greater penalty.

(6) A defendant who fails to file the financial disclosure required in paragraph (5), but who has filed a financial affidavit or financial information pursuant to subdivision (c) of Section 987, shall be deemed to have waived the confidentiality of that affidavit or financial information as to a victim in whose favor the order of restitution is entered pursuant to subdivision (f). The affidavit or information shall serve in lieu of the financial disclosure required in paragraph (5), and paragraphs (7) to (10), inclusive, shall not apply.

(7) Except as provided in paragraph (6), the defendant shall file the disclosure with the clerk of the court no later than the date set for the defendant's sentencing, unless otherwise directed by the court. The disclosure may be inspected or copied as provided by subdivision (b), (c), or (d) of Section 1203.05.

(8) In its discretion, the court may relieve the defendant of the duty under paragraph (7) of filing with the clerk by requiring that the defendant's disclosure be submitted as an attachment to, and be available to, those authorized to receive the following:

(A) Any report submitted pursuant to subparagraph (C) of paragraph (2) of subdivision (b) of Section 1203 or subdivision (g) of Section 1203.

(B) Any stipulation submitted pursuant to paragraph (4) of subdivision (b) of Section 1203.

(C) Any report by the probation officer, or any information submitted by the defendant applying for a conditional sentence pursuant to subdivision (d) of Section 1203.

(9) The court may consider a defendant's unreasonable failure to make a complete disclosure pursuant to paragraph (5) as any of the following:

(A) A circumstance in aggravation of the crime in imposing a term under subdivision (b) of Section 1170.

(B) A factor indicating that the interests of justice would not be served by admitting the defendant to probation under Section 1203.

(C) A factor indicating that the interests of justice would not be served by conditionally sentencing the defendant under Section 1203.

(D) A factor indicating that the interests of justice would not be served by imposing less than the maximum fine and sentence fixed by law for the case.

(10) A defendant's failure or refusal to make the required disclosure pursuant to paragraph (5) shall not delay entry of an order of restitution or pronouncement of sentence. In appropriate cases, the court may do any of the following:

(A) Require the defendant to be examined by the district attorney pursuant to subdivision (h).

(B) If sentencing the defendant under Section 1170, provide that the victim shall receive a copy of the portion of the probation report filed pursuant to Section 1203.10 concerning the defendant's employment, occupation, finances, and liabilities.

(C) If sentencing the defendant under Section 1203, set a date and place for submission of the disclosure required by paragraph (5) as a condition of probation or suspended sentence.

(11) If a defendant has any remaining unpaid balance on a restitution order or fine 120 days prior to his or her scheduled release from probation or 120 days prior to his or her completion of a conditional sentence, the defendant shall prepare and file a new and updated financial disclosure identifying all assets, income, and liabilities in which the defendant holds or controls or has held or controlled a present or future interest during the defendant's period of probation or conditional sentence. The financial disclosure shall be made available to the victim and the board pursuant to Section 1214. The disclosure shall be signed and prepared by the defendant on the same form as described in paragraph (5). Any defendant who willfully states as true any material matter that he or she knows to be false on the disclosure required by this subdivision is guilty of a misdemeanor, unless this conduct is punishable as perjury or another provision of law provides for a greater penalty. The financial disclosure required by this paragraph shall be filed with the clerk of the court no later than 90 days prior to the defendant's scheduled release from probation or completion of the defendant's conditional sentence.

(g) The court shall order full restitution unless it finds compelling and extraordinary reasons for not doing so, and states those reasons on the record. A defendant's inability to pay shall not be considered a compelling and extraordinary reason not to impose a restitution order, nor shall inability to pay be a consideration in determining the amount of a restitution order.

(h) The district attorney may request an order of examination pursuant to the procedures specified in Article 2 (commencing with Section 708.110) of Chapter 6 of Division 2 of Title 9 of Part 2 of the Code of Civil Procedure, in order to determine the defendant's financial assets for purposes of collecting on the restitution order.

(i) A restitution order imposed pursuant to subdivision (f) shall be enforceable as if the order were a civil judgment.

(j) The making of a restitution order pursuant to subdivision (f) shall not affect the right of a victim to recovery from the Restitution Fund as otherwise provided by law, except to the extent that restitution is actually collected pursuant to the order. Restitution collected pursuant to this subdivision shall be credited to any other judgments for the same losses

obtained against the defendant arising out of the crime for which the defendant was convicted.

(k) For purposes of this section, "victim" shall include all of the following:

(1) The immediate surviving family of the actual victim.

(2) Any corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision, agency, or instrumentality, or any other legal or commercial entity when that entity is a direct victim of a crime.

(3) Any person who has sustained economic loss as the result of a crime and who satisfies any of the following conditions:

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

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

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

(D) Is another family member of the victim, including, but not limited to, the victim's fiancé or fiancée, and who witnessed the crime.

(E) Is the primary caretaker of a minor victim.

(4) Any person who is eligible to receive assistance from the Restitution Fund pursuant to Chapter 5 (commencing with Section 13950) of Part 4 of Division 3 of Title 2 of the Government Code.

(*l*) At its discretion, the board of supervisors of any county may impose a fee to cover the actual administrative cost of collecting the restitution fine, not to exceed 10 percent of the amount ordered to be paid, to be added to the restitution fine and included in the order of the court, the proceeds of which shall be deposited in the general fund of the county.

(m) In every case in which the defendant is granted probation, the court shall make the payment of restitution fines and orders imposed pursuant to this section a condition of probation. Any portion of a restitution order that remains unsatisfied after a defendant is no longer on probation shall continue to be enforceable by a victim pursuant to Section 1214 until the obligation is satisfied.

(n) If the court finds and states on the record compelling and extraordinary reasons why a restitution fine or full restitution order should not be required, the court shall order, as a condition of probation, that the defendant perform specified community service, unless it finds and states on the record compelling and extraordinary reasons not to require community service in addition to the finding that restitution

should not be required. Upon revocation of probation, the court shall impose restitution pursuant to this section.

(o) The provisions of Section 13963 of the Government Code shall apply to restitution imposed pursuant to this section.

(p) The court clerk shall notify the California Victim Compensation and Government Claims Board within 90 days of an order of restitution being imposed if the defendant is ordered to pay restitution to the board due to the victim receiving compensation from the Restitution Fund. Notification shall be accomplished by mailing a copy of the court order to the board, which may be done periodically by bulk mail or electronic mail.

(q) Upon conviction for a violation of Section 236.1, the court shall, in addition to any other penalty or restitution, order the defendant to pay restitution to the victim in any case in which a victim has suffered economic loss as a result of the defendant's conduct. The court shall require that the defendant make restitution to the victim or victims in an amount established by court order, based on the amount of loss claimed by the victim or victims or any other showing to the court. In determining restitution pursuant to this section, the court shall base its order upon the greater of the following: the gross value of the victim's labor or services based upon the comparable value of similar services in the labor market in which the offense occurred, or the value of the victim's labor as guaranteed under California law, or the actual income derived by the defendant from the victim's labor or services or any other appropriate means to provide reparations to the victim.

(r) In addition to any other penalty or fine, the court shall order any person who has been convicted of any violation of Section 653h, 653s, 653u, or 653w to make restitution to any owner or lawful producer, or trade association acting on behalf of the owner or lawful producer, of a phonograph record, disc, wire, tape, film, or other device or article from which sounds or visual images are derived that suffered economic loss resulting from the violation. For the purpose of calculating restitution, the value of each nonconforming article or device shall be based on the aggregate wholesale value of lawfully manufactured and authorized devices or articles from which sounds or visual images are devised, unless a higher value can be proved in the case of (1) an unreleased audio work, or (2) an audiovisual work that, at the time of unauthorized distribution, has not been made available in copies for sale to the general public in the United States on a digital versatile disc. The order of restitution shall also include reasonable costs incurred as a result of any investigation of the violation undertaken by the owner, lawful producer, or trade association acting on behalf of the owner or lawful producer. "Aggregate wholesale value" means the average wholesale value of

lawfully manufactured and authorized sound or audiovisual recordings. Proof of the specific wholesale value of each nonconforming device or article is not required.

CHAPTER 469

An act to add Section 655.8 to the Business and Professions Code, relating to healing arts.

[Approved by Governor September 27, 2008. Filed with Secretary of State September 27, 2008.]

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

SECTION 1. Section 655.8 is added to the Business and Professions Code, to read:

655.8. (a) It is unlawful for any person licensed under this division or under any initiative act referred to in this division to charge, bill, or otherwise solicit payment from any patient, client, customer, or third-party payer for performance of the technical component of Computerized Tomography (CT), Positron Emission Tomography (PET), or Magnetic Resonance Imaging (MRI) diagnostic imaging services if those services were not actually rendered by the licensee or a person under his or her supervision.

(b) Radiological facilities or imaging centers performing the technical component of CT, PET, or MRI diagnostic imaging services shall directly bill either the patient or the responsible third-party payer for such services rendered by those facilities. Radiological facilities or imaging centers shall not bill the licensee who requests the services.

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

(1) Any person who, or radiological facility or imaging center that, contracts directly with a health care service plan licensed pursuant to Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code.

(2) Any person who, or clinic that, provides diagnostic imaging services without charge to the patient, or on a sliding scale payment basis if the patient's charge for services is determined by the patient's ability to pay.

(3) Health care programs operated by public entities, including, but not limited to, colleges and universities.

(4) Health care programs operated by private educational institutions to serve the health care needs of their students.

(5) Any person who, or clinic that, contracts with an employer to provide medical services to employees of the employer if the diagnostic imaging services are provided under the contract.

(6) Diagnostic imaging services that are performed within a physician and surgeon's office, as defined in paragraph (5) of subdivision (b) of Section 650.01, or the office of a group practice, as defined in paragraph (6) of subdivision (b) of Section 650.01.

(d) Nothing in this section prohibits a licensee or a physician entity from billing globally for professional and technical

components if both of the following conditions are met:

(1) Neither the physician, or any member of his or her medical group, nor the physician entity has ordered the diagnostic imaging services.

(2) The physician, or a member of his or her medical group, or the physician entity provides the professional interpretation of the diagnostic imaging service.

(e) Nothing in subdivision (d) is intended to authorize or permit an imaging center to engage in the practice of medicine or exercise other professional rights, privileges, or powers in violation of Section 2400 of the Business and Professions Code.

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

(1) "Physician entity" means a professional medical corporation formed pursuant to Section 2406 or a general partnership that consists entirely of physicians and surgeons or professional medical corporations.

(2) "Responsible third-party payer" means any person or entity who is responsible to pay for CT, PET, or MRI services provided to a patient.

(3) "Supervision" means that the referring licensee is providing the level of supervision set forth in paragraph (3) of subsection (b) of Section 410.32 of Title 42 of the Code of Federal Regulations.

(4) "Technical component" includes services other than those provided by a physician and surgeon for the CT, PET, or MRI including personnel, materials, space, equipment, and other facilities.

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 470

An act to add Section 21002 to the Government Code, relating to public employees' retirement.

[Approved by Governor September 27, 2008. Filed with Secretary of State September 27, 2008.]

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

SECTION 1. Section 21002 is added to the Government Code, to read:

21002. A member who returns to active service following an employer-approved uncompensated leave of absence because of his or her serious illness may purchase service credit for that period of absence upon the payment of contributions as specified in Sections 21050 and 21052. The purchase of additional service credit pursuant to this paragraph shall not reduce the amount of service credit that the member is eligible to purchase pursuant to this chapter. A member may purchase service credit pursuant to this section for a leave of absence that occurred either before or after the effective date of these provisions.

CHAPTER 471

An act to add Chapter 6.5 (commencing with Section 42390) to Part 3 of Division 30 of the Public Resources Code, relating to solid waste.

[Approved by Governor September 27, 2008. Filed with Secretary of State September 27, 2008.]

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

SECTION 1. Chapter 6.5 (commencing with Section 42390) is added to Part 3 of Division 30 of the Public Resources Code, to read:

CHAPTER 6.5. EXPANDED POLYSTYRENE LOOSEFILL PACKAGING

42390. (a) For purposes of this chapter, the following definitions shall apply:

(1) "Manufacturer" means a person who manufactures expanded polystyrene loosefill packaging material for sale in this state.

(2) "Recycled material" means feedstock material from any of the following that has been diverted from landfill disposal:

(A) Material derived from a finished polystyrene product that has completed its intended end use and product life cycle.

(B) Material derived from a blemished, flawed, or otherwise unusable finished polystyrene product.

(C) Material derived from manufacturing and fabrication scrap from production of a finished polystyrene product.

(3) "Wholesaler" means a person who purchases expanded polystyrene loosefill packaging for resale in this state.

(b) Except as provided in subdivision (c), on and after January 1, 2012, a wholesaler or manufacturer shall not sell or offer for sale in this state expanded polystyrene loosefill packaging material.

(c) Subdivision (b) does not apply to expanded polystyrene loosefill packaging materials that complies with the following requirements:

(1) On and after January 1, 2012, until December 31, 2013, inclusive, it is comprised of at least 60 percent recycled material.

(2) On and after January 1, 2014, until December 31, 2016, inclusive, it is comprised of at least 80 percent recycled material.

(3) On and after January 1, 2017, it is comprised of 100 percent recycled material.

(d) A wholesaler or manufacturer who sells or offers for sale at retail in this state expanded polystyrene loosefill packaging material in violation of this chapter is guilty of an infraction and shall be punished by a fine not exceeding one thousand dollars ($1,000).

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 472

An act to add and repeal Article 6.3 (commencing with Section 54710) of Chapter 9 of Part 29 of Division 4 of Title 2 of the Education Code, relating to pupils.

[Approved by Governor September 28, 2008. Filed with Secretary of State September 28, 2008.]

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

SECTION 1. It is the intent of the Legislature to establish a program to ensure early notification and early commitment of college opportunities for pupils in middle school and high school and their families. It is the intent of the Legislature that the program motivate pupils to stay in school, graduate from high school, take college preparatory coursework, and, if they choose to do so, seek postsecondary opportunities.

SEC. 2. Article 6.3 (commencing with Section 54710) is added to Chapter 9 of Part 29 of Division 4 of Title 2 of the Education Code, to read:

Article 6.3. Early Commitment to College Program

54710. The Early Commitment to College program is hereby established for the purpose of accomplishing all of the following goals:

(a) Increase high school completion rates, direct college-going rates, and college preparation of pupils attending schools with the greatest poverty and among low-income pupils in general.

(b) Motivate pupils to prepare for college by taking college preparatory coursework, which may include career technical coursework and the course requirements for admission to the University of California and the California State University.

(c) Help families understand that college is attainable and affordable, that financial aid is available, and that with the right preparation their children can go to college if they choose to do so.

(d) Provide a clear path and direct assistance for pupils through middle schools, high schools, community colleges, universities, and state and federal financial aid programs, thereby improving opportunity and efficiency.

(e) Strengthen the state's historic promise of college access made in the 1960 Master Plan for Higher Education and express this commitment directly to middle and high school pupils and their families.

(f) Prepare the highly skilled workforce necessary to keep California's economy competitive, maintain the income and quality of life for California residents, increase tax revenues, and provide for improved civic and democratic participation.

54711. (a) (1) Participation by pupils and school districts in the Early Commitment to College program is voluntary. A school district that chooses to participate in the program is encouraged to do so districtwide, with all schools in the district participating, and shall provide schoolwide college information and college preparation events inclusive of pupils who sign the "Save Me a Spot in College" pledge. An

elementary school district may distribute the general letter as set forth in subdivision (f) of Section 54712, but if the elementary school district chooses to participate in the program, it shall do so in collaboration with the high school district in which the predominant number of its pupils attend.

(2) Participation by colleges and universities in the Early Commitment to College program is voluntary.

(3) For purposes of this article, all of the following apply:

(A) "College Opportunity Zone" means the 30 percent of public schools that maintain any of grades 6 to 9, inclusive, with the highest proportion of low-income pupils.

(B) "Low-income pupil" means a pupil who is eligible for free or reduced-price meals.

(4) Schools designated as a College Opportunity Zone in a participating school district shall give all pupils enrolled in grades 6 to 9, inclusive, and their parents and guardians, the opportunity to sign a "Save Me a Spot in College" pledge.

(5) Schools not designated as a College Opportunity Zone, in a participating school district, shall give a pupil who is eligible for free and reduced-price meals and is enrolled in grades 6 to 9, inclusive, and his or her parent or guardian the opportunity to sign a "Save Me a Spot in College" pledge.

(b) A participating school district shall certify that a pupil has completed the "Save Me a Spot in College" pledge pursuant to Section 54713, and shall track pupils enrolled in the Early Commitment to College program by recording and reporting participation and outcome data as directed by the Superintendent.

(c) Any school that has pupils who are eligible for free or reduced-price meals in the National School Lunch Program is encouraged to participate in the Early Commitment to College program.

(d) A pupil scheduled to graduate from high school after 2017 shall not be allowed to enroll in the program.

54712. The Superintendent shall perform the following responsibilities:

(a) Identify schools as College Opportunity Zones.

(b) Develop the "Save Me a Spot in College" pledge, which shall include the commitments made by the pupil and the major postsecondary and financial aid opportunities provided by the state. The pledge shall contain all of the following assurances:

(1) A pupil who signs the pledge and enrolls in the Early Commitment to College program, in the same manner as all other pupils, shall be eligible to continue his or her postsecondary education at a campus of the California Community Colleges to pursue career technical education

or an associate degree, or to prepare for transfer to a four-year college or university, or, if he or she meets the admission requirements and applies for admission, at the University of California or the California State University.

(2) A pupil who signs the pledge and meets all the eligibility requirements of the Cal Grant Program (Article 3 (commencing with Section 69530) of Chapter 2 of Part 42 of Division 5 of Title 3) at the time of application shall be eligible to receive a Cal Grant award.

(3) In a manner that is consistent with Article 1 (commencing with Section 76300) of Chapter 2 of Part 47 of Division 7 of Title 3, a pupil who signs the pledge shall receive, upon enrollment at a community college, a fee waiver under the fee waiver program of the Board of Governors of the California Community Colleges for two or more years of enrollment at a campus of the California Community Colleges, as long as the student is a California resident and continues to show financial need on a completed Free Application for Federal Student Aid.

(c) Consult with the California Community Colleges, the University of California, the California State University, the Student Aid Commission, and independent colleges and universities in developing the pledge, letter, and supporting materials, including a method for participating school districts to notify colleges and universities in their service area that the school district is participating in the program and seeking partnerships with colleges, universities, and others to plan and conduct activities to implement the program.

(d) Determine the form of recognition for pupils who have been certified by his or her school district as having fulfilled the requirements of the pledge pursuant to subdivision (b) of Section 54711.

(e) Develop a method by which participating schools shall record and report participation in, and outcome data of, the Early Commitment to College program to the Superintendent pursuant to subdivision (b) of Section 54711.

(f) (1) Develop a letter addressed to pupils enrolled in grades 6 to 9, inclusive, and their parents or guardians, and signed by the Superintendent and the superintendent of the school district that describes the major steps to prepare for college, including postsecondary career technical education, and the major postsecondary and financial aid opportunities available to students in California.

(2) Develop a second letter signed by the Superintendent and the superintendent of the school district, to be directed to pupils eligible to sign the pledge pursuant to Section 54711, and their parents or guardians, that details the Early Commitment to College Program, including the pledge, in addition to the information in the letter directed to all students in grades 6 to 9, inclusive. Make both letters and information on the

Early Commitment to College program available on the Web site of the department and request all school districts to distribute the letters as appropriate through existing means to all pupils and their parents.

54713. (a) A pupil who signs a pledge declares a commitment to prepare for college, finish high school, and enroll in college and commits to do all of the following:

(1) Meet all graduation requirements to finish high school in California.

(2) Enroll in college preparatory coursework, which may include career technical coursework and the course requirements for admission to the University of California and the California State University.

(3) Seek to achieve proficiency in mathematics and in reading and writing in English, as demonstrated by results on the Standardized Testing and Reporting Program pursuant to Section 60640. Pupils attending nonpublic schools, which do not participate in the Standardized Testing and Reporting Program pursuant to Section 60640, shall seek to achieve proficiency in mathematics and reading and writing in English as demonstrated by results on other assessments of college-level readiness.

(4) Complete and file a free application for federal student aid and submit his or her grade point average to the Student Aid Commission by March 2 of his or her senior year.

(5) Meet application and other requirements for university admission or enroll directly in community college within 12 months after high school graduation.

(b) School districts that choose to participate in the voluntary Early Commitment to College program shall provide information and services, through existing programs to pupils, not exclusive of those who sign the pledge, through their middle school and high school years. These services shall include all of the following:

(1) At the time of enrollment, each pupil shall receive a certificate of participation in the Early Commitment to College program, with his or her name, and bearing the signature of the Superintendent and the superintendent of the school district.

(2) Participating pupils also shall receive a booklet of college information providing more specific information about eligibility requirements, preparation steps, and other pertinent information.

(3) Transcript review and academics assessment, leading to course planning for the pupil at the time of enrollment in the Early Commitment to College program and annual reporting to the pupil and his or her parent or guardian on how he or she is doing relative to state standards and other benchmarks.

(4) Information about the Golden State Scholarshare College Savings Trust (Article 19 (commencing with Section 69980) of Chapter 2 of Part 42 of Division 5 of Title 3) at the time of enrollment.

(5) A visit to at least one community college, including, but not necessarily limited to, exposure to career technical education and transfer programs, and, where geographically feasible, at least one four-year college in grade 9 or 10.

(6) Information on college admissions tests in grade 11.

(7) Information on college admission and community college enrollment steps in grade 12.

(8) Information on the financial aid application process, including, but not limited to, the free application for federal student aid and grade point average verification, in grade 12.

(9) Information communicating that a pupil who has signed the pledge and transfers out of a participating school district shall not receive the recognition set forth in subdivision (d) of Section 54712, unless he or she attends another school district that is participating in the program. The new school district may obtain the pupil's record of participation in the program from the original school district or the pupil may request to sign the pledge again, including after grade 9, only if he or she provides documentation that he or she was enrolled in the program in his or her original school district.

54714. (a) The Legislature encourages the California Community Colleges, the University of California, the California State University, independent colleges and universities, the California Student Opportunity and Access Program, the Student Aid Commission, and other nonprofit, business, or other community organizations to provide support services as needed in coordination with school districts.

(b) Nothing in this article prohibits public and private colleges and universities from maintaining existing, or entering into new, supplemental agreements with school districts and their pupils to offer a guarantee of admission, supplemental services, supplemental financial aid, or other opportunities for alignment of prerequisites or curriculum.

54715. On or before November 1, 2017, the Superintendent shall submit to the Legislature a report on the status of the program, including, but not limited to, the following information:

(a) The number of school districts and pupils participating in the program.

(b) The number of participating pupils who fulfilled the requirements of the pledge pursuant to subdivision (b) of Section 54711.

(c) Any relevant outcome data reported by school districts to the Superintendent pursuant to subdivision (b) of Section 54711.

As part of this report, the Superintendent shall provide a recommendation on whether the program should be continued.

54716. This article shall remain in effect only until January 1, 2019, and as of that date is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2019, deletes or extends that date.

CHAPTER 473

An act to amend Section 60641 of, and to add Chapter 6 (commencing with Section 99300) to Part 65 of Division 14 of Title 3 of, the Education Code, relating to postsecondary education.

[Approved by Governor September 28, 2008. Filed with Secretary of State September 28, 2008.]

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

SECTION 1. Section 60641 of the Education Code is amended to read:

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

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

(2) The individual results of each pupil test administered pursuant to Section 60640 shall be reported, in writing, to the pupil's parent or guardian. The written report shall include a clear explanation of the purpose of the test, the pupil's score, and its intended use by the school district. This subdivision does not require teachers or other school district personnel to prepare individualized explanations of each pupil's test score.

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

(B) Notwithstanding subparagraph (A), a pupil or his or her parent or guardian may authorize the release of individual pupil results to a

postsecondary educational institution for the purpose of credit, placement, determination of readiness for college-level coursework, or admission.

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

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

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

(d) The department shall ensure that a California Standards Test that is augmented for the purpose of determining credit, placement, or readiness for college-level coursework of a pupil in a postsecondary educational institution inform a pupil in grade 11 that he or she may request that the results from that assessment be released to a postsecondary educational institution.

SEC. 2. Chapter 6 (commencing with Section 99300) is added to Part 65 of Division 14 of Title 3 of the Education Code, to read:

Chapter 6. The Early Assessment Program

99300. (a) The Legislature finds and declares that in 2004, the California State University (CSU) established the Early Assessment Program (EAP), a collaborative effort among the State Board of Education, the State Department of Education, and CSU, to enable pupils to learn about their readiness for college-level English and mathematics before their senior year of high school. It is the intent of the Legislature that the office of the Chancellor of the California Community Colleges,

the office of the Chancellor of the California State University, the State Board of Education, and the State Department of Education work together to modify the existing EAP to expand it to include the California Community Colleges (CCC) so that, beginning in the 2009–10 school year, high school juniors who are considering attending either system can take the EAP and receive information in the summer before their senior year concerning their preparation for college-level work at both CSU and CCC.

(b) It is also the intent of the Legislature that the existing EAP student notification system, as currently operated by agreement between CSU and the State Department of Education, be modified to do both of the following:

(1) Reassure pupils that they are eligible to attend a community college and that taking the EAP test has no bearing on their eligibility to attend a community college.

(2) Inform pupils of their readiness for college-level coursework in English or mathematics, or both, and recommend the next appropriate steps as they pertain to achieving success at a community college, similar to how CSU communicates with pupils who take the EAP test and are prospective CSU students.

(c) It is also the intent of the Legislature that the EAP be modified to include all of the following requirements:

(1) That the participating community college districts utilize the existing EAP secure data repository and clearinghouse for test score distribution of the California Standards Test (CST) and the augmented CST, as referenced in Section 60641.

(2) That the modified EAP not affect the statutory reporting requirements of the STAR Program, or increase the costs of either the STAR Program or the State Department of Education.

(3) That the modified EAP be titled the "Early Assessment Program."

99301. (a) Notwithstanding subdivision (a) of Section 78213, the individual results of the California Standards Test (CST) and the augmented CST, as referenced in Section 60641, in addition to any other purposes may be used by community college districts to provide diagnostic advice to, or for the placement of, prospective community college students participating in the EAP.

(b) (1) As authorized pursuant to subparagraph (B) of paragraph (3) of subdivision (a) of Section 60641, the individual results of the CST and the augmented CST, as referenced in Section 60641, shall be provided to the office of the Chancellor of the California Community Colleges.

(2) The office of the Chancellor of the California Community Colleges shall coordinate with community college districts that choose to

voluntarily participate in the EAP as follows, and, to the extent possible, shall accomplish all of the following activities using existing resources:

(A) Encourage community college districts to choose to voluntarily participate in the EAP and notify them of the requirements of subdivision (c), including the requirements that the standards utilized by CSU to assess readiness for college-level English and mathematics courses, as expressed in the CST as augmented by CSU, shall also be used for the purposes of the EAP.

(B) Coordinate the progress of the program, provide technical assistance to participating community college districts pursuant to subdivision (c) as needed, identify additional reporting and program criteria as needed, and provide a report to the Legislature and Governor on or before February 15, 2015, on the implementation and results of the EAP for community college students.

(C) Provide access to the individual test results of the CST and the augmented CST, as referenced in Section 60641, to participating community college districts.

(c) For those community college districts that choose to work directly with high school pupils within their respective district boundaries who took the augmented CST, as referenced in Section 60641, and choose to offer assistance to these pupils in strengthening their college readiness skills, all of the following provisions apply:

(1) The individual results of the CST and the augmented CST, as referenced in Section 60641, shall be released by the office of the Chancellor of the California Community Colleges, as authorized pursuant to subparagraph (B) of paragraph (3) of subdivision (a) of Section 60641, to participating community college districts upon their request for this information and may be used to provide diagnostic advice to prospective community college students participating in the EAP.

(2) Pursuant to subparagraph (A) of paragraph (2) of subdivision (b), the same standards utilized by CSU to assess readiness shall also be used for purposes of this section.

(3) The augmented CST as referenced in Section 60641, and currently utilized by CSU for purposes of early assessment, shall be used to assess the college readiness of pupils in the EAP.

(4) Participating community college districts are encouraged to consult with the Academic Senate for the California Community Colleges to work toward sequencing their precollegiate level courses and transfer-level courses in English and mathematics to the elementary and secondary education academic content standards adopted pursuant to Section 60605.

(5) Participating community college districts shall identify an EAP coordinator and shall coordinate with CSU campuses and schools offering

instruction in kindergarten and any of grades 1 to 12, inclusive, in their respective district boundaries on EAP-related activities that assist pupils in making decisions that increase their college readiness skills and likelihood of pursuing a postsecondary education.

(6) In order to provide high school pupils with an indicator of their college readiness, a community college district participating in the EAP shall use individual test results provided to that college pursuant to paragraph (1) of, and subparagraph (C) of paragraph (2) of, subdivision (b) to provide diagnostic advice to prospective community college students participating in the EAP.

(7) The individual results of the augmented CST, as referenced in Section 60641 for purposes of the EAP, shall not be used by a community college as a criterion for admission.

(8) Participating community college districts shall utilize the existing infrastructure of academic opportunities, as developed by CSU, to provide additional preparation in grade 12 for prospective community college students participating in the EAP.

(d) Both of the following provisions apply to CSU:

(1) The individual results of the CST and the augmented CST, as referenced in Section 60641, as authorized pursuant to subparagraph (B) of paragraph (3) of subdivision (a) of Section 60641, shall be released to, and in addition to any other purposes may be used by, CSU to provide diagnostic advice to, or for the placement of prospective CSU students participating in the EAP.

(2) The individual results of the augmented CST, as referenced in Section 60641 for purposes of the EAP, shall not be used by CSU as a criterion for admission.

CHAPTER 474

An act to amend Section 69981 of the Education Code, relating to postsecondary education, and making an appropriation therefor.

[Approved by Governor September 28, 2008. Filed with Secretary of State September 28, 2008.]

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

SECTION 1. Section 69981 of the Education Code is amended to read:

69981. (a) There is hereby created an instrumentality of the State of California to be known as the Golden State Scholarshare College Savings Trust.

(b) The purposes, powers, and duties of the Scholarshare trust are vested in, and shall be exercised by, the board.

(c) The board, in the capacity of trustee, shall have the power and authority to do all of the following:

(1) Sue and be sued.

(2) Make and enter into contracts necessary for the administration of the Scholarshare trust.

(3) Adopt a corporate seal and change and amend it from time to time.

(4) Cause moneys in the program fund to be held and invested and reinvested.

(5) Enter into agreements with any institution of higher education or any federal or other state agency or other entity as required for the effectuation of its rights and duties.

(6) Accept any grants, gifts, appropriation, and other moneys from any unit of federal, state, or local government or any other person, firm, partnership, or corporation for deposit to the administrative fund or the program fund. Except as otherwise provided in Section 69982, the board may not accept any contribution by any nonpublic entity, person, firm, partnership, or corporation that is not designated for a specified beneficiary, unless the contribution is deposited in the CalSAVE account pursuant to subdivision (d).

(7) Enter into participation agreements with participants, as set forth in Section 69983.

(8) Make payments to institutions of higher education pursuant to participation agreements on behalf of beneficiaries.

(9) Make refunds to participants upon the cancellation of participation agreements pursuant to the provisions, limitations, and restrictions set forth in this article.

(10) Appoint an executive director, who shall serve at the pleasure of the board, and determine the duties of the executive director and other staff as necessary and set their compensation. The board may authorize the executive director to enter into contracts on behalf of the board or conduct any business necessary for the efficient operation of the board.

(11) Make provisions for the payment of costs of administration and operation of the Scholarshare trust.

(12) Carry out the duties and obligations of the Scholarshare trust pursuant to this article and have any and all other powers as may be reasonably necessary for the effectuation of the purposes, objectives, and provisions of this article.

(d) (1) There is established within the Scholarshare trust the California Scholarshare Advancement Vehicle for Education (CalSAVE) program to fund scholarships for beneficiaries to be determined by the board that may include, but are not limited to, foster youth, youth in at-risk categories, individuals with demonstrated economic need, former and active members of the California National Guard, individuals seeking undergraduate or postbaccalaureate courses in disciplines in which the state faces shortages, including nursing and teaching, and other categories to be determined by the board.

(2) The CalSAVE account is created within the program fund and is continuously appropriated, without regard to fiscal years, to the board for the purposes of the CalSAVE program. The board shall create subaccounts within the CalSAVE account for each category of beneficiary determined pursuant to paragraph (1). The CalSAVE account shall be funded by contributions from federal or local governments, or any other person, firm, partnership, or corporation, and from the administrative fund established pursuant to Section 69984. Any person contributing to the CalSAVE account may designate that his or her contribution be deposited into any subaccount within the CalSAVE account, or may contribute without any designation. The board shall apportion any undesignated funds among the subaccounts, taking into consideration factors, including, but not limited to, the number of eligible applications received seeking funding from a particular subaccount.

(e) The board shall adopt regulations as it deems necessary to implement this article consistent with the federal Internal Revenue Code and regulations issued pursuant to that code to ensure that this program meets all criteria for federal tax-deferral or tax-exempt benefits, or both.

CHAPTER 475

An act to amend Sections 15610.30 and 15657.5 of, and to add Sections 15657.6 and 15657.7 to, the Welfare and Institutions Code, relating to financial abuse.

[Approved by Governor September 28, 2008. Filed with Secretary of State September 28, 2008.]

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

SECTION 1. Section 15610.30 of the Welfare and Institutions Code is amended to read:

15610.30. (a) "Financial abuse" of an elder or dependent adult occurs when a person or entity does any of the following:

(1) Takes, secretes, appropriates, obtains, or retains real or personal property of an elder or dependent adult for a wrongful use or with intent to defraud, or both.

(2) Assists in taking, secreting, appropriating, obtaining, or retaining real or personal property of an elder or dependent adult for a wrongful use or with intent to defraud, or both.

(3) Takes, secretes, appropriates, obtains, or retains, or assists in taking, secreting, appropriating, obtaining, or retaining, real or personal property of an elder or dependent adult by undue influence, as defined in Section 1575 of the Civil Code.

(b) A person or entity shall be deemed to have taken, secreted, appropriated, obtained, or retained property for a wrongful use if, among other things, the person or entity takes, secretes, appropriates, obtains, or retains the property and the person or entity knew or should have known that this conduct is likely to be harmful to the elder or dependent adult.

(c) For purposes of this section, a person or entity takes, secretes, appropriates, obtains, or retains real or personal property when an elder or dependent adult is deprived of any property right, including by means of an agreement, donative transfer, or testamentary bequest, regardless of whether the property is held directly or by a representative of an elder or dependent adult.

(d) For purposes of this section, "representative" means a person or entity that is either of the following:

(1) A conservator, trustee, or other representative of the estate of an elder or dependent adult.

(2) An attorney-in-fact of an elder or dependent adult who acts within the authority of the power of attorney.

SEC. 2. Section 15657.5 of the Welfare and Institutions Code is amended to read:

15657.5. (a) Where it is proven by a preponderance of the evidence that a defendant is liable for financial abuse, as defined in Section 15610.30, in addition to compensatory damages and all other remedies otherwise provided by law, the court shall award to the plaintiff reasonable attorney's fees and costs. The term "costs" includes, but is not limited to, reasonable fees for the services of a conservator, if any, devoted to the litigation of a claim brought under this article.

(b) Where it is proven by a preponderance of the evidence that a defendant is liable for financial abuse, as defined in Section 15610.30, and where it is proven by clear and convincing evidence that the defendant has been guilty of recklessness, oppression, fraud, or malice

in the commission of the abuse, in addition to reasonable attorney's fees and costs set forth in subdivision (a), compensatory damages, and all other remedies otherwise provided by law, the limitations imposed by Section 377.34 of the Code of Civil Procedure on the damages recoverable shall not apply.

(c) The standards set forth in subdivision (b) of Section 3294 of the Civil Code regarding the imposition of punitive damages on an employer based upon the acts of an employee shall be satisfied before any punitive damages may be imposed against an employer found liable for financial abuse as defined in Section 15610.30. This subdivision shall not apply to the recovery of compensatory damages or attorney's fees and costs.

(d) Nothing in this section affects the award of punitive damages under Section 3294 of the Civil Code.

SEC. 3. Section 15657.6 is added to the Welfare and Institutions Code, to read:

15657.6. A person or entity that takes, secretes, appropriates, obtains, or retains, or assists in taking, secreting, appropriating, obtaining, or retaining the real or personal property of an elder or dependent adult when the elder or dependent adult lacks capacity pursuant to Section 812 of the Probate Code, or is of unsound mind, but not entirely without understanding, pursuant to Section 39 of the Civil Code, shall, upon demand by the elder or dependent adult or a representative of the elder or dependent adult, as defined in subdivision (d) of Section 15610.30, return the property and if that person or entity fails to return the property, the elder or dependent adult shall be entitled to the remedies provided by Section 15657.5, including attorney's fees and costs. This section shall not apply to any agreement entered into by an elder or dependent adult when the elder or dependent adult had capacity.

SEC. 4. Section 15657.7 is added to the Welfare and Institutions Code, to read:

15657.7. An action for damages pursuant to Sections 15657.5 and 15657.6 for financial abuse of an elder or dependent adult, as defined in Section 15610.30, shall be commenced within four years after the plaintiff discovers or, through the exercise of reasonable diligence, should have discovered, the facts constituting the financial abuse.

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 476

An act to add Section 25243.5 to the Corporations Code, relating to securities.

[Approved by Governor September 28, 2008. Filed with Secretary of State September 28, 2008.]

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

SECTION 1. Section 25243.5 is added to the Corporations Code, to read:

25243.5. (a) A broker-dealer or investment adviser, or an agent or representative thereof, shall not use a senior-specific certification, credential, or professional designation in connection with the offer, sale, or purchase of securities, or the provision of advice as to the value of or the advisability of investing in, purchasing, or selling securities, either directly or indirectly or through publications or writings or by issuing or promulgating analyses or reports relating to securities, that indicates or implies that the broker-dealer, investment adviser, or an agent or representative thereof, has special certification or training in advising or servicing senior citizens or retirees, in such a way as to mislead any person.

(b) The prohibited use of these certifications, credentials, or professional designations includes, but is not limited to, the following:

(1) The use of a certification, credential, or professional designation by a person who has not actually earned or is otherwise ineligible to use the certification, credential, or designation.

(2) The use of a nonexistent or self-conferred certification, credential, or professional designation.

(3) The use of a certification, credential, or professional designation that indicates or implies a level of occupational qualifications obtained through education, training, or experience that the person using the certification, credential, or professional designation does not have.

(4) The use of a certification, credential, or professional designation that was obtained from a designating, credentialing, or certifying organization where any of the following apply:

(A) The organization is primarily engaged in the business of instruction in sales marketing.

(B) The organization does not have reasonable standards or procedures for assuring the competency of individuals to whom it grants a certification, credential, or professional designation.

(C) The organization does not have reasonable standards or procedures for monitoring and disciplining individuals with a certification, credential, or professional designation for improper or unethical conduct.

(D) The organization does not have reasonable continuing education requirements for individuals with a certification, credential, or professional designation in order to maintain the certificate, credential, or professional designation.

(c) There is a rebuttable presumption that a designating, credentialing, or certifying organization is not disqualified solely for the purposes of paragraph (4) of subdivision (b) when the organization has been accredited by the American National Standards Institute, the National Commission for Certifying Agencies, or an organization that is on the United States Department of Education's list entitled "Accrediting Agencies Recognized for Title IV Purposes" and the certification, credential, or professional designation issued therefrom does not primarily apply to sales and/or marketing.

(d) In determining whether a combination of words, or an acronym standing for a combination of words, constitutes a certification, credential, or professional designation indicating or implying that a person has special certification or training in advising or serving senior citizens or retirees, factors to be considered shall include both of the following:

(1) Use of one or more word such as "senior," "retirement," "elder," or like words combined with one or more words such as "certified," "registered," "chartered," "adviser," "specialist," "consultant," "planner," or like words, in the name of the certification, credential, or professional designation or credential.

(2) The manner in which those words are combined.

(e) This section shall not apply to the use of a job title by a person within an organization that is licensed or registered by the Department of Corporations or a federal financial services regulatory agency, when that job title indicates seniority or standing within the organization, or specifies a person's area of specialization within the organization. For the purposes of this subdivision, federal financial services regulatory agency includes, but is not limited to, an agency that regulates brokers or dealers, investment advisers, or investment companies as described under the Investment Company Act of 1940 (15 U.S.C. Sec. 809-1 et seq.).

(f) (1) This section shall not apply to a broker or agent who is licensed by the Department of Insurance and is in compliance with the requirements of Section 787.1 of the Insurance Code.

(2) This subdivision shall be operative only if Assembly Bill 2150 of the 2007–08 Regular Session is chaptered and becomes effective and that bill adds Section 787.1 to the Insurance Code.

(g) This section shall become operative on July 1, 2009.

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 477

An act to add Section 1569.695 to the Health and Safety Code, relating to residential care facilities for the elderly.

[Approved by Governor September 28, 2008. Filed with Secretary of State September 28, 2008.]

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

SECTION 1. Section 1569.695 is added to the Health and Safety Code, to read:

1569.695. (a) In addition to any other requirement of this chapter, a residential care facility for the elderly shall have an emergency plan that shall include, but not be limited to, all of the following:

(1) Evacuation procedures.

(2) Plans for the facility to be self-reliant for a period of not less than 72 hours immediately following any emergency or disaster, including, but not limited to, a long-term power failure.

(3) Transportation needs and evacuation procedures to ensure that the facility can communicate with emergency response personnel or can access the information necessary in order to check the emergency routes to be used at the time of an evacuation and relocation necessitated by a disaster.

(4) Procedures that address, but are not limited to, all of the following:

(A) Provision of emergency power that could include identification of suppliers of backup generators.

(B) Responding to individual residents' needs in the event the emergency call buttons are inoperable.

(C) Process for communicating with residents, families, hospice providers, and others, as appropriate, that might include landline telephones, cellular telephones, or walkie-talkies.

(D) Assistance with, and administration of, medications.

(E) Storage and preservation of medications.

(F) The operation of assistive medical devices that need electric power for their operation, including, but not limited to, oxygen equipment and wheelchairs.

(G) A process for identifying residents with special needs, such as hospice, and a plan for meeting those needs.

(b) Each facility subject to this section shall make the plan available upon request to residents onsite and available to local emergency responders.

(c) The department's Community Care Licensing Division shall confirm, during comprehensive licensing visits, that the plan is on file at the facility.

(d) Nothing in this section shall create a new or additional requirement for the department to evaluate the emergency plan. The department shall only verify that the plan is on file at the time of the comprehensive inspection.

(e) This subdivision shall not apply to residential care facilities for the elderly that have obtained a certificate of authority to offer continuing care contracts, as defined in paragraph (5) of subdivision (c) of Section 1771.

(f) This section shall become operative on March 1, 2009.

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 478

An act to add Section 1569.658 to the Health and Safety Code, relating to care facilities.

[Approved by Governor September 28, 2008. Filed with Secretary of State September 28, 2008.]

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

SECTION 1. Section 1569.658 is added to the Health and Safety Code, to read:

1569.658. (a) On or before January 31 of each year, the licensee of a licensed residential care facility for the elderly shall prepare a document disclosing its average monthly rate increases, inclusive of rates for living units and service fees, for each of the previous 3 years. For purposes of this section, "service fees" do not include fees for optional services or services provided by a third party. The licensee shall disclose the average amount of the increase, as well as the average percentage of increase. Newly licensed facilities without three years of resident rate increase history shall disclose the average increase for the years during which the facility has been serving residents. This section does not apply to newly licensed facilities with no current residents.

(b) The licensee shall provide a written copy of the disclosure required by this section to every resident or resident's representative, upon signing an admission agreement to receive residential or other services from the facility. The resident or resident's representative shall sign a confirmation of receipt of the disclosure, which shall be maintained by the facility in the resident's file.

(c) The licensee shall provide a copy of the most recent disclosure required by this section to any prospective resident, or his or her representative.

(d) This section shall not apply to a licensee of a residential care facility for the elderly that has obtained a certificate of authority to offer a continuing care contract, as defined in paragraph (5) of subdivision (c) of Section 1771.

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 479

An act to amend Sections 1770 and 1780 of the Civil Code, relating to public social services.

[Approved by Governor September 28, 2008. Filed with
Secretary of State September 28, 2008.]

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

SECTION 1. Section 1770 of the Civil Code is amended to read:

1770. (a) The following unfair methods of competition and unfair or deceptive acts or practices undertaken by any person in a transaction intended to result or which results in the sale or lease of goods or services to any consumer are unlawful:

(1) Passing off goods or services as those of another.

(2) Misrepresenting the source, sponsorship, approval, or certification of goods or services.

(3) Misrepresenting the affiliation, connection, or association with, or certification by, another.

(4) Using deceptive representations or designations of geographic origin in connection with goods or services.

(5) Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities which they do not have or that a person has a sponsorship, approval, status, affiliation, or connection which he or she does not have.

(6) Representing that goods are original or new if they have deteriorated unreasonably or are altered, reconditioned, reclaimed, used, or secondhand.

(7) Representing that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another.

(8) Disparaging the goods, services, or business of another by false or misleading representation of fact.

(9) Advertising goods or services with intent not to sell them as advertised.

(10) Advertising goods or services with intent not to supply reasonably expectable demand, unless the advertisement discloses a limitation of quantity.

(11) Advertising furniture without clearly indicating that it is unassembled if that is the case.

(12) Advertising the price of unassembled furniture without clearly indicating the assembled price of that furniture if the same furniture is available assembled from the seller.

(13) Making false or misleading statements of fact concerning reasons for, existence of, or amounts of price reductions.

(14) Representing that a transaction confers or involves rights, remedies, or obligations which it does not have or involve, or which are prohibited by law.

(15) Representing that a part, replacement, or repair service is needed when it is not.

(16) Representing that the subject of a transaction has been supplied in accordance with a previous representation when it has not.

(17) Representing that the consumer will receive a rebate, discount, or other economic benefit, if the earning of the benefit is contingent on an event to occur subsequent to the consummation of the transaction.

(18) Misrepresenting the authority of a salesperson, representative, or agent to negotiate the final terms of a transaction with a consumer.

(19) Inserting an unconscionable provision in the contract.

(20) Advertising that a product is being offered at a specific price plus a specific percentage of that price unless (A) the total price is set forth in the advertisement, which may include, but is not limited to, shelf tags, displays, and media advertising, in a size larger than any other price in that advertisement, and (B) the specific price plus a specific percentage of that price represents a markup from the seller's costs or from the wholesale price of the product. This subdivision shall not apply to in-store advertising by businesses which are open only to members or cooperative organizations organized pursuant to Division 3 (commencing with Section 12000) of Title 1 of the Corporations Code where more than 50 percent of purchases are made at the specific price set forth in the advertisement.

(21) Selling or leasing goods in violation of Chapter 4 (commencing with Section 1797.8) of Title 1.7.

(22) (A) Disseminating an unsolicited prerecorded message by telephone without an unrecorded, natural voice first informing the person answering the telephone of the name of the caller or the organization being represented, and either the address or the telephone number of the caller, and without obtaining the consent of that person to listen to the prerecorded message.

(B) This subdivision does not apply to a message disseminated to a business associate, customer, or other person having an established relationship with the person or organization making the call, to a call for the purpose of collecting an existing obligation, or to any call generated at the request of the recipient.

(23) The home solicitation, as defined in subdivision (h) of Section 1761, of a consumer who is a senior citizen where a loan is made encumbering the primary residence of that consumer for the purposes of paying for home improvements and where the transaction is part of a pattern or practice in violation of either subsection (h) or (i) of Section

1639 of Title 15 of the United States Code or subsection (e) of Section 226.32 of Title 12 of the Code of Federal Regulations.

A third party shall not be liable under this subdivision unless (A) there was an agency relationship between the party who engaged in home solicitation and the third party or (B) the third party had actual knowledge of, or participated in, the unfair or deceptive transaction. A third party who is a holder in due course under a home solicitation transaction shall not be liable under this subdivision.

(24) (A) Charging or receiving an unreasonable fee to prepare, aid, or advise any prospective applicant, applicant, or recipient in the procurement, maintenance, or securing of public social services.

(B) For purposes of this paragraph, the following definitions shall apply:

(i) "Public social services" means those activities and functions of state and local government administered or supervised by the State Department of Health Care Services, the State Department of Public Health, or the State Department of Social Services, and involved in providing aid or services, or both, including health care services and medical assistance, to those persons who, because of their economic circumstances or social condition, are in need of that aid or those services and may benefit from them.

(ii) "Unreasonable fee" means a fee that is exorbitant and disproportionate to the services performed. Factors to be considered, when appropriate, in determining the reasonableness of a fee, are based on the circumstances existing at the time of the service and shall include, but not be limited to, all of the following:

(I) The time and effort required.

(II) The novelty and difficulty of the services.

(III) The skill required to perform the services.

(IV) The nature and length of the professional relationship.

(V) The experience, reputation, and ability of the person providing the services.

(C) Paragraph (24) shall not apply to attorneys licensed to practice law in California, who are subject to the California Rules of Professional Conduct and to the mandatory fee arbitration provisions of Article 13 (commencing with Section 6200) of Chapter 4 of Division 3 of the Business and Professions Code, when the fees charged or received are for providing representation in administrative agency appeal proceedings or court proceedings for purposes of procuring, maintaining, or securing public social services on behalf of a person or group of persons.

(b) (1) It is an unfair or deceptive act or practice for a mortgage broker or lender, directly or indirectly, to use a home improvement contractor to negotiate the terms of any loan that is secured, whether in

whole or in part, by the residence of the borrower and which is used to finance a home improvement contract or any portion thereof. For purposes of this subdivision, "mortgage broker or lender" includes a finance lender licensed pursuant to the California Finance Lenders Law (Division 9 (commencing with Section 22000) of the Financial Code), a residential mortgage lender licensed pursuant to the California Residential Mortgage Lending Act (Division 20 (commencing with Section 50000) of the Financial Code), or a real estate broker licensed under the Real Estate Law (Division 4 (commencing with Section 10000) of the Business and Professions Code).

(2) This section shall not be construed to either authorize or prohibit a home improvement contractor from referring a consumer to a mortgage broker or lender by this subdivision. However, a home improvement contractor may refer a consumer to a mortgage lender or broker if that referral does not violate Section 7157 of the Business and Professions Code or any other provision of law. A mortgage lender or broker may purchase an executed home improvement contract if that purchase does not violate Section 7157 of the Business and Professions Code or any other provision of law. Nothing in this paragraph shall have any effect on the application of Chapter 1 (commencing with Section 1801) of Title 2 to a home improvement transaction or the financing thereof.

SEC. 2. Section 1780 of the Civil Code is amended to read:

1780. (a) Any consumer who suffers any damage as a result of the use or employment by any person of a method, act, or practice declared to be unlawful by Section 1770 may bring an action against that person to recover or obtain any of the following:

(1) Actual damages, but in no case shall the total award of damages in a class action be less than one thousand dollars ($1,000).

(2) An order enjoining the methods, acts, or practices.

(3) Restitution of property.

(4) Punitive damages.

(5) Any other relief that the court deems proper.

(b) (1) Any consumer who is a senior citizen or a disabled person, as defined in subdivisions (f) and (g) of Section 1761, as part of an action under subdivision (a), may seek and be awarded, in addition to the remedies specified therein, up to five thousand dollars ($5,000) where the trier of fact does all of the following:

(A) Finds that the consumer has suffered substantial physical, emotional, or economic damage resulting from the defendant's conduct.

(B) Makes an affirmative finding in regard to one or more of the factors set forth in subdivision (b) of Section 3345.

(C) Finds that an additional award is appropriate.

(2) Judgment in a class action by senior citizens or disabled persons under Section 1781 may award each class member that additional award if the trier of fact has made the foregoing findings.

(c) Whenever it is proven by a preponderance of the evidence that a defendant has engaged in conduct in violation of paragraph (24) of subdivision (a) of Section 1770, in addition to all other remedies otherwise provided in this section, the court shall award treble actual damages to the plaintiff. Subdivision (c) shall not apply to attorneys licensed to practice law in California, who are subject to the California Rules of Professional Conduct and to the mandatory fee arbitration provisions of Article 13 (commencing with Section 6200) of Chapter 4 of Division 3 of the Business and Professions Code, when the fees charged or received are for providing representation in administrative agency appeal proceedings or court proceedings for purposes of procuring, maintaining, or securing public social services on behalf of a person or group of persons.

(d) An action under subdivision (a) or (b) may be commenced in the county in which the person against whom it is brought resides, has his or her principal place of business, or is doing business, or in the county where the transaction or any substantial portion thereof occurred.

In any action subject to the provisions of this section, concurrently with the filing of the complaint, the plaintiff shall file an affidavit stating facts showing that the action has been commenced in a county described in this section as a proper place for the trial of the action. If a plaintiff fails to file the affidavit required by this section, the court shall, upon its own motion or upon motion of any party, dismiss the action without prejudice.

(e) The court shall award court costs and attorney's fees to a prevailing plaintiff in litigation filed pursuant to this section. Reasonable attorney's fees may be awarded to a prevailing defendant upon a finding by the court that the plaintiff's prosecution of the action was not in good faith.

CHAPTER 480

An act to amend, repeal, and add Section 15657.03 of the Welfare and Institutions Code, relating to elder abuse.

[Approved by Governor September 28, 2008. Filed with Secretary of State September 28, 2008.]

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

SECTION 1. 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 petitioner.

(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 five 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) Pursuant to paragraph (4) of subdivision (b) of Section 6103.2 of the Government Code, a petitioner shall not be required to pay a fee for law enforcement to serve an order issued under this chapter.

(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 Part 4 of Division 3 of the Civil Code, by Chapter 3 (commencing with Section 525) of Title 7 of Part 2 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.

(s) This section shall remain in effect only until January 1, 2010, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2010, deletes or extends that date.

SEC. 2. Section 15657.03 is added to the Welfare and Institutions Code, 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, and, in the discretion of the court, on a showing of good cause, of other named family or household members or a conservator, if any, 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, other named family or household member of the petitioner, or conservator of the petitioner.

(C) That physical or emotional harm would otherwise result to the petitioner, other named family or household member of the petitioner, or conservator of 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 petitioner, other named family or household member of the petitioner, or conservator of the petitioner.

(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 five 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 a person named in an order issued under this section, after a hearing, has not been served personally with the order but has received actual notice of the existence and substance of the order through personal appearance in court to hear the terms of the order from the court, no additional proof of service is required for enforcement of the order.

(2) 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.

(3) 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) Pursuant to paragraph (4) of subdivision (b) of Section 6103.2 of the Government Code, a petitioner shall not be required to pay a fee for law enforcement to serve an order issued under this chapter.

(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 Part 4 of Division 3 of the Civil Code, by Chapter 3 (commencing with Section 525) of Title 7 of Part 2 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.

(s) This section shall become operative on January 1, 2010.

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 481

An act to amend Section 15630 of the Welfare and Institutions Code, relating to elder abuse.

[Approved by Governor September 28, 2008. Filed with Secretary of State September 28, 2008.]

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

SECTION 1. Section 15630 of the Welfare and Institutions Code is amended to read:

15630. (a) Any person who has assumed full or intermittent responsibility for the care or custody of an elder or dependent adult, whether or not he or she receives compensation, including administrators, supervisors, and any licensed staff of a public or private facility that provides care or services for elder or dependent adults, or any elder or dependent adult care custodian, health practitioner, clergy member, or employee of a county adult protective services agency or a local law enforcement agency, is a mandated reporter.

(b) (1) Any mandated reporter who, in his or her professional capacity, or within the scope of his or her employment, has observed or has knowledge of an incident that reasonably appears to be physical abuse, as defined in Section 15610.63 of the Welfare and Institutions Code, abandonment, abduction, isolation, financial abuse, or neglect, or is told by an elder or dependent adult that he or she has experienced behavior, including an act or omission, constituting physical abuse, as defined in Section 15610.63 of the Welfare and Institutions Code, abandonment, abduction, isolation, financial abuse, or neglect, or reasonably suspects that abuse, shall report the known or suspected instance of abuse by telephone immediately or as soon as practicably possible, and by written report sent within two working days, as follows:

(A) If the abuse has occurred in a long-term care facility, except a state mental health hospital or a state developmental center, the report shall be made to the local ombudsperson or the local law enforcement agency.

The local ombudsperson and the local law enforcement agency shall, as soon as practicable, except in the case of an emergency or pursuant to a report required to be made pursuant to clause (v), in which case these actions shall be taken immediately, do all of the following:

(i) Report to the State Department of Public Health any case of known or suspected abuse occurring in a long-term health care facility, as defined in subdivision (a) of Section 1418 of the Health and Safety Code.

(ii) Report to the State Department of Social Services any case of known or suspected abuse occurring in a residential care facility for the elderly, as defined in Section 1569.2 of the Health and Safety Code, or in an adult day care facility, as defined in paragraph (2) of subdivision (a) of Section 1502.

(iii) Report to the State Department of Public Health and the California Department of Aging any case of known or suspected abuse occurring in an adult day health care center, as defined in subdivision (b) of Section 1570.7 of the Health and Safety Code.

(iv) Report to the Bureau of Medi-Cal Fraud and Elder Abuse any case of known or suspected criminal activity.

(v) Report all cases of known or suspected physical abuse and financial abuse to the local district attorney's office in the county where the abuse occurred.

(B) If the suspected or alleged abuse occurred in a state mental hospital or a state developmental center, the report shall be made to designated investigators of the State Department of Mental Health or the State Department of Developmental Services, or to the local law enforcement agency.

Except in an emergency, the local law enforcement agency shall, as soon as practicable, report any case of known or suspected criminal activity to the Bureau of Medi-Cal Fraud and Elder Abuse.

(C) If the abuse has occurred any place other than one described in subparagraph (A), the report shall be made to the adult protective services agency or the local law enforcement agency.

(2) (A) A mandated reporter who is a clergy member who acquires knowledge or reasonable suspicion of elder or dependent adult abuse during a penitential communication is not subject to paragraph (1). For purposes of this subdivision, "penitential communication" means a communication that is intended to be in confidence, including, but not limited to, a sacramental confession made to a clergy member who, in the course of the discipline or practice of his or her church, denomination, or organization is authorized or accustomed to hear those communications and under the discipline tenets, customs, or practices of his or her church, denomination, or organization, has a duty to keep those communications secret.

(B) Nothing in this subdivision shall be construed to modify or limit a clergy member's duty to report known or suspected elder and dependent adult abuse when he or she is acting in the capacity of a care custodian, health practitioner, or employee of an adult protective services agency.

(C) Notwithstanding any other provision in this section, a clergy member who is not regularly employed on either a full-time or part-time basis in a long-term care facility or does not have care or custody of an

elder or dependent adult shall not be responsible for reporting abuse or neglect that is not reasonably observable or discernible to a reasonably prudent person having no specialized training or experience in elder or dependent care.

(3) (A) A mandated reporter who is a physician and surgeon, a registered nurse, or a psychotherapist, as defined in Section 1010 of the Evidence Code, shall not be required to report, pursuant to paragraph (1), an incident where all of the following conditions exist:

(i) The mandated reporter has been told by an elder or dependent adult that he or she has experienced behavior constituting physical abuse, as defined in Section 15610.63 of the Welfare and Institutions Code, abandonment, abduction, isolation, financial abuse, or neglect.

(ii) The mandated reporter is not aware of any independent evidence that corroborates the statement that the abuse has occurred.

(iii) The elder or dependent adult has been diagnosed with a mental illness or dementia, or is the subject of a court-ordered conservatorship because of a mental illness or dementia.

(iv) In the exercise of clinical judgment, the physician and surgeon, the registered nurse, or the psychotherapist, as defined in Section 1010 of the Evidence Code, reasonably believes that the abuse did not occur.

(B) This paragraph shall not be construed to impose upon mandated reporters a duty to investigate a known or suspected incident of abuse and shall not be construed to lessen or restrict any existing duty of mandated reporters.

(4) (A) In a long-term care facility, a mandated reporter shall not be required to report as a suspected incident of abuse, as defined in Section 15610.07, an incident where all of the following conditions exist:

(i) The mandated reporter is aware that there is a proper plan of care.

(ii) The mandated reporter is aware that the plan of care was properly provided or executed.

(iii) A physical, mental, or medical injury occurred as a result of care provided pursuant to clause (i) or (ii).

(iv) The mandated reporter reasonably believes that the injury was not the result of abuse.

(B) This paragraph shall not be construed to require a mandated reporter to seek, nor to preclude a mandated reporter from seeking, information regarding a known or suspected incident of abuse prior to reporting. This paragraph shall apply only to those categories of mandated reporters that the State Department of Public Health determines, upon approval by the Bureau of Medi-Cal Fraud and Elder Abuse and the state long-term care ombudsperson, have access to plans of care and have the training and experience necessary to determine whether the conditions specified in this section have been met.

(c) (1) Any mandated reporter who has knowledge, or reasonably suspects, that types of elder or dependent adult abuse for which reports are not mandated have been inflicted upon an elder or dependent adult, or that his or her emotional well-being is endangered in any other way, may report the known or suspected instance of abuse.

(2) If the suspected or alleged abuse occurred in a long-term care facility other than a state mental health hospital or a state developmental center, the report may be made to the long-term care ombudsperson program. Except in an emergency, the local ombudsperson shall report any case of known or suspected abuse to the State Department of Public Health and any case of known or suspected criminal activity to the Bureau of Medi-Cal Fraud and Elder Abuse, as soon as is practicable.

(3) If the suspected or alleged abuse occurred in a state mental health hospital or a state developmental center, the report may be made to the designated investigator of the State Department of Mental Health or the State Department of Developmental Services or to a local law enforcement agency or to the local ombudsperson. Except in an emergency, the local ombudsperson and the local law enforcement agency shall report any case of known or suspected criminal activity to the Bureau of Medi-Cal Fraud and Elder Abuse, as soon as is practicable.

(4) If the suspected or alleged abuse occurred in a place other than a place described in paragraph (2) or (3), the report may be made to the county adult protective services agency.

(5) If the conduct involves criminal activity not covered in subdivision (b), it may be immediately reported to the appropriate law enforcement agency.

(d) When two or more mandated reporters are present and jointly have knowledge or reasonably suspect that types of abuse of an elder or a dependent adult for which a report is or is not mandated have occurred, and when there is agreement among them, the telephone report may be made by a member of the team selected by mutual agreement, and a single report may be made and signed by the selected member of the reporting team. Any member who has knowledge that the member designated to report has failed to do so shall thereafter make the report.

(e) A telephone report of a known or suspected instance of elder or dependent adult abuse shall include, if known, the name of the person making the report, the name and age of the elder or dependent adult, the present location of the elder or dependent adult, the names and addresses of family members or any other adult responsible for the elder's or dependent adult's care, the nature and extent of the elder's or dependent adult's condition, the date of the incident, and any other information, including information that led that person to suspect elder or dependent adult abuse, as requested by the agency receiving the report.

(f) The reporting duties under this section are individual, and no supervisor or administrator shall impede or inhibit the reporting duties, and no person making the report shall be subject to any sanction for making the report. However, internal procedures to facilitate reporting, ensure confidentiality, and apprise supervisors and administrators of reports may be established, provided they are not inconsistent with this chapter.

(g) (1) Whenever this section requires a county adult protective services agency to report to a law enforcement agency, the law enforcement agency shall, immediately upon request, provide a copy of its investigative report concerning the reported matter to that county adult protective services agency.

(2) Whenever this section requires a law enforcement agency to report to a county adult protective services agency, the county adult protective services agency shall, immediately upon request, provide to that law enforcement agency a copy of its investigative report concerning the reported matter.

(3) The requirement to disclose investigative reports pursuant to this subdivision shall not include the disclosure of social services records or case files that are confidential, nor shall this subdivision be construed to allow disclosure of any reports or records if the disclosure would be prohibited by any other provision of state or federal law.

(h) Failure to report, or impeding or inhibiting a report of, physical abuse, as defined in Section 15610.63 of the Welfare and Institutions Code, abandonment, abduction, isolation, financial abuse, or neglect of an elder or dependent adult, in violation of this section, is a misdemeanor, punishable by not more than six months in the county jail, by a fine of not more than one thousand dollars ($1,000), or by both that fine and imprisonment. Any mandated reporter who willfully fails to report, or impedes or inhibits a report of, physical abuse, as defined in Section 15610.63 of the Welfare and Institutions Code, abandonment, abduction, isolation, financial abuse, or neglect of an elder or dependent adult, in violation of this section, where that abuse results in death or great bodily injury, shall be punished by not more than one year in a county jail, by a fine of not more than five thousand dollars ($5,000), or by both that fine and imprisonment. If a mandated reporter intentionally conceals his or her failure to report an incident known by the mandated reporter to be abuse or severe neglect under this section, the failure to report is a continuing offense until a law enforcement agency specified in paragraph (1) of subdivision (b) of Section 15630 of the Welfare and Institutions Code discovers the offense.

(i) For purposes of this section, “dependent adult” shall have the same meaning as in Section 15610.23.

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 482

An act to amend Sections 361.5, 366.21, 366.22, 366.26, 366.27, 366.3, 366.35, and 16508.1 of, and to add Section 366.25 to, the Welfare and Institutions Code, relating to foster care.

[Approved by Governor September 28, 2008. Filed with Secretary of State September 28, 2008.]

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

SECTION 1. Section 361.5 of the Welfare and Institutions Code 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.

(1) Child welfare services, when provided, shall be provided as follows:

(A) 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 subparagraph (C).

(B) For a child who, on the date of initial removal from the physical custody of his or her parent or guardian, was under three years of age, court-ordered services shall not exceed a period of six months from the date the child entered foster care.

(C) 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 three years of age 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.

(2) Notwithstanding subparagraphs (A), (B), and (C) of paragraph (1), 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. In determining whether court-ordered services may be extended, the court shall consider the special circumstances of an incarcerated or institutionalized parent or parents, or parent or parents court-ordered to a residential substance abuse treatment program, including, but not limited to, barriers to the parent's or guardian's access to services and ability to maintain contact with his or her child. The court shall also consider, among other factors, good faith efforts that the parent or guardian has made to maintain contact with the child. 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, or unless a parent or guardian is incarcerated and the corrections facility in which he or she is incarcerated does not provide access to the treatment services ordered by the court. Physical custody of the child by the parents or guardians during the applicable time period under subparagraph (A), (B), or (C) of paragraph (1) 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 three years of age 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 subparagraph (C) of paragraph (1), 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 subparagraph (C) of paragraph (1).

(3) Notwithstanding paragraph (2), court-ordered services may be extended up to a maximum time period not to exceed 24 months after the date the child was originally removed from physical custody of his or her parent or guardian if it is shown, at the hearing held pursuant to subdivision (b) of Section 366.22, 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 it is in the child's best interest to have the time period extended and that there is a substantial probability that the child will be returned to the physical custody of his or her parent or guardian who is described in subdivision (b) of Section 366.22 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, in order for substantial probability to be found. Physical custody of the child by the parents or guardians during the applicable time period under subparagraph (A), (B), or (C) of paragraph (1) shall not serve to interrupt the running of the period. If at the end of the applicable time period, the 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.

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 length and 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, the likelihood of the parent's discharge from incarceration or institutionalization within the reunification time limitations described in subdivision (a), and any other appropriate factors. In determining the content of reasonable services, the court shall consider the particular barriers to an incarcerated or otherwise institutionalized parent's access to those court-mandated services and ability to maintain contact with his or her child, and shall document this information in the child's case plan. 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 reunification service plan if actual access to these services is provided. The social worker shall document in the child's case plan the particular barriers to an incarcerated or institutionalized parent's access to those court-mandated services and ability to maintain contact with his or her child.

(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. The county welfare department shall utilize the prisoner locator system developed by the Department of Corrections and

Rehabilitation to facilitate timely and effective notice of hearings for incarcerated parents.

(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 and Rehabilitation 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, and shall consider in-state and out-of-state placement options. 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) (1) 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:

(A) Current search efforts for an absent parent or parents.

(B) 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 subparagraph shall include, but not be limited to, the child's siblings, grandparents, aunts, and uncles.

(C) An evaluation of the child's medical, developmental, scholastic, mental, and emotional status.

(D) 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 subparagraph, "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.

(E) 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.

(F) An analysis of the likelihood that the child will be adopted if parental rights are terminated.

(2) (A) A relative caregiver's preference for legal guardianship over adoption, if it is due to circumstances that do not include an unwillingness to accept legal or financial responsibility for the child, shall not constitute the sole basis for recommending removal of the child from the relative caregiver for purposes of adoptive placement.

(B) A relative caregiver shall be given information regarding the permanency options of guardianship and adoption, including the long-term benefits and consequences of each option, prior to establishing legal guardianship or pursuing adoption.

(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. 1.5. Section 361.5 of the Welfare and Institutions Code 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.

(1) Child welfare services, when provided, shall be provided as follows:

(A) 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 subparagraph (C).

(B) For a child who, on the date of initial removal from the physical custody of his or her parent or guardian, was under three years of age, court-ordered services shall not exceed a period of six months from the date the child entered foster care.

(C) 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 three years of age 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.

(2) Notwithstanding subparagraphs (A), (B), and (C) of paragraph (1), 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. In determining whether court-ordered services may be extended, the court shall consider the special circumstances of an incarcerated or institutionalized parent or parents, or parent or parents court-ordered to a residential substance abuse treatment program, including, but not limited to, barriers to the parent's or guardian's access to services and ability to maintain contact with his or her child. The court shall also consider, among other factors, good faith efforts that the parent or guardian has made to maintain contact with the child. 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, or unless a parent or guardian is incarcerated and the corrections facility in which he or she is incarcerated does not provide access to the treatment services ordered by the court. Physical custody of the child by the parents or guardians during the applicable time period under paragraph subparagraph (A), (B), or (C) of paragraph (1) 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 three years of age 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 subparagraph (C) of paragraph (1), 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 subparagraph (C) of paragraph (1).

(3) Notwithstanding paragraph (2), court-ordered services may be extended up to a maximum time period not to exceed 24 months after the date the child was originally removed from physical custody of his or her parent or guardian if it is shown, at the hearing held pursuant to subdivision (b) of Section 366.22, 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 it is in the child's best interest to have the time period extended and that there is a substantial probability that the child will be returned to the physical custody of his or her parent or guardian who is described in subdivision (b) of Section 366.22 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, in order for substantial probability to be found. Physical custody of the child by the parents or guardians during the applicable time period under subparagraph (A), (B), or (C) of paragraph (1) shall not serve to interrupt the running of the period. If at the end of the applicable time period, the 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.

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 length and 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, the likelihood of the parent's discharge from incarceration or institutionalization within the reunification time limitations described in subdivision (a), and any other appropriate factors. In determining the content of reasonable services, the court shall consider the particular barriers to an incarcerated or otherwise institutionalized parent's access to those court-mandated

services and ability to maintain contact with his or her child, and shall document this information in the child's case plan. 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 reunification service plan if actual access to these services is provided. The social worker shall document in the child's case plan the particular barriers to an incarcerated or institutionalized parent's access to those court-mandated services and ability to maintain contact with his or her child.

(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. The county welfare department shall utilize the prisoner locator system developed by the Department of Corrections and Rehabilitation to facilitate timely and effective notice of hearings for incarcerated parents.

(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 and Rehabilitation 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, and shall consider in-state and

out-of-state placement options. 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. Any relative, as defined in subdivision (e) of Section 388, of the child may petition the court for visitation. Upon a petition under subdivision (c) of Section 388 for visitation between the child and a relative, the court may also order visitation between the child and a relative if the court determines that it is in the best interest of the child.

(g) (1) 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:

(A) Current search efforts for an absent parent or parents.

(B) 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 subparagraph shall include, but not be limited to, the child's siblings, grandparents, aunts, and uncles.

(C) An evaluation of the child's medical, developmental, scholastic, mental, and emotional status.

(D) 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 subparagraph, "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.

(E) 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.

(F) An analysis of the likelihood that the child will be adopted if parental rights are terminated.

(2) (A) A relative caregiver's preference for legal guardianship over adoption, if it is due to circumstances that do not include an unwillingness to accept legal or financial responsibility for the child, shall not constitute the sole basis for recommending removal of the child from the relative caregiver for purposes of adoptive placement.

(B) A relative caregiver shall be given information regarding the permanency options of guardianship and adoption, including the long-term benefits and consequences of each option, prior to establishing legal guardianship or pursuing adoption.

(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. 1.7. Section 361.5 of the Welfare and Institutions Code 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.

(1) Family reunification services, when provided, shall be provided as follows:

(A) Except as otherwise provided in subparagraph (C), 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 be provided during the period of time beginning with the dispositional hearing and ending with the date of the hearing set pursuant to subdivision (f) of Section 366.21, unless the child is returned to the home of the parent or guardian.

(B) For a child who, on the date of initial removal from the physical custody of his or her parent or guardian, was under three years of age, court-ordered services shall be provided during the period of time beginning with the dispositional hearing and ending with the date of the hearing set pursuant to subdivision (e) of Section 366.21, unless the child is returned to the home of the parent or guardian.

(C) 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 three years of age 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.

Any motion to terminate court-ordered reunification services prior to the hearing set pursuant to subdivision (f) of Section 366.21 for a child described by paragraph (1), or within six months of the initial dispositional hearing for a child described by paragraph (2) or this

paragraph, shall be made pursuant to the requirements set forth in subdivision (c) of Section 388.

(2) Notwithstanding subparagraphs (A), (B), and (C) of paragraph (1), 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. In determining whether court-ordered services may be extended, the court shall consider the special circumstances of an incarcerated or institutionalized parent or parents, or parent or parents court-ordered to a residential substance abuse treatment program, including, but not limited to, barriers to the parent's or guardian's access to services and ability to maintain contact with his or her child. The court shall also consider, among other factors, good faith efforts that the parent or guardian has made to maintain contact with the child. 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, or unless a parent or guardian is incarcerated and the corrections facility in which he or she is incarcerated does not provide access to the treatment services ordered by the court. Physical custody of the child by the parents or guardians during the applicable time period under subparagraph (A), (B), or (C) of paragraph (1) 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 three years of age 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 subparagraph

(C) of paragraph (1), 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 subparagraph (C) of paragraph (1).

(3) Notwithstanding paragraph (2), court-ordered services may be extended up to a maximum time period not to exceed 24 months after the date the child was originally removed from physical custody of his or her parent or guardian if it is shown, at the hearing held pursuant to subdivision (b) of Section 366.22, 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 it is in the child's best interest to have the time period extended and that there is a substantial probability that the child will be returned to the physical custody of his or her parent or guardian who is described in subdivision (b) of Section 366.22 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, in order for substantial probability to be found. Physical custody of the child by the parents or guardians during the applicable time period under subparagraph (A), (B), or (C) of paragraph (1) shall not serve to interrupt the running of the period. If at the end of the applicable time period, the 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.

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 length and 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, the likelihood of the parent's discharge from incarceration or institutionalization within the reunification time limitations described in subdivision (a), and any other appropriate factors. In determining the content of reasonable services, the court shall consider the particular barriers to an incarcerated or otherwise institutionalized parent's access to those court-mandated services and ability to maintain contact with his or her child, and shall document this information in the child's case plan. 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 reunification service plan if actual access to these services is provided. The social worker shall document in the child's case plan the particular barriers to an incarcerated or institutionalized parent's access to those court-mandated services and ability to maintain contact with his or her child.

(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. The county welfare department shall utilize the prisoner locator system developed by the Department of Corrections and Rehabilitation to facilitate timely and effective notice of hearings for incarcerated parents.

(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 and Rehabilitation 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, and shall consider in-state and out-of-state placement options. 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) (1) 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:

(A) Current search efforts for an absent parent or parents.

(B) 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 subparagraph shall include, but not be limited to, the child's siblings, grandparents, aunts, and uncles.

(C) An evaluation of the child's medical, developmental, scholastic, mental, and emotional status.

(D) 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 subparagraph, "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.

(E) 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.

(F) An analysis of the likelihood that the child will be adopted if parental rights are terminated.

(2) (A) A relative caregiver's preference for legal guardianship over adoption, if it is due to circumstances that do not include an unwillingness to accept legal or financial responsibility for the child, shall not constitute the sole basis for recommending removal of the child from the relative caregiver for purposes of adoptive placement.

(B) A relative caregiver shall be given information regarding the permanency options of guardianship and adoption, including the long-term benefits and consequences of each option, prior to establishing legal guardianship or pursuing adoption.

(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. 1.9. Section 361.5 of the Welfare and Institutions Code 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.

(1) Family reunification services, when provided, shall be provided as follows:

(A) Except as otherwise provided in subparagraph (C), 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 be provided during the period of time beginning with the dispositional hearing and ending with the date of the hearing set pursuant to subdivision (f) of Section 366.21, unless the child is returned to the home of the parent or guardian.

(B) For a child who, on the date of initial removal from the physical custody of his or her parent or guardian, was under three years of age, court-ordered services shall be provided during the period of time beginning with the dispositional hearing and ending with the date of the hearing set pursuant to subdivision (e) of Section 366.21, unless the child is returned to the home of the parent or guardian.

(C) 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 three years of age 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.

Any motion to terminate court-ordered reunification services prior to the hearing set pursuant to subdivision (f) of Section 366.21 for a child described by paragraph (1), or within six months of the initial dispositional hearing for a child described by paragraph (2) or this paragraph, shall be made pursuant to the requirements set forth in subdivision (c) of Section 388.

(2) Notwithstanding subparagraphs (A), (B), and (C) of paragraph (1), 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. In determining whether court-ordered services may be extended, the court shall consider the special circumstances of an incarcerated or institutionalized parent or parents, or parent or parents court-ordered to a residential substance abuse treatment program, including, but not limited to, barriers to the parent's or guardian's access to services and ability to maintain contact with his or her child. The court shall also consider, among other factors, good faith efforts that the parent or guardian has made to maintain contact with the child. 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, or unless a parent or guardian is incarcerated and the corrections facility in which he or she is incarcerated does not provide access to the treatment services ordered by the court. Physical custody of the child by the parents or guardians during the applicable time period under subparagraph (A), (B), or (C) of paragraph (1) 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 three years of age 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 subparagraph (C) of paragraph (1), 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 subparagraph (C) of paragraph (1).

(3) Notwithstanding paragraph (2), court-ordered services may be extended up to a maximum time period not to exceed 24 months after the date the child was originally removed from physical custody of his or her parent or guardian if it is shown, at the hearing held pursuant to subdivision (b) of Section 366.22, 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 it is in the child's best interest to have the time period extended and that there is a substantial probability that the child will be returned to the physical custody of his or her parent or guardian who is described in subdivision (b) of Section 366.22 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, in order for substantial probability to be found. Physical custody of the child by the parents or guardians during the applicable time period under subparagraph (A), (B), or (C) of paragraph (1) shall not serve to interrupt the running of the period. If at the end of the applicable time period, the 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.

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 length and 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, the likelihood of the parent's discharge from incarceration or institutionalization within the reunification time limitations described in subdivision (a), and any other appropriate factors. In determining the content of reasonable services, the court shall consider the particular barriers to an incarcerated or otherwise institutionalized parent's access to those court-mandated services and ability to maintain contact with his or her child, and shall document this information in the child's case plan. 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 reunification service plan if actual access to these services is provided. The social worker shall document in the child's case plan the particular barriers to an incarcerated or institutionalized parent's access to those court-mandated services and ability to maintain contact with his or her child.

(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. The county welfare department shall utilize the prisoner locator system developed by the Department of Corrections and Rehabilitation to facilitate timely and effective notice of hearings for incarcerated parents.

(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 and Rehabilitation 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, and shall consider in-state and out-of-state placement options. 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. Any relative, as defined in subdivision (f) of Section 388, of the child may petition the court for visitation. Upon a petition under subdivision (c) of Section 388 for visitation between the child and a relative, the court may also order visitation between the child and a relative if the court determines that it is in the best interest of the child.

(g) (1) 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:

(A) Current search efforts for an absent parent or parents.

(B) 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 subparagraph shall include, but not be limited to, the child's siblings, grandparents, aunts, and uncles.

(C) An evaluation of the child's medical, developmental, scholastic, mental, and emotional status.

(D) 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 subparagraph, "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.

(E) 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.

(F) An analysis of the likelihood that the child will be adopted if parental rights are terminated.

(2) (A) A relative caregiver's preference for legal guardianship over adoption, if it is due to circumstances that do not include an unwillingness to accept legal or financial responsibility for the child, shall not constitute the sole basis for recommending removal of the child from the relative caregiver for purposes of adoptive placement.

(B) A relative caregiver shall be given information regarding the permanency options of guardianship and adoption, including the long-term benefits and consequences of each option, prior to establishing legal guardianship or pursuing adoption.

(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. 2. Section 366.21 of the Welfare and Institutions Code is amended to read:

366.21. (a) Every hearing conducted by the juvenile court reviewing the status of a dependent child shall be placed on the appearance calendar. The court shall advise all persons present at the hearing of the date of the future hearing and of their right to be present and represented by counsel.

(b) Except as provided in 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 subparagraph (C) of paragraph (1) 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. The social worker shall include a copy of the Judicial Council Caregiver Information Form (JV-290) with the summary of recommendations to the child's foster parents, relative caregivers, or foster parents approved for adoption, in the caregiver's primary language when available, along with information on how to file the form with the court.

(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, or a Judicial Council Caregiver Information Form (JV-290), 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. At the hearing, the court shall consider the criminal history, obtained pursuant to paragraph (1) of subdivision (f) of Section 16504.5, of the parent or legal guardian subsequent to the child's removal to the extent that the criminal record is substantially related to the welfare of the child or the parent's or guardian's ability to exercise custody and control regarding his or her child, provided the parent or legal guardian agreed to submit fingerprint images to obtain criminal history information as part of the case plan. 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, taking into account the particular barriers to an incarcerated or institutionalized parent or legal guardian's access to those court-mandated services and ability to maintain contact with his or her child.

Regardless of whether 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 three years of age on the date of the initial removal, or is a member of a sibling group described in subparagraph

(C) of paragraph (1) 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 three years of age on the date of initial removal or is a member of a sibling group described in subparagraph (C) of paragraph (1) 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 subparagraph (C) of paragraph (1) 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. The court shall take into account any particular barriers to a parent's ability to maintain contact with his or her child due to the parent's incarceration or institutionalization. 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. At the permanency hearing, the court shall consider the criminal history, obtained pursuant to paragraph (1) of subdivision (f) of Section 16504.5, of the parent or legal guardian subsequent to the child's removal to the extent that the criminal record is substantially related to the welfare of the child or the parent or legal guardian's ability to exercise custody and control regarding his or her child, provided that the parent or legal guardian agreed to submit fingerprint images to obtain criminal history information as part of the case plan. 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, taking into account the particular barriers to an incarcerated or institutionalized parent or legal guardian's access to those court-mandated services and ability to maintain contact with his or her child and shall make appropriate findings pursuant to subdivision (a) of Section 366.

Regardless of whether 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. If the child is not returned to his or her parent or legal guardian, the court shall consider, and state for the record, in-state and out-of-state placement options. If the child is placed out of the state, the court shall make a determination whether the out-of-state placement continues to be appropriate and in the best interests of the child.

(g) If the time period in which the court-ordered services were provided has met or exceeded the time period set forth in subparagraph (A), (B), or (C) of paragraph (1) 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.

If the child is not returned to his or her parent or legal guardian, the court shall consider, and state for the record, in-state and out-of-state options for permanent placement. If the child is placed out of the state, the court shall make a determination whether the out-of-state placement continues to be appropriate and in the best interests of the child.

(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) (1) 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:

(A) Current search efforts for an absent parent or parents or legal guardians.

(B) 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 subparagraph shall include, but not be limited to, the child's siblings, grandparents, aunts, and uncles.

(C) An evaluation of the child's medical, developmental, scholastic, mental, and emotional status.

(D) 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.

(E) 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.

(F) 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 within the state or out of the state.

(G) An analysis of the likelihood that the child will be adopted if parental rights are terminated.

(2) (A) A relative caregiver's preference for legal guardianship over adoption, if it is due to circumstances that do not include an unwillingness to accept legal or financial responsibility for the child, shall not constitute the sole basis for recommending removal of the child from the relative caregiver for purposes of adoptive placement.

(B) A relative caregiver shall be given information regarding the permanency options of guardianship and adoption, including the long-term benefits and consequences of each option, prior to establishing legal guardianship or pursuing adoption.

(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 for 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. 3. 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. At the permanency review hearing, the court shall consider the criminal history, obtained pursuant to paragraph (1) of subdivision (f) of Section 16504.5, of the parent or legal guardian subsequent to the child's removal, to the extent that the criminal record is substantially related to the welfare of the child or the parent's or legal guardian's ability to exercise custody and control regarding his or her child, provided that the parent or legal guardian agreed to submit fingerprint images to obtain criminal history information as part of the case plan. 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, taking into account the particular barriers of an incarcerated or institutionalized parent or legal guardian's access to those court-mandated services and ability to maintain contact with his or her child; 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 his or her parent or legal guardian, the court shall consider, and state for the record, in-state and out-of-state options for the child's permanent placement. If the child is placed out of the state, the court shall make a determination whether the out-of-state placement continues to be appropriate and in the best interests of the child.

Unless the conditions in subdivision (b) are met and 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 (3) 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) If the child is not returned to a parent or legal guardian at the permanency review hearing and the court determines by clear and convincing evidence that the best interests of the child would be met by the provision of additional reunification services to a parent or legal guardian who is making significant and consistent progress in a substance abuse treatment program, or a parent recently discharged from

incarceration or institutionalization and making significant and consistent progress in establishing a safe home for the child's return, the court may continue the case for up to six months for a subsequent permanency review hearing, provided that the hearing shall occur within 24 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:

(1) That the parent or legal guardian has consistently and regularly contacted and visited with the child.

(2) That the parent or legal guardian has made significant and consistent progress in the prior 18 months in resolving problems that led to the child's removal from the home.

(3) The parent or legal guardian has demonstrated the capacity and ability both to complete the objectives of his or her substance abuse treatment plan as evidenced by reports from a substance abuse provider as applicable, or complete a treatment plan postdischarge from incarceration or institutionalization, 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 subsequent 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.

(c) (1) 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:

(A) Current search efforts for an absent parent or parents.

(B) 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 subparagraph shall include, but not be limited to, the child's siblings, grandparents, aunts, and uncles.

(C) An evaluation of the child's medical, developmental, scholastic, mental, and emotional status.

(D) 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.

(E) 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.

(F) An analysis of the likelihood that the child will be adopted if parental rights are terminated.

(2) (A) A relative caregiver's preference for legal guardianship over adoption, if it is due to circumstances that do not include an unwillingness to accept legal or financial responsibility for the child, shall not constitute the sole basis for recommending removal of the child from the relative caregiver for purposes of adoptive placement.

(B) A relative caregiver shall be given information regarding the permanency options of guardianship and adoption, including the long-term benefits and consequences of each option, prior to establishing legal guardianship or pursuing adoption.

(d) 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 for in Article 4.5 (commencing with Section 11360) of Chapter 2 of Part 3 of Division 9.

(e) 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.

(f) The implementation and operation of the amendments to 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. 4. Section 366.25 is added to the Welfare and Institutions Code, to read:

366.25. (a) (1) When a case has been continued pursuant to subdivision (b) of Section 366.22, the subsequent permanency review hearing shall occur within 24 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. At the subsequent permanency review hearing, the court shall consider the criminal history, obtained pursuant to paragraph (1) of subdivision (f) of Section 16504.5, of the parent or legal guardian subsequent to the child's removal to the extent that the criminal record is substantially related to the welfare of the child or parent or legal guardian's ability to exercise custody and control regarding his or her child provided that the parent or legal guardian agreed to submit fingerprint images to obtain criminal history information as part of the case plan. 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.

(2) 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 his or her parents or legal guardian, the court shall consider and state for the record, in-state and out-of-state options for the child's permanent placement. If the child is placed out of the state, the court shall make a determination whether the out-of-state placement continues to be appropriate and in best interests of the child.

(3) If the child is not returned to a parent or legal guardian at the subsequent 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 (3) 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 subsequent 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:

(A) The child has been placed with a foster family that is eligible to adopt a child, or has been placed in a preadoptive home.

(B) The case plan includes services to make and finalize a permanent placement for the child if efforts to reunify fail.

(C) 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) (1) 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:

(A) Current search efforts for an absent parent or parents.

(B) 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.

(C) An evaluation of the child's medical, developmental, scholastic, mental, and emotional status.

(D) 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.

(E) 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.

(F) An analysis of the likelihood that the child will be adopted if parental rights are terminated.

(2) (A) A relative caregiver's preference for legal guardianship over adoption, if it is due to circumstances that do not include an unwillingness to accept legal or financial responsibility for the child, shall not constitute the sole basis for recommending removal of the child from the relative caregiver for purposes of adoptive placement.

(B) A relative caregiver shall be given information regarding the permanency options of guardianship and adoption, including the long-term benefits and consequences of each option, prior to establishing legal guardianship or pursuing adoption.

(c) 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 for 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 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.

(e) The implementation and operation 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. 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 (d) 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 8616.5 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 (d) 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, 366.22, or 366.25, 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) Appoint a relative or relatives with whom the child is currently residing as legal guardian or guardians for the child, and order that letters of guardianship issue.

(3) 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.

(4) Appoint a nonrelative legal guardian for the child and order that letters of guardianship issue.

(5) 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, subdivision (b) of Section 366.22, or subdivision (b) of Section 366.25, 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. Under these circumstances, the court shall terminate parental rights unless either of the following applies:

(A) The child is living with a relative who is unable or unwilling to adopt the child because of 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 through legal guardianship, and the removal of the child from the custody of his or her relative would be detrimental to the emotional well-being of the child. For purposes of an Indian child, "relative" shall include an "extended family member," as defined in the federal Indian Child Welfare Act (25 U.S.C. Sec. 1903(2)).

(B) 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:

(i) The parents have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship.

(ii) A child 12 years of age or older objects to termination of parental rights.

(iii) 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.

(iv) The child is living with a foster parent or Indian custodian 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 foster parent or Indian custodian would be detrimental to the emotional well-being of the child. This clause does not apply to any child 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.

(v) 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.

(vi) The child is an Indian child and there is a compelling reason for determining that termination of parental rights would not be in the best interest of the child, including, but not limited to:

(I) Termination of parental rights would substantially interfere with the child's connection to his or her tribal community or the child's tribal membership rights.

(II) The child's tribe has identified guardianship, long-term foster care with a fit and willing relative, or another planned permanent living arrangement for the child.

If the court finds that termination of parental rights would be detrimental to the child pursuant to clause (i), (ii), (iii), (iv), (v), or (vi), it shall state its reasons in writing or on the record.

(2) The court shall not terminate parental rights if:

(A) 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.

(B) In the case of an Indian child:

(i) At the hearing terminating parental rights, the court has found that active efforts were not made as required in Section 361.7.

(ii) The court does not make a determination at the hearing terminating parental rights, supported by evidence beyond a reasonable doubt, including testimony of one or more "qualified expert witnesses" as defined in Section 224.6, that the continued custody of the child by the parent is likely to result in serious emotional or physical damage to the child.

(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 the state or out of the state, 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 (4) of subdivision (b). For purposes of this section, a child may only be found to be difficult to place for adoption if there is no identified or available prospective adoptive parent for the child because of the child's membership in a sibling group, or the presence of a diagnosed medical, physical, or mental handicap, or the child is seven years of age 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 clause (i), (ii), (iii), (iv), (v), or (vi) of subparagraph (B) 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, subdivision (b)

of Section 366.22, and subdivision (b) of Section 366.25 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, 366.22, and 366.25 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 home study.

(B) Cooperating with an adoption home study.

(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. 5.5. 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 (d) 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 8616.5 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 (d) 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, 366.22, or 366.25, 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) Appoint a relative or relatives with whom the child is currently residing as legal guardian or guardians for the child, and order that letters of guardianship issue.

(3) 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.

(4) Appoint a nonrelative legal guardian for the child and order that letters of guardianship issue.

(5) 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, subdivision (b) of Section 366.22, or subdivision (b) of Section 366.25, 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. Under these circumstances, the court shall terminate parental rights unless any of the following applies:

(A) The child is living with a relative who is unable or unwilling to adopt the child because of 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 through legal guardianship, and the removal of the child from the custody of his or her relative would be detrimental to the emotional well-being of the child. For purposes of an Indian child, "relative" shall include an "extended family member," as defined in the federal Indian Child Welfare Act (25 U.S.C. Sec. 1903(2)).

(B) 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:

(i) The parents have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship.

(ii) A child 12 years of age or older objects to termination of parental rights.

(iii) 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.

(iv) The child is living with a foster parent or Indian custodian 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 foster parent or Indian custodian would be detrimental to the emotional well-being of the child. This clause does not apply to any child 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.

(v) 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.

(vi) The child is an Indian child and there is a compelling reason for determining that termination of parental rights would not be in the best interest of the child, including, but not limited to:

(I) Termination of parental rights would substantially interfere with the child's connection to his or her tribal community or the child's tribal membership rights.

(II) The child's tribe has identified guardianship, long-term foster care with a fit and willing relative, tribal customary adoption, or another

planned permanent living arrangement for the child. For purposes of this section, "tribal customary adoption" means adoption by and through the child's tribe's custom, traditions, or tribal law without termination of parental rights.

(C) For purposes of subparagraph (B) in the case of tribal customary adoptions, all of the following apply:

(i) The child's tribe or the tribe's designee shall complete an adoptive home study and the tribe's designee, which may include the State Department of Social Services, the county child welfare agency where the case is being adjudicated, or a California licensed adoption agency, shall complete a check of the Child Abuse Central Index pursuant to subdivision (a) of Section 11170 of the Penal Code and any other required fingerprint clearance checks through the Department of Justice and the Federal Bureau of Investigation. The standard for the evaluation of the home shall be the prevailing social and cultural standard of the child's tribe. If and when federal or state law provides that tribes may conduct all required background checks, such tribally administered background checks shall satisfy the requirements of this section.

(ii) The child's tribe shall file with the court within 120 days a tribal customary adoption order evidencing that a tribal customary adoption has been completed. The court shall have discretion to grant a continuance to the tribe for filing a tribal customary adoption order up to, but not exceeding, 60 days. If the child's tribe does not file the tribal customary adoption order within the designated time period, the court shall make new findings and orders under subdivision (b) and this subdivision to determine an alternative permanent plan for the child.

(iii) The child, birth parents, or Indian custodian and the tribal customary adoptive parents and their counsel, if applicable, may present evidence to the tribe regarding the tribal customary adoption order and the child's best interests.

(iv) The tribal customary adoption order shall include, but not be limited to, a description of (1) the modification of the legal relationship of the birth parents or Indian custodian and the child, including contact, if any, between the child and the birth parents or Indian custodian, the responsibilities of the birth parents or Indian custodian, and the rights of inheritance of the child and (2) the child's legal relationship with the tribe. The order shall not include any child support obligation from the birth parents or Indian custodian. There shall be a conclusive presumption that any rights or obligations not specified in the tribal customary adoption order shall vest in the customary adoptive parents.

(v) Prior consent to a permanent plan of tribal customary adoption of a child shall not be required of an Indian parent or Indian custodian

whose parental relationship to the child will be modified by the tribal customary adoption.

(vi) Nothing in this subclause is intended to prevent the transfer of those proceedings to a tribal court where such transfer is otherwise permitted under applicable law.

(D) If the court finds that termination of parental rights would be detrimental to the child pursuant to clause (i), (ii), (iii), (iv), (v), or (vi) of subparagraph (B), it shall state its reasons in writing or on the record.

(2) The court shall not terminate parental rights if:

(A) 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.

(B) In the case of an Indian child:

(i) At the hearing terminating parental rights, the court has found that active efforts were not made as required in Section 361.7.

(ii) The court does not make a determination at the hearing terminating parental rights, supported by evidence beyond a reasonable doubt, including testimony of one or more "qualified expert witnesses" as defined in Section 224.6, that the continued custody of the child by the parent is likely to result in serious emotional or physical damage to the child.

(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 the state or out of the state, 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 (4) of subdivision (b). For purposes of this section, a child may only be found to be difficult to place for adoption if there is no identified or

available prospective adoptive parent for the child because of the child's membership in a sibling group, or the presence of a diagnosed medical, physical, or mental handicap, or the child is seven years of age 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 clause (i), (ii), (iii), (iv), (v), or (vi) of subparagraph (B) 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, subdivision (b) of Section 366.22, and subdivision (b) of Section 366.25 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) (1) 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.

(2) In the case of an Indian child where the Indian child's tribe has elected a permanent plan of tribal customary adoption, the court shall, after the appellate rights of the birth parents or Indian custodian have been exhausted, order that an adoption hearing be set, at which time the tribal customary adoption order shall be filed in the court and the court shall give the tribal customary adoption order full faith and credit pursuant to Section 224.5 and the court shall issue an order of adoption consistent with subparagraph (C) of paragraph (1) of subdivision (c), unless the court finds by clear and convincing evidence that issuance of the order would be detrimental to the child.

(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 tribal customary adoption order evidencing that the Indian child has been the subject of a tribal customary adoption shall be afforded full faith and credit and shall have the same force and effect as an order of adoption authorized by this section. The rights and obligations of the parties as to the matters determined by the Indian child's tribe shall be binding on all parties. A court shall not order compliance with the order absent a finding that the party seeking the enforcement participated, or attempted to participate, in good faith, in family mediation services of the court or dispute resolution through the tribe regarding the conflict, prior to the filing of the enforcement action. The Judicial Council shall adopt rules of court and necessary forms required to implement tribal customary adoption as a permanent plan for dependent Indian children effective July 1, 2009. The Judicial Council shall study California's tribal customary adoption provisions and their affects on children, birth parents, adoptive parents, Indian custodians, tribes, and the court, and shall report all of its findings to the Legislature on or before January 1, 2011.

(3) 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, 366.22, and 366.25 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 home study.

(B) Cooperating with an adoption home study.

(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.

(p) 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.

SEC. 5.6. Section 366.26 is added to the Welfare and Institutions Code, to read:

366.26. (a) This section applies to children who are adjudged dependent children of the juvenile court pursuant to subdivision (d) 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 8616.5 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 (d) 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, 366.22, or 366.25, 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) Appoint a relative or relatives with whom the child is currently residing as legal guardian or guardians for the child, and order that letters of guardianship issue.

(3) 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.

(4) Appoint a nonrelative legal guardian for the child and order that letters of guardianship issue.

(5) 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, subdivision (b) of Section 366.22, or subdivision (b) of Section 366.25, 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. Under these circumstances, the court shall terminate parental rights unless either of the following applies:

(A) The child is living with a relative who is unable or unwilling to adopt the child because of 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 through legal guardianship, and the removal of the child from the custody of his or her relative would be detrimental to the emotional well-being of the child. For purposes of an Indian child,

"relative" shall include an "extended family member," as defined in the federal Indian Child Welfare Act (25 U.S.C. Sec. 1903(2)).

(B) 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:

(i) The parents have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship.

(ii) A child 12 years of age or older objects to termination of parental rights.

(iii) 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.

(iv) The child is living with a foster parent or Indian custodian 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 foster parent or Indian custodian would be detrimental to the emotional well-being of the child. This clause does not apply to any child 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.

(v) 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.

(vi) The child is an Indian child and there is a compelling reason for determining that termination of parental rights would not be in the best interest of the child, including, but not limited to:

(I) Termination of parental rights would substantially interfere with the child's connection to his or her tribal community or the child's tribal membership rights.

(II) The child's tribe has identified guardianship, long-term foster care with a fit and willing relative, or another planned permanent living arrangement for the child.

If the court finds that termination of parental rights would be detrimental to the child pursuant to clause (i), (ii), (iii), (iv), (v), or (vi), it shall state its reasons in writing or on the record.

(2) The court shall not terminate parental rights if:

(A) 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.

(B) In the case of an Indian child:

(i) At the hearing terminating parental rights, the court has found that active efforts were not made as required in Section 361.7.

(ii) The court does not make a determination at the hearing terminating parental rights, supported by evidence beyond a reasonable doubt, including testimony of one or more "qualified expert witnesses" as defined in Section 224.6, that the continued custody of the child by the parent is likely to result in serious emotional or physical damage to the child.

(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 the state or out of the state, 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 (4) of subdivision (b). For purposes of this section, a child may only be found to be difficult to place for adoption if there is no identified or available prospective adoptive parent for the child because of the child's membership in a sibling group, or the presence of a diagnosed medical, physical, or mental handicap, or the child is seven years of age 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 clause (i), (ii), (iii), (iv), (v), or (vi) of subparagraph (B) 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, subdivision (b) of Section 366.22, and subdivision (b) of Section 366.25 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, 366.22, and 366.25 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 home study.

(B) Cooperating with an adoption home study.

(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.

(p) This section shall become operative on January 1, 2012.

SEC. 6. Section 366.27 of the Welfare and Institutions Code is amended to read:

366.27. (a) If a court, pursuant to paragraph (3) of subdivision (g) of Section 366.21, Section 366.22, Section 366.25, or Section 366.26, orders the placement of a minor in a planned permanent living arrangement with a relative, the court may authorize the relative to provide the same legal consent for the minor's medical, surgical, and dental care as the custodial parent of the minor.

(b) If a court orders the placement of a minor in a planned permanent living arrangement with a foster parent, relative caretaker, or nonrelative extended family member as defined in Section 362.7, the court may limit the right of the minor's parent or guardian to make educational decisions on the minor's behalf, so that the foster parent, relative caretaker, or nonrelative extended family member may exercise the educational consent duties pursuant to Section 56055 of the Education Code.

(c) If a court orders the placement of a minor in a planned permanent living arrangement, for purposes of this section, a foster parent shall include a person, relative caretaker, or a nonrelative extended family member as defined in Section 362.7, who has been licensed or approved by the county welfare department, county probation department, or the

State Department of Social Services, or has been designated by the court as a specified placement.

SEC. 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 either in the juvenile court that retains jurisdiction over the guardianship as authorized by Section 366.4 or the juvenile court in the county where the guardian and child currently reside, based on the best interests of the child, unless the termination is due to the emancipation or adoption of the child. The juvenile court having jurisdiction over the guardianship shall receive notice from the court in which the petition is filed within five calendar days of the filing. Prior to the hearing on a petition to terminate legal guardianship pursuant to this subdivision, the court shall order the county department of social

services or welfare department having jurisdiction or jointly with the county department where the guardian and child currently reside to prepare a report, for the court's consideration, that shall include an evaluation of whether the child could safely remain in, or be returned to, 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 family maintenance or reunification services to maintain the legal guardianship and set forth a plan for providing those services. If the petition to terminate legal guardianship is granted, either 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, 366.25, 366.26, or subdivision (h).

(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 (g), 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 either to return the child

to the safe home of the parent or to complete whatever steps are necessary to finalize the permanent placement of the child. If the reviewing body determines that a second period of reunification services is in the child's best interests, and that there is a significant likelihood of the child's return to a safe home due to changed circumstances of the parent, pursuant to subdivision (f), the specific reunification services required to effect the child's return to a safe home shall be described.

(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.

(f) 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 up to a period of six months, and family maintenance services, as needed for an additional six months in order to return the child to a safe home environment.

(g) 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.

(h) 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.

(i) If, as authorized by subdivision (h), 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.

(j) 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.

(k) The reviews conducted pursuant to subdivision (a) or (d) may be conducted earlier than every six months if the court determines that an earlier review is in the best interests of the child or as court rules prescribe.

SEC. 8. Section 366.35 of the Welfare and Institutions Code is amended 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, subdivision (a) of Section 366.25, 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 16508.1 of the Welfare and Institutions Code is amended to read:

16508.1. (a) For every child who is in foster care, or who enters foster care, on or after January 1, 1999, and has been in foster care for 15 of the most recent 22 months, the social worker shall submit to the court a recommendation that the court set a hearing pursuant to Section 366.26 for the purpose of terminating parental rights. The social worker shall concurrently initiate and describe a plan to identify, recruit, process and approve a qualified family for adoption of the child.

(b) The social worker is not required to submit the recommendation as described in subdivision (a) if any of the following applies:

(1) The case plan for the child has documented a compelling reason or reasons why it is unlikely that the child will be adopted, as determined by the department when it is acting as an adoption agency or by the licensed adoption agency, and therefore termination of parental rights would not be in the best interest of the child or that one of the conditions set forth in paragraph (1) of subdivision (c) of Section 366.26 applies.

(2) A hearing under Section 366.26 is already set.

(3) The court has found at the previous hearing under Section 366.21 that there is a substantial probability that the child will be returned to the child's home within the extended period of time permitted.

(4) The court has found at the previous hearing under Section 366.21 that reasonable reunification services have not been offered or provided.

(5) The court has found at each and every hearing at which the court was required to consider reasonable efforts or services that reasonable efforts were not made or that reasonable services were not offered or provided.

(6) The incarceration or institutionalization of the parent or parents, or the court-ordered participation of the parent or parents in a residential substance abuse treatment program, constitutes a significant factor in the child's placement in foster care for a period of 15 of the most recent 22 months, and termination of parental rights is not in the child's best interests, considering factors such as the age of the child, the degree of parent and child bonding, the length of the sentence, and the nature of the treatment and the nature of the crime or illness.

(c) A recommendation to the court pursuant to subdivision (a) shall not be made if the social worker documents in the case record a compelling reason why a hearing pursuant to Section 366.26 is not in the best interest of the child, or that reasonable efforts to safely return the child home are continuing consistent with the time period provided for in paragraph (1) of subdivision (g) of Section 366.21.

(d) Beginning January 1, 1999, the county welfare department shall implement a procedure for reviewing the application of this section to

the case plans of all children who have been in foster care for 15 out of the most recent 22 months. The review shall proceed within the following timeframes:

(1) By July 1, 1999, one-third of the children shall have been reviewed, giving priority to children who have been in foster care the greatest length of time.

(2) By January 1, 2000, at least two-thirds of the children shall have been reviewed.

(3) By July 1, 2000, all children shall have been reviewed.

(e) For purposes of this section, a child shall be considered 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 home of his or her parent or guardian.

SEC. 10. (a) Section 1.5 of this bill incorporates amendments to Section 361.5 of the Welfare and Institutions Code proposed by both this bill and AB 2029. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2009, (2) each bill amends Section 361.5 of the Welfare and Institutions Code, and (3) AB 2341 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after AB 2029, in which case Sections 1, 1.7, and 1.9 of this bill shall not become operative.

(b) Section 1.7 of this bill incorporates amendments to Section 361.5 of the Welfare and Institutions Code proposed by both this bill and AB 2341. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2009, (2) each bill amends Section 361.5 of the Welfare and Institutions Code, (3) AB 2029 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after AB 2341 in which case Sections 1, 1.5, and 1.9 of this bill shall not become operative.

(c) Section 1.9 of this bill incorporates amendments to Section 361.5 of the Welfare and Institutions Code proposed by this bill, AB 2029, and AB 2341. It shall only become operative if (1) all three bills are enacted and become effective on or before January 1, 2009, (2) all three bills amend Section 361.5 of the Welfare and Institutions Code, and (3) this bill is enacted after AB 2029 and AB 2341, in which case Sections 1, 1.5, and 1.7 of this bill shall not become operative.

SEC. 11. Sections 5.5 and 5.6 of this bill incorporate amendments to Section 366.26 of the Welfare and Institutions Code proposed by both this bill and AB 2736. They shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2009, (2) each bill amends Section 366.26 of the Welfare and Institutions Code, and (3) this bill is enacted after AB 2736, in which case Section 5 of this bill

shall not become operative and Section 4 of AB 2736, if it adds Section 366.26 to the Welfare and Institutions Code, shall not become operative.

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 483

An act to amend Sections 362.05 and 727 of the Welfare and Institutions Code, relating to dependent children.

[Approved by Governor September 28, 2008. Filed with Secretary of State September 28, 2008.]

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

SECTION 1. Section 362.05 of the Welfare and Institutions Code is amended to read:

362.05. (a) 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. A group home administrator, a facility manager, or his or her responsible designee, and a caregiver, 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. A group home administrator, a facility manager, or his or her responsible designee, and a caregiver shall take reasonable steps to determine the appropriateness of the activity in consideration of the child's age, maturity, and developmental level.

(b) A group home administrator or a facility manager, or his or her responsible designee, is encouraged to consult with social work or treatment staff members who are most familiar with the child at the

group home in applying and using the reasonable and prudent parent standard.

SEC. 2. Section 727 of the Welfare and Institutions Code is amended to read:

727. (a) When a minor is adjudged a ward of the court on the ground that he or she is a person described by Section 601 or 602, the court may make any and all reasonable orders for the care, supervision, custody, conduct, maintenance, and support of the minor, including medical treatment, subject to further order of the court. To facilitate coordination and cooperation among governmental agencies, the court may, after giving notice and an opportunity to be heard, join in the juvenile court proceedings any agency that the court determines has failed to meet a legal obligation to provide services to the minor. However, no governmental agency shall be joined as a party in a juvenile court proceeding in which a minor has been ordered committed to the Department of the Youth Authority. In any proceeding in which an agency is joined, the court shall not impose duties upon the agency beyond those mandated by law. Nothing in this section shall prohibit agencies which have received notice of the hearing on joinder from meeting prior to the hearing to coordinate services for the minor.

The court has no authority to order services unless it has been determined through the administrative process of an agency that has been joined as a party, that the minor is eligible for those services. With respect to mental health assessment, treatment, and case management services pursuant to Chapter 26.5 (commencing with Section 7570) of Division 7 of Title 1 of the Government Code, the court's determination shall be limited to whether the agency has complied with that chapter.

In the discretion of the court, a ward may be ordered to be on probation without supervision of the probation officer. The court, in so ordering, may impose on the ward any and all reasonable conditions of behavior as may be appropriate under this disposition. A minor who has been adjudged a ward of the court on the basis of the commission of any of the offenses described in subdivision (b) or paragraph (2) of subdivision (d) of Section 707, Section 459 of the Penal Code, or subdivision (a) of Section 11350 of the Health and Safety Code, shall not be eligible for probation without supervision of the probation officer. A minor who has been adjudged a ward of the court on the basis of the commission of any offense involving the sale or possession for sale of a controlled substance, except misdemeanor offenses involving marijuana, as specified in Chapter 2 (commencing with Section 11053) of Division 10 of the Health and Safety Code, or of an offense in violation of Section 12220 of the Penal Code, shall be eligible for probation without supervision of the probation officer only when the court determines that the interests of

justice would best be served and states reasons on the record for that determination.

In all other cases, the court shall order the care, custody, and control of the minor to be under the supervision of the probation officer who may place the minor in any of the following:

(1) The approved home of a relative, or the approved home of a nonrelative, extended family member as defined in Section 362.7. When a decision has been made to place the minor in the home of a relative, the court may authorize the relative to give legal consent for the minor's medical, surgical, and dental care and education as if the relative caretaker were the custodial parent of the minor.

(2) A suitable licensed community care facility.

(3) 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.

(4) (A) Every child adjudged a ward of the juvenile court who is residing in a placement as defined in paragraphs (1) to (3), inclusive, 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 wards have policies consistent with this section and that those agencies promote and protect the ability of wards to participate in age-appropriate extracurricular, enrichment, and social activities. A group home administrator, a facility manager, or his or her responsible designee, and a caregiver, 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. A group home administrator, a facility manager, or his or her responsible designee, and a caregiver shall take reasonable steps to determine the appropriateness of the activity taking into consideration the child's age, maturity, and developmental level.

(B) A group home administrator or a facility manager, or his or her responsible designee, is encouraged to consult with social work or treatment staff members who are most familiar with the child at the group home in applying and using the reasonable and prudent parent standard.

(b) When a minor has been adjudged a ward of the court on the ground that he or she is a person described in Section 601 or 602 and the court finds that notice has been given in accordance with Section 661, and when the court orders that a parent or guardian shall retain custody of

that minor either subject to or without the supervision of the probation officer, the parent or guardian may be required to participate with that minor in a counseling or education program including, but not limited to, parent education and parenting programs operated by community colleges, school districts, or other appropriate agencies designated by the court.

(c) The juvenile court may direct any and all reasonable orders to the parents and guardians of the minor who is the subject of any proceedings under this chapter as the court deems necessary and proper to carry out subdivisions (a) and (b), including orders to appear before a county financial evaluation officer and orders directing the parents or guardians to ensure the minor's regular school attendance and to make reasonable efforts to obtain appropriate educational services necessary to meet the needs of the minor.

When counseling or other treatment services are ordered for the minor, the parent, guardian, or foster parent shall be ordered to participate in those services, unless participation by the parent, guardian, or foster parent is deemed by the court to be inappropriate or potentially detrimental to the child.

CHAPTER 484

An act to amend Section 18987.5 of, and to add Section 11052.6 to, the Welfare and Institutions Code, relating to public social services.

[Approved by Governor September 28, 2008. Filed with Secretary of State September 28, 2008.]

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

SECTION 1. Section 11052.6 is added to the Welfare and Institutions Code, to read:

11052.6. (a) Notwithstanding any other provision of law, the requirements of Section 11052.5 shall not apply to any caretaker relative when all of the following apply:

(1) He or she is an approved relative pursuant to subdivision (d) of Section 309 caring for a child who is a dependent child of the court, and is receiving benefits under the CalWORKs program on behalf of the child.

(2) The caretaker relative is changing residence from one county to another county and is applying for benefits in the new county on behalf of one or more related children who are current recipients of benefits

under the CalWORKS Program under Chapter 2 (commencing with Section 11200) of Part 3.

(3) The caretaker relative is not an applicant for or a recipient of benefits under the CalWORKS Program.

(b) If the caretaker relative subsequently applies for benefits under the CalWORKS Program, he or she shall be subject to the requirements of Section 11052.5 that are applicable to that program.

(c) The county CalWORKs program shall verify that the individual applying for benefits meets the criteria set forth in this section.

SEC. 2. Section 18987.5 of the Welfare and Institutions Code is amended to read:

18987.5. Except as otherwise provided in this chapter, this chapter shall become inoperative on January 1, 2013, and, as of January 1, 2014, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2014, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because this act provides for offsetting savings to local agencies or school districts that result in no net costs to the local agencies or school districts, within the meaning of Section 17556 of the Government Code.

CHAPTER 485

An act to amend Section 11155.2 of, and to amend and repeal Section 11450 of, the Welfare and Institutions Code, relating to CalWORKs.

[Approved by Governor September 28, 2008. Filed with Secretary of State September 28, 2008.]

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

SECTION 1. Section 11155.2 of the Welfare and Institutions Code is amended to read:

11155.2. (a) In addition to the personal property permitted by this part, recipients of aid under CalWORKs shall be permitted to retain savings and interest thereon for specified purposes. Interest earned from these savings and deposited into a restricted account shall be considered exempt as income for purposes of determining eligibility for aid and grant amounts if the interest is retained in the account. If the interest is not deposited by the financial institution into the account, the interest shall be treated as a nonqualifying withdrawal of funds from the account

as specified in subdivision (b). This section shall not apply to applicants. Funds may be used by the family for education or job training expenses for the accountholder or his or her dependents, for starting a business, for the purchase of a home, or for costs associated with securing permanent rental housing or to make rent payments to overcome an episode of homelessness. Recipients who wish to retain savings for these purposes shall enter into a written agreement with the county to establish a separate account with a financial institution, with the account to be used solely for the purpose of accumulating funds for later withdrawal for a qualifying expenditure. A qualifying expenditure shall be defined by department regulations and shall be verified by the recipient. The recipient shall agree to provide periodic verification of account activity, as required by department regulations. The agreement shall notify the recipient of the penalty for nonqualifying withdrawal of funds.

(b) Any nonqualifying withdrawal of funds from the account shall result in a calculation of a period of ineligibility for all persons in the assistance unit, to be determined by dividing the balance in the account immediately prior to the withdrawal by the minimum basic standard of adequate care for the members of the assistance unit, as set forth in Section 11452. The resulting whole number shall be the number of months of ineligibility. The period of ineligibility may be reduced when the minimum basic standard of adequate care of the assistance unit, including special needs, increases.

(c) If the California Savings and Asset Project is established pursuant to Chapter 17 (commencing with Section 50897) of Part 2 of Division 31 of the Health and Safety Code, then to the extent permitted by federal law, a recipient shall be eligible to receive matching funds derived from federal contributions for the purpose of establishing an individual account in an amount not to exceed three thousand dollars ($3,000) in addition to the amounts specified in subdivision (a) and a fiduciary organization may provide amounts in excess of the first three thousand dollars ($3,000) limitation if contributed solely through private sources.

SEC. 2. Section 11450 of the Welfare and Institutions Code, as amended by Section 1 of Chapter 726 of the Statutes of 2007, is repealed.

SEC. 3. Section 11450 of the Welfare and Institutions Code, as amended by Section 2 of Chapter 726 of the Statutes of 2007, is amended to read:

11450. (a) (1) Aid shall be paid for each needy family, which shall include all eligible brothers and sisters of each eligible applicant or recipient child and the parents of the children, but shall not include unborn children, or recipients of aid under Chapter 3 (commencing with Section 12000), qualified for aid under this chapter. In determining the amount of aid paid, and notwithstanding the minimum basic standards

of adequate care specified in Section 11452, the family's income, exclusive of any amounts considered exempt as income or paid pursuant to subdivision (e) or Section 11453.1, averaged for the prospective quarter pursuant to Sections 11265.2 and 11265.3, and then calculated pursuant to Section 11451.5, shall be deducted from the sum specified in the following table, as adjusted for cost-of-living increases pursuant to Section 11453 and paragraph (2). In no case shall the amount of aid paid for each month exceed the sum specified in the following table, as adjusted for cost-of-living increases pursuant to Section 11453 and paragraph (2), plus any special needs, as specified in subdivisions (c), (e), and (f):

Number of eligible needy persons in the same home	Maximum aid
1	$ 326
2	535
3	663
4	788
5	899
6	1,010
7	1,109
8	1,209
9	1,306
10 or more	1,403

If, when, and during those times that the United States government increases or decreases its contributions in assistance of needy children in this state above or below the amount paid on July 1, 1972, the amounts specified in the above table shall be increased or decreased by an amount equal to that increase or decrease by the United States government, provided that no increase or decrease shall be subject to subsequent adjustment pursuant to Section 11453.

(2) The sums specified in paragraph (1) shall not be adjusted for cost of living for the 1990–91, 1991–92, 1992–93, 1993–94, 1994–95, 1995–96, 1996–97, and 1997–98 fiscal years, and through October 31, 1998, nor shall that amount be included in the base for calculating any cost-of-living increases for any fiscal year thereafter. Elimination of the cost-of-living adjustment pursuant to this paragraph shall satisfy the requirements of Section 11453.05, and no further reduction shall be made pursuant to that section.

(b) When the family does not include a needy child qualified for aid under this chapter, aid shall be paid to a pregnant mother for the month in which the birth is anticipated and for the three-month period immediately prior to the month in which the birth is anticipated in the amount that would otherwise be paid to one person, as specified in subdivision (a), if the mother, and child, if born, would have qualified for aid under this chapter. Verification of pregnancy shall be required as a condition of eligibility for aid under this subdivision. Aid shall also be paid to a pregnant woman with no other children in the amount which would otherwise be paid to one person under subdivision (a) at any time after verification of pregnancy if the pregnant woman is also eligible for the Cal-Learn Program described in Article 3.5 (commencing with Section 11331) and if the mother, and child, if born, would have qualified for aid under this chapter.

(c) The amount of forty-seven dollars ($47) per month shall be paid to pregnant mothers qualified for aid under subdivision (a) or (b) to meet special needs resulting from pregnancy if the mother, and child, if born, would have qualified for aid under this chapter. County welfare departments shall refer all recipients of aid under this subdivision to a local provider of the Women, Infants and Children program. If that payment to pregnant mothers qualified for aid under subdivision (a) is considered income under federal law in the first five months of pregnancy, payments under this subdivision shall not apply to persons eligible under subdivision (a), except for the month in which birth is anticipated and for the three-month period immediately prior to the month in which delivery is anticipated, if the mother, and the child, if born, would have qualified for aid under this chapter.

(d) For children receiving AFDC-FC under this chapter, there shall be paid, exclusive of any amount considered exempt as income, an amount of aid each month which, when added to the child's income, is equal to the rate specified in Section 11460, 11461, 11462, 11462.1, or 11463. In addition, the child shall be eligible for special needs, as specified in departmental regulations.

(e) In addition to the amounts payable under subdivision (a) and Section 11453.1, a family shall be entitled to receive an allowance for recurring special needs not common to a majority of recipients. These recurring special needs shall include, but not be limited to, special diets upon the recommendation of a physician for circumstances other than pregnancy, and unusual costs of transportation, laundry, housekeeping services, telephone, and utilities. The recurring special needs allowance for each family per month shall not exceed that amount resulting from multiplying the sum of ten dollars ($10) by the number of recipients in the family who are eligible for assistance.

(f) After a family has used all available liquid resources, both exempt and nonexempt, in excess of one hundred dollars ($100), with the exception of funds deposited in a restricted account described in subdivision (a) of Section 11155.2, the family shall also be entitled to receive an allowance for nonrecurring special needs.

(1) An allowance for nonrecurring special needs shall be granted for replacement of clothing and household equipment and for emergency housing needs other than those needs addressed by paragraph (2). These needs shall be caused by sudden and unusual circumstances beyond the control of the needy family. The department shall establish the allowance for each of the nonrecurring special need items. The sum of all nonrecurring special needs provided by this subdivision shall not exceed six hundred dollars ($600) per event.

(2) Homeless assistance is available to a homeless family seeking shelter when the family is eligible for aid under this chapter. Homeless assistance for temporary shelter is also available to homeless families which are apparently eligible for aid under this chapter. Apparent eligibility exists when evidence presented by the applicant, or which is otherwise available to the county welfare department, and the information provided on the application documents indicate that there would be eligibility for aid under this chapter if the evidence and information were verified. However, an alien applicant who does not provide verification of his or her eligible alien status, or a woman with no eligible children who does not provide medical verification of pregnancy, is not apparently eligible for purposes of this section.

A family is considered homeless, for the purpose of this section, when the family lacks a fixed and regular nighttime residence; or the family has a primary nighttime residence that is a supervised publicly or privately operated shelter designed to provide temporary living accommodations; or the family is residing in a public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings. A family is also considered homeless for the purpose of this section if the family has received a notice to pay rent or quit. The family shall demonstrate that the eviction is the result of a verified financial hardship as a result of extraordinary circumstances beyond their control, and not other lease or rental violations, and that the family is experiencing a financial crisis that could result in homelessness if preventative assistance is not provided.

(A) (i) A nonrecurring special need of sixty-five dollars ($65) a day shall be available to families of up to four members for the costs of temporary shelter, subject to the requirements of this paragraph. The fifth and additional members of the family shall each receive fifteen dollars ($15) per day, up to a daily maximum of one hundred twenty-five

dollars ($125). County welfare departments may increase the daily amount available for temporary shelter as necessary to secure the additional bedspace needed by the family.

(ii) This special need shall be granted or denied immediately upon the family's application for homeless assistance, and benefits shall be available for up to three working days. The county welfare department shall verify the family's homelessness within the first three working days and if the family meets the criteria of questionable homelessness established by the department, the county welfare department shall refer the family to its early fraud prevention and detection unit, if the county has such a unit, for assistance in the verification of homelessness within this period.

(iii) After homelessness has been verified, the three-day limit shall be extended for a period of time which, when added to the initial benefits provided, does not exceed a total of 16 calendar days. This extension of benefits shall be done in increments of one week and shall be based upon searching for permanent housing which shall be documented on a housing search form; good cause; or other circumstances defined by the department. Documentation of a housing search shall be required for the initial extension of benefits beyond the three-day limit and on a weekly basis thereafter as long as the family is receiving temporary shelter benefits. Good cause shall include, but is not limited to, situations in which the county welfare department has determined that the family, to the extent it is capable, has made a good faith but unsuccessful effort to secure permanent housing while receiving temporary shelter benefits.

(B) A nonrecurring special need for permanent housing assistance is available to pay for last month's rent and security deposits when these payments are reasonable conditions of securing a residence, or to pay for up to two months of rent arrearages, when these payments are a reasonable condition of preventing eviction.

The last month's rent or monthly arrearage portion of the payment (i) shall not exceed 80 percent of the family's total monthly household income without the value of food stamps or special needs for a family of that size and (ii) shall only be made to families that have found permanent housing costing no more than 80 percent of the family's total monthly household income without the value of food stamps or special needs for a family of that size.

However, if the county welfare department determines that a family intends to reside with individuals who will be sharing housing costs, the county welfare department shall, in appropriate circumstances, set aside the condition specified in clause (ii) of the preceding paragraph.

(C) The nonrecurring special need for permanent housing assistance is also available to cover the standard costs of deposits for utilities which are necessary for the health and safety of the family.

(D) A payment for or denial of permanent housing assistance shall be issued no later than one working day from the time that a family presents evidence of the availability of permanent housing. If an applicant family provides evidence of the availability of permanent housing before the county welfare department has established eligibility for aid under this chapter, the county welfare department shall complete the eligibility determination so that the denial of or payment for permanent housing assistance is issued within one working day from the submission of evidence of the availability of permanent housing, unless the family has failed to provide all of the verification necessary to establish eligibility for aid under this chapter.

(E) (i) Except as provided in clauses (ii) and (iii), eligibility for the temporary shelter assistance and the permanent housing assistance pursuant to this paragraph shall be limited to one period of up to 16 consecutive calendar days of temporary assistance and one payment of permanent assistance. Any family that includes a parent or nonparent caretaker relative living in the home who has previously received temporary or permanent homeless assistance at any time on behalf of an eligible child shall not be eligible for further homeless assistance. Any person who applies for homeless assistance benefits shall be informed that the temporary shelter benefit of up to 16 consecutive days is available only once in a lifetime, with certain exceptions, and that a break in the consecutive use of the benefit constitutes permanent exhaustion of the temporary benefit.

(ii) A family that becomes homeless as a direct and primary result of a state or federally declared natural disaster shall be eligible for temporary and permanent homeless assistance.

(iii) A family shall be eligible for temporary and permanent homeless assistance when homelessness is a direct result of domestic violence by a spouse, partner, or roommate; physical or mental illness that is medically verified that shall not include a diagnosis of alcoholism, drug addiction, or psychological stress; or, the uninhabitability of the former residence caused by sudden and unusual circumstances beyond the control of the family including natural catastrophe, fire, or condemnation. These circumstances shall be verified by a third-party governmental or private health and human services agency, except that domestic violence may also be verified by a sworn statement by the victim, as provided under Section 11495.25. Homeless assistance payments based on these specific circumstances may not be received more often than once in any 12-month period. In addition, if the domestic violence is verified by a

sworn statement by the victim, the homeless assistance payments shall be limited to two periods of not more than 16 consecutive calendar days of temporary assistance and two payments of permanent assistance. A county may require that a recipient of homeless assistance benefits who qualifies under this paragraph for a second time in a 24-month period participate in a homelessness avoidance case plan as a condition of eligibility for homeless assistance benefits. The county welfare department shall immediately inform recipients who verify domestic violence by a sworn statement pursuant to clause (iii) of the availability of domestic violence counseling and services, and refer those recipients to services upon request.

(iv) If a county requires a recipient who verifies domestic violence by a sworn statement to participate in a homelessness avoidance case plan pursuant to clause (iii), the plan shall include the provision of domestic violence services, if appropriate.

(v) If a recipient seeking homeless assistance based on domestic violence pursuant to clause (iii) has previously received homeless avoidance services based on domestic violence, the county shall review whether services were offered to the recipient and consider what additional services would assist the recipient in leaving the domestic violence situation.

(vi) The county welfare department shall report to the department through a statewide homeless assistance payment indicator system, necessary data, as requested by the department, regarding all recipients of aid under this paragraph.

(F) The county welfare departments, and all other entities participating in the costs of the AFDC program, have the right in their share to any refunds resulting from payment of the permanent housing. However, if an emergency requires the family to move within the 12-month period specified in subparagraph (E), the family shall be allowed to use any refunds received from its deposits to meet the costs of moving to another residence.

(G) Payments to providers for temporary shelter and permanent housing and utilities shall be made on behalf of families requesting these payments.

(H) The daily amount for the temporary shelter special need for homeless assistance may be increased if authorized by the current year's Budget Act by specifying a different daily allowance and appropriating the funds therefor.

(I) No payment shall be made pursuant to this paragraph unless the provider of housing is a commercial establishment, shelter, or person in the business of renting properties who has a history of renting properties.

(g) The department shall establish rules and regulations ensuring the uniform application statewide of this subdivision.

(h) The department shall notify all applicants and recipients of aid through the standardized application form that these benefits are available and shall provide an opportunity for recipients to apply for the funds quickly and efficiently.

(i) Except for the purposes of Section 15200, the amounts payable to recipients pursuant to Section 11453.1 shall not constitute part of the payment schedule set forth in subdivision (a).

The amounts payable to recipients pursuant to Section 11453.1 shall not constitute income to recipients of aid under this section.

(j) For children receiving Kin-GAP pursuant to Article 4.5 (commencing with Section 11360) of Chapter 2, there shall be paid, exclusive of any amount considered exempt as income, an amount of aid each month, which, when added to the child's income, is equal to the rate specified in Section 11364.

SEC. 3.5. Section 11450 of the Welfare and Institutions Code, as amended by Section 2 of Chapter 726 of the Statutes of 2007, is amended to read:

11450. (a) (1) Aid shall be paid for each needy family, which shall include all eligible brothers and sisters of each eligible applicant or recipient child and the parents of the children, but shall not include unborn children, or recipients of aid under Chapter 3 (commencing with Section 12000), qualified for aid under this chapter. In determining the amount of aid paid, and notwithstanding the minimum basic standards of adequate care specified in Section 11452, the family's income, exclusive of any amounts considered exempt as income or paid pursuant to subdivision (e) or Section 11453.1 determined for the prospective semiannual period pursuant to Sections 11265.2 and 11265.3, and then calculated pursuant to Section 11451.5, shall be deducted from the sum specified in the following table, as adjusted for cost-of-living increases pursuant to Section 11453 and paragraph (2). In no case shall the amount of aid paid for each month exceed the sum specified in the following table, as adjusted for cost-of-living increases pursuant to Section 11453 and paragraph (2), plus any special needs, as specified in subdivisions (c), (e), and (f):

Number of eligible needy persons in the same home	Maximum aid
1	$ 326
2	535

3	663
4	788
5	899
6	1,010
7	1,109
8	1,209
9	1,306
10 or more	1,403

If, when, and during those times that the United States government increases or decreases its contributions in assistance of needy children in this state above or below the amount paid on July 1, 1972, the amounts specified in the above table shall be increased or decreased by an amount equal to that increase or decrease by the United States government, provided that no increase or decrease shall be subject to subsequent adjustment pursuant to Section 11453.

(2) The sums specified in paragraph (1) shall not be adjusted for cost of living for the 1990–91, 1991–92, 1992–93, 1993–94, 1994–95, 1995–96, 1996–97, and 1997–98 fiscal years, and through October 31, 1998, nor shall that amount be included in the base for calculating any cost-of-living increases for any fiscal year thereafter. Elimination of the cost-of-living adjustment pursuant to this paragraph shall satisfy the requirements of Section 11453.05, and no further reduction shall be made pursuant to that section.

(b) When the family does not include a needy child qualified for aid under this chapter, aid shall be paid to a pregnant mother for the month in which the birth is anticipated and for the three-month period immediately prior to the month in which the birth is anticipated in the amount that would otherwise be paid to one person, as specified in subdivision (a), if the mother, and child, if born, would have qualified for aid under this chapter. Verification of pregnancy shall be required as a condition of eligibility for aid under this subdivision. Aid shall also be paid to a pregnant woman with no other children in the amount which would otherwise be paid to one person under subdivision (a) at any time after verification of pregnancy if the pregnant woman is also eligible for the Cal-Learn Program described in Article 3.5 (commencing with Section 11331) and if the mother, and child, if born, would have qualified for aid under this chapter.

(c) The amount of forty-seven dollars ($47) per month shall be paid to pregnant mothers qualified for aid under subdivision (a) or (b) to meet special needs resulting from pregnancy if the mother, and child, if born, would have qualified for aid under this chapter. County welfare departments shall refer all recipients of aid under this subdivision to a

local provider of the Women, Infants and Children program. If that payment to pregnant mothers qualified for aid under subdivision (a) is considered income under federal law in the first five months of pregnancy, payments under this subdivision shall not apply to persons eligible under subdivision (a), except for the month in which birth is anticipated and for the three-month period immediately prior to the month in which delivery is anticipated, if the mother, and the child, if born, would have qualified for aid under this chapter.

(d) For children receiving AFDC-FC under this chapter, there shall be paid, exclusive of any amount considered exempt as income, an amount of aid each month which, when added to the child's income, is equal to the rate specified in Section 11460, 11461, 11462, 11462.1, or 11463. In addition, the child shall be eligible for special needs, as specified in departmental regulations.

(e) In addition to the amounts payable under subdivision (a) and Section 11453.1, a family shall be entitled to receive an allowance for recurring special needs not common to a majority of recipients. These recurring special needs shall include, but not be limited to, special diets upon the recommendation of a physician for circumstances other than pregnancy, and unusual costs of transportation, laundry, housekeeping services, telephone, and utilities. The recurring special needs allowance for each family per month shall not exceed that amount resulting from multiplying the sum of ten dollars ($10) by the number of recipients in the family who are eligible for assistance.

(f) After a family has used all available liquid resources, both exempt and nonexempt, in excess of one hundred dollars ($100), with the exception of funds deposited in a restricted account described in subdivision (a) of Section 11155.2, the family shall also be entitled to receive an allowance for nonrecurring special needs.

(1) An allowance for nonrecurring special needs shall be granted for replacement of clothing and household equipment and for emergency housing needs other than those needs addressed by paragraph (2). These needs shall be caused by sudden and unusual circumstances beyond the control of the needy family. The department shall establish the allowance for each of the nonrecurring special need items. The sum of all nonrecurring special needs provided by this subdivision shall not exceed six hundred dollars ($600) per event.

(2) Homeless assistance is available to a homeless family seeking shelter when the family is eligible for aid under this chapter. Homeless assistance for temporary shelter is also available to homeless families which are apparently eligible for aid under this chapter. Apparent eligibility exists when evidence presented by the applicant, or which is otherwise available to the county welfare department, and the information

provided on the application documents indicate that there would be eligibility for aid under this chapter if the evidence and information were verified. However, an alien applicant who does not provide verification of his or her eligible alien status, or a woman with no eligible children who does not provide medical verification of pregnancy, is not apparently eligible for purposes of this section.

A family is considered homeless, for the purpose of this section, when the family lacks a fixed and regular nighttime residence; or the family has a primary nighttime residence that is a supervised publicly or privately operated shelter designed to provide temporary living accommodations; or the family is residing in a public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings. A family is also considered homeless for the purpose of this section if the family has received a notice to pay rent or quit. The family shall demonstrate that the eviction is the result of a verified financial hardship as a result of extraordinary circumstances beyond their control, and not other lease or rental violations, and that the family is experiencing a financial crisis that could result in homelessness if preventative assistance is not provided.

(A) (i) A nonrecurring special need of sixty-five dollars ($65) a day shall be available to families of up to four members for the costs of temporary shelter, subject to the requirements of this paragraph. The fifth and additional members of the family shall each receive fifteen dollars ($15) per day, up to a daily maximum of one hundred twenty-five dollars ($125). County welfare departments may increase the daily amount available for temporary shelter as necessary to secure the additional bedspace needed by the family.

(ii) This special need shall be granted or denied immediately upon the family's application for homeless assistance, and benefits shall be available for up to three working days. The county welfare department shall verify the family's homelessness within the first three working days and if the family meets the criteria of questionable homelessness established by the department, the county welfare department shall refer the family to its early fraud prevention and detection unit, if the county has such a unit, for assistance in the verification of homelessness within this period.

(iii) After homelessness has been verified, the three-day limit shall be extended for a period of time which, when added to the initial benefits provided, does not exceed a total of 16 calendar days. This extension of benefits shall be done in increments of one week and shall be based upon searching for permanent housing which shall be documented on a housing search form; good cause; or other circumstances defined by the department. Documentation of a housing search shall be required for the

initial extension of benefits beyond the three-day limit and on a weekly basis thereafter as long as the family is receiving temporary shelter benefits. Good cause shall include, but is not limited to, situations in which the county welfare department has determined that the family, to the extent it is capable, has made a good faith but unsuccessful effort to secure permanent housing while receiving temporary shelter benefits.

(B) A nonrecurring special need for permanent housing assistance is available to pay for last month's rent and security deposits when these payments are reasonable conditions of securing a residence, or to pay for up to two months of rent arrearages, when these payments are a reasonable condition of preventing eviction.

The last month's rent or monthly arrearage portion of the payment (i) shall not exceed 80 percent of the family's total monthly household income without the value of food stamps or special needs for a family of that size and (ii) shall only be made to families that have found permanent housing costing no more than 80 percent of the family's total monthly household income without the value of food stamps or special needs for a family of that size.

However, if the county welfare department determines that a family intends to reside with individuals who will be sharing housing costs, the county welfare department shall, in appropriate circumstances, set aside the condition specified in clause (ii) of the preceding paragraph.

(C) The nonrecurring special need for permanent housing assistance is also available to cover the standard costs of deposits for utilities which are necessary for the health and safety of the family.

(D) A payment for or denial of permanent housing assistance shall be issued no later than one working day from the time that a family presents evidence of the availability of permanent housing. If an applicant family provides evidence of the availability of permanent housing before the county welfare department has established eligibility for aid under this chapter, the county welfare department shall complete the eligibility determination so that the denial of or payment for permanent housing assistance is issued within one working day from the submission of evidence of the availability of permanent housing, unless the family has failed to provide all of the verification necessary to establish eligibility for aid under this chapter.

(E) (i) Except as provided in clauses (ii) and (iii), eligibility for the temporary shelter assistance and the permanent housing assistance pursuant to this paragraph shall be limited to one period of up to 16 consecutive calendar days of temporary assistance and one payment of permanent assistance. Any family that includes a parent or nonparent caretaker relative living in the home who has previously received temporary or permanent homeless assistance at any time on behalf of

an eligible child shall not be eligible for further homeless assistance. Any person who applies for homeless assistance benefits shall be informed that the temporary shelter benefit of up to 16 consecutive days is available only once in a lifetime, with certain exceptions, and that a break in the consecutive use of the benefit constitutes permanent exhaustion of the temporary benefit.

(ii) A family that becomes homeless as a direct and primary result of a state or federally declared natural disaster shall be eligible for temporary and permanent homeless assistance.

(iii) A family shall be eligible for temporary and permanent homeless assistance when homelessness is a direct result of domestic violence by a spouse, partner, or roommate; physical or mental illness that is medically verified that shall not include a diagnosis of alcoholism, drug addiction, or psychological stress; or, the uninhabitability of the former residence caused by sudden and unusual circumstances beyond the control of the family including natural catastrophe, fire, or condemnation. These circumstances shall be verified by a third-party governmental or private health and human services agency, except that domestic violence may also be verified by a sworn statement by the victim, as provided under Section 11495.25. Homeless assistance payments based on these specific circumstances may not be received more often than once in any 12-month period. In addition, if the domestic violence is verified by a sworn statement by the victim, the homeless assistance payments shall be limited to two periods of not more than 16 consecutive calendar days of temporary assistance and two payments of permanent assistance. A county may require that a recipient of homeless assistance benefits who qualifies under this paragraph for a second time in a 24-month period participate in a homelessness avoidance case plan as a condition of eligibility for homeless assistance benefits. The county welfare department shall immediately inform recipients who verify domestic violence by a sworn statement pursuant to clause (iii) of the availability of domestic violence counseling and services, and refer those recipients to services upon request.

(iv) If a county requires a recipient who verifies domestic violence by a sworn statement to participate in a homelessness avoidance case plan pursuant to clause (iii), the plan shall include the provision of domestic violence services, if appropriate.

(v) If a recipient seeking homeless assistance based on domestic violence pursuant to clause (iii) has previously received homeless avoidance services based on domestic violence, the county shall review whether services were offered to the recipient and consider what additional services would assist the recipient in leaving the domestic violence situation.

(vi) The county welfare department shall report to the department through a statewide homeless assistance payment indicator system, necessary data, as requested by the department, regarding all recipients of aid under this paragraph.

(F) The county welfare departments, and all other entities participating in the costs of the AFDC program, have the right in their share to any refunds resulting from payment of the permanent housing. However, if an emergency requires the family to move within the 12-month period specified in subparagraph (E), the family shall be allowed to use any refunds received from its deposits to meet the costs of moving to another residence.

(G) Payments to providers for temporary shelter and permanent housing and utilities shall be made on behalf of families requesting these payments.

(H) The daily amount for the temporary shelter special need for homeless assistance may be increased if authorized by the current year's Budget Act by specifying a different daily allowance and appropriating the funds therefor.

(I) No payment shall be made pursuant to this paragraph unless the provider of housing is a commercial establishment, shelter, or person in the business of renting properties who has a history of renting properties.

(g) The department shall establish rules and regulations ensuring the uniform application statewide of this subdivision.

(h) The department shall notify all applicants and recipients of aid through the standardized application form that these benefits are available and shall provide an opportunity for recipients to apply for the funds quickly and efficiently.

(i) Except for the purposes of Section 15200, the amounts payable to recipients pursuant to Section 11453.1 shall not constitute part of the payment schedule set forth in subdivision (a).

The amounts payable to recipients pursuant to Section 11453.1 shall not constitute income to recipients of aid under this section.

(j) For children receiving Kin-GAP pursuant to Article 4.5 (commencing with Section 11360) of Chapter 2, there shall be paid, exclusive of any amount considered exempt as income, an amount of aid each month, which, when added to the child's income, is equal to the rate specified in Section 11364.

SEC. 4. If Section 3.5 of this act becomes operative, the amendments made to subdivision (a) of Section 11450 of the Welfare and Institutions Code by that section shall become operative in a county on the date that the county implements the semiannual reporting provisions referred to in that section. A county may implement the semiannual reporting

provisions as early as July 1, 2010, but in no event later than January 1, 2011.

SEC. 5. Section 3.5 of this bill incorporates amendments to Section 11450 of the Welfare and Institutions Code proposed by both this bill and AB 2844. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2009, (2) each bill amends Section 11450 of the Welfare and Institutions Code, and (3) this bill is enacted after AB 2844, in which case Section 3 of this bill shall not become operative.

SEC. 6. No appropriation pursuant to Section 15200 of the Welfare and Institutions Code shall be made for the purposes of this act.

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.

CHAPTER 486

An act to amend Sections 11462, 18358, 18358.05, 18358.10, 18358.15, 18358.20, 18358.23, 18358.25, and 18358.30 of, and to add Section 18358.37 to, the Welfare and Institutions Code, relating to foster care.

[Approved by Governor September 28, 2008. Filed with Secretary of State September 28, 2008.]

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

SECTION 1. Section 11462 of the Welfare and Institutions Code is amended to read:

11462. (a) (1) Effective July 1, 1990, foster care providers licensed as group homes, as defined in departmental regulations, including public child care institutions, as defined in Section 11402.5, shall have rates established by classifying each group home program and applying the standardized schedule of rates. The department shall collect information from group providers beginning January 1, 1990, in order to classify each group home program.

(2) Notwithstanding paragraph (1), foster care providers licensed as group homes shall have rates established only if the group home is organized and operated on a nonprofit basis as required under subdivision (h) of Section 11400. The department shall terminate the rate effective

January 1, 1993, of any group home not organized and operated on a nonprofit basis as required under subdivision (h) of Section 11400.

(3) (A) The department shall determine, consistent with the requirements of this chapter and other relevant requirements under law, the rate classification level (RCL) for each group home program on a biennial basis. Submission of the biennial rate application shall be made according to a schedule determined by the department.

(B) The department shall adopt regulations to implement this paragraph. The adoption, amendment, repeal, or readoption of a regulation authorized by this paragraph 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 department is hereby exempted from the requirement to describe specific facts showing the need for immediate action.

(b) A group home program shall be initially classified, for purposes of emergency regulations, according to the level of care and services to be provided using a point system developed by the department and described in the report, "The Classification of Group Home Programs under the Standardized Schedule of Rates System," prepared by the State Department of Social Services, August 30, 1989.

(c) The rate for each RCL has been determined by the department with data from the AFDC-FC Group Home Rate Classification Pilot Study. The rates effective July 1, 1990, were developed using 1985 calendar year costs and reflect adjustments to the costs for each fiscal year, starting with the 1986–87 fiscal year, by the amount of the California Necessities Index computed pursuant to the methodology described in Section 11453. The data obtained by the department using 1985 calendar year costs shall be updated and revised by January 1, 1993.

(d) As used in this section, "standardized schedule of rates" means a listing of the 14 rate classification levels, and the single rate established for each RCL.

(e) Except as specified in paragraph (1), the department shall determine the RCL for each group home program on a prospective basis, according to the level of care and services that the group home operator projects will be provided during the period of time for which the rate is being established.

(1) (A) For new and existing providers requesting the establishment of an RCL, and for existing group home programs requesting an RCL increase, the department shall determine the RCL no later than 13 months after the effective date of the provisional rate. The determination of the RCL shall be based on a program audit of documentation and other

information that verifies the level of care and supervision provided by the group home program during a period of the two full calendar months or 60 consecutive days, whichever is longer, preceding the date of the program audit, unless the group home program requests a lower RCL. The program audit shall not cover the first six months of operation under the provisional rate. Pending the department's issuance of the program audit report that determines the RCL for the group home program, the group home program shall be eligible to receive a provisional rate that shall be based on the level of care and service that the group home program proposes it will provide. The group home program shall be eligible to receive only the RCL determined by the department during the pendency of any appeal of the department's RCL determination.

(B) A group home program may apply for an increase in its RCL no earlier than two years from the date the department has determined the group home program's rate, unless the host county, the primary placing county, or a regional consortium of counties submits to the department in writing that the program is needed in that county, that the provider is capable of effectively and efficiently operating the proposed program, and that the provider is willing and able to accept AFDC-FC children for placement who are determined by the placing agency to need the level of care and services that will be provided by the program.

(C) To ensure efficient administration of the department's audit responsibilities, and to avoid the fraudulent creation of records, group home programs shall make records that are relevant to the RCL determination available to the department in a timely manner. Except as provided in this section, the department may refuse to consider, for purposes of determining the rate, any documents that are relevant to the determination of the RCL that are not made available by the group home provider by the date the group home provider requests a hearing on the department's RCL determination. The department may refuse to consider, for purposes of determining the rate, the following records, unless the group home provider makes the records available to the department during the fieldwork portion of the department's program audit:

(i) Records of each employee's full name, home address, occupation, and social security number.

(ii) Time records showing when the employee begins and ends each work period, meal periods, split shift intervals, and total daily hours worked.

(iii) Total wages paid each payroll period.

(iv) Records required to be maintained by licensed group home providers under Title 22 of the California Code of Regulations that are relevant to the RCL determination.

(D) To minimize financial abuse in the startup of group home programs, when the department's RCL determination is more than three levels lower than the RCL level proposed by the group home provider, and the group home provider does not appeal the department's RCL determination, the department shall terminate the rate of a group home program 45 days after issuance of its program audit report. When the group home provider requests a hearing on the department's RCL determination, and the RCL determined by the director under subparagraph (E) is more than three levels lower than the RCL level proposed by the group home provider, the department shall terminate the rate of a group home program within 30 days of issuance of the director's decision. Notwithstanding the reapplication provisions in subparagraph (B), the department shall deny any request for a new or increased RCL from a group home provider whose RCL is terminated pursuant to this subparagraph, for a period of no greater than two years from the effective date of the RCL termination.

(E) A group home provider may request a hearing of the department's RCL determination under subparagraph (A) no later than 30 days after the date the department issues its RCL determination. The department's RCL determination shall be final if the group home provider does not request a hearing within the prescribed time. Within 60 days of receipt of the request for hearing, the department shall conduct a hearing on the RCL determination. The standard of proof shall be the preponderance of the evidence and the burden of proof shall be on the department. The hearing officer shall issue the proposed decision within 45 days of the close of the evidentiary record. The director shall adopt, reject, or modify the proposed decision, or refer the matter back to the hearing officer for additional evidence or findings within 100 days of issuance of the proposed decision. If the director takes no action on the proposed decision within the prescribed time, the proposed decision shall take effect by operation of law.

(2) Group home programs that fail to maintain at least the level of care and services associated with the RCL upon which their rate was established shall inform the department. The department shall develop regulations specifying procedures to be applied when a group home fails to maintain the level of services projected, including, but not limited to, rate reduction and recovery of overpayments.

(3) The department shall not reduce the rate, establish an overpayment, or take other actions pursuant to paragraph (2) for any period that a group home program maintains the level of care and services associated with the RCL for children actually residing in the facility. Determinations of levels of care and services shall be made in the same way as

modifications of overpayments are made pursuant to paragraph (2) of subdivision (b) of Section 11466.2.

(4) A group home program that substantially changes its staffing pattern from that reported in the group home program statement shall provide notification of this change to all counties that have placed children currently in care. This notification shall be provided whether or not the RCL for the program may change as a result of the change in staffing pattern.

(f) (1) The standardized schedule of rates for the 2002–03, 2003–04, 2004–05, 2005–06, 2006–07, and 2007–08 fiscal years is:

Rate Classification Level	Point Ranges	FY 2002-03, 2003-04, 2004-05, 2005-06, 2006-07, and 2007-08 Standard Rate
1	Under 60	$1,454
2	60- 89	1,835
3	90-119	2,210
4	120-149	2,589
5	150-179	2,966
6	180-209	3,344
7	210-239	3,723
8	240-269	4,102
9	270-299	4,479
10	300-329	4,858
11	330-359	5,234
12	360-389	5,613
13	390-419	5,994
14	420 & Up	6,371

(2) (A) For group home programs that receive AFDC-FC payments for services performed during the 2002–03, 2003–04, 2004–05, 2005–06, 2006–07, 2007–08, and 2008–09 fiscal years, the adjusted RCL point ranges below shall be used for establishing the biennial rates for existing programs, pursuant to paragraph (3) of subdivision (a) and in performing program audits and in determining any resulting rate reduction, overpayment assessment, or other actions pursuant to paragraph (2) of subdivision (e):

Rate Classification Level	Adjusted Point Ranges for the 2002-03, 2003-04, 2004-05, 2005-06, 2006-07, 2007-08, and 2008-09 Fiscal Years
1	Under 54
2	54- 81
3	82-110
4	111-138
5	139-167
6	168-195
7	196-224
8	225-253
9	254-281
10	282-310
11	311-338
12	339-367
13	368-395
14	396 & Up

(B) Notwithstanding subparagraph (A), foster care providers operating group homes during the 2002–03, 2003–04, 2004–05, 2005–06, 2006–07, 2007–08, and 2008–09 fiscal years shall remain responsible for ensuring the health and safety of the children placed in their programs in accordance with existing applicable provisions of the Health and Safety Code and community care licensing regulations, as contained in Title 22 of the Code of California Regulations.

(C) Subparagraph (A) shall not apply to program audits of group home programs with provisional rates established pursuant to paragraph (1) of subdivision (e). For those program audits, the RCL point ranges in paragraph (1) shall be used.

(g) (1) (A) For the 1999–2000 fiscal year, the standardized rate for each RCL shall be adjusted by an amount equal to the California Necessities Index computed pursuant to the methodology described in Section 11453. The resultant amounts shall constitute the new standardized schedule of rates, subject to further adjustment pursuant to subparagraph (B).

(B) In addition to the adjustment in subparagraph (A), commencing January 1, 2000, the standardized rate for each RCL shall be increased by 2.36 percent, rounded to the nearest dollar. The resultant amounts shall constitute the new standardized schedule of rates.

(2) Beginning with the 2000–01 fiscal year, the standardized schedule of rates shall be adjusted annually by an amount equal to the CNI

computed pursuant to Section 11453, subject to the availability of funds. The resultant amounts shall constitute the new standardized schedule of rates.

(3) Effective January 1, 2001, the amount included in the standard rate for each Rate Classification Level (RCL) for the salaries, wages, and benefits for staff providing child care and supervision or performing social work activities, or both, shall be increased by 10 percent. This additional funding shall be used by group home programs solely to supplement staffing, salaries, wages, and benefit levels of staff specified in this paragraph. The standard rate for each RCL shall be recomputed using this adjusted amount and the resultant rates shall constitute the new standardized schedule of rates. The department may require a group home receiving this additional funding to certify that the funding was utilized in accordance with the provisions of this section.

(4) Effective January 1, 2008, the amount included in the standard rate for each RCL for the wages for staff providing child care and supervision or performing social work activities, or both, shall be increased by 5 percent, and the amount included for the payroll taxes and other employer-paid benefits for these staff shall be increased from 20.325 percent to 24 percent. The standard rate for each RCL shall be recomputed using these adjusted amounts, and the resulting rates shall constitute the new standardized schedule of rates.

(h) The standardized schedule of rates pursuant to subdivisions (f) and (g) shall be implemented as follows:

(1) Any group home program that received an AFDC-FC rate in the prior fiscal year at or above the standard rate for the RCL in the current fiscal year shall continue to receive that rate.

(2) Any group home program that received an AFDC-FC rate in the prior fiscal year below the standard rate for the RCL in the current fiscal year shall receive the RCL rate for the current year.

(i) (1) The department shall not establish a rate for a new program of a new or existing provider, or for an existing program at a new location of an existing provider, unless the provider submits a letter of recommendation from the host county, the primary placing county, or a regional consortium of counties that includes all of the following:

(A) That the program is needed by that county.

(B) That the provider is capable of effectively and efficiently operating the program.

(C) That the provider is willing and able to accept AFDC-FC children for placement who are determined by the placing agency to need the level of care and services that will be provided by the program.

(D) That, if the letter of recommendation is not being issued by the host county, the primary placing county has notified the host county of

its intention to issue the letter and the host county was given the opportunity 30 days to respond to this notification and to discuss options with the primary placing county.

(2) The department shall encourage the establishment of consortia of county placing agencies on a regional basis for the purpose of making decisions and recommendations about the need for, and use of, group home programs and other foster care providers within the regions.

(3) The department shall annually conduct a county-by-county survey to determine the unmet placement needs of children placed pursuant to Section 300 and Section 601 or 602, and shall publish its findings by November 1 of each year.

(j) The department shall develop regulations specifying ratesetting procedures for program expansions, reductions, or modifications, including increases or decreases in licensed capacity, or increases or decreases in level of care or services.

(k) (1) For the purpose of this subdivision, "program change" means any alteration to an existing group home program planned by a provider that will increase the RCL or AFDC-FC rate. An increase in the licensed capacity or other alteration to an existing group home program that does not increase the RCL or AFDC-FC rate shall not constitute a program change.

(2) For the 1998–99, 1999–2000, and 2000–01 fiscal years, the rate for a group home program shall not increase, as the result of a program change, from the rate established for the program effective July 1, 2000, and as adjusted pursuant to subparagraph (B) of paragraph (1) of subdivision (g), except as provided in paragraph (3).

(3) (A) For the 1998–99, 1999–2000, and 2000–01 fiscal years, the department shall not establish a rate for a new program of a new or existing provider or approve a program change for an existing provider that either increases the program's RCL or AFDC-FC rate, or increases the licensed capacity of the program as a result of decreases in another program with a lower RCL or lower AFDC-FC rate that is operated by that provider, unless both of the following conditions are met:

(i) The licensee obtains a letter of recommendation from the host county, primary placing county, or regional consortium of counties regarding the proposed program change or new program.

(ii) The county determines that there is no increased cost to the General Fund.

(B) Notwithstanding subparagraph (A), the department may grant a request for a new program or program change, not to exceed 25 beds, statewide, if both of the following conditions are met:

(i) The licensee obtains a letter of recommendation from the host county, primary placing county, or regional consortium of counties regarding the proposed program change or new program.

(ii) The department determines that the new program or program change will result in a reduction of referrals to state hospitals during the 1998–99 fiscal year.

(*l*) General unrestricted or undesignated private charitable donations and contributions made to charitable or nonprofit organizations shall not be deducted from the cost of providing services pursuant to this section. The donations and contributions shall not be considered in any determination of maximum expenditures made by the department.

(m) The department shall, by October 1 of each year, commencing October 1, 1992, provide the Joint Legislative Budget Committee with a list of any new departmental requirements established during the previous fiscal year concerning the operation of group homes, and of any unusual, industrywide increase in costs associated with the provision of group care that may have significant fiscal impact on providers of group homes care. The committee may, in fiscal year 1993–94 and beyond, use the list to determine whether an appropriation for rate adjustments is needed in the subsequent fiscal year.

SEC. 2. Section 18358 of the Welfare and Institutions Code is amended to read:

18358. The definitions contained in this section shall govern the construction of this chapter, unless the context requires otherwise:

(a) "Department" means the State Department of Social Services.

(b) "Eligible children" means children who meet both of the following conditions:

(1) Children who are emotionally disturbed, or who have a serious behavioral problem, as evidenced by a history that may include, but is not limited to, the following:

(A) Lying.

(B) Stealing.

(C) Verbal or physical aggression.

(D) Unacceptable sexual behavior.

(E) Attempts at self-harmful behaviors.

(F) Defiant and oppositional behavior.

(2) Children who, as a result of their emotional disturbance or serious behavioral problem, satisfy one or more of the following criteria:

(A) Are placed in a group home with a rate classification level of nine or higher pursuant to Section 11462.

(B) Have been assessed by the child's county interagency review team or county placing agency as at imminent risk of psychiatric

hospitalization or placement in a group home with a rate classification level of nine or higher pursuant to Section 11462.

(C) Were previously in a group home program, except children on probation or otherwise in the custody of the juvenile court for any violent felony, as defined in subdivision (c) of Section 667.5 of the Penal Code.

(D) Are voluntarily placed in a group home with a rate classification level of 9 or higher pursuant to Section 7572.5 of the Government Code.

SEC. 3. Section 18358.05 of the Welfare and Institutions Code is amended to read:

18358.05. (a) The department shall implement intensive treatment foster care programs for eligible children.

(b) (1) The department shall implement the program in any participating county that applies for and receives the department's approval for an intensive treatment foster care program rate.

(2) Upon application to the department, the county shall do all of the following:

(A) Identify the population of children to be served, including, but not limited to, the rate classification levels from 9 to 14, inclusive, pursuant to subparagraph (A) of paragraph (2) of subdivision (b) of Section 18358, that the county has chosen to include.

(B) Certify that participating foster family agencies have the required personnel, administrative support, financial services, and resources to successfully participate in the program.

(C) Project savings or cost neutrality to the state General Fund.

(D) Provide a plan for monitoring the participating foster family agencies for compliance with this chapter.

(3) Each participating foster family agency may, with the approval of the host county, accept placements from counties other than the host county.

(c) No more than a total of 1,000 children who were in, or at imminent risk of being placed in, group homes with rate classification levels of 9 to 11, inclusive, pursuant to Section 11462, may be placed in intensive treatment foster care programs at the same time, from January 1, 2009, to December 31, 2011, inclusive. This limitation does not include children in the Title IV-E waiver demonstration project Counties of Alameda and Los Angeles.

SEC. 4. Section 18358.10 of the Welfare and Institutions Code is amended to read:

18358.10. Each foster family agency participating in this program shall enter into a contract or memorandum of understanding with the county and provide all of the following personnel and administrative and support services:

(a) (1) Special attention to the selection and training of foster parents.

(2) All participating intensive treatment foster care (ITFC) foster parents shall be provided with at least 40 hours of training in the care of emotionally disturbed children or children who have a serious behavioral problem before becoming an ITFC parent, and before placement of a child pursuant to this program, 32 hours of ongoing in-service training within the first 12 months after becoming a certified ITFC parent, and 12 hours of ongoing in-service training each year thereafter. Training shall include, but not be limited to, working with abused and neglected children, behavior deescalation techniques, and cardiopulmonary resuscitation and first aid. All training shall be completed prior to the child's placement in the home. In two-parent homes, placement may be made after one parent has completed 40 hours of training, provided that an additional 20 hours of ongoing in-service training are completed within 12 months after becoming an ITFC foster parent, and provided that the second parent has completed 40 hours of training and completes an additional 20 hours of training within the first six months of certification of the foster parent as an ITFC foster parent.

(3) Upon approval of the county interagency review team or the county placing agency, the training requirements specified in paragraph (2) for a participating foster parent in this program may be waived for foster parents with prior experience that includes, but is not limited to, working for at least one year with emotionally disturbed children or children who have a serious behavioral problem.

(4) Foster parents shall be provided with all necessary support services.

(b) Caseloads for participating social work case managers that average eight children, except as provided in paragraph (1) of subdivision (b) of Section 18358.30.

(c) The specific assignment to each certified family home of a trained support counselor with experience in residential treatment.

(1) The support counselor shall have one of the following:

(A) A bachelor's degree in a social science related field and at least six months of experience in working with emotionally disturbed children or children who have a serious behavioral problem.

(B) An associate degree in a social science related field and have at least one year's experience in working with emotionally disturbed children or children who have a serious behavioral problem.

(C) Upon approval of the county interagency review team or the county placing agency, the educational requirements may be waived for support counselors with at least two years of experience working with emotionally disturbed children or children who have a serious behavioral problem, and who demonstrate a combination of education, skills, and

experience that meets the specific cultural and linguistic needs of the target population.

(2) Each participating foster family agency shall provide each support counselor with 40 hours of training to include, but not be limited to, working with abused and neglected children, behavior deescalation techniques, cardiopulmonary resuscitation, first aid, and developing treatment plans for emotionally disturbed children or children who have a serious behavioral problem. All training shall be completed prior to placing a child in a certified family home for which the support counselor is assigned responsibility. An additional 20 hours of ongoing in-service training is required within the first 12 months after becoming an ITFC support counselor.

(3) Each support counselor shall provide support service to the child and the foster family. This service shall include, but not be limited to, structuring a safe environment for the child, collateral contacts, and any administrative or training functions necessary to implement the child's needs and services plan. The child's needs and services plan shall ensure that services meet the child's needs and are appropriate to and consistent with the minimum level of service specified in Section 18358.30. The child's individual needs and services plan shall be reviewed and approved by the certified foster parents.

(d) Coordination services with local education agencies and the service provider's nonpublic school, where applicable.

(e) A 24-hour on call administrator who is available to respond to emergency situations.

SEC. 5. Section 18358.15 of the Welfare and Institutions Code is amended to read:

18358.15. (a) Each foster family agency participating in the program shall develop the child's needs and services plan, and have it agreed to by the county interagency review team, or county placing agency, and certified foster parents. Each foster family agency participating in the program shall provide the services and supports identified in the needs and services plan which are allowable under California's foster care program in accordance with Sections 11460 and 11463, and their implementing regulations. Each foster family agency shall also arrange for the services needed by each child and for which the child meets eligibility criteria under applicable publicly funded programs, including, but not limited to, mental health, education, and health services. The foster family agency shall arrange for these services funded by those publicly funded programs to be delivered either by the private nonprofit organization that also operates the foster family agency or by another qualified provider. Children in the ITFC program who meet the public mental health system criteria for mental health services and supports

shall have those services and supports funded by the Early Periodic Screening, Diagnosis, and Treatment (EPSDT) program pursuant to Section 5778 and other appropriate mental health system sources. This subdivision shall not be construed to change the eligibility criteria for EPSDT benefits or services pursuant to federal law. The services that the foster family agency shall provide or arrange for include, but are not limited to, the following:

(1) Individualized needs and services plans that ensure continuity and stability in the placement of participating children in certified family homes that meet the needs of eligible children, including children making the transition from institutional placement to noninstitutional placement. The needs and services plan for each child in placement shall describe the specific needs of the child and the appropriate level of services provided to the child pursuant to Section 18358.30.

(2) Education and mental health services for children.

(3) In-home and support services necessary to implement the case plan.

(4) Other necessary services for children in placement, including medical and dental services.

(b) No more than one emotionally disturbed child or child who has a serious behavioral problem shall be placed in a certified ITFC family home unless the participating foster family agency provides the placing or participating county welfare department with a written assessment of the risk and compatibility of placing together two children who are emotionally disturbed or have a serious behavioral problem. More than two children who are emotionally disturbed or have serious behavioral problems who are siblings may be placed together in the same certified family home if the placement is approved by the county interagency review team or the county placing agency of the participating county. However, there shall be no more than a total of five children living in a certified family home with two adults, and there shall be no more than a total of three children living in a certified family home with one adult, except in cases where children living in the home other than those placed pursuant to this chapter are 15 years of age or older.

(c) Any use of physical contact to manage the behavior of a child that is reported to the foster family agency pursuant to Section 18538.25 shall in turn be reported by the foster family agency to the Community Care Licensing Division of the department as a special incident pursuant to Section 80061 of Title 22 of the California Code of Regulations.

SEC. 6. Section 18358.20 of the Welfare and Institutions Code is amended to read:

18358.20. In addition to the requirements of Sections 18358.10 and 18358.15, any foster family agency that serves children under this

program shall have a contract or memorandum of understanding with the county prior to accepting referrals of children. The contract or memorandum of understanding shall identify how the foster family agency will provide or arrange for the following services and activities:

(a) An effective 24 hours a day, seven days a week social work emergency response service. The plan shall include the criteria for an in-person response and define the timeframe in which in-person response will be made.

(b) Mental health coverage available as needed for mental health emergencies.

(c) Development of a service plan approved by the placing county for each child within one month of placement that thoroughly assesses the unique needs and strengths of the child in the life domains specified in paragraph (1), and identifies the necessary services and supports to improve outcomes.

(1) For purposes of this section, "life domains" means the framework of important aspects of a child's life to be assessed in the child's service plan, including, but not limited to, the following:

(A) Safety.

(B) Emotional and psychological well-being.

(C) Behavioral.

(D) Family and living situation.

(E) Social and recreational.

(F) Cultural and spiritual.

(G) Educational and vocational.

(H) Health.

(I) Developmental.

(2) Applicable services and supports associated with each life domain, which may include, but are not limited to, the following:

(A) The child's need for mental health service interventions.

(B) Individual or group mental health treatment services.

(C) Psychotropic medication and monitoring.

(D) Behavior analysis, positive behavioral interventions, and behavioral modification techniques.

(E) Interventions designed to prevent entry or reentry into the juvenile justice system.

(F) Family reunification services, parent training, or other support services needed to return the child home, or when that is not possible, to establish, reestablish, or reinforce a lifelong relationship with a caring adult.

(G) Family finding services to support and enhance access to lifelong permanent relationships with relative and nonrelative kin.

(H) Targeted life skills training and resources to ensure appropriate access to social and recreational resources and relationships, as needed to support the achievement of important developmental milestones.

(I) Mentoring or developing of positive adult relationships.

(J) Education supports, as needed to maintain and enhance the child's educational success and stability.

(K) Education liaison services as needed to support the child's education in the least restrictive environment.

(L) Respite care.

(M) Support counselors.

(N) Case management to ensure appropriate and effective coordination of activities and resources as identified in the needs and services plan.

(d) A system for recruiting, training, and supervising qualified in-home support counselors.

(e) A system of record keeping that documents the delivery of services and supports to each child. This documentation shall be summarized and submitted on an annual basis to the county. Each agency shall report the type and cost of the services delivered.

(f) Written policies and procedures on how the program will be structured to ensure the safety of the child, how suicide attempts, runaways, sexual acting out or, violent and assaultive behavior will be handled, and what will occur to reduce or eliminate future episodes.

(g) Written procedures on frequency of treatment plan review, modifications of treatment plans, and the role of the foster family and the child's parents in development of the treatment plan.

(h) A process for recruitment, selection and training of foster parents, including respite foster parents. The training curriculum shall include the following areas, at a minimum:

(1) Alternative forms of discipline.

(2) Child growth and development.

(3) Behavior management techniques.

(4) Differential needs and treatment of children.

(5) Behavior deescalation techniques.

(i) Arranging for the provision of respite care services and frequency of respite care.

(j) Social work staffing. Social workers shall have a master's degree consistent with subdivision (e) of Section 1506 of the Health and Safety Code, and shall have at least one year of experience working with seriously emotionally disturbed children or children who have a serious behavioral problem.

(k) Other staff or contract services to be utilized in service delivery, the tasks and responsibilities of those individuals, and the training they will receive.

(*l*) An evaluation component that includes quarterly reporting to the department of the following data, by age group. The department shall publish the data annually.

(1) Number of children placed under this chapter.

(2) Number of prior foster care placements for each child prior to entering the ITFC program.

(3) Outcomes for children referred to the program, including:

(A) Percentage of children discharged to a more intensive program.

(B) Percentage of children discharged to a less restrictive program, short of permanency.

(C) Percentage of children who drop down an ITFC level.

(D) Percentage of children discharged to reunification with a parent or guardian.

(E) Percentage of children discharged to adoption.

(F) Percentage of children discharged to kin guardianship.

(G) Percentage of children discharged to other permanent outcome.

(H) Percentage of children hospitalized.

(I) Number of ITFC families in which a child was placed.

(J) Percentage of children continuing in placement.

(m) A plan for surveying placing counties annually to ascertain and report to the department on the following:

(1) Quality of services provided.

(2) Progress toward treatment goals.

SEC. 7. Section 18358.23 of the Welfare and Institutions Code is amended to read:

18358.23. In addition to the requirements of paragraph (2) of subdivision (b) of Section 18358.05, participating counties shall do all of the following:

(a) Determine the placement of eligible children in intensive treatment foster care programs. All children placed in the programs shall either have a completed level of care assessment indicating a need for services greater than regular foster care or have their placement reviewed by the participating county's existing interagency review team or county placing agency.

(b) Enter into contracts or memoranda of understanding with participating foster family agencies.

(c) Provide routine case management services.

(d) Monitor the implementation of the case plan for the child.

SEC. 8. Section 18358.25 of the Welfare and Institutions Code is amended to read:

18358.25. (a) Certified foster parents participating under this chapter shall ensure the well-being of emotionally disturbed children or children

with a serious behavioral problem under their care. This care includes, but is not limited to, all of the following:

(1) Participation in initial and ongoing in-service training and demonstration pursuant to Section 18358.1 and demonstration of an understanding of and ability to meet the needs of emotionally disturbed children or children with a serious behavioral problem.

(2) Participation in the implementation of the individual case plan and in the development and implementation of the needs and services plan for the child.

(3) Ensuring that the child's medical and dental needs are met.

(b) To the extent possible, certified foster parents selected under this chapter shall have a background in special education, psychological counseling, nursing, or child development.

(c) (1) All certified foster parents selected to participate in this program shall rent, lease, or own their own homes which shall be certified by the foster family agency.

(2) The home of certified foster parents shall be within reasonably close proximity to the participating foster family agency or a satellite location of the agency, and to the extent possible, close to the child's family and community.

(d) (1) All certified foster parents shall report any special incident pursuant to Section 80061 of Title 22 of the California Code of Regulations. Additionally, any use of physical contact to manage the behavior of a child shall be reported as a special incident.

(2) Certified foster parents shall report incidents to the participating foster family agency, which shall report the incidents to the Community Care Licensing Division of the department pursuant to Section 18358.15.

SEC. 9. Section 18358.30 of the Welfare and Institutions Code is amended to read:

18358.30. (a) Rates for foster family agency programs participating under this chapter shall be exempt from the current AFDC-FC foster family agency ratesetting system.

(b) Rates for foster family agency programs participating under this chapter shall be set according to the appropriate service and rate level based on the level of services provided to the eligible child and the certified foster family. For an eligible child placed from a group home program, the service and rate level shall not exceed the rate paid for group home placement. For an eligible child assessed by the county interagency review team or county placing agency as at imminent risk of group home placement or psychiatric hospitalization, the appropriate service and rate level for the child shall be determined by the interagency review team or county placing agency at time of placement. In all of the service and rate levels, the foster family agency programs shall:

(1) Provide social work services with average caseloads not to exceed eight children per worker, except that social worker average caseloads for children in Service and Rate Level E shall not exceed 12 children per worker.

(2) Pay an amount not less than one thousand two hundred dollars ($1,200) per child per month to the certified foster parent or parents.

(3) Perform activities necessary for the administration of the programs, including, but not limited to, training, recruitment, certification, and monitoring of the certified foster parents.

(4) (A) (i) Provide a minimum average range of service per month for children in each service and rate level in a participating foster family agency, represented by paid employee hours incurred by the participating foster family agency, by the in-home support counselor to the eligible child and the certified foster parents depending on the needs of the child and according to the following schedule:

Service and Rate Level	In-Home Support Counselor Hours Per Month
A	98-114 hours
B	81-97 hours
C	64-80 hours
D	47-63 hours

(ii) Children placed at Service and Rate Level E shall receive behavior deescalation and other support services on a flexible, as needed, basis from an in-home support counselor. The foster family agency shall provide one full-time in-home support counselor for every 20 children placed at this level.

(B) When the interagency review team or county placing agency and the foster family agency agree that alternative services are in the best interests of the child, the foster family agency may provide or arrange for services and supports allowable under California's foster care program in lieu of in-home support services required

by subparagraph (A). These services and supports may include, but need not be limited to, activities in the Multidimensional Treatment Foster Care (MTFC) program.

(c) The department or placing county, or both, may review the level of services provided by the foster family agency program. If the level of services actually provided are less than those required by subdivision (b) for the child's service and rate level, the rate shall be adjusted to reflect the level of service actually provided, and an overpayment may be established and recovered by the department.

(d) (1) On and after July 1, 1998, the standard rate schedule of service and rate levels shall be:

Service and Rate Level	Fiscal Year 1998-99 Standard Rate
A	$3,957
B	$3,628
C	$3,290
D	$2,970
E	$2,639

(2) (A) On and after July 1, 1999, the standardized schedule of rates 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 standardized rate schedule, subject to further adjustment pursuant to subparagraph (B), for foster family agency programs participating under this chapter.

(B) In addition to the adjustment in subparagraph (A), commencing January 1, 2000, the standardized schedule of rates shall be increased by 2.36 percent, rounded to the nearest dollar. The resultant amounts shall constitute the new standardized rate schedule for foster family agency programs participating under this chapter.

(3) Beginning with the 2000–01 fiscal year, the standardized schedule of rates shall be adjusted annually by an amount equal to the California Necessities Index computed pursuant to Section 11453, subject to the availability of funds. The resultant amounts, rounded to the nearest dollar, shall constitute the new standard rate schedule for foster family agency programs participating under this chapter.

(e) Rates for foster family agency programs participating under this chapter shall not exceed Service and Rate Level A at any time during an eligible child's placement. An eligible child may be initially placed in a participating intensive foster care program at any one of the five Service and Rate Levels A to E, inclusive, and thereafter placed at any level, either higher or lower, not to exceed a total of six months at any level other than Service and Rate Level E, unless it is determined to be in the best interests of the child by the child's county interagency review team or county placing agency and the child's certified foster parents. The child's county interagency placement review team or county placement agency may, through a formal review of the child's placement, extend the placement of an eligible child in a service and rate level higher than Service and Rate Level E for additional periods of up to six months each.

(f) It is the intent of the Legislature that the rate paid to participating foster family agency programs shall decrease as the child's need for services from the foster family agency decreases. The foster family agency shall notify the placing county and the department of the reduced services and the pilot classification model, and the rate shall be reduced accordingly.

(g) It is the intent of the Legislature to prohibit any duplication of public funding. Therefore, social worker services, payments to certified foster parents, administrative activities, and the services of in-home support counselors that are funded by another public source shall not be counted in determining whether the foster family agency program has met its obligations to provide the items listed in paragraphs (1), (2), (3), and (4) of subdivision (b). The department shall work with other potentially affected state departments to ensure that duplication of payment or services does not occur.

SEC. 10. Section 18358.37 is added to the Welfare and Institutions Code, to read:

18358.37. The department shall develop, in consultation with the counties, providers, and other stakeholders, cost reporting, claiming, and other procedures necessary to maximize federal financial participation.

SEC. 11. No appropriation pursuant to Section 15200 of the Welfare and Institutions Code shall be made for purposes of this act.

CHAPTER 487

An act to add and repeal Section 44265.2 of the Education Code, relating to teacher credentialing, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 28, 2008. Filed with Secretary of State September 28, 2008.]

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

SECTION 1. Section 44265.2 is added to the Education Code, to read:

44265.2. (a) Notwithstanding any other law, a local educational agency or school may employ and assign an individual to provide instruction to pupils who are three and four years of age and who are diagnosed as autistic, as defined by Section 300.8(c)(1) of Title 34 of the Code of Federal Regulations, if the individual holds a valid level 1 or clear education specialist credential, is authorized to provide

instruction to pupils with autism, and meets the competence criteria set forth in subdivision (b).

(b) (1) The local educational agency or school shall determine that an individual described in subdivision (a) has satisfied either of the following competence criteria allowing the individual to provide instruction to pupils who are ages three and four years of age with autism:

(A) He or she has provided full-time instruction for at least one year prior to September 1, 2007, in a special education program that serves pupils who are three and four years of age with autism pursuant to their individualized education programs and received from the local educational agency or school a favorable evaluation or recommendation to teach pupils with autism.

(B) He or she has completed at least three semester units of coursework in the subject of special education, early childhood education at a regionally accredited institution of higher education.

(2) The local educational agency or school shall maintain verification of experience or coursework on file in its office.

(c) This section shall become inoperative on August 31, 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. 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 allow local educational agencies and nonpublic, nonsectarian schools to hire and retain more credentialed special education teachers to provide instruction to pupils with autism at the earliest possible time, it is necessary that this act take effect immediately.

CHAPTER 488

An act to amend Sections 7847 and 7887 of the Business and Professions Code, relating to geologists and geophysicists.

[Approved by Governor September 28, 2008. Filed with Secretary of State September 28, 2008.]

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

SECTION 1. Section 7847 of the Business and Professions Code is amended to read:

7847. The board, upon application therefor, on its prescribed form, and upon the payment of the application and registration fees fixed by this chapter, which fees shall be retained by the board, may issue a certificate of registration as a geologist or as a geophysicist to a person holding an equivalent certificate of registration as a geologist or as a geophysicist, issued to him by any state or country when the applicant's qualifications meet the other requirements of this chapter and the rules established by the board.

SEC. 2. Section 7887 of the Business and Professions Code is amended to read:

7887. The amount of the fees prescribed by this chapter shall be fixed by the board in accordance with the following schedule:

(a) The fee for filing each application for registration as a geologist or a geophysicist or certification as a specialty geologist or a specialty geophysicist and for administration of the examination at not more than two hundred and fifty dollars ($250).

(b) The registration fee for a geologist or for a geophysicist and the fee for the certification in a specialty shall be fixed at an amount equal to the renewal fee in effect on the last regular renewal date before the date on which the certificate is issued, except that, with respect to certificates that will expire less than one year after issuance, the fee shall be fixed at an amount equal to 50 percent of the renewal fee in effect on the last regular renewal date before the date on which the certificate is issued. The board may, by appropriate regulation, provide for the waiver or refund of the initial certificate fee where the certificate is issued less than 45 days before the date on which it will expire.

(c) The duplicate certificate fee at not more than six dollars ($6).

(d) The temporary registration fee for a geologist or for a geophysicist at not more than eighty dollars ($80).

(e) The renewal fee for a geologist or for a geophysicist shall be fixed by the board at not more than four hundred dollars ($400).

(f) The renewal fee for a specialty geologist or for a specialty geophysicist at not more than one hundred dollars ($100).

(g) Notwithstanding Section 163.5, the delinquency fee for a certificate is an amount equal to 50 percent of the renewal fee in effect on the last regular renewal date.

(h) Each applicant for registration as a geologist shall pay an examination fee fixed by the board at an amount equal to the actual cost to the board to administer the examination described in subdivision (d) of Section 7841 that shall not exceed four hundred fifty dollars ($450).

(i) Each applicant for registration as a geophysicist or certification as an engineering geologist or certification as a hydrogeologist shall pay an examination fee fixed by the board at an amount equal to the actual

cost to the board for the development and maintenance of the written examination, and shall not exceed one hundred dollars ($100).

CHAPTER 489

An act to add Section 4980.40.5 to the Business and Professions Code, relating to marriage and family therapists.

[Approved by Governor September 28, 2008. Filed with Secretary of State September 28, 2008.]

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

SECTION 1. Section 4980.40.5 is added to the Business and Professions Code, to read:

4980.40.5. (a) 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 approved by the Bureau for Private Postsecondary and Vocational Education as of June 30, 2007, shall be considered by the board to meet the requirements necessary for licensure as a marriage and family therapist and for registration as a marriage and family therapist intern provided that the degree is conferred on or before July 1, 2010.

(b) As an alternative to meeting the qualifications specified in subdivision (a) of Section 4980.40, the board shall accept as equivalent degrees those doctor's or master's degrees that otherwise meet the requirements of this chapter and are conferred by educational institutions accredited by any of the following associations:

(1) Northwest Association of Secondary and Higher Schools.
(2) Middle States Association of Colleges and Secondary Schools.
(3) New England Association of Schools and Colleges.
(4) North Central Association of Colleges and Secondary Schools.
(5) Southern Association of Colleges and Schools.

(c) If legislation enacted in the 2007–08 Regular Session reestablishes the Private Postsecondary and Vocational Education Reform Act of 1989 (Chapter 7 (commencing with Section 94700) of Part 59 of Division 10 of Title 3 of the Education Code) or a successor act and the Bureau for Private Postsecondary and Vocational Education or a successor agency, this section shall become inoperative on the date that legislation becomes

operative. The board shall post notice on its Internet Web site if the conditions described in this subdivision have been satisfied.

CHAPTER 490

An act to add Sections 7636 and 9615 to the Business and Professions Code, and to amend Section 8585 of the Health and Safety Code, relating to the Cemetery and Funeral Bureau.

[Approved by Governor September 28, 2008. Filed with Secretary of State September 28, 2008.]

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

SECTION 1. Section 7636 is added to the Business and Professions Code, to read:

7636. (a) (1) Any person who holds or has held, or was named on, any license or registration under the jurisdiction of the bureau that has been, within the immediately preceding 10 years, revoked, suspended, placed on probation, or surrendered under a stipulated decision, and who is employed by, or who seeks employment with, a licensed funeral establishment in any capacity, shall inform the managing funeral director of that revocation, suspension, probation, or surrender.

(2) A person subject to this subdivision shall inform the managing funeral director upon application for employment by completing a form that shall be made available by the bureau.

(b) A managing funeral director who is informed pursuant to subdivision (a) shall notify the bureau by submitting the form within 30 days of so being informed. Failure of the managing funeral director to notify the bureau shall be a cause for a warning. A managing funeral director shall not be subject to a warning if his or her failure to notify the bureau is due to a false statement made by an employee.

(c) Any person required to notify the managing funeral director under subdivision (a) who fails to do so or who makes a false statement on the required form shall be subject to disciplinary action if that person is a licensee of the bureau, or that failure or false statement shall be cause for denial of a license under Section 480.

(d) For purposes of subdivision (a), the term "named on" applies to a person who was an owner, partner, or corporate officer of an entity that was licensed or registered under the act at the time that entity's license or registration under the act was revoked, suspended, placed on probation, or surrendered.

SEC. 2. Section 9615 is added to the Business and Professions Code, to read:

9615. (a) (1) Any person who holds or has held, or was named on, any license or registration under the jurisdiction of the bureau that has been, within the immediately preceding 10 years, revoked, suspended, placed on probation, or surrendered under a stipulated decision, and who is employed by, or who seeks employment with, a licensed cemetery, a licensed crematory, or a licensed cemetery broker in any capacity, shall inform the licensed cemetery manager, the licensed crematory manager, or the licensed cemetery broker of that revocation, suspension, probation, or surrender.

(2) A person subject to this subdivision shall inform the licensed cemetery manager, the licensed crematory manager, or the licensed cemetery broker upon application for employment by completing a form that shall be made available by the bureau.

(b) The cemetery manager, crematory manager, or cemetery broker who is informed pursuant to subdivision (a) shall notify the bureau by submitting the form within 30 days of being so informed. Failure of the cemetery manager, crematory manager, or cemetery broker to notify the bureau shall be a cause for a warning. A cemetery manager, crematory manager, or cemetery broker shall not be subject to a warning if his or her failure to notify the bureau is due to a false statement made by an employee.

(c) Any person required to notify the cemetery manager, crematory manager, or cemetery broker under subdivision (a) who fails to do so or who makes a false statement on the required form shall be subject to disciplinary action if that person is a licensee of the bureau, or that failure or false statement shall be cause for denial of a license under Section 480.

(d) For purposes of subdivision (a), the term "named on" applies to a person who was an owner, partner, or corporate officer of an entity that was licensed or registered under the act at the time that entity's license or registration under the act was revoked, suspended, placed on probation, or surrendered.

SEC. 3. Section 8585 of the Health and Safety Code is amended to read:

8585. (a) Whenever ownership of any cemetery authority is proposed to be transferred, the cemetery authority shall notify the Cemetery and Funeral Bureau in the Department of Consumer Affairs. A change in ownership, for purposes of this section, shall be deemed to occur whenever more than 50 percent of the equitable ownership of a cemetery authority is transferred in a single transaction or in a related series of transactions to one or more persons, associations, or corporations. The

notice shall specify the address of the principal offices of the cemetery authority, and whether it will be changed or unchanged, and shall specify the name and address of each new owner and the stockholders. A person or entity that knowingly provides false information shall be subject to a civil penalty for each violation in the minimum amount of two thousand five hundred dollars ($2,500) and the maximum amount of twenty-five thousand dollars ($25,000). An action for a civil penalty under this provision may be brought by any public prosecutor in the name of the people of the State of California and the penalty imposed shall be enforceable as a civil judgment.

(b) Notice of the change of ownership shall be published in a newspaper of general circulation in the county in which the cemetery is located. The notice shall specify the address of the principal offices of the cemetery authority, whether changed or unchanged, and shall specify the name and address of each new owner and each stockholder owning more than 5 percent of the stock of each new owner.

(c) If there is a change of ownership pursuant to this section, the existing certificate of authority shall lapse and a new certificate of authority shall be obtained from the Cemetery and Funeral Bureau. No person shall purchase a cemetery, including purchase at a sale for delinquent taxes, or purchase more than 50 percent of the equitable ownership of a cemetery authority without having obtained a certificate of authority from the Cemetery and Funeral Bureau prior to the purchase of the cemetery or the ownership interest in the cemetery authority.

(d) Every cemetery authority shall post and continuously maintain at each public entrance to the cemetery a sign specifying the current name and address of the cemetery authority, a statement that the name and address of each director and officer of the cemetery authority may be obtained by contacting the Cemetery and Funeral Bureau, and shall have either of the following:

(1) The address of the Cemetery and Funeral Bureau.

(2) A statement that the address of the Cemetery and Funeral Bureau is available at the office of the cemetery.

(e) The signs shall be at least 16 inches high and 24 inches wide and shall be prominently mounted upright and vertical.

(f) The Cemetery and Funeral Bureau shall suspend the certificate of authority of any cemetery authority that is in violation of this section. No person shall obtain a certificate of authority under intentionally false or misleading statements and no person shall delegate authority of ownership under this section, except to another person licensed by the bureau. The certificate may be reinstated only upon compliance with these requirements.

SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

CHAPTER 491

An act to amend Section 65863 of the Government Code, relating to local planning.

[Approved by Governor September 28, 2008. Filed with Secretary of State September 28, 2008.]

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

SECTION 1. Section 65863 of the Government Code is amended to read:

65863. (a) Each city, county, or city and county shall ensure that its housing element inventory described in paragraph (3) of subdivision (a) of Section 65583 or its housing element program to make sites available pursuant to paragraph (1) of subdivision (c) of Section 65583 can accommodate its share of the regional housing need pursuant to Section 65584, throughout the planning period.

(b) No city, county, or city and county shall, by administrative, quasi-judicial, legislative, or other action, reduce, or require or permit the reduction of, the residential density for any parcel to, or allow development of any parcel at, a lower residential density, as defined in paragraphs (1) and (2) of subdivision (h), unless the city, county, or city and county makes written findings supported by substantial evidence of both of the following:

(1) The reduction is consistent with the adopted general plan, including the housing element.

(2) The remaining sites identified in the housing element are adequate to accommodate the jurisdiction's share of the regional housing need pursuant to Section 65584.

(c) If a reduction in residential density for any parcel would result in the remaining sites in the housing element not being adequate to accommodate the jurisdiction's share of the regional housing need

pursuant to Section 65584, the jurisdiction may reduce the density on that parcel if it identifies sufficient additional, adequate, and available sites with an equal or greater residential density in the jurisdiction so that there is no net loss of residential unit capacity.

(d) The requirements of this section shall be in addition to any other law that may restrict or limit the reduction of residential density.

(e) If a court finds that an action of a city, county, or city and county is in violation of this section, the court shall award to the plaintiff or petitioner who proposed the housing development, reasonable attorney's fees and costs of suit, except under extraordinary circumstances in which the court finds that awarding fees would not further the purposes of this section or the court finds that the action was frivolous. This subdivision shall remain operative only until January 1, 2007, and as of that date is no longer operative, unless a later enacted statute that is enacted before January 1, 2007, deletes or extends that date.

(f) This section requires that a city, county, or city and county be solely responsible for compliance with this section, unless a project applicant requests in his or her initial application, as submitted, a density that would result in the remaining sites in the housing element not being adequate to accommodate the jurisdiction's share of the regional housing need pursuant to Section 65584. In that case, the city, county, or city and county may require the project applicant to comply with this section. The submission of an application for purposes of this subdivision does not depend on the application being deemed complete or being accepted by the city, county, or city and county.

(g) This section shall not be construed to apply to parcels that, prior to January 1, 2003, were either (1) subject to a development agreement, or (2) parcels for which an application for a subdivision map had been submitted.

(h) (1) If the local jurisdiction has adopted a housing element for the current planning period that is in substantial compliance with Article 10.6 (commencing with Section 65580) of Chapter 3, for purposes of this section, "lower residential density" means the following:

(A) For sites on which the zoning designation permits residential use and that are identified in the local jurisdiction's housing element inventory described in paragraph (3) of subdivision (a) of Section 65583, fewer units on the site than were projected by the jurisdiction to be accommodated on the site pursuant to subdivision (c) of Section 65583.2.

(B) For sites that have been or will be rezoned pursuant to the local jurisdiction's housing element program described in paragraph (1) of subdivision (c) of Section 65583, fewer units for the site than were projected to be developed on the site in the housing element program.

(2) (A) If the local jurisdiction has not adopted a housing element for the current planning period within 90 days of the deadline established by Section 65588 or the adopted housing element is not in substantial compliance with Article 10.6 (commencing with Section 65580) of Chapter 3 within 180 days of the deadline established by Section 65588, "lower residential density" means any of the following:

(i) For residentially zoned sites, a density that is lower than 80 percent of the maximum allowable residential density for that parcel.

(ii) For sites on which residential and nonresidential uses are permitted, a use that would result in the development of fewer than 80 percent of the number of residential units that would be allowed under the maximum residential density for the site.

(B) If the council of governments fails to complete a final housing need allocation pursuant to the deadlines established by Section 65584.05, then for purposes of this paragraph, the deadline pursuant to Section 65588 shall be extended by a time period equal to the number of days of delay incurred by the council of governments in completing the final housing need allocation.

SEC. 1.5. Section 65863 of the Government Code is amended to read:

65863. (a) Each city, county, or city and county shall ensure that its housing element inventory described in paragraph (3) of subdivision (a) of Section 65583 or its housing element program to make sites available pursuant to paragraph (1) of subdivision (c) of Section 65583 can accommodate its share of the regional housing need pursuant to Section 65584, throughout the planning period.

(b) No city, county, or city and county shall, by administrative, quasi-judicial, legislative, or other action, reduce, or require or permit the reduction of, the residential density for any parcel to, or allow development of any parcel at, a lower residential density, as defined in paragraphs (1), and (2) of subdivision (g), unless the city, county, or city and county makes written findings supported by substantial evidence of both of the following:

(1) The reduction is consistent with the adopted general plan, including the housing element.

(2) The remaining sites identified in the housing element are adequate to accommodate the jurisdiction's share of the regional housing need pursuant to Section 65584.

(c) If a reduction in residential density for any parcel would result in the remaining sites in the housing element not being adequate to accommodate the jurisdiction's share of the regional housing need pursuant to Section 65584, the jurisdiction may reduce the density on that parcel if it identifies sufficient additional, adequate, and available

sites with an equal or greater residential density in the jurisdiction so that there is no net loss of residential unit capacity.

(d) The requirements of this section shall be in addition to any other law that may restrict or limit the reduction of residential density.

(e) This section requires that a city, county, or city and county be solely responsible for compliance with this section, unless a project applicant requests in his or her initial application, as submitted, a density that would result in the remaining sites in the housing element not being adequate to accommodate the jurisdiction's share of the regional housing need pursuant to Section 65584. In that case, the city, county, or city and county may require the project applicant to comply with this section. The submission of an application for purposes of this subdivision does not depend on the application being deemed complete or being accepted by the city, county, or city and county.

(f) This section shall not be construed to apply to parcels that, prior to January 1, 2003, were either (1) subject to a development agreement, or (2) parcels for which an application for a subdivision map had been submitted.

(g) (1) If the local jurisdiction has adopted a housing element for the current planning period that is in substantial compliance with Article 10.6 (commencing with Section 65580) of Chapter 3, for purposes of this section, "lower residential density" means the following:

(A) For sites on which the zoning designation permits residential use and that are identified in the local jurisdiction's housing element inventory described in paragraph (3) of subdivision (a) of Section 65583, fewer units on the site than were projected by the jurisdiction to be accommodated on the site pursuant to subdivision (c) of Section 65583.2.

(B) For sites that have been or will be rezoned pursuant to the local jurisdiction's housing element program described in paragraph (1) of subdivision (c) of Section 65583, fewer units for the site than were projected to be developed on the site in the housing element program.

(2) (A) If the local jurisdiction has not adopted a housing element for the current planning period within 90 days of the deadline established by Section 65588 or the adopted housing element is not in substantial compliance with Article 10.6 (commencing with Section 65580) of Chapter 3 within 180 days of the deadline established by Section 65588, "lower residential density" means any of the following:

(i) For residentially zoned sites, a density that is lower than 80 percent of the maximum allowable residential density for that parcel.

(ii) For sites on which residential and nonresidential uses are permitted, a use that would result in the development of fewer than 80 percent of the number of residential units that would be allowed under the maximum residential density for the site.

(B) If the council of governments fails to complete a final housing need allocation pursuant to the deadlines established by Section 65584.05, then for purposes of this paragraph, the deadline pursuant to Section 65588 shall be extended by a time period equal to the number of days of delay incurred by the council of governments in completing the final housing need allocation.

SEC. 1.7. In enacting Section 1.5 of this act to repeal subdivision (e) of Section 65863 of the Government Code, the Legislature finds and declares that it is aware that a successful party may request a court to award attorney's fees pursuant to Section 1021.5 of the Code of Civil Procedure.

SEC. 2. Sections 1.5 and 1.7 of this bill incorporate amendments to Section 65863 of the Government Code proposed by both this bill and SB 1124. These sections shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2009, (2) each bill amends Section 65863 of the Government Code, and (3) this bill is enacted after SB 1124, in which case Section 1 of this bill shall not become operative.

CHAPTER 492

An act to add Sections 422.4 and 602.12 to the Penal Code, relating to crimes, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 28, 2008. Filed with Secretary of State September 28, 2008.]

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

SECTION 1. This act shall be known and may be cited as the Researcher Protection Act of 2008.

SEC. 2. The Legislature hereby finds and declares that while individuals are entitled to express their views on animal use in research and to mount protests that are protected under the First Amendment to the United States Constitution, the use of physical threats, violence, or destruction of property is unacceptable and should not be tolerated. Unlawful acts that threaten and intimidate researchers or their families at their personal residences are not protected by the First Amendment to the United States Constitution, and are a direct threat to the academic researcher's constitutional right to academic freedom.

SEC. 3. Section 422.4 is added to the Penal Code, to read:

422.4. (a) Any person who publishes information describing or depicting an academic researcher or his or her immediate family member, or the location or locations where an academic researcher or an immediate family member of an academic researcher may be found, with the intent that another person imminently use the information to commit a crime involving violence or a threat of violence against an academic researcher or his or her immediate family member, and the information is likely to produce the imminent commission of such a crime, is guilty of a misdemeanor, punishable by imprisonment in a county jail for not more than one year, a fine of not more than one thousand dollars ($1,000), or by both a fine and imprisonment.

(b) For the purposes of this section, all of the following apply:

(1) "Publishes" means making the information available to another person through any medium, including, but not limited to, the Internet, the World Wide Web, or e-mail.

(2) "Academic researcher" has the same meaning as in Section 602.12.

(3) "Immediate family" means any spouse, whether by marriage or not, domestic partner, parent, child, any person related by consanguinity or affinity within the second degree, or any other person who regularly resides in the household, or who, within the prior six months, regularly resided in the household.

(4) "Information" includes, but is not limited to, an image, film, filmstrip, photograph, negative, slide, photocopy, videotape, video laser disc, or any other computer-generated image.

(c) Any academic researcher about whom information is published in violation of subdivision (a) may seek a preliminary injunction enjoining any further publication of that information. This subdivision shall not apply to a person or entity protected pursuant to Section 1070 of the Evidence Code.

(d) This section shall not apply to any person who is lawfully engaged in labor union activities that are protected under state or federal law.

(e) This section shall not preclude prosecution under any other provision of law.

SEC. 4. Section 602.12 is added to the Penal Code, to read:

602.12. (a) Any person who enters the residential real property of an academic researcher for the purpose of chilling, preventing the exercise of, or interfering with the researcher's academic freedom is guilty of trespass, a misdemeanor.

(b) For the purposes of this section, the following definitions apply:

(1) "Academic researcher" means any person lawfully engaged in academic research who is a student, trainee, employee, or affiliated physician of an accredited California community college, a campus of the California State University or the University of California, or a

Western Association of Schools and Colleges accredited, degree granting, nonprofit institution. Academic research does not include routine, nonlaboratory coursework or assignments.

(2) "Academic freedom" means the lawful performance, dissemination, or publication of academic research or instruction.

(c) This section shall not apply to any person who is lawfully engaged in labor union activities that are protected under state or federal law.

(d) This section shall not preclude prosecution under any other provision of law.

SEC. 5. The provisions of this act are severable. If any provision of this act or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

SEC. 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.

SEC. 7. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to provide protection against escalating acts of violence against researchers as soon as possible, it is necessary that this act take effect immediately.

CHAPTER 493

An act to amend Section 5272 of the Business and Professions Code, relating to outdoor advertising.

[Approved by Governor September 28, 2008. Filed with Secretary of State September 28, 2008.]

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

SECTION 1. Section 5272 of the Business and Professions Code is amended to read:

5272. With the exception of Article 4 (commencing with Section 5300) and Sections 5400 and 5404, inclusive, nothing contained in this chapter applies to any advertising display that is used exclusively for any of the following purposes:

(a) To advertise the sale, lease, or exchange of real property upon which the advertising display is placed.

(b) To advertise directions to, and the sale, lease, or exchange of, real property for which the advertising display is placed; provided, that the exemption of this paragraph does not apply to advertising displays visible from a highway and subject to the Highway Beautification Act of 1965 (23 U.S.C., Sec. 131).

(c) To designate the name of the owner or occupant of the premises or to identify the premises.

(d) To advertise the business conducted or services rendered or the goods produced or sold upon the property upon which the advertising display is placed if the display is upon the same side of the highway and within 1,000 feet of the point on the property or within 1,000 feet of the entrance to the site at which the business is conducted or services are rendered or goods are produced or sold.

(e) (1) To advertise any products, goods, or services sold by persons on the premise of an arena pursuant to all of the following conditions:

(A) The arena is located on public land.

(B) The arena provides a venue for professional sports on a permanent basis.

(C) The arena has a capacity of 5,000 or more seats.

(D) The arena has an advertising display in existence before January 1, 2009.

(E) The products, goods, or services advertised are or will be offered for sale by persons on a regular basis during the term of an agreement between the vendor or business whose products, goods, or services are sold and the property owner, facility owner, or facility operator, and the term of the agreement is a minimum of one year.

(2) An advertising display authorized pursuant to this subdivision shall not advertise products, goods, or services directed at an adult population, including, but not limited to, alcohol, tobacco, gambling, or sexually explicit material.

CHAPTER 494

An act to amend Sections 22823, 24214, 24216, 24216.5, and 24216.6 of, and to add Sections 22827, 22828, and 22829 to, the Education Code,

relating to state teachers' retirement, and making an appropriation therefor.

[Approved by Governor September 28, 2008. Filed with Secretary of State September 28, 2008.]

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

SECTION 1. Section 22823 of the Education Code is amended to read:

22823. (a) A member who elects to purchase out-of-state credit shall pay, prior to retirement, all contributions with respect to that service at the contribution rate for additional service credit adopted by the board as a plan amendment, in effect at the time of election.

(b) (1) Any payment that a member may make to the system to obtain credit for out-of-state service shall be paid in full prior to the effective date of a family, survivor, disability, or retirement allowance.

(2) If the system is unable to inform the member or beneficiary of the amount required to purchase out-of-state service prior to the effective date of the applicable allowance, the member or beneficiary may make payment in full within 30 working days after the date of mailing of the statement of contributions and interest required or the effective date of the appropriate allowance, whichever is later. The payment shall be paid in full before a member or beneficiary may receive any adjustment in the appropriate allowance due because of that payment.

(c) Contributions for out-of-state service credit shall be made in a lump sum, or in not more than 120 monthly installments, not to exceed ten years. No installment, except the final installment, shall be less than twenty-five dollars ($25).

(d) Regular interest shall be charged on the monthly unpaid balance if the member makes installment payments.

(e) If the payment described in subdivision (a) is not received at the system's headquarters office, as described in Section 22375, within 120 days of the due date, the election pursuant to this section shall be canceled. The member shall receive credit for out-of-state service based on the payments that were made or the member may request a return of his or her payments.

(f) If the election to purchase out-of-state service is canceled as described in subdivision (e), the member may, prior to the effective date of his or her retirement, elect to purchase out-of-state service pursuant to this section.

SEC. 2. Section 22827 is added to the Education Code, to read:

22827. (a) A member who retired for service between June 1, 2007, and December 31, 2007, inclusive, may elect to purchase credit for out-of-state service for either of the following:

(1) Service performed as an employee of an educational institution located outside of the United States and its territories that receives a portion of its funding from any foreign or domestic public sources and provides a level of education comparable to kindergarten and grades 1 to 12, inclusive, as determined by the applicable law of the jurisdiction in which the educational institution is located.

(2) As an employee of an educational institution that receives funds under Section 2701 of Title 22 of the United States Code.

(b) The member may not receive credit for service pursuant to this section if the member retains or is eligible to receive credit for the same service in the Cash Benefit Program under Part 14 (commencing with Section 26000) or another public retirement system, excluding social security.

(c) The amount of service for which a member may purchase credit may not exceed the number of years of service performed by the member in a position described in subdivision (a) prior to that member's effective retirement date.

(d) Compensation for out-of-state service may not be used in determining the highest average annual compensation earnable when calculating final compensation.

(e) The service credit purchased pursuant to this section may not be used to meet the eligibility requirements for benefits provided pursuant to Sections 24001 and 24101.

SEC. 3. Section 22828 is added to the Education Code, to read:

22828. A request to purchase out-of-state service credit pursuant to Section 22827 must be received, as provided in Section 22375, no later than June 30, 2009.

SEC. 4. Section 22829 is added to the Education Code, to read:

22829. (a) This section applies only to a member who elects to receive out-of-state service credit pursuant to Section 22827.

(b) The member shall pay all contributions with respect to that service at the contribution rate for additional service credit adopted by the board as a plan amendment in effect at the time of election.

(c) Contributions shall be based upon the member's age at the date of the election and upon compensation earnable in the last school year of credited service or either of the two immediately preceding school years, whichever is highest.

(d) Any payment that a member may make to the system to obtain credit for out-of-state service shall be paid in full before a member or

beneficiary may receive any adjustment in the appropriate allowance due date because of that payment.

(e) The system shall make any appropriate adjustments to the member's benefit allowance to reflect the purchase of additional service retroactive to the effective date of retirement.

(f) Contributions for out-of-state service credit shall be made in a lump sum.

(g) If the payment election described in subdivision (b) is not received at the system's headquarters office, as described in Section 22375, within 30 days of receiving a bill for this purchase from the system, the election shall be canceled.

(h) If the election to purchase out-of-state service is canceled as described in subdivision (g), the member may, prior to June 30, 2009, make a new election to purchase out-of-state service pursuant to this section.

SEC. 5. Section 24214 of the Education Code, as amended by Section 1 of Chapter 353 of the Statutes of 2007, is amended to read:

24214. (a) A member retired for service under this part may perform the activities identified in subdivision (a) or (b) of Section 22119.5 as an employee of an employer, as an employee of a third party, or as an independent contractor within the California public school system, but the member may not make contributions to the retirement fund or accrue service credit based on compensation earned from that service. The employer shall maintain accurate records of the earnings of the retired member and report those earnings monthly to the system and retired member as described in Section 22461.

(b) If a member is retired for service under this part, the rate of pay for service performed by that member as an employee of the employer, as an employee of a third party, or as an independent contractor may not be less than the minimum, nor exceed that paid by the employer to other employees performing comparable duties.

(c) A member retired for service under this part may not be required to reinstate for performing the activities identified in subdivision (a) or (b) of Section 22119.5 as an employee of an employer, as an employee of a third party, or as an independent contractor within the California public school system.

(d) A member retired for service under this part may earn compensation for performing activities identified in subdivision (a) or (b) of Section 22119.5 in any one school year up to the limitation specified in subdivision (f) as an employee of an employer, as an employee of a third party, or an independent contractor, within the California public school system, without a reduction in his or her retirement allowance.

(e) (1) The postretirement compensation limitation provisions set forth in this section are not applicable to compensation earned by a member retired for service under this part who has returned to work after the date of retirement and, for a period of at least 12 consecutive months, has not performed the activities identified in subdivision (a) or (b) of Section 22119.5 as an employee of an employer, as an employee of a third party, or as an independent contractor within the California public school system. For the purpose of this paragraph, the period of 12 consecutive months begins from the effective date of the member's most recent retirement.

(2) The postretirement compensation limitation provisions set forth in this section are not applicable to compensation earned for the performance of the activities described in subdivision (a) for which the employer is not eligible to receive state apportionment or to compensation that is not creditable pursuant to Section 22119.2.

(f) The limitation that shall apply to the compensation for performance of the activities identified in subdivision (a) or (b) of Section 22119.5 by a member retired for service under this part either as an employee of an employer, an employee of a third party, or as an independent contractor shall, in any one school year, be an amount calculated by the board each July 1 equal to twenty-two thousand dollars ($22,000) adjusted by the percentage change in the average compensation earnable of active members of the Defined Benefit Program, as determined by the system, from the 1998–99 fiscal year to the fiscal year ending in the previous calendar year.

(g) If a member retired for service under this part earns compensation for performing activities identified in subdivision (a) or (b) of Section 22119.5 in excess of the limitation specified in subdivision (f), as an employee of an employer, as an employee of a third party, or as an independent contractor, within the California public school system, and if that compensation is not exempt from that limitation under subdivision (e) or any other provisions of law, the member's retirement allowance shall be reduced by the amount of the excess compensation. The amount of the reduction may be equal to the monthly allowance payable but shall not exceed the amount of the annual allowance payable under this part for the fiscal year in which the excess compensation was earned.

(h) The amendments to this section enacted during the 1995–96 Regular Session shall be deemed to have become operative on July 1, 1996.

(i) This section shall remain in effect only until June 30, 2010, and shall be repealed on January 1, 2011, unless a later enacted statute deletes or extends that date.

SEC. 6. Section 24214 of the Education Code, as amended by Section 2 of Chapter 353 of the Statutes of 2007, is amended to read:

24214. (a) A member retired for service under this part may perform the activities identified in subdivision (a) or (b) of Section 22119.5 as an employee of an employer, as an employee of a third party, or as an independent contractor within the California public school system, but the member may not make contributions to the retirement fund or accrue service credit based on compensation earned from that service. The employer shall maintain accurate records of the earnings of the retired member and report those earnings monthly to the system and retired member as described in Section 22461.

(b) If a member is retired for service under this part, the rate of pay for service performed by that member as an employee of the employer, as an employee of a third party, or as an independent contractor within the California public school system may not be less than the minimum, nor exceed that paid by the employer to other employees performing comparable duties.

(c) A member retired for service under this part may not be required to reinstate for performing the activities identified in subdivision (a) or (b) of Section 22119.5 as an employee of an employer, as an employee of a third party, or as an independent contractor within the California public school system.

(d) A member retired for service under this part may earn compensation for performing activities identified in subdivision (a) or (b) of Section 22119.5 in any one school year up to the limitation specified in subdivision (f) as an employee of an employer, as an employee of a third party, or an independent contractor, within the California public school system, without a reduction in his or her retirement allowance.

(e) The postretirement compensation limitation provisions set forth in this section are not applicable to compensation earned for the performance of the activities described in subdivision (a) for which the employer is not eligible to receive state apportionment or to compensation that is not creditable pursuant to Section 22119.2.

(f) The limitation that shall apply to the compensation for performance of the activities identified in subdivision (a) or (b) of Section 22119.5 by a member retired for service under this part either as an employee of an employer, an employee of a third party, or as an independent contractor shall, in any one school year, be an amount calculated by the board each July 1 equal to twenty-two thousand dollars ($22,000) adjusted by the percentage change in the average compensation earnable of active members of the Defined Benefit Program, as determined by

the system, from the 1998–99 fiscal year to the fiscal year ending in the previous calendar year.

(g) If a member retired for service under this part earns compensation for performing activities identified in subdivision (a) or (b) of Section 22119.5 in excess of the limitation specified in subdivision (f), as an employee of an employer, as an employee of a third party, or as an independent contractor, within the California public school system, the member's retirement allowance shall be reduced by the amount of the excess compensation. The amount of the reduction may be equal to the monthly allowance payable but may not exceed the amount of the annual allowance payable under this part for the fiscal year in which the excess compensation was earned.

(h) The language of this section derived from the amendments to the section of this number added by Chapter 394 of the Statutes of 1995, enacted during the 1995–96 Regular Session, is deemed to have become operative on July 1, 1996.

(i) This section shall become operative on July 1, 2010.

SEC. 7. Section 24216 of the Education Code is amended to read:

24216. (a) (1) A member retired for service under this part who is appointed as a trustee or administrator by the Superintendent pursuant to Section 41320.1, or who is appointed as a trustee pursuant to the Immediate Intervention/Underperforming Schools Program (Article 3 (commencing with Section 52053) of Chapter 6.1 of Part 28) or the High Priority Schools Grant Program (Article 3.5 (commencing with Section 52055.600) of Chapter 6.1 of Part 28), or a member retired for service who is assigned by a county superintendent of schools pursuant to Article 2 (commencing with Section 42122) of Chapter 6 of Part 24, shall be exempt from subdivisions (d) and (f) of Section 24214 for a maximum period of two years.

(2) The period of exemption shall commence on the date the member retired for service is appointed or assigned and shall end no more than two calendar years from that date, after which the limitation specified in subdivisions (d) and (f) of Section 24214 shall apply.

(3) An exemption under this subdivision shall be granted by the system providing that the Superintendent or the county superintendent of schools submits documentation required by the system to substantiate the eligibility of the member retired for service for an exemption under this subdivision.

(b) (1) A member retired for service under this part who is employed by an employer to perform creditable service in an emergency situation to fill a vacant administrative position requiring highly specialized skills shall be exempt from the provisions of subdivisions (d) and (f) of Section 24214 for creditable service performed up to one-half of the full-time

position, if the vacancy occurred due to circumstances beyond the control of the employer.

(2) The period of exemption shall commence on the date the member retired for service is appointed or assigned and shall end no more than two calendar years from that date, after which the limitation specified in subdivisions (d) and (f) of Section 24214 shall apply.

(3) An exemption under this subdivision shall be granted by the system subject to the following conditions:

(A) The recruitment process to fill the vacancy on a permanent basis is expected to extend over several months.

(B) The employment is reported in a public meeting of the governing body of the employer.

(C) The employer submits documentation required by the system to substantiate the eligibility of the member retired for service for an exemption under this subdivision.

(c) This section does not apply to any person who has received additional service credit pursuant to Section 22715 or 22716.

(d) A person who has received additional service credit pursuant to Section 22714 or 22714.5 shall be ineligible for one year from the effective date of retirement for the exemption provided in this section for service performed in any school district, community college district, or county office of education in the state.

(e) This section shall remain in effect only until June 30, 2010, and shall be repealed on January 1, 2011, unless a later enacted statute deletes or extends that date.

SEC. 7.5. Section 24216 of the Education Code is amended to read:

24216. (a) (1) A member retired for service under this part who is appointed as a trustee or administrator by the Superintendent pursuant to Section 41320.1, or who is appointed as a trustee pursuant to the Immediate Intervention/Underperforming Schools Program (Article 3 (commencing with Section 52053) of Chapter 6.1 of Part 28) or the High Priority Schools Grant Program (Article 3.5 (commencing with Section 52055.600) of Chapter 6.1 of Part 28), or a member retired for service who is assigned by a county superintendent of schools pursuant to Article 2 (commencing with Section 42122) of Chapter 6 of Part 24, shall be exempt from subdivisions (d) and (f) of Section 24214 for a maximum period of two years.

(2) The period of exemption shall commence on the date the member retired for service is appointed or assigned and shall end no more than 24 consecutive months from that date, after which the limitation specified in subdivisions (d) and (f) of Section 24214 shall apply.

(3) An exemption under this subdivision shall be granted by the system providing that the Superintendent or the county superintendent of schools

submits documentation required by the system to substantiate the eligibility of the member retired for service for an exemption under this subdivision. The documentation shall be received by the system no later than June 30 of the school year for which the exemption is to apply.

(b) (1) A member retired for service under this part who is employed by an employer to perform creditable service in an emergency situation to fill a vacant administrative position requiring highly specialized skills shall be exempt from the provisions of subdivisions (d) and (f) of Section 24214 for creditable service performed up to one-half of the full-time position, if the vacancy occurred due to circumstances beyond the control of the employer.

(2) The period of exemption shall commence on the date the member retired for service is appointed or assigned and shall end no more than two calendar years from that date, after which the limitation specified in subdivisions (d) and (f) of Section 24214 shall apply.

(3) An exemption under this subdivision shall be granted by the system subject to the following conditions:

(A) The recruitment process to fill the vacancy on a permanent basis is expected to extend over several months.

(B) The employment is reported in a public meeting of the governing body of the employer.

(C) The employer submits documentation required by the system to substantiate the eligibility of the member retired for service for an exemption under this subdivision.

(c) This section does not apply to any person who has received additional service credit pursuant to Section 22715 or 22716.

(d) A person who has received additional service credit pursuant to Section 22714 or 22714.5 shall be ineligible for one year from the effective date of retirement for the exemption provided in this section for service performed in any school district, community college district, or county office of education in the state.

(e) This section shall remain in effect only until June 30, 2010, and shall be repealed on January 1, 2011, unless a later enacted statute deletes or extends that date.

SEC. 8. Section 24216.5 of the Education Code is amended to read:

24216.5. (a) The compensation earned by a member who retired for service under this part shall be exempt from subdivisions (d), (f), and (g) of Section 24214, if all of the following conditions are met:

(1) The member retired for service with an effective date on or before January 1, 2007.

(2) The member retired for service is employed by a school district to provide any of the following:

(A) Direct classroom instruction to pupils enrolled in kindergarten or any grades 1 to 12, inclusive.

(B) Support and assessment for new teachers through the Beginning Teacher Support and Assessment program authorized by Section 44279.1.

(C) Support to individuals completing student teaching assignments.

(D) Support to individuals participating in the following programs:

(i) Pre-Internship Teaching Program authorized pursuant to Article 5.6 (commencing with Section 44305) of Chapter 2 of Part 25.

(ii) Alternative certification programs authorized pursuant to Article 11 (commencing with Section 44380) of Chapter 2 of Part 25.

(iii) School Paraprofessional Teacher Training Program established pursuant to Article 12 (commencing with Section 44390) of Chapter 2 of Part 25.

(E) Instruction and pupil services provided to pupils enrolled in special education programs authorized pursuant to Part 30 (commencing with Section 56000) of Division 4 of Title 2.

(F) Instruction to pupils enrolled in English language learner programs authorized pursuant to Chapter 3 (commencing with Section 300), Chapter 4 (commencing with Section 400), and Chapter 6 (commencing with Section 430) of Part 1 of Division 1.

(3) All members retired for service whose employment with a school district meets the conditions specified in this section shall be treated as a distinct class of temporary employees within the existing bargaining unit whose service may not be included in computing the service required as a prerequisite to attainment of or eligibility for classification as a permanent employee of a school district. The compensation for service performed by this class of employees shall be established in accordance with subdivision (b) of Section 24214 and agreed to in the collective bargaining agreement between the employing school district and the exclusive representative for the existing bargaining unit within which these temporary employees of the school district are treated as a distinct class.

(4) The employing school district submits documentation required by the system to substantiate the eligibility of the temporary employment of a member retired for service for the exemption under this subdivision.

(b) A school district that employs a member retired for service pursuant to this section shall maintain accurate records of the retired member's compensation earned and shall report that compensation monthly to the system regardless of the method of payment or the source of funds from which the compensation is paid.

(c) This section does not apply to the compensation earned for creditable service performed by a member retired for service for a community college district.

(d) This section shall remain in effect only until June 30, 2010, and shall be repealed as of January 1, 2011, unless a later enacted statute deletes or extends that date.

SEC. 8.5. Section 24216.5 of the Education Code is amended to read:

24216.5. (a) The compensation earned by a member who retired for service under this part shall be exempt from subdivisions (d), (f), and (g) of Section 24214, if all of the following conditions are met:

(1) The member retired for service with an effective date on or before January 1, 2007.

(2) The member retired for service is employed by a school district to provide any of the following:

(A) Direct classroom instruction to pupils enrolled in kindergarten or any grades 1 to 12, inclusive.

(B) Support and assessment for new teachers through the Beginning Teacher Support and Assessment program authorized by Section 44279.1.

(C) Support to individuals completing student teaching assignments.

(D) Support to individuals participating in the following programs:

(i) Pre-Internship Teaching Program authorized pursuant to Article 5.6 (commencing with Section 44305) of Chapter 2 of Part 25.

(ii) Alternative certification programs authorized pursuant to Article 11 (commencing with Section 44380) of Chapter 2 of Part 25.

(iii) School Paraprofessional Teacher Training Program established pursuant to Article 12 (commencing with Section 44390) of Chapter 2 of Part 25.

(E) Instruction and pupil services provided to pupils enrolled in special education programs authorized pursuant to Part 30 (commencing with Section 56000) of Division 4 of Title 2.

(F) Instruction to pupils enrolled in English language learner programs authorized pursuant to Chapter 3 (commencing with Section 300), Chapter 4 (commencing with Section 400), and Chapter 6 (commencing with Section 430) of Part 1 of Division 1.

(3) All members retired for service whose employment with a school district meets the conditions specified in this section shall be treated as a distinct class of temporary employees within the existing bargaining unit whose service may not be included in computing the service required as a prerequisite to attainment of or eligibility for classification as a permanent employee of a school district. The compensation for service performed by this class of employees shall be established in accordance with subdivision (b) of Section 24214 and agreed to in the collective bargaining agreement between the employing school district and the exclusive representative for the existing bargaining unit within which these temporary employees of the school district are treated as a distinct class.

(4) The employing school district submits documentation required by the system to substantiate the eligibility of the temporary employment of a member retired for service for the exemption under this subdivision. The documentation shall be received by the system no later than June 30 of the school year for which the exemption is to apply.

(b) A school district that employs a member retired for service pursuant to this section shall maintain accurate records of the retired member's compensation earned and shall report that compensation monthly to the system regardless of the method of payment or the source of funds from which the compensation is paid.

(c) This section does not apply to the compensation earned for creditable service performed by a member retired for service for a community college district.

(d) This section shall remain in effect only until June 30, 2010, and shall be repealed as of January 1, 2011, unless a later enacted statute deletes or extends that date.

SEC. 9. Section 24216.6 of the Education Code is amended to read:

24216.6. (a) The compensation earned by a member who retired for service under this part shall be exempt from subdivisions (d), (f), and (g) of Section 24214, if all of the following conditions are met:

(1) The member retired for service with an effective date on or before January 1, 2007.

(2) The member retired for service is employed by a school district to provide direct remedial instruction to pupils in grades 2 to 12, inclusive. "Remedial instruction" means the programs specified in Sections 37252 and 37252.2.

(3) All members retired for service whose employment with a school district meets the conditions specified in this section shall be treated as a distinct class of temporary employees within the existing bargaining unit whose service may not be included in computing the service required as a prerequisite to attainment of or eligibility for classification as a permanent employee of a school district. The compensation for service performed by this class of employees shall be established in accordance with subdivision (b) of Section 24214 and agreed to in the collective bargaining agreement between the employing school district and the exclusive representative for the existing bargaining unit within which these temporary employees of the school district are treated as a distinct class.

(4) The employing school district submits documentation required by the system to substantiate the eligibility of the temporary employment of a member retired for service for the exemption under this subdivision. That documentation shall be on a properly executed form provided by the system.

(b) A school district that employs a member retired for service pursuant to this section shall maintain accurate records of the retired member's compensation earned and shall report that compensation monthly to the system regardless of the method of payment or the source of funds from which the compensation is paid.

(c) This section does not apply to the compensation earned for creditable service performed by a member retired for service for a county office of education or a community college district.

(d) This section shall remain in effect only until June 30, 2010, and shall be repealed as of January 1, 2011, unless a later enacted statute deletes or extends that date.

SEC. 9.5. Section 24216.6 of the Education Code is amended to read:

24216.6. (a) The compensation earned by a member who retired for service under this part shall be exempt from subdivisions (d), (f), and (g) of Section 24214, if all of the following conditions are met:

(1) The member retired for service with an effective date on or before January 1, 2007.

(2) The member retired for service is employed by a school district to provide direct remedial instruction to pupils in grades 2 to 12, inclusive. "Remedial instruction" means the programs specified in Sections 37252 and 37252.2.

(3) All members retired for service whose employment with a school district meets the conditions specified in this section shall be treated as a distinct class of temporary employees within the existing bargaining unit whose service may not be included in computing the service required as a prerequisite to attainment of or eligibility for classification as a permanent employee of a school district. The compensation for service performed by this class of employees shall be established in accordance with subdivision (b) of Section 24214 and agreed to in the collective bargaining agreement between the employing school district and the exclusive representative for the existing bargaining unit within which these temporary employees of the school district are treated as a distinct class.

(4) The employing school district submits documentation required by the system to substantiate the eligibility of the temporary employment of a member retired for service for the exemption under this subdivision. That documentation shall be on a properly executed form provided by the system and shall be received by the system no later than June 30 of the school year for which the exemption is to apply.

(b) A school district that employs a member retired for service pursuant to this section shall maintain accurate records of the retired member's compensation earned and shall report that compensation

monthly to the system regardless of the method of payment or the source of funds from which the compensation is paid.

(c) This section does not apply to the compensation earned for creditable service performed by a member retired for service for a county office of education or a community college district.

(d) This section shall remain in effect only until June 30, 2010, and shall be repealed as of January 1, 2011, unless a later enacted statute deletes or extends that date.

SEC. 10. (a) Section 7.5 of this bill incorporates amendments to Section 24216 of the Education Code proposed by both this bill and SB 1376. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2009, (2) each bill amends Section 24216 of the Education Code, and (3) this bill is enacted after SB 1376, in which case Section 7 of this bill shall not become operative.

(b) Section 8.5 of this bill incorporates amendments to Section 24216.5 of the Education Code proposed by both this bill and SB 1376. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2009, (2) each bill amends Section 24216.5 of the Education Code, and (3) this bill is enacted after SB 1376, in which case Section 8 of this bill shall not become operative.

(c) Section 9.5 of this bill incorporates amendments to Section 24216.6 of the Education Code proposed by both this bill and SB 1376. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2009, (2) each bill amends Section 24216.6 of the Education Code, and (3) this bill is enacted after SB 1376, in which case Section 9 of this bill shall not become operative.

CHAPTER 495

An act to add and repeal Section 140.2 of the Streets and Highways Code, relating to transportation.

[Approved by Governor September 28, 2008. Filed with Secretary of State September 28, 2008.]

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

SECTION 1. Section 140.2 is added to the Streets and Highways Code, to read:

140.2. (a) Notwithstanding any other provision of law, except Section 13332.09 of the Government Code, the department may purchase and equip heavy mobile fleet vehicles and special equipment by means of

best value procurement. As used in this section, "best value procurement" means a method of selecting a proposal based on an evaluation of the following factors in addition to price:

(1) Total cost of ownership, including warranty, under which all repair costs are borne solely by the warranty provider, repair costs, maintenance costs, fuel consumption, or salvage value.

(2) Product performance and productivity.

(3) Supplier's ability to perform to the contract requirements.

(4) Environmental benefits, including reduction of greenhouse gas emissions, reduction of air pollutant emissions, or reduction of toxic or hazardous materials.

(b) In addition to disclosure of the minimum requirements for qualification, the solicitation document provided to a prospective bidder shall specify that one or more of the factors described in subdivision (a), as applicable to the bidder's product, will be given a weighted value. If deemed qualified to bid, the department shall then utilize a scoring method based on those factors and price in determining the successful bid.

(c) Best value procurements shall be limited to fifteen million dollars ($15,000,000) annually.

(d) On or before December 31, 2011, and again by October 1, 2013, the department shall submit a report to the Legislature that includes an evaluation of the best value procurement bidding process.

(e) This section shall remain in effect only until January 1, 2014, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2014, deletes or extends that date.

SEC. 2. This act shall become operative only if Assembly Bill 2560 of the 2007–08 Regular Session is also enacted and becomes operative.

CHAPTER 496

An act to amend, repeal, and add Section 14105.18 of the Welfare and Institutions Code, relating to health care, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 28, 2008. Filed with Secretary of State September 28, 2008.]

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

SECTION 1. Section 14105.18 of the Welfare and Institutions Code is amended to read:

14105.18. (a) Notwithstanding any other provision of law, provider rates of payment for services rendered in all of the following programs shall be identical to the rates of payment for the same service performed by the same provider type pursuant to the Medi-Cal program, except that hospital inpatient rates of payment shall be 90 percent of the Medi-Cal hospital interim rates of payment, as developed by the department, and these hospital rates shall not be subject to any further reductions to Medi-Cal rates of payment enacted before or after the effective date of the act that amended this subdivision during the 2007–08 Regular Session.

(1) The California Children's Services Program established pursuant to Article 5 (commencing with Section 123800) of Chapter 3 of Part 2 of Division 106 of the Health and Safety Code.

(2) The Genetically Handicapped Person's Program established pursuant to Article 1 (commencing with Section 125125) of Chapter 2 of Part 5 of Division 106 of the Health and Safety Code.

(3) The Breast and Cervical Cancer Early Detection Program established pursuant to Article 1.5 (commencing with Section 104150) of Chapter 2 of Part 1 of Division 103 of the Health and Safety Code and the breast cancer programs specified in Section 30461.6 of the Revenue and Taxation Code.

(4) The State-Only Family Planning Program established pursuant to Division 24 (commencing with Section 24000).

(5) The Family Planning, Access, Care, and Treatment (Family PACT) Waiver Program established pursuant to subdivision (aa) of Section 14132.

(b) The director may identify in regulations other programs not listed in subdivision (a) in which providers shall be paid rates of payment that are identical to the rates of payments in the Medi-Cal program pursuant to subdivision (a).

(c) Notwithstanding subdivision (a), services provided under any of the programs described in subdivisions (a) and (b) may be reimbursed at rates greater than the Medi-Cal rate that would otherwise be applicable if those rates are adopted by the director in regulations.

(d) This section shall remain in effect only until January 1, 2010, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2010, deletes or extends that date.

SEC. 2. Section 14105.18 is added to the Welfare and Institutions Code, to read:

14105.18. (a) Notwithstanding any other provision of law, provider rates of payment for services rendered in all of the following programs shall be identical to the rates of payment for the same service performed by the same provider type pursuant to the Medi-Cal program.

(1) The California Children's Services Program established pursuant to Article 5 (commencing with Section 123800) of Chapter 3 of Part 2 of Division 106 of the Health and Safety Code.

(2) The Genetically Handicapped Person's Program established pursuant to Article 1 (commencing with Section 125125) of Chapter 2 of Part 5 of Division 106 of the Health and Safety Code.

(3) The Breast and Cervical Cancer Early Detection Program established pursuant to Article 1.5 (commencing with Section 104150) of Chapter 2 of Part 1 of Division 103 of the Health and Safety Code and the breast cancer programs specified in Section 30461.6 of the Revenue and Taxation Code.

(4) The State-Only Family Planning Program established pursuant to Division 24 (commencing with Section 24000).

(5) The Family Planning, Access, Care, and Treatment (Family PACT) Waiver Program established pursuant to subdivision (aa) of Section 14132.

(b) The director may identify in regulations other programs not listed in subdivision (a) in which providers shall be paid rates of payment that are identical to the rates of payments in the Medi-Cal program pursuant to subdivision (a).

(c) Notwithstanding subdivision (a), services provided under any of the programs described in subdivisions (a) and (b) may be reimbursed at rates greater than the Medi-Cal rate that would otherwise be applicable if those rates are adopted by the director in regulations.

(d) This section shall become operative on January 1, 2010.

SEC. 3. The Legislature finds and declares that the intent of paragraphs (1) and (2) of subdivision (a) of Section 14105.18 of the Welfare and Institutions Code, as enacted by Chapter 1161 of the Statutes of 2002, was that the rates of reimbursement for all inpatient hospital services under these paragraphs would be at the applicable Medi-Cal interim rates of reimbursement paid to hospitals not under contract pursuant to Article 2.6 (commencing with Section 14081) of Chapter 7 of Part 3 of Division 9 of the Welfare and Institutions 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:

To ensure that providers of services listed in Section 14105.18 of the Welfare and Institutions Code are not adversely affected, it is necessary that this act go into immediate effect.

CHAPTER 497

An act to amend Sections 10201, 10202, 10202.5, 10204, 10205, 10209, 10212.2, 10214, 10214.5, 10214.7, and 10214.9 of the Unemployment Insurance Code, relating to the employment training panel.

[Approved by Governor September 28, 2008. Filed with Secretary of State September 28, 2008.]

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

SECTION 1. Section 10201 of the Unemployment Insurance Code is amended to read:

10201. As used in this chapter:

(a) "Department" means the Employment Development Department.

(b) "Employer" or "eligible employer" means any employer subject to Part 1 (commencing with Section 100) of Division 1, except any public entity, or any nonprofit organization which has elected an alternate method of financing its liability for unemployment insurance compensation benefits pursuant to Article 5 (commencing with Section 801), or Article 6 (commencing with Section 821) of Chapter 3.

Any public entity or nonprofit organization that has elected an alternate method of financing its liability for unemployment insurance compensation benefits pursuant to Article 5 (commencing with Section 801), or Article 6 (commencing with Section 821) of Chapter 3, shall be deemed to be an employer only for purposes of placement of new hire trainees who received training as an incidental part of a training project designed to meet the needs of one or more private sector employers.

(c) "Eligible participant" means any person who, prior to beginning training or employment pursuant to this chapter, is any of the following:

(1) Unemployed and has established an unemployment insurance claim in this state, or has exhausted eligibility for unemployment insurance benefits from this state within the previous 24 months.

(2) Employed for a minimum of 90 days by his or her employer, or if employed for less than 90 days, met the conditions of paragraph (1) at the time of hire, had received a notice of layoff from the prior employer, or was employed by an employer for a period of not less than 90 days during the 180-day period prior to the employee's current employment at the start of training with an eligible employer, as provided in subdivision (b). The panel may waive this requirement for trainees employed by a business locating or expanding operations in the state,

provided it is part of a state and local economic development effort endeavoring to create or retain California jobs. The panel may also waive the requirement for up to 10 percent of the trainee population, if it determines a business meets standard funding requirements set out under subdivision (a) of Section 10200.

(d) "Executive director" means the executive director appointed pursuant to Section 10202.

(e) "Fund" means the Employment Training Fund created by Section 1610.

(f) "Job" means employment on a basis customarily considered full time for the occupation and industry. The employment shall have definite career potential and a substantial likelihood of providing long-term job security, with reportable California earnings during the employment retention period. Furthermore, the employment shall provide earnings, upon completion of the employment requirement specified in subdivision (f) of Section 10209, equal to 50 percent, in the case of new hire training, or 60 percent, in the case of retraining, of the state or regional average hourly wage. However, in no case shall the employment result in earnings of less than 45 percent of the state average hourly wage for new hire training and 55 percent of the state average hourly wage for retraining. The panel may consider the dollar value of health benefits that are voluntarily paid for by an employer when computing earnings to meet the minimum wage requirements.

(g) "New hire training" means employment training, including job-related literacy training, for persons who, at the start of training, are unemployed.

(h) "Panel" means the Employment Training Panel created by Section 10202.

(i) "Retraining" means employment-related skill and literacy training for persons who are employed and who meet the definition of paragraph (2) of subdivision (c) prior to commencement of training and will continue to be employed by the same employer for at least 90 days following completion of training.

(j) "State average hourly wage" means the average weekly wage paid by employers to employees covered by unemployment insurance, as reported to the Employment Development Department for the four calendar quarters ending June 30 of the preceding calendar year, divided by 40 hours.

(k) "Trainee" means an eligible participant.

(*l*) "Training agency" means any private training entity or local educational agency.

SEC. 2. Section 10202 of the Unemployment Insurance Code is amended to read:

10202. (a) The Employment Training Panel is established in the Employment Development Department.

(b) The executive director shall be appointed by the Governor, and shall be well qualified for the position with experience in government. The executive director may perform all duties, exercise all powers, discharge all responsibilities, and administer and enforce all laws, rules, and regulations under the jurisdiction of the panel, with the approval of the panel. The executive director shall administer this chapter, with the approval of the panel, in the manner he or she deems necessary to conduct the work of the panel properly. With the approval of the panel, the executive director may create divisions and subdivisions as necessary, and change and abolish these divisions and subdivisions from time to time.

(c) The panel may employ personnel necessary to carry out the purposes of this chapter. All personnel shall be appointed pursuant to the State Civil Service Act (Part 1 (commencing with Section 18000) of Division 5 of Title 2 of the Government Code), except for an executive director, and two assistant directors, who shall be exempt from state civil service.

(d) All personnel of the panel shall be appointed, directed, and controlled only by the panel or its authorized deputies or agents to whom it may delegate its powers.

(e) The Governor shall appoint two assistant directors, to serve at the pleasure of the Governor. The assistant directors shall have the duties as assigned by the executive director, and shall be responsible to the executive director for the performance of their duties.

SEC. 3. Section 10202.5 of the Unemployment Insurance Code is amended to read:

10202.5. (a) The panel shall consist of eight persons, seven of whom shall be appointed as provided in subdivision (b), and shall have experience and a demonstrated interest in business management and employment relations. The Secretary of Business, Transportation and Housing, or his or her designee, shall also serve on the panel as an ex officio, voting member.

(b) (1) Two members of the panel shall be appointed by the Speaker of the Assembly. One of those members shall be a private sector labor representative and the other member shall be a business representative.

(2) Two members of the panel shall be appointed by the President pro Tempore of the Senate. One of those members shall be a private sector labor representative and the other member shall be a business representative.

(3) Three members of the panel shall be appointed by the Governor. One of those members shall be a private sector labor representative, one

member shall be a business representative, and one member shall be a public member.

(4) Labor appointments shall be made from nominations from state labor federations. Business appointments shall be made from nominations from state business organizations and business trade associations.

(5) The Governor shall designate a member to chair the panel, and the person so designated shall serve as the chair of the panel at the pleasure of the Governor.

(c) The appointive members of the panel shall serve for two-year terms.

(d) Appointive members of the panel shall receive the necessary traveling and other expenses incurred by them in the performance of their official duties out of appropriations made for the support of the panel. In addition, each appointive member of the panel shall receive one hundred dollars ($100) for each day attending meetings of the panel, and may receive one hundred dollars ($100) for each day spent conducting other official business of the panel, but not exceeding a maximum of three hundred dollars ($300) per month.

SEC. 4. Section 10204 of the Unemployment Insurance Code is amended to read:

10204. The panel shall coordinate its programs with local and state workforce investment boards and other partners of the federal Workforce Investment Act of 1998. This coordination shall include, but not be limited to, the adoption of a plan, including regular sharing of data, for the coordination of training authorized pursuant to this chapter with programs administered under Division 8 (commencing with Section 15000).

SEC. 5. Section 10205 of the Unemployment Insurance Code is amended to read:

10205. The panel shall do all of the following:

(a) Establish a three-year plan that shall be updated annually, based on the demand of employers for trained workers, changes in the state's economy and labor markets, and continuous reviews of the effectiveness of panel training contracts. The updated plan shall be submitted to the Governor and the Legislature not later than January 1 of each year. In carrying out this section, the panel shall review information in the following areas:

(1) Labor market information, including the state-local labor market information program in the Employment Development Department, the California Economic Strategy Panel, and other relevant regional or statewide initiatives and collaboratives.

(2) Evaluations of the effectiveness of training as measured by increased security of employment for workers and benefits to the California economy.

(3) The demand for training by industry, type of training, and size of employer.

(4) Changes in skills necessary to perform jobs, including changes in basic literacy skills.

(5) Changes in the demographics of the labor force and the population entering the labor market.

(6) Proposed expenditures by other agencies of federal Workforce Investment Act funds and other state and federal training and vocational education funds on eligible participants.

(b) Maintain a system to continuously monitor economic and other data required under this plan. If this data changes significantly during the life of the plan, the plan shall be amended by the panel. Each plan shall include all of the following:

(1) The panel's objectives with respect to the criteria and priorities specified in Section 10200 and the distribution of funds between new-hire training and retraining.

(2) The identification of specific industries, production and quality control techniques, and regions of the state where employment training funds would most benefit the state's economy and plans to encourage training in these areas, including specific standards and a system for expedited review of proposals that meet the standards.

(3) A system for expedited review of proposals that are substantially similar with respect to employer needs, training curriculum, duration of training, and costs of training, in order to encourage the development of proposals that meet the needs identified in paragraph (2).

(4) The panel's goals, operational objectives, and strategies to meet the needs of small businesses, including, but not limited to, those small businesses with 100 or fewer employees. These strategies proposed by the panel may include, but not be limited to, pilot demonstration projects designed to identify potential barriers that small businesses may experience in accessing panel programs and workforce training resources, including barriers that may exist within small businesses.

(5) The research objectives of the panel that contribute to the effectiveness of this chapter in benefiting the economy of the state as a whole.

(6) A priority list of skills or occupations that are in such short supply that employers are choosing to not locate or expand their businesses in the state or are importing labor in response to these skills shortages.

(7) A review of the panel's efforts to coordinate with the California Workforce Investment Board and local boards to achieve an effective

and coordinated approach in the delivery of the state's workforce resources.

(A) The panel will consider specific strategies to achieve this goal that include the development of initiatives to engage local workforce investment boards in enhancing the utilization of panel training resources by companies in priority sectors, special populations, and in geographically underserved areas of the state.

(B) Various approaches to foster greater program integration between workforce investment boards and the panel will also be considered, which may include marketing agreements, expanded technical assistance, modification of program regulations and policy, and expanded use of multiple employer contracts.

(c) Solicit proposals and write contracts on the basis of proposals made directly to it. Contracts for the purpose of providing employment training may be written with any of the following:

(1) An employer or group of employers.

(2) A training agency.

(3) A local workforce investment board with the approval of the appropriate local elected officials in the local workforce investment area.

(4) A grant recipient or administrative entity selected pursuant to the federal Workforce Investment Act of 1998, with the approval of the local workforce investment board and the appropriate local elected officials.

These contracts shall be in the form of fixed-fee performance contracts. Notwithstanding any provision of law to the contrary, contracts entered into pursuant to this chapter shall not be subject to competitive bidding procedures. Contracts for training may be written for a period not to exceed 24 months for the purpose of administration by the panel and the contracting employer or any group of employers acting jointly or any training agency for the purpose of providing employment training.

(d) Fund training projects that best meet the priorities identified annually. In doing so, the panel shall seek to facilitate the employment of the maximum number of eligible participants.

(e) Establish minimum standards for the consideration of proposals, which shall include, but not be limited to, evidence of labor market demand, the number of jobs available, the skill requirements for the identified jobs, the projected cost per person trained, hired, and retained in employment, the wages paid successful trainees upon placement, and the curriculum for the training. No proposal shall be considered or approved that proposes training for employment covered by a collective bargaining agreement unless the signatory labor organization agrees in writing.

(f) Ensure the provision of adequate fiscal and accounting controls for, monitoring and auditing of, and other appropriate technical and administrative assistance to, projects funded by this chapter.

(g) Provide for evaluation of projects funded by this chapter. The evaluations shall assess the effectiveness of training previously funded by the panel to improve job security and stability for workers, and benefit participating employers and the state's economy, and shall compare the wages of trainees in the 12-month period prior to training as well as the 12-month period subsequent to completion of training, as reflected in the department's unemployment insurance tax records. Individual project evaluations shall contain a summary description of the project, the number of persons entering training, the number of persons completing training, the number of persons employed at the end of the project, the number of persons still employed three months after the end of the project, the wages paid, the total costs of the project, and the total reimbursement received from the Employment Training Fund.

(h) Report annually to the Legislature, by November 30, on projects operating during the previous state fiscal year. These annual reports shall provide separate summaries of all of the following:

(1) Projects completed during the year, including their individual and aggregate performance and cost.

(2) Projects not completed during the year, briefly describing each project and identifying approved contract amounts by contract and for this category as a whole, and identifying any projects in which funds are expected to be disencumbered.

(3) Projects terminated prior to completion and the reasons for the termination.

(4) A description of the amount, type, and effectiveness of literacy training funded by the panel.

(5) Results of complete project evaluations.

(6) A description of pilot projects, and the strategies that were identified through these projects, to increase access by small businesses to panel training contracts.

(7) A listing of training projects that were funded in high unemployment areas and a detailed description of the policies and procedures that were used to designate geographic regions and municipalities as high unemployment areas.

In addition, based upon its experience in administering job training projects, the panel shall include in these reports policy recommendations concerning the impact of job training and the panel's program on economic development, labor-management relations, employment security, and other related issues.

(i) Conduct ongoing reviews of panel policies with the goal of developing an improved process for developing, funding, and implementing panel contracts as described in this chapter.

(j) Expedite the processing of contracts for firms considering locating or expanding businesses in the state, in accordance with the priorities for employment training programs set forth in subdivision (b) of Section 10200.

(k) Coordinate and consult regularly with business groups and labor organizations, the California Workforce Investment Board, the State Department of Education, the office of the Chancellor of the California Community Colleges, and the Employment Development Department.

(*l*) Adopt by regulation procedures for the conduct of panel business, including the scheduling and conduct of meetings, the review of proposals, the disclosure of contacts between panel members and parties at interest concerning particular proposals, contracts or cases before the panel or its staff, the awarding of contracts, the administration of contracts, and the payment of amounts due to contractors. All decisions by the panel shall be made by resolution of the panel and any adverse decision shall include a statement of the reason for the decision.

(m) Adopt regulations and procedures providing reasonable confidentiality for the proprietary information of employers seeking training funds from the panel if the public disclosure of that information would result in an unfair competitive disadvantage to the employer supplying the information. The panel may not withhold information from the public regarding its operations, procedures, and decisions that would otherwise be subject to disclosure under the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code).

(n) Review and comment on the budget and performance of any program, project, or activity funded by the panel utilizing funds collected pursuant to Section 976.6.

SEC. 5.5. Section 10205 of the Unemployment Insurance Code is amended to read:

10205. The panel shall do all of the following:

(a) Establish a three-year plan that shall be updated annually, based on the demand of employers for trained workers, changes in the state's economy and labor markets, and continuous reviews of the effectiveness of panel training contracts. The updated plan shall be submitted to the Governor and the Legislature not later than January 1 of each year. In carrying out this section, the panel shall review information in the following areas:

(1) Labor market information, including the state-local labor market information program in the Employment Development Department, the

California Economic Strategy Panel, and other relevant regional or statewide initiatives and collaboratives.

(2) Evaluations of the effectiveness of training as measured by increased security of employment for workers and benefits to the California economy.

(3) The demand for training by industry, type of training, and size of employer.

(4) Changes in skills necessary to perform jobs, including changes in basic literacy skills.

(5) Changes in the demographics of the labor force and the population entering the labor market.

(6) Proposed expenditures by other agencies of federal Workforce Investment Act funds and other state and federal training and vocational education funds on eligible participants.

(b) Maintain a system to continuously monitor economic and other data required under this plan. If this data changes significantly during the life of the plan, the plan shall be amended by the panel. Each plan shall include all of the following:

(1) The panel's objectives with respect to the criteria and priorities specified in Section 10200 and the distribution of funds between new-hire training and retraining.

(2) (A) The identification of specific industries, with consideration of new and emerging industries such as clean technology, production and quality control techniques, and regions of the state where employment training funds would most benefit the state's economy and plans to encourage training in these areas, including specific standards and a system for expedited review of proposals that meet the standards.

(B) The panel shall develop a definition of clean technology that shall be used for purposes of this paragraph.

(3) A system for expedited review of proposals that are substantially similar with respect to employer needs, training curriculum, duration of training, and costs of training, in order to encourage the development of proposals that meet the needs identified in paragraph (2).

(4) The panel's goals, operational objectives, and strategies to meet the needs of small businesses, including, but not limited to, those small businesses with 100 or fewer employees. These strategies proposed by the panel may include, but not be limited to, pilot demonstration projects designed to identify potential barriers that small businesses may experience in accessing panel programs and workforce training resources, including barriers that may exist within small businesses.

(5) The research objectives of the panel that contribute to the effectiveness of this chapter in benefiting the economy of the state as a whole.

(6) A priority list of skills or occupations that are in such short supply that employers are choosing to not locate or expand their businesses in the state or are importing labor in response to these skills shortages.

(7) A review of the panel's efforts to coordinate with the California Workforce Investment Board and local boards to achieve an effective and coordinated approach in the delivery of the state's workforce resources.

(A) The panel will consider specific strategies to achieve this goal that include the development of initiatives to engage local workforce investment boards in enhancing the utilization of panel training resources by companies in priority sectors, special populations, and in geographically underserved areas of the state.

(B) Various approaches to foster greater program integration between workforce investment boards and the panel will also be considered, which may include marketing agreements, expanded technical assistance, modification of program regulations and policy, and expanded use of multiple employer contracts.

(c) Solicit proposals and write contracts on the basis of proposals made directly to it. Contracts for the purpose of providing employment training may be written with any of the following:

(1) An employer or group of employers.

(2) A training agency.

(3) A local workforce investment board with the approval of the appropriate local elected officials in the local workforce investment area.

(4) A grant recipient or administrative entity selected pursuant to the federal Workforce Investment Act of 1998, with the approval of the local workforce investment board and the appropriate local elected officials.

These contracts shall be in the form of fixed-fee performance contracts. Notwithstanding any provision of law to the contrary, contracts entered into pursuant to this chapter shall not be subject to competitive bidding procedures. Contracts for training may be written for a period not to exceed 24 months for the purpose of administration by the panel and the contracting employer or any group of employers acting jointly or any training agency for the purpose of providing employment training.

(d) Fund training projects that best meet the priorities identified annually. In doing so, the panel shall seek to facilitate the employment of the maximum number of eligible participants.

(e) Establish minimum standards for the consideration of proposals, which shall include, but not be limited to, evidence of labor market demand, the number of jobs available, the skill requirements for the identified jobs, the projected cost per person trained, hired, and retained in employment, the wages paid successful trainees upon placement, and the curriculum for the training. No proposal shall be considered or

approved that proposes training for employment covered by a collective bargaining agreement unless the signatory labor organization agrees in writing.

(f) Ensure the provision of adequate fiscal and accounting controls for, monitoring and auditing of, and other appropriate technical and administrative assistance to, projects funded by this chapter.

(g) Provide for evaluation of projects funded by this chapter. The evaluations shall assess the effectiveness of training previously funded by the panel to improve job security and stability for workers, and benefit participating employers and the state's economy, and shall compare the wages of trainees in the 12-month period prior to training as well as the 12-month period subsequent to completion of training, as reflected in the department's unemployment insurance tax records. Individual project evaluations shall contain a summary description of the project, the number of persons entering training, the number of persons completing training, the number of persons employed at the end of the project, the number of persons still employed three months after the end of the project, the wages paid, the total costs of the project, and the total reimbursement received from the Employment Training Fund.

(h) Report annually to the Legislature, by November 30, on projects operating during the previous state fiscal year. These annual reports shall provide separate summaries of all of the following:

(1) Projects completed during the year, including their individual and aggregate performance and cost.

(2) Projects not completed during the year, briefly describing each project and identifying approved contract amounts by contract and for this category as a whole, and identifying any projects in which funds are expected to be disencumbered.

(3) Projects terminated prior to completion and the reasons for the termination.

(4) A description of the amount, type, and effectiveness of literacy training funded by the panel.

(5) Results of complete project evaluations.

(6) A description of pilot projects, and the strategies that were identified through these projects, to increase access by small businesses to panel training contracts.

(7) A listing of training projects that were funded in high unemployment areas and a detailed description of the policies and procedures that were used to designate geographic regions and municipalities as high unemployment areas.

In addition, based upon its experience in administering job training projects, the panel shall include in these reports policy recommendations concerning the impact of job training and the panel's program on

economic development, labor-management relations, employment security, and other related issues.

(i) Conduct ongoing reviews of panel policies with the goal of developing an improved process for developing, funding, and implementing panel contracts as described in this chapter.

(j) Expedite the processing of contracts for firms considering locating or expanding businesses in the state, in accordance with the priorities for employment training programs set forth in subdivision (b) of Section 10200.

(k) Coordinate and consult regularly with business groups and labor organizations, the California Workforce Investment Board, the State Department of Education, the office of the Chancellor of the California Community Colleges, and the Employment Development Department.

(*l*) Adopt by regulation procedures for the conduct of panel business, including the scheduling and conduct of meetings, the review of proposals, the disclosure of contacts between panel members and parties at interest concerning particular proposals, contracts or cases before the panel or its staff, the awarding of contracts, the administration of contracts, and the payment of amounts due to contractors. All decisions by the panel shall be made by resolution of the panel and any adverse decision shall include a statement of the reason for the decision.

(m) Adopt regulations and procedures providing reasonable confidentiality for the proprietary information of employers seeking training funds from the panel if the public disclosure of that information would result in an unfair competitive disadvantage to the employer supplying the information. The panel may not withhold information from the public regarding its operations, procedures, and decisions that would otherwise be subject to disclosure under the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code).

(n) Review and comment on the budget and performance of any program, project, or activity funded by the panel utilizing funds collected pursuant to Section 976.6.

SEC. 5.7. Section 10205 of the Unemployment Insurance Code is amended to read:

10205. The panel shall do all of the following:

(a) Establish a three-year plan that shall be updated annually, based on the demand of employers for trained workers, changes in the state's economy and labor markets, and continuous reviews of the effectiveness of panel training contracts. The updated plan shall be submitted to the Governor and the Legislature not later than January 1 of each year. In carrying out this section, the panel shall review information in the following areas:

(1) Labor market information, including the state-local labor market information program in the Employment Development Department, the California Economic Strategy Panel, and other relevant regional or statewide initiatives and collaboratives.

(2) Evaluations of the effectiveness of training as measured by increased security of employment for workers and benefits to the California economy.

(3) The demand for training by industry, type of training, and size of employer.

(4) Changes in skills necessary to perform jobs, including changes in basic literacy skills.

(5) Changes in the demographics of the labor force and the population entering the labor market.

(6) Proposed expenditures by other agencies of federal Workforce Investment Act funds and other state and federal training and vocational education funds on eligible participants.

(b) Maintain a system to continuously monitor economic and other data required under this plan. If this data changes significantly during the life of the plan, the plan shall be amended by the panel. Each plan shall include all of the following:

(1) The panel's objectives with respect to the criteria and priorities specified in Section 10200 and the distribution of funds between new-hire training and retraining.

(2) The identification of specific industries, production and quality control techniques, and regions of the state where employment training funds would most benefit the state's economy and plans to encourage training in these areas, including specific standards and a system for expedited review of proposals that meet the standards.

(3) A system for expedited review of proposals that are substantially similar with respect to employer needs, training curriculum, duration of training, and costs of training, in order to encourage the development of proposals that meet the needs identified in paragraph (2).

(4) The panel's goals, operational objectives, and strategies to meet the needs of small businesses, including, but not limited to, those small businesses with 100 or fewer employees, and to support target populations with consideration of veterans and other target populations, as identified. These strategies proposed by the panel may include, but not be limited to, pilot demonstration projects designed to identify potential barriers that small businesses and target populations may experience in accessing panel programs and workforce training resources.

(5) The research objectives of the panel that contribute to the effectiveness of this chapter in benefiting the economy of the state as a whole.

(6) A priority list of skills or occupations that are in such short supply that employers are choosing to not locate or expand their businesses in the state or are importing labor in response to these skills shortages.

(7) A review of the panel's efforts to coordinate with the California Workforce Investment Board and local boards to achieve an effective and coordinated approach in the delivery of the state's workforce resources.

(A) The panel will consider specific strategies to achieve this goal that include the development of initiatives to engage local workforce investment boards in enhancing the utilization of panel training resources by companies in priority sectors, special populations, and in geographically underserved areas of the state.

(B) Various approaches to foster greater program integration between workforce investment boards and the panel will also be considered, which may include marketing agreements, expanded technical assistance, modification of program regulations and policy, and expanded use of multiple employer contracts.

(c) Solicit proposals and write contracts on the basis of proposals made directly to it. Contracts for the purpose of providing employment training may be written with any of the following:

(1) An employer or group of employers.

(2) A training agency.

(3) A local workforce investment board with the approval of the appropriate local elected officials in the local workforce investment area.

(4) A grant recipient or administrative entity selected pursuant to the federal Workforce Investment Act of 1998, with the approval of the local workforce investment board and the appropriate local elected officials.

These contracts shall be in the form of fixed-fee performance contracts. Notwithstanding any provision of law to the contrary, contracts entered into pursuant to this chapter shall not be subject to competitive bidding procedures. Contracts for training may be written for a period not to exceed 24 months for the purpose of administration by the panel and the contracting employer or any group of employers acting jointly or any training agency for the purpose of providing employment training.

(d) Fund training projects that best meet the priorities identified annually. In doing so, the panel shall seek to facilitate the employment of the maximum number of eligible participants.

(e) Establish minimum standards for the consideration of proposals, which shall include, but not be limited to, evidence of labor market demand, the number of jobs available, the skill requirements for the identified jobs, the projected cost per person trained, hired, and retained in employment, the wages paid successful trainees upon placement, and the curriculum for the training. No proposal shall be considered or

approved that proposes training for employment covered by a collective bargaining agreement unless the signatory labor organization agrees in writing.

(f) Ensure the provision of adequate fiscal and accounting controls for, monitoring and auditing of, and other appropriate technical and administrative assistance to, projects funded by this chapter.

(g) Provide for evaluation of projects funded by this chapter. The evaluations shall assess the effectiveness of training previously funded by the panel to improve job security and stability for workers, and benefit participating employers and the state's economy, and shall compare the wages of trainees in the 12-month period prior to training as well as the 12-month period subsequent to completion of training, as reflected in the department's unemployment insurance tax records. Individual project evaluations shall contain a summary description of the project, the number of persons entering training, the number of persons completing training, the number of persons employed at the end of the project, the number of persons still employed three months after the end of the project, the wages paid, the total costs of the project, and the total reimbursement received from the Employment Training Fund.

(h) Report annually to the Legislature, by November 30, on projects operating during the previous state fiscal year. These annual reports shall provide separate summaries of all of the following:

(1) Projects completed during the year, including their individual and aggregate performance and cost.

(2) Projects not completed during the year, briefly describing each project and identifying approved contract amounts by contract and for this category as a whole, and identifying any projects in which funds are expected to be disencumbered.

(3) Projects terminated prior to completion and the reasons for the termination.

(4) A description of the amount, type, and effectiveness of literacy training funded by the panel.

(5) Results of complete project evaluations.

(6) A description of pilot projects, and the strategies that were identified through these projects, to increase access by small businesses to panel training contracts.

(7) A listing of training projects that were funded in high unemployment areas and a detailed description of the policies and procedures that were used to designate geographic regions and municipalities as high unemployment areas.

In addition, based upon its experience in administering job training projects, the panel shall include in these reports policy recommendations concerning the impact of job training and the panel's program on

economic development, labor-management relations, employment security, and other related issues.

(i) Conduct ongoing reviews of panel policies with the goal of developing an improved process for developing, funding, and implementing panel contracts as described in this chapter.

(j) Expedite the processing of contracts for firms considering locating or expanding businesses in the state, in accordance with the priorities for employment training programs set forth in subdivision (b) of Section 10200.

(k) Coordinate and consult regularly with business groups and labor organizations, the California Workforce Investment Board, the State Department of Education, the Office of the Chancellor of the California Community Colleges, and the Employment Development Department.

(*l*) Adopt by regulation procedures for the conduct of panel business, including the scheduling and conduct of meetings, the review of proposals, the disclosure of contacts between panel members and parties at interest concerning particular proposals, contracts or cases before the panel or its staff, the awarding of contracts, the administration of contracts, and the payment of amounts due to contractors. All decisions by the panel shall be made by resolution of the panel and any adverse decision shall include a statement of the reason for the decision.

(m) Adopt regulations and procedures providing reasonable confidentiality for the proprietary information of employers seeking training funds from the panel if the public disclosure of that information would result in an unfair competitive disadvantage to the employer supplying the information. The panel may not withhold information from the public regarding its operations, procedures, and decisions that would otherwise be subject to disclosure under the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code).

(n) Review and comment on the budget and performance of any program, project, or activity funded by the panel utilizing funds collected pursuant to Section 976.6.

SEC. 5.9. Section 10205 of the Unemployment Insurance Code is amended to read:

10205. The panel shall do all of the following:

(a) Establish a three-year plan that shall be updated annually, based on the demand of employers for trained workers, changes in the state's economy and labor markets, and continuous reviews of the effectiveness of panel training contracts. The updated plan shall be submitted to the Governor and the Legislature not later than January7 1 of each year. In carrying out this section, the panel shall review information in the following areas:

(1) Labor market information, including the state-local labor market information program in the Employment Development Department, the California Economic Strategy Panel, and other relevant regional or statewide initiatives and collaboratives.

(2) Evaluations of the effectiveness of training as measured by increased security of employment for workers and benefits to the California economy.

(3) The demand for training by industry, type of training, and size of employer.

(4) Changes in skills necessary to perform jobs, including changes in basic literacy skills.

(5) Changes in the demographics of the labor force and the population entering the labor market.

(6) Proposed expenditures by other agencies of federal Workforce Investment Act funds and other state and federal training and vocational education funds on eligible participants.

(b) Maintain a system to continuously monitor economic and other data required under this plan. If this data changes significantly during the life of the plan, the plan shall be amended by the panel. Each plan shall include all of the following:

(1) The panel's objectives with respect to the criteria and priorities specified in Section 10200 and the distribution of funds between new-hire training and retraining.

(2) (A) The identification of specific industries, with consideration of new and emerging industries such as clean technology, production and quality control techniques, and regions of the state where employment training funds would most benefit the state's economy and plans to encourage training in these areas, including specific standards and a system for expedited review of proposals that meet the standards.

(B) The panel shall develop a definition of clean technology that shall be used for purposes of this paragraph.

(3) A system for expedited review of proposals that are substantially similar with respect to employer needs, training curriculum, duration of training, and costs of training, in order to encourage the development of proposals that meet the needs identified in paragraph (2).

(4) The panel's goals, operational objectives, and strategies to meet the needs of small businesses, including, but not limited to, those small businesses with 100 or fewer employees, and to support target populations with consideration of veterans and other target populations, as identified. These strategies proposed by the panel may include, but not be limited to, pilot demonstration projects designed to identify potential barriers that small businesses and target populations may experience in accessing panel programs and workforce training resources.

(5) The research objectives of the panel that contribute to the effectiveness of this chapter in benefiting the economy of the state as a whole.

(6) A priority list of skills or occupations that are in such short supply that employers are choosing to not locate or expand their businesses in the state or are importing labor in response to these skills shortages.

(7) A review of the panel's efforts to coordinate with the California Workforce Investment Board and local boards to achieve an effective and coordinated approach in the delivery of the state's workforce resources.

(A) The panel will consider specific strategies to achieve this goal that include the development of initiatives to engage local workforce investment boards in enhancing the utilization of panel training resources by companies in priority sectors, special populations, and in geographically underserved areas of the state.

(B) Various approaches to foster greater program integration between workforce investment boards and the panel will also be considered, which may include marketing agreements, expanded technical assistance, modification of program regulations and policy, and expanded use of multiple employer contracts.

(c) Solicit proposals and write contracts on the basis of proposals made directly to it. Contracts for the purpose of providing employment training may be written with any of the following:

(1) An employer or group of employers.

(2) A training agency.

(3) A local workforce investment board with the approval of the appropriate local elected officials in the local workforce investment area.

(4) A grant recipient or administrative entity selected pursuant to the federal Workforce Investment Act of 1998, with the approval of the local workforce investment board and the appropriate local elected officials.

These contracts shall be in the form of fixed-fee performance contracts. Notwithstanding any provision of law to the contrary, contracts entered into pursuant to this chapter shall not be subject to competitive bidding procedures. Contracts for training may be written for a period not to exceed 24 months for the purpose of administration by the panel and the contracting employer or any group of employers acting jointly or any training agency for the purpose of providing employment training.

(d) Fund training projects that best meet the priorities identified annually. In doing so, the panel shall seek to facilitate the employment of the maximum number of eligible participants.

(e) Establish minimum standards for the consideration of proposals, which shall include, but not be limited to, evidence of labor market demand, the number of jobs available, the skill requirements for the

identified jobs, the projected cost per person trained, hired, and retained in employment, the wages paid successful trainees upon placement, and the curriculum for the training. No proposal shall be considered or approved that proposes training for employment covered by a collective bargaining agreement unless the signatory labor organization agrees in writing.

(f) Ensure the provision of adequate fiscal and accounting controls for, monitoring and auditing of, and other appropriate technical and administrative assistance to, projects funded by this chapter.

(g) Provide for evaluation of projects funded by this chapter. The evaluations shall assess the effectiveness of training previously funded by the panel to improve job security and stability for workers, and benefit participating employers and the state's economy, and shall compare the wages of trainees in the 12-month period prior to training as well as the 12-month period subsequent to completion of training, as reflected in the department's unemployment insurance tax records. Individual project evaluations shall contain a summary description of the project, the number of persons entering training, the number of persons completing training, the number of persons employed at the end of the project, the number of persons still employed three months after the end of the project, the wages paid, the total costs of the project, and the total reimbursement received from the Employment Training Fund.

(h) Report annually to the Legislature, by November 30, on projects operating during the previous state fiscal year. These annual reports shall provide separate summaries of all of the following:

(1) Projects completed during the year, including their individual and aggregate performance and cost.

(2) Projects not completed during the year, briefly describing each project and identifying approved contract amounts by contract and for this category as a whole, and identifying any projects in which funds are expected to be disencumbered.

(3) Projects terminated prior to completion and the reasons for the termination.

(4) A description of the amount, type, and effectiveness of literacy training funded by the panel.

(5) Results of complete project evaluations.

(6) A description of pilot projects, and the strategies that were identified through these projects, to increase access by small businesses to panel training contracts.

(7) A listing of training projects that were funded in high unemployment areas and a detailed description of the policies and procedures that were used to designate geographic regions and municipalities as high unemployment areas.

In addition, based upon its experience in administering job training projects, the panel shall include in these reports policy recommendations concerning the impact of job training and the panel's program on economic development, labor-management relations, employment security, and other related issues.

(i) Conduct ongoing reviews of panel policies with the goal of developing an improved process for developing, funding, and implementing panel contracts as described in this chapter.

(j) Expedite the processing of contracts for firms considering locating or expanding businesses in the state, in accordance with the priorities for employment training programs set forth in subdivision (b) of Section 10200.

(k) Coordinate and consult regularly with business groups and labor organizations, the California Workforce Investment Board, the State Department of Education, the Office of the Chancellor of the California Community Colleges, and the Employment Development Department.

(*l*) Adopt by regulation procedures for the conduct of panel business, including the scheduling and conduct of meetings, the review of proposals, the disclosure of contacts between panel members and parties at interest concerning particular proposals, contracts or cases before the panel or its staff, the awarding of contracts, the administration of contracts, and the payment of amounts due to contractors. All decisions by the panel shall be made by resolution of the panel and any adverse decision shall include a statement of the reason for the decision.

(m) Adopt regulations and procedures providing reasonable confidentiality for the proprietary information of employers seeking training funds from the panel if the public disclosure of that information would result in an unfair competitive disadvantage to the employer supplying the information. The panel may not withhold information from the public regarding its operations, procedures, and decisions that would otherwise be subject to disclosure under the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code).

(n) Review and comment on the budget and performance of any program, project, or activity funded by the panel utilizing funds collected pursuant to Section 976.6.

SEC. 6. Section 10209 of the Unemployment Insurance Code is amended to read:

10209. (a) Contracts shall only be made for training in job-related vocational skills that are necessary for participants to attain a new job or retain an existing job with definite career potential and long-term job security. The contracts for vocational skills training may include ancillary training for job-related basic and literacy skills training if the panel finds

that the training is necessary to achieve the objectives of the vocational training.

(b) The panel shall not approve any training proposal which facilitates the change in ownership of a business leading to the likelihood that an existing collective bargaining agreement would be declared void.

(c) To encourage a broad and equitable distribution of funds, the panel may require an employer who has previously received funds pursuant to this chapter for retraining of workers at a facility to contribute proportionately more to the cost of training in subsequent panel contracts for training of workers at the same facility.

(d) The panel may delegate to the executive director the authority to approve training contracts of up to one hundred thousand dollars ($100,000), provided the contracts meet the requirements of this chapter and the policies established by the panel, and provided that the panel regularly reviews the actions taken by the executive director pursuant to this subdivision.

(e) Payments shall be made in accordance with a performance contract under which partial payments may be made during training, a partial payment may be made on placement or retention of each trainee, and not less than 25 percent of the negotiated fee is withheld until the trainee has been retained in employment for 90 days after the end of training with a single employer, except for those occupations in which it is not customary for a worker to be employed 90 consecutive days with a single employer. In these latter cases, the panel may substitute a period similar to the probationary period customary to the occupation. The probationary period shall not be less than 500 work hours and shall be completed within 272 days of the completion of the training. In no case shall any payment be considered to have been earned until the trainee has been retained in employment for 90 days or the equivalent probationary period for an occupation in which it is not customary for a worker to be employed 90 consecutive days with a single employer.

(f) Contracts for new hire training shall require the contractor to provide the placement services necessary to ensure the trainees are placed in jobs for which they have been trained.

SEC. 7. Section 10212.2 of the Unemployment Insurance Code is amended to read:

10212.2. The panel shall prepare a budget covering necessary administrative costs of the panel. The budget shall not be subject to change by the director except as agreed to by the panel. In the event that agreement cannot be reached, the Secretary of the Labor and Workforce Development Agency shall attempt to reach a mutual agreement. In the event a mutual agreement cannot be reached, the final decision shall rest with the Governor.

SEC. 8. Section 10214 of the Unemployment Insurance Code is amended to read:

10214. To assist the panel and the Legislature in assessing the impact of this chapter over an extended period of time, the Employment Development Department shall develop and maintain a continuous employment, wage, and benefit history of unemployment insurance participants.

SEC. 9. Section 10214.5 of the Unemployment Insurance Code is amended to read:

10214.5. (a) The panel may allocate up to 15 percent of the annually available training funds for the purpose of funding special employment training projects that improve the skills and employment security of frontline workers, as defined in subdivision (a) of Section 10200. Notwithstanding any other provision of this chapter, participants in these projects are not required to meet the eligibility criteria set forth in paragraph (1) of subdivision (a) of Section 10200 or subdivision (c) of Section 10201.

(b) The panel shall, on an annual basis, identify industries and occupations that shall be priorities for funding under this section. Training shall be targeted to frontline workers who earn at least the state average hourly wage.

(c) The panel may waive the minimum wage provisions pursuant to subdivision (f) of Section 10201 for projects in regions of the state where the unemployment rate is significantly higher than the state average, and may waive the employment retentions provisions specified in subdivision (f) of Section 10209 and instead require that the trainee has been retained in employment for a minimum of 90 days out of 120 consecutive days after the end of training with no more than three employers.

(d) (1) The panel may allocate funds pursuant to subdivision (a) to increase the productivity and extended employment retention of workers in the state's major seasonal industries.

(2) In funding special employment training projects for this purpose, the panel may do all of the following:

(A) When the amount of the postretention wages of each trainee who has completed training exceeds the amount of wages that the trainee earned before and during training, waive the minimum wage requirements set forth in subdivision (f) of Section 10201.

(B) Waive the employment retention requirements set forth in subdivision (f) of Section 10209 and instead require that the trainee be retained in employment for not less than 500 hours within the 12-month period following the completion of the training.

(C) When the panel finds that the training is necessary to achieve the objectives of vocational training, waive the limitation on job-related

basic and literacy skills training set forth in subdivision (a) of Section 10209.

(3) For purposes of this section, "major seasonal industries" means eligible employers who satisfy all of the following requirements:

(A) Have a workforce comprised of at least 50 percent of workers whose employment period is necessarily cyclical, including, but not limited to, businesses directly involved in the harvesting, packing, or processing of goods or products.

(B) Have retained at least 50 percent of the same seasonal employees for at least one season of not less than 500 hours for the preceding 12-month period.

(C) Pay wages and provide benefits that exceed industry averages.

(e) The panel shall adopt minimum standards for consideration of proposals to be funded pursuant to this section.

(f) The panel may select contracts funded under this section based on competitive bidding.

(g) It is the intent of the Legislature in providing the authority for these projects that the panel allocate these funds in a manner consistent with the objectives of this chapter as provided in Section 10200.

SEC. 10. Section 10214.7 of the Unemployment Insurance Code is amended to read:

10214.7. The panel shall allocate funds available in the annual Budget Act for training programs designed for individuals who are eligible to receive benefits under Chapter 2 (commencing with Section 11200) of Part 3 of Division 9 of the Welfare and Institutions Code or who have received CalWORKs benefits within one year of the commencement of the training program.

(a) It is the intent of the Legislature in providing authority for these training programs 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 eligibility criteria for individuals trained under this section shall be employment with an eligible employer as defined in subdivision (a) of Section 10201 and:

(1) Receipt of CalWORKs benefits at the time training begins, or

(2) Receipt of CalWORKs benefits within one year of the time training commenced.

(c) For purposes of this section, the panel may waive, if necessary, any of the following:

(1) The employer eligibility criteria outlined in paragraph (1) of subdivision (a) of Section 10200.

(2) The minimum training wage requirements pursuant to subdivision (g) of Section 10201.

(3) The employment retention provisions specified in subdivision (f) of Section 10209 and instead require that the trainee has been retained in employment for a minimum of 90 days out of 120 consecutive days after the end of training with no more than three employers.

(d) Notwithstanding any other provisions of this chapter, the panel shall consider proposals that use innovative strategies and training options to enable current and prior CalWORKs recipients and eligibles to retain employment, including, but not limited to, projects that provide basic skills training.

(e) The panel shall adopt administrative procedures for approving and administering contracts under this section to expedite contracts, minimize barriers to completion of training, and facilitate the training of single trainees and small groups of trainees from one worksite.

SEC. 11. Section 10214.9 of the Unemployment Insurance Code is amended to read:

10214.9. (a) (1) The panel may fund 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.

SEC. 12. (a) Section 5.5 of this bill incorporates amendments to Section 10205 of the Unemployment Insurance Code proposed by both this bill and AB 2622. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2009, (2) each bill amends Section 10205 of the Unemployment Insurance Code, and (3) AB 3066 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after AB 2622, in which case Sections 5, 5.7, and 5.9 of this bill shall not become operative.

(b) Section 5.7 of this bill incorporates amendments to Section 10205 of the Unemployment Insurance Code proposed by both this bill and AB 3066. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2009, (2) each bill amends Section 10205 of the Unemployment Insurance Code, (3) AB 2622 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after AB 3066 in which case Sections 5, 5.5, and 5.9 of this bill shall not become operative.

(c) Section 5.9 of this bill incorporates amendments to Section 10205 of the Unemployment Insurance Code proposed by this bill, AB 2622, and AB 3066. It shall only become operative if (1) all three bills are enacted and become effective on or before January 1, 2009, (2) all three bills amend Section 10205 of the Unemployment Insurance Code, and (3) this bill is enacted after AB 2622 and AB 3066, in which case Sections 5, 5.5, and 5.7 of this bill shall not become operative.

CHAPTER 498

An act to add and repeal Section 87500.1 of the Government Code, relating to the Political Reform Act of 1974.

[Approved by Governor September 28, 2008. Filed with Secretary of State September 28, 2008.]

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

SECTION 1. The Legislature finds and declares the following:

(a) Existing law contained in the Political Reform Act of 1974 requires tens of thousands of public officials to complete and file statements of economic interests (Form 700) in paper form with thousands of filing officers and filing officials in public agencies statewide.

(b) Today, many similar business processes are handled electronically by private sector and public sector entities, saving these organizations millions of dollars in labor and costs of materials.

(c) E-commerce is a methodology with which the people of California are becoming increasingly familiar and comfortable. Electronic banking and e-filing of state and federal income tax returns are common.

(d) E-commerce is particularly well-suited to completing, filing, processing, and storing Form 700 data, in that it provides ease and convenience for the filer, as well as preserves the safety and security of the electronic information. Further, it permits significant operational efficiencies for public agency filing officers.

(e) Electronic filing of Form 700s provides a convenience for filers and aids their prompt compliance with the act. A pilot program for electronic filing of Form 700s is appropriate, however, because electronic filing is a new and underused procedure for local government agencies.

(f) The Local Agency Electronic Form 700 Pilot Project is established to serve as a practical model of a safe, secure, and efficient method of completing, filing, and retaining Form 700 data of local officials. The program will assist other local agencies in implementing their own electronic filing procedures in the future.

SEC. 2. Section 87500.1 is added to the Government Code, to read:

87500.1. (a) The Counties of Los Angeles, Merced, Orange, and Stanislaus may permit the electronic filing of a statement of economic interests required by Article 3 (commencing with Section 87300) in accordance with regulations adopted by the commission. Each participating county shall use the standard form for electronic filing found online, as required by the commission.

(b) A public official subject to Article 2 (commencing with Section 87200) shall not participate in the pilot program.

(c) A statement filed electronically must include an electronic transmission that is submitted under penalty of perjury and that conforms to subdivision (b) of Section 1633.11 of the Civil Code.

(d) (1) The filing officer shall issue to a person who electronically files his or her statement of economic interests or amendment electronic confirmation that notifies the filer that his or her statement of economic interests or amendment was received. The confirmation shall include the date and the time that the statement of economic interests was received by the filing officer and the method by which the filer may view and print the data received by the filing officer.

(2) A paper copy retained by the filer of a statement of economic interests or amendment that was electronically filed and the confirmation issued pursuant to paragraph (1) that shows that the filer timely filed his or her statement of economic interests or amendment shall create a

rebuttable presumption that the filer filed his or her statement of economic interests or amendment on time.

(e) The filing officer shall utilize a system that includes firewalls, data encryption, secure authentication, and all necessary hardware and software and industry best practices to ensure that the security and integrity of the data and information contained in the statement of economic interests are not jeopardized or compromised.

(f) The filing officer shall provide the public with a copy of an official's statement of economic interests upon request, in accordance with Section 81008. The paper copy of the electronically filed statement of economic interests shall be identical to the statement of economic interests published by the commission and shall include the date that the statement was filed.

(g) (1) The pilot program shall commence on or after January 1, 2009, and shall be completed by January 1, 2012. The pilot program shall include the reporting periods of 2008 through 2011. A county participating in the pilot program shall submit a report to the commission not later than July 1, 2011. The report shall include the following:

(A) A listing and estimate of associated operational efficiencies and related savings.

(B) A listing and estimate of associated costs from implementing and operating the pilot program.

(C) A listing of safety, security, or privacy issues encountered and explanation of how those issues were addressed.

(D) Available information relating to feedback from electronic filing participants.

(E) Any other relevant information on the implementation of the pilot program.

(2) The commission shall transmit the county reports received, as well as any comments on the reports, to the Legislative Analyst's Office not later than August 15, 2011. The Legislative Analyst's Office shall provide a report to the Legislature evaluating the pilot program not later than March 1, 2012.

(h) The commission, in conjunction with the Legislative Analyst's Office, may develop additional criteria for the report to be submitted to the commission by participating counties pursuant to paragraph (1) of subdivision (g).

(i) This section shall remain in effect until March 1, 2012, and as of that date is repealed, unless a later enacted statute, which is enacted before March 1, 2012, deletes or extends that date.

SEC. 3. The Legislature finds and declares that this bill furthers the purposes of the Political Reform Act of 1974 within the meaning of subdivision (a) of Section 81012 of the Government Code.

CHAPTER 499

An act to amend Sections 1680, 1721.5, 1725, 1741, 1750, 1750.1, 1752.1, 1765, 1771, and 1777 of, to amend and renumber Sections 1753.1, 1754, and 1770 of, to amend, renumber, add, and repeal Sections 1756 and 1757 of, to add Sections 1750.5, 1752.3, 1752.4, and 1753.4 to, to add and repeal Sections 1754.5, 1755, 1756.1, 1756.2, and 1758 of, to repeal Sections 1751.1, 1752, 1752.2, 1752.5, and 1753.5 of, and to repeal and add Sections 1750.2, 1750.3, 1750.4, 1751, 1752.6, and 1753 of, the Business and Professions Code, relating to dentistry.

[Approved by Governor September 28, 2008. Filed with Secretary of State September 28, 2008.]

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

SECTION 1. Section 1680 of the Business and Professions Code is amended to read:

1680. Unprofessional conduct by a person licensed under this chapter is defined as, but is not limited to, any one of the following:

(a) The obtaining of any fee by fraud or misrepresentation.

(b) The employment directly or indirectly of any student or suspended or unlicensed dentist to practice dentistry as defined in this chapter.

(c) The aiding or abetting of any unlicensed person to practice dentistry.

(d) The aiding or abetting of a licensed person to practice dentistry unlawfully.

(e) The committing of any act or acts of sexual abuse, misconduct, or relations with a patient that are substantially related to the practice of dentistry.

(f) The use of any false, assumed, or fictitious name, either as an individual, firm, corporation, or otherwise, or any name other than the name under which he or she is licensed to practice, in advertising or in any other manner indicating that he or she is practicing or will practice dentistry, except that name as is specified in a valid permit issued pursuant to Section 1701.5.

(g) The practice of accepting or receiving any commission or the rebating in any form or manner of fees for professional services, radiograms, prescriptions, or other services or articles supplied to patients.

(h) The making use by the licensee or any agent of the licensee of any advertising statements of a character tending to deceive or mislead the public.

(i) The advertising of either professional superiority or the advertising of performance of professional services in a superior manner. This subdivision shall not prohibit advertising permitted by subdivision (h) of Section 651.

(j) The employing or the making use of solicitors.

(k) The advertising in violation of Section 651.

(*l*) The advertising to guarantee any dental service, or to perform any dental operation painlessly. This subdivision shall not prohibit advertising permitted by Section 651.

(m) The violation of any of the provisions of law regulating the procurement, dispensing, or administration of dangerous drugs, as defined in Chapter 9 (commencing with Section 4000) or controlled substances, as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code.

(n) The violation of any of the provisions of this division.

(o) The permitting of any person to operate dental radiographic equipment who has not met the requirements of Section 1656.

(p) The clearly excessive prescribing or administering of drugs or treatment, or the clearly excessive use of diagnostic procedures, or the clearly excessive use of diagnostic or treatment facilities, as determined by the customary practice and standards of the dental profession.

Any person who violates this subdivision is guilty of a misdemeanor and shall be punished by a fine of not less than one hundred dollars ($100) or more than six hundred dollars ($600), or by imprisonment for a term of not less than 60 days or more than 180 days, or by both a fine and imprisonment.

(q) The use of threats or harassment against any patient or licensee for providing evidence in any possible or actual disciplinary action, or other legal action; or the discharge of an employee primarily based on the employee's attempt to comply with the provisions of this chapter or to aid in the compliance.

(r) Suspension or revocation of a license issued, or discipline imposed, by another state or territory on grounds that would be the basis of discipline in this state.

(s) The alteration of a patient's record with intent to deceive.

(t) Unsanitary or unsafe office conditions, as determined by the customary practice and standards of the dental profession.

(u) The abandonment of the patient by the licensee, without written notice to the patient that treatment is to be discontinued and before the patient has ample opportunity to secure the services of another dentist, registered dental hygienist, registered dental hygienist in alternative practice, or registered dental hygienist in extended functions and provided the health of the patient is not jeopardized.

(v) The willful misrepresentation of facts relating to a disciplinary action to the patients of a disciplined licensee.

(w) Use of fraud in the procurement of any license issued pursuant to this chapter.

(x) Any action or conduct that would have warranted the denial of the license.

(y) The aiding or abetting of a licensed dentist, dental assistant, registered dental assistant, registered dental assistant in extended functions, dental sedation assistant permitholder, orthodontic assistant permitholder, registered dental hygienist, registered dental hygienist in alternative practice, or registered dental hygienist in extended functions to practice dentistry in a negligent or incompetent manner.

(z) The failure to report to the board in writing within seven days any of the following: (1) the death of his or her patient during the performance of any dental or dental hygiene procedure; (2) the discovery of the death of a patient whose death is related to a dental or dental hygiene procedure performed by him or her; or (3) except for a scheduled hospitalization, the removal to a hospital or emergency center for medical treatment for a period exceeding 24 hours of any patient to whom oral conscious sedation, conscious sedation, or general anesthesia was administered, or any patient as a result of dental or dental hygiene treatment. With the exception of patients to whom oral conscious sedation, conscious sedation, or general anesthesia was administered, removal to a hospital or emergency center that is the normal or expected treatment for the underlying dental condition is not required to be reported. Upon receipt of a report pursuant to this subdivision the board may conduct an inspection of the dental office if the board finds that it is necessary. A dentist shall report to the board all deaths occurring in his or her practice with a copy sent to the Dental Hygiene Committee of California if the death was the result of treatment by a registered dental hygienist, registered dental hygienist in alternative practice, or registered dental hygienist in extended functions. A registered dental hygienist, registered dental hygienist in alternative practice, or registered dental hygienist in extended functions shall report to the Dental Hygiene Committee of California all deaths occurring as the result of dental hygiene treatment, and a copy of the notification shall be sent to the board.

(aa) Participating in or operating any group advertising and referral services that are in violation of Section 650.2.

(ab) The failure to use a fail-safe machine with an appropriate exhaust system in the administration of nitrous oxide. The board shall, by regulation, define what constitutes a fail-safe machine.

(ac) Engaging in the practice of dentistry with an expired license.

(ad) Except for good cause, the knowing failure to protect patients by failing to follow infection control guidelines of the board, thereby risking transmission of bloodborne infectious diseases from dentist, dental assistant, registered dental assistant, registered dental assistant in extended functions, dental sedation assistant permitholder, orthodontic assistant permitholder, registered dental hygienist, registered dental hygienist in alternative practice, or registered dental hygienist in extended functions to patient, from patient to patient, and from patient to dentist, dental assistant, registered dental assistant, registered dental assistant in extended functions, dental sedation assistant permitholder, orthodontic assistant permitholder, registered dental hygienist, registered dental hygienist in alternative practice, or registered dental hygienist in extended functions. In administering this subdivision, the board shall consider referencing the standards, regulations, and guidelines of the State Department of Public Health developed pursuant to Section 1250.11 of the Health and Safety Code and the standards, guidelines, and regulations pursuant to the California Occupational Safety and Health Act of 1973 (Part 1 (commencing with Section 6300) of Division 5 of the Labor Code) for preventing the transmission of HIV, hepatitis B, and other blood-borne pathogens in health care settings. The board shall review infection control guidelines, if necessary, on an annual basis and proposed changes shall be reviewed by the Dental Hygiene Committee of California to establish a consensus. The committee shall submit any recommended changes to the infection control guidelines for review to establish a consensus. As necessary, the board shall consult with the Medical Board of California, the California Board of Podiatric Medicine, the Board of Registered Nursing, and the Board of Vocational Nursing and Psychiatric Technicians, to encourage appropriate consistency in the implementation of this subdivision.

The board shall seek to ensure that all appropriate dental personnel are informed of the responsibility to follow infection control guidelines, and of the most recent scientifically recognized safeguards for minimizing the risk of transmission of bloodborne infectious diseases.

(ae) The utilization by a licensed dentist of any person to perform the functions of any registered dental assistant, registered dental assistant in extended functions, dental sedation assistant permitholder, orthodontic assistant permitholder, registered dental hygienist, registered dental

hygienist in alternative practice, or registered dental hygienist in extended functions who, at the time of initial employment, does not possess a current, valid license or permit to perform those functions.

(af) The prescribing, dispensing, or furnishing of dangerous drugs or devices, as defined in Section 4022, in violation of Section 2242.1.

SEC. 2. Section 1721.5 of the Business and Professions Code is amended to read:

1721.5. (a) All funds received by the Treasurer pursuant to Section 1725 shall be placed in the State Dental Assistant Fund for the purposes of administering this chapter as it relates to dental assistants, registered dental assistants, registered dental assistants in extended functions, dental sedation assistant permitholders, and orthodontic assistant permitholders. Expenditure of these funds shall be subject to appropriation by the Legislature in the annual Budget Act.

(b) On July 1, 2009, all moneys in the State Dental Auxiliary Fund, other than the moneys described in Section 1945, shall be transferred to the State Dental Assistant Fund. The board's authority to expend those funds, as appropriated in the 2008 Budget Act, shall continue in order to carry out the provisions of this chapter as they related to dental assistants licensed under this chapter for the 2008–09 fiscal year, including the payment of any encumbrances related to dental assistants licensed under this chapter incurred by the State Dental Auxiliary Fund.

SEC. 3. 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 and permitting of dental assistants 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). On and after January 1, 2010, the application fee for an original license shall not exceed fifty dollars ($50).

(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.

(c) The fee for application and for the issuance of an orthodontic assistant permit or a dental sedation assistant permit shall not exceed fifty dollars ($50).

(d) The fee for the written examination for an orthodontic assistant permit or a dental sedation assistant permit shall not exceed the actual cost of the examination.

(e) The fee for the written examination in law and ethics for a registered dental assistant shall not exceed the actual cost of the examination.

(f) The fee for examination for licensure as a registered dental assistant in extended functions shall not exceed the actual cost of the examination.

(g) The fee for examination for licensure as a registered dental hygienist shall not exceed the actual cost of the examination.

(h) 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.

(i) The fee for examination for licensure as a registered dental hygienist in extended functions shall not exceed the actual cost of the examination.

(j) 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.

(k) The biennial renewal fee for a registered dental assistant 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 for a registered dental assistant license, registered dental assistant in extended functions license, dental sedation assistant permit, or orthodontic assistant permit in an amount not to exceed eighty dollars ($80).

(*l*) The delinquency fee shall not exceed twenty-five dollars ($25) or one-half of the renewal fee, whichever is greater. Any delinquent license or permit may be restored only upon payment of all fees, including the delinquency fee.

(m) The fee for issuance of a duplicate registration, license, permit, 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).

(n) The fee for each curriculum review and site evaluation for educational programs for registered dental assistants that are not accredited by a board-approved agency, or the Chancellor's office of the California Community Colleges shall not exceed one thousand four hundred dollars ($1,400).

(o) The fee for review of each approval application for a course that is not accredited by a board-approved agency, or the Chancellor's office of the California Community Colleges shall not exceed three hundred dollars ($300).

(p) No fees or charges other than those listed in subdivisions (a) to (o), inclusive, above shall be levied by the board in connection with the licensure or permitting of dental assistants, registered dental assistant educational program site evaluations and course evaluations pursuant to this chapter.

(q) Fees fixed by the board pursuant to this section shall not be subject to the approval of the Office of Administrative Law.

(r) Fees collected pursuant to this section shall be deposited in the State Dental Assistant Fund.

SEC. 4. 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) "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.

(c) "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.

SEC. 5. Section 1750 of the Business and Professions Code, as amended by Section 6 of Chapter 588 of the Statutes of 2007, 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) The supervising licensed dentist shall be responsible for determining the competency of the dental assistant to perform allowable functions.

(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. 6. Section 1750 of the Business and Professions Code, as amended by Section 7 of Chapter 588 of the Statutes of 2007, 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 Section 1750.1 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.

(b) The supervising licensed dentist shall be responsible for determining the competency of the dental assistant to perform the basic supportive dental procedures, as authorized by Section 1750.1.

(c) The employer of a dental assistant shall be responsible for ensuring that the dental assistant who has been in continuous employment for 120 days or more, has already successfully completed, or successfully completes, all of the following within a year of the date of employment:

(1) A board-approved course in the Dental Practice Act.

(2) A board-approved course in infection control.

(3) A course in basic life support offered by an instructor approved by the American Red Cross or the American Heart Association, or any other course approved by the board as equivalent and that provides the student the opportunity to engage in hands-on simulated clinical scenarios.

(d) The employer of a dental assistant shall be responsible for ensuring that the dental assistant maintains certification in basic life support.

(e) This section shall become operative on January 1, 2010.

SEC. 7. Section 1750.1 of the Business and Professions Code is amended to read:

1750.1. (a) A dental assistant may perform the following duties under the general supervision of a supervising licensed dentist:

(1) Extra-oral duties or procedures specified by the supervising licensed dentist, provided that these duties or procedures meet the definition of a basic supportive procedure specified in Section 1750.

(2) Operate dental radiography equipment for the purpose of oral radiography if the dental assistant has complied with the requirements of Section 1656.

(3) Perform intraoral and extraoral photography.

(b) A dental assistant may perform the following duties under the direct supervision of a supervising licensed dentist:

(1) Apply nonaerosol and noncaustic topical agents.

(2) Apply topical fluoride.

(3) Take intraoral impressions for all nonprosthodontic appliances.

(4) Take facebow transfers and bite registrations.

(5) Place and remove rubber dams or other isolation devices.

(6) Place, wedge, and remove matrices for restorative procedures.

(7) Remove post-extraction dressings after inspection of the surgical site by the supervising licensed dentist.

(8) Perform measurements for the purposes of orthodontic treatment.

(9) Cure restorative or orthodontic materials in operative site with a light-curing device.

(10) Examine orthodontic appliances.

(11) Place and remove orthodontic separators.

(12) Remove ligature ties and archwires.

(13) After adjustment by the dentist, examine and seat removable orthodontic appliances and deliver care instructions to the patient.

(14) Remove periodontal dressings.

(15) Remove sutures after inspection of the site by the dentist.

(16) Place patient monitoring sensors.

(17) Monitor patient sedation, limited to 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 supervising licensed dentist who shall be at the patient's chairside during this procedure.

(18) Assist in the administration of nitrous oxide when used for analgesia or sedation. A dental assistant shall not start the administration of the gases and shall not adjust the flow of the gases unless instructed to do so by the supervising licensed dentist who shall be present at the patient's chairside during the implementation of these instructions. This paragraph shall not be construed to prevent any person from taking appropriate action in the event of a medical emergency.

(c) Under the supervision of a registered dental hygienist in alternative practice, a dental assistant may perform intraoral retraction and suctioning.

(d) The board may specify additional allowable duties by regulation.

(e) The duties of a dental assistant or a dental assistant holding a permit in orthodontic assisting or in dental sedation do not include any of the following procedures unless specifically allowed by law:

(1) Diagnosis and comprehensive treatment planning.

(2) Placing, finishing, or removing permanent restorations.

(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 by law.

(f) The duties of a dental assistant are defined in subdivision (a) of Section 1750 and do not include any duty or procedure that only an orthodontic assistant permitholder, dental sedation assistant permitholder, registered dental assistant, registered dental assistant in extended functions, registered dental hygienist, or registered dental hygienist in alternative practice is allowed to perform.

(g) This section shall become operative on January 1, 2010.

SEC. 8. Section 1750.2 of the Business and Professions Code is repealed.

SEC. 9. Section 1750.2 is added to the Business and Professions Code, to read:

1750.2. (a) On and after January 1, 2010, the board may issue an orthodontic assistant permit to a person who files a completed application including a fee and provides evidence, satisfactory to the board, of all of the following eligibility requirements:

(1) Completion of at least 12 months of work experience as a dental assistant.

(2) Successful completion of a board-approved course in the Dental Practice Act and a board-approved, course in infection control.

(3) Successful completion of a course in basic life support offered by an instructor approved by the American Red Cross or the American Heart Association, or any other course approved by the board as equivalent.

(4) Successful completion of a board-approved orthodontic assistant course, which may commence after the completion of six months of work experience as a dental assistant.

(5) Passage of a written examination administered by the board after completion of all of the other requirements of this subdivision. The written examination shall encompass the knowledge, skills, and abilities necessary to competently perform the duties specified in Section 1750.3.

(b) A person who holds an orthodontic assistant permit pursuant to this section shall be subject to the same continuing education requirements for registered dental assistants as established by the board pursuant to Section 1645 and the renewal requirements of Article 6 (commencing with Section 1715).

SEC. 10. Section 1750.3 of the Business and Professions Code is repealed.

SEC. 11. Section 1750.3 is added to the Business and Professions Code, to read:

1750.3. A person holding an orthodontic assistant permit pursuant to Section 1750.2 may perform the following duties under the direct supervision of a licensed dentist:

(a) All duties that a dental assistant is allowed to perform.

(b) Prepare teeth for bonding, and select, preposition, and cure orthodontic brackets after their position has been approved by the supervising licensed dentist.

(c) Remove only orthodontic brackets and attachments with removal of the bonding material by the supervising licensed dentist.

(d) Size, fit, and cement orthodontic bands.

(e) Remove orthodontic bands and remove excess cement from supragingival surfaces of teeth with a hand instrument.

(f) Place and ligate archwires.

(g) Remove excess cement with an ultrasonic scaler from supragingival surfaces of teeth undergoing orthodontic treatment.

(h) Any additional duties that the board may prescribe by regulation.

SEC. 12. Section 1750.4 of the Business and Professions Code is repealed.

SEC. 13. Section 1750.4 is added to the Business and Professions Code, to read:

1750.4. (a) On and after January 1, 2010, the board may issue a dental sedation assistant permit to a person who files a completed application including a fee and provides evidence, satisfactory to the board, of all of the following eligibility requirements:

(1) Completion of at least 12 months of work experience as a dental assistant.

(2) Successful completion of a board-approved course in the Dental Practice Act and a board-approved, course in infection control.

(3) Successful completion of a course in basic life support offered by an instructor approved by the American Red Cross or the American Heart Association, or any other course approved by the board as equivalent.

(4) Successful completion of a board-approved dental sedation assistant course, which may commence after the completion of six months of work experience as a dental assistant.

(5) Passage of a written examination administered by the board after completion of all of the other requirements of this subdivision. The written examination shall encompass the knowledge, skills, and abilities necessary to competently perform the duties specified in Section 1750.5.

(b) A person who holds a permit 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. 14. Section 1750.5 is added to the Business and Professions Code, to read:

1750.5. A person holding a dental sedation assistant permit pursuant to Section 1750.4 may perform the following duties under the direct supervision of a licensed dentist or other licensed health care professional authorized to administer conscious sedation or general anesthesia in the dental office:

(a) All duties that a dental assistant is allowed to perform.

(b) Monitor patients undergoing conscious sedation or general anesthesia utilizing data from noninvasive instrumentation such as pulse oximeters, electrocardiograms, capnography, blood pressure, pulse, and respiration rate monitoring devices. Evaluation of the condition of a sedated patient shall remain the responsibility of the dentist or other

licensed health care professional authorized to administer conscious sedation or general anesthesia, who shall be at the patient's chairside while conscious sedation or general anesthesia is being administered.

(c) Drug identification and draw, limited to identification of appropriate medications, ampule and vial preparation, and withdrawing drugs of correct amount as verified by the supervising licensed dentist.

(d) Add drugs, medications, and fluids to intravenous lines using a syringe, provided that a supervising licensed dentist is present at the patient's chairside, limited to determining patency of intravenous line, selection of injection port, syringe insertion into injection port, occlusion of intravenous line and blood aspiration, line release and injection of drugs for appropriate time interval. The exception to this duty is that the initial dose of a drug or medication shall be administered by the supervising licensed dentist.

(e) Removal of intravenous lines.

(f) Any additional duties that the board may prescribe by regulation.

(g) The duties listed in subdivisions (b) to (e), inclusive, may not be performed in any setting other than a dental office or dental clinic.

SEC. 15. Section 1751 of the Business and Professions Code, as amended by Section 13 of Chapter 588 of the Statutes of 2007, is repealed.

SEC. 16. Section 1751 is added to the Business and Professions Code, to read:

1751. (a) At least once every seven years, the board shall review the allowable duties for dental assistants, registered dental assistants, registered dental assistants in extended functions, dental sedation assistant permitholders, and orthodontic assistant permitholders, the supervision level for these categories, and the settings under which these duties may be performed, and shall update the regulations as necessary to keep them current with the state of the dental practice.

(b) This section shall become operative on January 1, 2010.

SEC. 17. Section 1751.1 of the Business and Professions Code is repealed.

SEC. 18. Section 1752 of the Business and Professions Code, as amended by Section 14 of Chapter 588 of the Statutes of 2007, is repealed.

SEC. 19. Section 1752 of the Business and Professions Code, as amended by Section 15 of Chapter 588 of the Statutes of 2007, is repealed.

SEC. 20. Section 1752.1 of the Business and Professions Code is amended to read:

1752.1. (a) The board may license as a registered dental assistant a person who files an application and submits written evidence, satisfactory to the board, of one of the following eligibility requirements:

(1) Graduation from an educational program in registered dental assisting approved by the board, and satisfactory performance on a written and practical examination administered by the board.

(2) For individuals applying prior to January 1, 2010, evidence of completion of satisfactory work experience of at least 12 months as a dental assistant in California or another state and satisfactory performance on a written and practical examination administered by the board.

(3) For individuals applying on or after January 1, 2010, evidence of completion of satisfactory work experience of at least 15 months as a dental assistant in California or another state and satisfactory performance on a written and practical examination administered by the board.

(b) For purposes of this section, "satisfactory work experience" means performance of the duties specified in Section 1750.1 in a competent manner as determined by the employing dentist, who shall certify to such satisfactory work experience in the application.

(c) The board shall give credit toward the work experience referred to in this section 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. 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.

(d) 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.

(e) In addition to the requirements specified in subdivisions (a) and (d), individuals applying for registered dental assistant licensure on or after January 1, 2010, shall demonstrate satisfactory performance on a

written examination in law and ethics administered by the board and shall provide written evidence of successful completion within five years prior to application of all of the following:

(1) A board-approved course in the Dental Practice Act.

(2) A board-approved course in infection control.

(3) A course in basic life support offered by an instructor approved by the American Red Cross or the American Heart Association, or any other course approved by the board as equivalent.

(f) A registered dental assistant may apply for an orthodontic assistant permit or a dental sedation assistant permit, or both, by submitting written evidence of the following:

(1) Successful completion of a board-approved orthodontic assistant or dental sedation assistant course, as applicable.

(2) Passage of a written examination administered by the board that shall encompass the knowledge, skills, and abilities necessary to competently perform the duties of the particular permit.

(g) A registered dental assistant with permits in either orthodontic assisting or dental sedation assisting shall be referred to as an "RDA with orthodontic assistant permit," or "RDA with dental sedation assistant permit," as applicable. These terms shall be used for reference purposes only and do not create additional categories of licensure.

(h) Completion of the continuing education requirements established by the board pursuant to Section 1645 by a registered dental assistant who also holds a permit as an orthodontic assistant or dental sedation assistant shall fulfill the continuing education requirements for the permit or permits.

SEC. 21. Section 1752.2 of the Business and Professions Code is repealed.

SEC. 22. Section 1752.3 is added to the Business and Professions Code, to read:

1752.3. (a) On and after January 1, 2010, the written examination for registered dental assistant licensure required by Section 1752.1 shall comply with Section 139.

(b) On and after January 1, 2010, the practical examination for registered dental assistant licensure required by Section 1752.1 shall consist of three of the procedures described in paragraphs (1) to (4), inclusive. The specific procedures shall be assigned by a registered dental assistant examination committee appointed by the board and shall be graded by examiners appointed by the board. The procedures shall be performed on a fully articulated maxillary and mandibular typodont secured with a bench clamp. Each applicant shall furnish the required materials necessary to complete the examination.

(1) Place a base or liner.

(2) Place, adjust, and finish a direct provisional restoration.

(3) Fabricate and adjust an indirect provisional restoration.

(4) Cement an indirect provisional restoration.

SEC. 23. Section 1752.4 is added to the Business and Professions Code, to read:

1752.4. (a) A registered dental assistant may perform all of the following duties:

(1) All duties that a dental assistant is allowed to perform.

(2) Mouth-mirror inspections of the oral cavity, to include charting of obvious lesions, existing restorations, and missing teeth.

(3) Apply and activate bleaching agents using a nonlaser light-curing device.

(4) Use of automated caries detection devices and materials to gather information for diagnosis by the dentist.

(5) Obtain intraoral images for computer-aided design (CAD), milled restorations.

(6) Pulp vitality testing and recording of findings.

(7) Place bases, liners, and bonding agents.

(8) Chemically prepare teeth for bonding.

(9) Place, adjust, and finish direct provisional restorations.

(10) Fabricate, adjust, cement, and remove indirect provisional restorations, including stainless steel crowns when used as a provisional restoration.

(11) Place post-extraction dressings after inspection of the surgical site by the supervising licensed dentist.

(12) Place periodontal dressings.

(13) Dry endodontically treated canals using absorbent paper points.

(14) Adjust dentures extra-orally.

(15) Remove excess cement from surfaces of teeth with a hand instrument.

(16) Polish coronal surfaces of the teeth.

(17) Place ligature ties and archwires.

(18) Remove orthodontic bands.

(19) All duties that the board may prescribe by regulation.

(b) A registered dental assistant may only perform the following additional duties if he or she has completed a board-approved registered dental assistant educational program in those duties, or if he or she has provided evidence, satisfactory to the board, of having completed a board-approved course in those duties.

(1) Remove excess cement with an ultrasonic scaler from supragingival surfaces of teeth undergoing orthodontic treatment.

(2) The allowable duties of an orthodontic assistant permitholder as specified in Section 1750.3. A registered dental assistant shall not be

required to complete further instruction in the duties of placing ligature ties and archwires, removing orthodontic bands, and removing excess cement from tooth surfaces with a hand instrument.

(3) The allowable duties of a dental sedation assistant permitholder as specified in Section 1750.5.

(4) The application of pit and fissure sealants.

(c) Except as provided in Section 1777, the supervising licensed dentist shall be responsible for determining whether each authorized procedure performed by a registered dental assistant should be performed under general or direct supervision.

(d) This section shall become operative on January 1, 2010.

SEC. 24. Section 1752.5 of the Business and Professions Code is repealed.

SEC. 25. Section 1752.6 of the Business and Professions Code is repealed.

SEC. 26. Section 1752.6 is added to the Business and Professions Code, to read:

1752.6. A registered dental assistant licensed on and after January 1, 2010, shall provide evidence of successful completion of a board-approved course in the application of pit and fissure sealants prior to the first expiration of his or her license that requires the completion of continuing education as a condition of renewal. The license of a registered dental assistant who does not provide evidence of successful completion of that course shall not be renewed until evidence of course completion is provided.

SEC. 27. Section 1753 of the Business and Professions Code is repealed.

SEC. 28. Section 1753 is added to the Business and Professions Code, to read:

1753. (a) On and after January 1, 2010, the board may license as a registered dental assistant in extended functions a person who submits written evidence, satisfactory to the board, of all of the following eligibility requirements:

(1) Current licensure as a registered dental assistant or completion of the requirements for licensure as a registered dental assistant.

(2) Successful completion of a board-approved course in the application of pit and fissure sealants.

(3) 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 1753.5.

(B) An extended functions postsecondary program approved by the board to teach the duties that registered dental assistants in extended functions were allowed to perform pursuant to board regulations prior

to January 1, 2010, and a course approved by the board in the procedures specified in paragraphs (1), (2), (5), and (7) to (11), inclusive, of subdivision (b) of Section 1753.5.

(4) Passage of a written examination and a clinical or practical examination administered by the board. The board shall designate whether the written examination shall be administered by the board or by the board-approved extended functions program.

(b) A registered dental assistant in extended functions may apply for an orthodontic assistant permit or a dental sedation assistant permit, or both, by providing written evidence of the following:

(1) Successful completion of a board-approved orthodontic assistant or dental sedation assistant course, as applicable.

(2) Passage of a written examination administered by the board that shall encompass the knowledge, skills, and abilities necessary to competently perform the duties of the particular permit.

(c) A registered dental assistant in extended functions with permits in either orthodontic assisting or dental sedation assisting shall be referred to as an "RDAEF with orthodontic assistant permit," or "RDAEF with dental sedation assistant permit," as applicable. These terms shall be used for reference purposes only and do not create additional categories of licensure.

(d) Completion of the continuing education requirements established by the board pursuant to Section 1645 by a registered dental assistant in extended functions who also holds a permit as an orthodontic assistant or dental sedation assistant shall fulfill the continuing education requirement for such permit or permits.

SEC. 29. Section 1753.1 of the Business and Professions Code is amended and renumbered to read:

1753.5. (a) A registered dental assistant in extended functions licensed on or after January 1, 2010, is authorized to perform all duties and procedures that a registered dental assistant is authorized to perform as specified in and limited by Section 1752.4, and those duties that the board may prescribe by regulation.

(b) A registered dental assistant in extended functions licensed on or after January 1, 2010, 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) Conduct preliminary evaluation of the patient's oral health, including, but not limited to, charting, intraoral and extra-oral evaluation of soft tissue, classifying occlusion, and myofunctional evaluation.

(2) Perform oral health assessments in school-based, community health project settings under the direction of a dentist, registered dental hygienist, or registered dental hygienist in alternative practice.

(3) Cord retraction of gingiva for impression procedures.
(4) Size and fit endodontic master points and accessory points.
(5) Cement endodontic master points and accessory points.
(6) Take final impressions for permanent indirect restorations.
(7) Take final impressions for tooth-borne removable prosthesis.
(8) Polish and contour existing amalgam restorations.
(9) Place, contour, finish, and adjust all direct restorations.
(10) Adjust and cement permanent indirect restorations.
(11) Other procedures authorized by regulations adopted by the board.

(c) All procedures required to be performed under direct supervision shall be checked and approved by the supervising licensed dentist prior to the patient's dismissal from the office.

SEC. 30. Section 1753.4 is added to the Business and Professions Code, to read:

1753.4. On and after January 1, 2010, each applicant for licensure as a registered dental assistant in extended functions shall successfully complete an examination consisting of the procedures described in subdivisions (a) and (b). On and after January 1, 2010, each person who holds a current and active registered dental assistant in extended functions license issued prior to January 1, 2010, who wishes to perform the duties specified in paragraphs (1), (2), (5), and (7) to (11), inclusive, of subdivision (b) of Section 1753.5, shall successfully complete an examination consisting of the procedures described in subdivision (b). The specific procedures shall be assigned by a registered dental assistant in extended functions examination committee appointed by the board and shall be graded by examiners appointed by the board. Each applicant shall furnish the required materials necessary to complete the examination.

(a) Successful completion of the following two procedures on a patient provided by the applicant. The prepared tooth, prior to preparation, shall have had mesial and distal contact. The preparation performed shall have margins at or below the free gingival crest and shall be one of the following: $\frac{7}{8}$ crown, $\frac{3}{4}$ crown, or full crown, including porcelain fused to metal. Alginate impression materials alone shall not be acceptable:

(1) Cord retraction of gingiva for impression procedures.
(2) Take a final impression for a permanent indirect restoration.

(b) Successful completion of two of the following procedures on a simulated patient head mounted in appropriate position and accommodating an articulated typodont in an enclosed intraoral environment, or mounted on a dental chair in a dental operatory:

(1) Place, condense, and carve an amalgam restoration.
(2) Place and contour a nonmetallic direct restoration.
(3) Polish and contour an existing amalgam restoration.

SEC. 31. Section 1753.5 of the Business and Professions Code is repealed.

SEC. 32. Section 1754 of the Business and Professions Code is amended and renumbered to read:

1752.4. (a) By September 15, 1993, the board, upon recommendation of the board and 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 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 allowable duties of 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) 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.

(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. 33. Section 1754.5 is added to the Business and Professions Code, to read:

1754.5. As used in this article, the following definitions shall apply:

(a) "Didactic instruction" means lectures, demonstrations, and other instruction without active participation by students. The approved provider or its designee may provide didactic instruction via electronic media, home study materials, or live lecture methodology if the provider has submitted that content for approval.

(b) "Laboratory instruction" means instruction in which students receive supervised experience performing procedures using study models, mannequins, or other simulation methods. There shall be at least one instructor for every 14 students who are simultaneously engaged in laboratory instruction.

(c) "Preclinical instruction" means instruction in which students receive supervised experience performing procedures on students, faculty, or staff members. There shall be at least one instructor for every six students who are simultaneously engaged in preclinical instruction.

(d) "Clinical instruction" means instruction in which students receive supervised experience in performing procedures in a clinical setting on patients. Clinical instruction shall only be performed upon successful demonstration and evaluation of preclinical skills. There shall be at least

one instructor for every six students who are simultaneously engaged in clinical instruction.

(E) 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. 34. Section 1755 is added to the Business and Professions Code, to read:

1755. (a) (1) The criteria in subdivisions (b) to (h), inclusive, shall be met by a dental assisting program or course and all orthodontic assisting and dental sedation assisting permit programs or courses to secure and maintain approval by the board as provided in this article.

(2) The board may approve, provisionally approve, or deny approval of any program or course.

(3) Program and course records shall be subject to inspection by the board at any time.

(4) The board may withdraw approval at any time that it determines that a program or course does not meet the requirements established in this section or any other requirements of law.

(5) All programs and courses shall be established at the postsecondary educational level or deemed equivalent thereto by the board.

(b) The program or course director shall possess a valid, active, and current license issued by the board. The program or course director shall actively participate in and be responsible for the day-to-day administration of the program or course, including the following requirements:

(1) Maintaining for a period of not less than five years copies of curricula, program outlines, objectives, and grading criteria, and copies of faculty credentials, licenses, and certifications, and individual student records, including those necessary to establish satisfactory completion of the program or course.

(2) Informing the board of any major change to the program or course content, physical facilities, or faculty, within 10 days of the change.

(3) Ensuring that all staff and faculty involved in clinical instruction meet the requirements set forth in this article.

(c) No faculty member shall instruct in any procedure that he or she is not licensed or permitted to perform. Each faculty member shall have been licensed or permitted for a minimum of two years and possess experience in the subject matter he or she is teaching.

(d) A certificate or other evidence of completion shall be issued to each student who successfully completes the program or course and shall include the student's name, the name of the program or course, the total number of program or course hours, the date of completion, and the signature of the program or course director or his or her designee.

(e) Facilities and class scheduling shall provide each student with sufficient opportunity, with instructor supervision, to develop minimum competency in all duties for which the program or course is approved to instruct.

(1) The location and number of general use equipment and armamentaria shall ensure that each student has the access necessary to develop minimum competency in all of the duties for which the program or course is approved to instruct. The program or course provider may either provide the specified equipment and supplies or require that the student provide them. Nothing in this section shall preclude a dental office that contains the equipment required by this section from serving as a location for laboratory instruction.

(2) The minimum requirement for armamentaria includes infection control materials specified by the Division of Occupational Safety and Health and the regulations of the board, protective eyewear, mask, and gloves for each student and faculty member, and appropriate eye protection for each piece of equipment.

(3) Clinical instruction shall be of sufficient duration to allow the procedures to be performed to clinical proficiency. Operatories shall be sufficient in number to allow a ratio of at least one operatory for every five students who are simultaneously engaged in clinical instruction.

(A) Each operatory shall contain functional equipment, including a power-operated chair for treating patients in a supine position, operator and assistant stools, air-water syringe, adjustable light, oral evacuation equipment, work surface, and adjacent hand-washing sink.

(B) Each operatory shall be of sufficient size to simultaneously accommodate one student, one instructor, and one patient.

(f) The program or course shall establish written clinical and laboratory protocols to ensure adequate asepsis, infection, and hazard control and disposal of hazardous wastes, that comply with the board's regulations and other federal, state, and local requirements. The program or course shall provide these protocols to all students, faculty, and appropriate staff to ensure compliance with these protocols. Adequate space shall be provided for preparing and sterilizing all armamentarium. All reusable armamentarium shall be sterilized and nonreusable items properly disposed.

(g) A written policy on managing emergency situations shall be made available to all students, faculty, and staff. All faculty and staff involved in the direct provision of patient care shall be certified in basic life support procedures, including cardiopulmonary resuscitation. Recertification intervals may not exceed two years. The program or course director shall ensure and document compliance by faculty and staff. A program or course shall not be required to ensure that students

complete instruction in basic life support prior to performing procedures on patients.

(h) A detailed program or course outline shall clearly state curriculum subject matter and specific instruction hours in the individual areas of didactic, laboratory, and clinical instruction. General program or course objectives and specific instructional unit objectives shall be stated in writing, and shall include theoretical aspects of each subject as well as practical application. Objective evaluation criteria shall be used for measuring student progress toward attainment of specific program or course objectives. Students shall be provided with all of the following:

(1) Specific unit objectives and the evaluation criteria that will be used for all aspects of the curriculum including written, practical, and clinical examinations.

(2) Standards of performance that state the minimum number of satisfactory performances that are required for each procedure.

(3) Standards of performance for laboratory, preclinical, and clinical functions, those steps that constitute a critical error and would cause the student to fail the procedure, and a description of each of the grades that may be assessed for each procedure.

(i) (1) If an extramural clinical facility is utilized, students shall, as part of an extramural organized program of instruction, be provided with planned, supervised clinical instruction. Laboratory and preclinical instruction shall be performed under the direct supervision of program or course faculty and shall not be provided in extramural facilities.

(2) The program or course director, or a designated faculty member, shall be responsible for selecting extramural clinical sites and evaluating student competence in performing procedures both before and after the clinical assignment.

(3) The program or course director, or a designated faculty member, shall orient dentists who intend to provide extramural clinical facilities prior to the student assignment. Orientation shall include the objectives of the program or course, the student's preparation for the clinical assignment, and a review of procedures and criteria to be used by the dentist in evaluating the student during the assignment. The program or course faculty and extramural clinic personnel shall use the same objective evaluation criteria.

(4) There shall be a written contract of affiliation with each extramural clinical facility, which shall describe the settings in which the clinical training will be received, and affirm that the dentist and clinic personnel acknowledge the legal scope of duties and infection control requirements, that the clinical facility has the necessary equipment and armamentaria appropriate for the procedures to be performed, and that the equipment and armamentaria are in safe operating condition.

(j) Any additional requirements that the board may prescribe by regulation.

(k) 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. 35. Section 1756 of the Business and Professions Code is amended and renumbered to read:

1753.1. (a) The board may license as a registered dental assistant in extended functions a person who satisfies all of the following eligibility 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 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. 36. Section 1756 is added to the Business and Professions Code, to read:

1756. In addition to the requirements of Section 1755, the following criteria shall be met by a course in infection control, as required in Sections 1750, 1750.2, 1750.4, and 1752.1, to secure and maintain approval by the board:

(a) Adequate provisions for the supervision and operation of the course in infection control shall be made. Notwithstanding Section 1755, faculty shall not be required to be licensed by the board, but faculty shall have experience in the instruction of the infection control regulations and guidelines issued by the board and the Division of Occupational Safety and Health (Cal-DOSH). In addition to the requirements of Section 1755, all faculty responsible for clinical evaluation shall have completed a two-hour methodology course in clinical evaluation.

(b) A course in infection control shall be of sufficient duration for the student to develop minimum competency in all aspects of infection control regulations and guidelines issued by the board and Cal-DOSH, but in no event less than eight hours, including at least four hours of didactic instruction, at least two hours of laboratory or preclinical instruction, and at least two hours of clinical instruction. Preclinical instruction shall utilize instruments, surfaces, and situations where contamination is simulated, without actual contamination, from bloodborne and other pathogens being present.

(c) The minimum requirements for equipment and armamentaria shall include personal protective equipment, FDA-approved sterilizer,

ultrasonic unit or instrument processing device, sharps container, selection of instruments, equipment, and armamentaria that are necessary to instruct or demonstrate proper hazardous waste disposal, consistent with Cal-DOSH regulations, local, state, and federal mandates, and all other armamentaria required to instruct or properly demonstrate the subjects described in the course content.

(d) Areas of instruction shall include, at a minimum, the instruction specified in subdivisions (e) and (f).

(e) Didactic instruction shall include, at a minimum, the following as they relate to the infection control regulations of the board and of Cal-DOSH:

(1) Basic dental science and microbiology as they relate to infection control in dentistry.

(2) Legal and ethical aspects of infection control procedures.

(3) Terms and protocols specified in the regulations of the board regarding the minimum standards for infection control.

(4) Principles of modes of disease transmission and prevention.

(5) Principles, techniques, and protocols of hand hygiene, personal protective equipment, surface barriers and disinfection, sterilization, sanitation, and hazardous chemicals associated with infection control.

(6) Principles and protocols of sterilizer monitoring and the proper loading, unloading, storage, and transportation of instruments to work area.

(7) Principles and protocols associated with sharps management.

(8) Principles and protocols of infection control for laboratory areas.

(9) Principles and protocols of waterline maintenance.

(10) Principles and protocols of regulated and nonregulated waste management.

(11) Principles and protocols related to injury and illness prevention, hazard communication, general office safety, exposure control, postexposure requirements, and monitoring systems for radiation safety and sterilization systems.

(f) Preclinical instruction shall include three experiences in the following areas, with one used for a practical examination. Clinical instruction shall include two experiences in the following areas, with one used for a clinical examination:

(1) Apply hand cleansing products and perform hand cleansing techniques and protocols.

(2) Apply, remove, and dispose of patient treatment gloves, utility gloves, overgloves, protective eyewear, masks, and clinical attire.

(3) Apply the appropriate techniques and protocols for the preparation, sterilization, and storage of instruments including, at a minimum, application of personal protective equipment, precleaning, ultrasonic

cleaning, rinsing, sterilization wrapping, internal or external process indicators, labeling, sterilization, drying, storage, and delivery to work area.

(4) Preclean and disinfect contaminated operatory surfaces and devices, and properly use, place, and remove surface barriers.

(5) Maintain sterilizer including, at a minimum, proper instrument loading and unloading, operation cycle, spore testing, and handling and disposal of sterilization chemicals.

(6) Apply work practice controls as they relate to the following classification of sharps: anesthetic needles or syringes, orthodontic wires, and broken glass.

(7) Apply infection control protocol for the following laboratory devices: impressions, bite registrations, and prosthetic appliances.

(8) Perform waterline maintenance, including use of water tests and purging of waterlines.

(g) Each student shall pass a written examination that reflects the curriculum content, which may be administered at intervals throughout the course as determined by the course director.

(h) 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. 37. Section 1756.1 is added to the Business and Professions Code, to read:

1756.1. In addition to the requirements of Section 1755, the following criteria shall be met by a orthodontic assistant permit course to secure and maintain approval by the board. The board may approve orthodontic assistant permit courses prior to January 1, 2010, and recognize the completion of orthodontic assistant permit courses by students prior to January 1, 2010, but the board may not issue an orthodontic assistant permit to students graduating from orthodontic assistant permit courses until on or after January 1, 2010.

(a) The course shall be of sufficient duration for the student to develop minimum competence in all of the duties that orthodontic assistant permitholders are authorized to perform, but in no event less than 84 hours, including at least 24 hours of didactic instruction, at least 28 hours of laboratory instruction, and at least 32 hours of clinical instruction.

(b) The minimum requirements for equipment and armamentaria shall include banded or bonded orthodontic typodonts in the ratio of at least one for every four students, bench mount or dental chair mounted mannequin head, curing light, regular typodont with full dentition and soft gingiva in the ratio of at least one for every four students, and a selection of orthodontic instruments and adjunct material for all of the

procedures that orthodontic assistant permitholders are authorized to perform.

(c) All faculty responsible for clinical evaluation shall have completed a two-hour methodology course in clinical evaluation prior to conducting clinical evaluations of students.

(d) Areas of instruction shall include, at a minimum, the instruction specified in subdivisions (e) to (j), inclusive. In addition to the requirements of those subdivisions, instruction shall include basic background information on orthodontic practice, including orthodontic treatment review, charting, patient education, and legal and infection control requirements as they apply to orthodontic practice.

(e) The following requirements shall be met for sizing, fitting, cementing, and removing orthodontic bands:

(1) Didactic instruction shall include the following:

(A) Theory of band positioning and tooth movement.

(B) Characteristics of band material including malleability, stiffness, ductility, and work hardening.

(C) Techniques for orthodontic banding and removal, including all of the following:

(i) Armamentaria.

(ii) General principles of fitting and removing bands.

(iii) Normal placement requirements of brackets, tubes, lingual sheaths, lingual cleats, and buttons onto bands.

(iv) Orthodontic cements and adhesive materials: classifications, armamentaria, and mixing technique.

(v) Cementing bands: armamentaria, mixing technique, and band cementation procedures.

(vi) Procedure for removal of bands after cementation.

(2) Laboratory instruction shall include typodont experience in the sizing, fitting, cementing, and removal of four posterior first molar bands a minimum of two times, with the cementing and removal of two first molar bands used as a practical examination.

(3) Clinical instruction shall include the sizing, fitting, cementing, and removal of four posterior first molar bands on at least two patients.

(f) The following requirements shall be met for preparing teeth for bonding:

(1) Didactic instruction shall include the following: chemistry of etching materials and tooth surface preparation, application and time factors, armamentaria, and techniques for tooth etching.

(2) Laboratory instruction shall include typodont experience with etchant application in preparation for subsequent bracket bonding on four anterior and four posterior teeth a minimum of four times each, with one of each of the four times used for a practical examination.

(3) Clinical instruction shall include etchant application in preparation for bracket bonding on anterior and posterior teeth on at least two patients.

(g) The following requirements shall be met for bracket positioning, bond curing, and removal of orthodontic brackets.

(1) Didactic instruction shall include the following:

(A) Characteristics and methods of orthodontic bonding.

(B) Armamentaria.

(C) Types of bracket bonding surfaces.

(D) Bonding material characteristics, application techniques, and curing time factors.

(E) Procedure for direct and indirect bracket bonding.

(F) Procedures for bracket or tube removal.

(2) Laboratory instruction shall include typodont experience with selecting, prepositioning, tooth etching, positioning, curing and removing of four anterior and four posterior brackets a minimum of four times each, with one each of the four times used for a practical examination.

(3) Clinical instruction shall include selecting, adjusting, prepositioning, etching, curing and removal of anterior and posterior brackets on at least two patients.

(h) The following requirements shall be met for archwire placement and ligation:

(1) Didactic instruction shall include the following:

(A) Archwire characteristics.

(B) Armamentaria.

(C) Procedures for placement of archwire previously adjusted by the dentist.

(D) Ligature systems, purpose and types, including elastic, wire, and self-ligating.

(2) Laboratory instruction shall include typodont experience on the following:

(A) The insertion of a preformed maxillary and mandibular archwire a minimum of four times per arch, with one of each of the four times used for a practical examination.

(B) Ligation of maxillary and mandibular archwire using elastic or metal ligatures or self-ligating brackets a minimum of four times per arch, with one of each of the four times used for a practical examination.

(3) Clinical instruction shall include the following:

(A) Insertion of a preformed maxillary and mandibular archwire on at least two patients.

(B) Ligating both preformed maxillary and mandibular archwires using a combination of elastic and metal ligatures or self-ligating brackets on at least two patients for each.

(i) The following requirements shall be met for cement removal with a hand instrument:

(1) Didactic instruction shall include, armamentaria and techniques of cement removal using hand instruments and related materials.

(2) Laboratory instruction shall include typodont experience on the removal of excess cement supragingivally from an orthodontically banded typodont using a hand instrument four times, with one of the four times used for a practical examination.

(3) Clinical instruction shall include removal of excess cement supragingivally from orthodontic bands with a hand instrument on at least two patients.

(j) Instruction for cement removal with an ultrasonic scaler shall be in accordance with the regulations of the board governing courses in the removal of excess cement from teeth under orthodontic treatment with an ultrasonic scaler.

(k) Each student shall pass a written examination that reflects the curriculum content, which may be administered at intervals throughout the course as determined by the course director.

(*l*) 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. 38. Section 1756.2 is added to the Business and Professions Code, to read:

1756.2. In addition to the requirements of Section 1755, the following criteria shall be met by a dental sedation assistant permit course to secure and maintain approval by the board. The board may approve a dental sedation assistant permit course prior to January 1, 2010, and recognize the completion of these courses by students prior to January 1, 2010, but the board may not issue a dental sedation assistant permit to students graduating from dental sedation assistant permit courses until on or after January 1, 2010. As used in this section, "IV" means "intravenous."

(a) (1) The course director or faculty may, in lieu of a license issued by the board, possess a valid, active, and current license issued in California as a certified registered nurse anesthetist or a physician and surgeon.

(2) All faculty responsible for clinical evaluation shall have completed a two-hour methodology course in clinical evaluation prior to conducting clinical evaluations of students.

(b) The course shall be of a sufficient duration for the student to develop minimum competence in all of the duties that dental sedation assistant permitholders are authorized to perform, but in no event less than 110 hours, including at least 40 hours of didactic instruction, at

least 32 hours of combined laboratory and preclinical instruction, and at least 38 hours of clinical instruction.

(c) (1) The following are minimum requirements for equipment and armamentaria: one pulse oximeter for each six students; one automated external defibrillator (AED) or AED trainer; one capnograph or teaching device for monitoring of end tidal CO_2; blood pressure cuff and stethoscope for each six students; one pretracheal stethoscope for each six students; one electrocardiogram machine, one automatic blood pressure/pulse measuring system/machine, and one oxygen delivery system including oxygen tank; one IV start kit for each student; one venous access device kit for each student; IV equipment and supplies for IV infusions including hanging device infusion containers and tubing for each six students; one sharps container for each six students; packaged syringes, needles, needleless devices, practice fluid ampules and vials for each student; stopwatch or timer with second hand for each six students; one heart/lung sounds mannequin or teaching device; tonsillar or pharyngeal suction tip, endotracheal tube forceps, endotracheal tube and appropriate connectors, suction equipment for aspiration of oral and pharyngeal cavities, and laryngoscope in the ratio of at least one for each six students; any other monitoring or emergency equipment that the regulations of the board require for the administration of general anesthesia or conscious sedation; and a selection of instruments and supplemental armamentaria for all of the procedures that dental sedation assistant permitholders are authorized to perform.

(2) Each operatory used for preclinical or clinical training shall contain either a surgery table or a power-operated chair for treating patients in a supine position, an irrigation system or sterile water delivery system as they pertain to the specific practice, and all other equipment and armamentarium required to instruct in the duties that dental sedation assistant permitholders are authorized to perform.

(3) All students, faculty, and staff involved in the direct provision of patient care shall be certified in basic life support procedures, including the use of an automatic electronic defibrillator.

(d) Areas of instruction shall include, at a minimum, the instruction specified in subdivisions (e) to (n), inclusive, as they relate to the duties that dental sedation assistant permitholders are authorized to perform.

(e) General didactic instruction shall include:

(1) Patient evaluation and selection factors through review of medical history, physical assessment, and medical consultation.

(2) Characteristics of anatomy and physiology of the circulatory, cardiovascular, and respiratory systems, and the central and peripheral nervous system.

(3) Characteristics of anxiety management related to the surgical patient, relatives, and escorts, and characteristics of anxiety and pain reduction techniques.

(4) Overview of the classification of drugs used by patients for cardiac disease, respiratory disease, hypertension, diabetes, neurological disorders, and infectious diseases.

(5) Overview of techniques and specific drug groups utilized for sedation and general anesthesia.

(6) Definitions and characteristics of levels of sedation achieved with general anesthesia and sedative agents, including the distinctions between conscious sedation, deep sedation, and general anesthesia.

(7) Overview of patient monitoring during conscious sedation and general anesthesia.

(8) Prevention, recognition, and management of complications.

(9) Obtaining informed consent.

(f) (1) With respect to medical emergencies, didactic instruction shall include an overview of medical emergencies, including, but not limited to, airway obstruction, bronchospasm or asthma, laryngospasm, allergic reactions, syncope, cardiac arrest, cardiac dysrhythmia, seizure disorders, hyperglycemia and hypoglycemia, drug overdose, hyperventilation, acute coronary syndrome including angina and myocardial infarction, hypertension, hypotension, stroke, aspiration of vomitus, and congestive heart failure.

(2) Laboratory instruction shall include the simulation and response to at least the following medical emergencies: airway obstruction, bronchospasm, emesis and aspiration of foreign material under anesthesia, angina pectoris, myocardial infarction, hypotension, hypertension, cardiac arrest, allergic reaction, convulsions, hypoglycemia, syncope, and respiratory depression. Both training mannequins and other students or staff may be used for simulation. Instruction shall include at least two experiences each, one of each of which shall be used for a practical examination.

(g) With respect to sedation and the pediatric patient, didactic instruction shall include the following:

(1) Psychological considerations.

(2) Patient evaluation and selection factors through review of medical history, physical assessment, and medical consultation.

(3) Definitions and characteristics of levels of sedation achieved with general anesthesia and sedative agents, with special emphasis on the distinctions between conscious sedation, deep sedation, and general anesthesia.

(4) Review of respiratory and circulatory physiology and related anatomy, with special emphasis on establishing and maintaining a patent airway.

(5) Overview of pharmacology agents used in contemporary sedation and general anesthesia.

(6) Patient monitoring.

(7) Obtaining informed consent.

(8) Prevention, recognition, and management of complications, including principles of basic life support.

(h) With respect to physically, mentally, and neurologically compromised patients, didactic instruction shall include the following: an overview of characteristics of Alzheimer's disease, autism, cerebral palsy, Down's syndrome, mental retardation, multiple sclerosis, muscular dystrophy, Parkinson's disease, schizophrenia, and stroke.

(i) With respect to health history and patient assessment, didactic instruction shall include, but not be limited to, the recording of the following:

(1) Age, sex, weight, physical status (American Society of Anesthesiologists Classification), medication use, general health, any known or suspected medically compromising conditions, rationale for anesthesia or sedation of the patient, visual examination of the airway, and auscultation of the heart and lungs as medically required.

(2) General anesthesia or conscious sedation records including a time-oriented record with preoperative, multiple intraoperative, and postoperative pulse oximetry and blood pressure and pulse readings, amounts of time of drug administration, length of procedure, complications of anesthesia or sedation, and a statement of the patient's condition at time of discharge.

(j) With respect to monitoring heart sounds with pretracheal/precordial stethoscope and ECG/EKG and use of AED:

(1) Didactic instruction shall include the following:

(A) Characteristics of pretracheal/precordial stethoscope.

(B) Review of anatomy and physiology of circulatory system: heart, blood vessels, and cardiac cycle as it relates to EKG.

(C) Characteristics of rhythm interpretation and waveform analysis basics.

(D) Characteristics of manual intermittent and automatic blood pressure and pulse assessment.

(E) Characteristics and use of an AED.

(F) Procedure for using a pretracheal/precordial stethoscope for monitoring of heart sounds.

(G) Procedure for use and monitoring of the heart with an ECG/EKG machine, including electrode placement, and the adjustment of such equipment.

(H) Procedure for using manual and automatic blood pressure/pulse/respiration measuring system.

(2) Preclinical instruction shall include at least three experiences on another student or staff person for each of the following, one of each of which shall be used for an examination. Clinical instruction shall include at lease three experiences on a patient for each of the following, one of each of which shall be used for a clinical examination:

(A) Assessment of blood pressure and pulse both manually and utilizing an automatic system.

(B) Placement and assessment of an electrocardiogram (ECG/EKG). Instruction shall include the adjustment of such equipment.

(C) Monitoring and assessment of heart sounds with a pretracheal/precordial stethoscope.

(D) Use of an AED or AED trainer.

(k) With respect to monitoring lung/respiratory sounds with pretracheal/precordial stethoscope and monitoring oxygen saturation end tidal CO_2 with pulse oximeter and capnograph:

(1) Didactic instruction shall include the following:

(A) Characteristics of pretracheal/precordial stethoscope, pulse oximeter and capnograph for respiration monitoring.

(B) Review of anatomy and physiology of respiratory system to include the nose, mouth, pharynx, epiglottis, larynx, trachea, bronchi, bronchioles, and alveolus.

(C) Characteristics of respiratory monitoring/lung sounds: mechanism of respiration, composition of respiratory gases, oxygen saturation.

(D) Characteristics of manual and automatic respiration assessment.

(E) Procedure for using a pretracheal/precordial stethoscope for respiration monitoring.

(F) Procedure for using and maintaining pulse oximeter for monitoring oxygen saturation.

(G) Procedure for use and maintenance of capnograph.

(H) Characteristics for monitoring blood and skin color and other related factors.

(I) Procedures and use of an oxygen delivery system.

(J) Characteristics of airway management to include armamentaria and use.

(2) Preclinical and clinical instruction shall include at least three experiences on a student or staff person for each of the following, one of each of which shall be used for an examination. Clinical instruction

shall include at least three experiences on a patient for each of the following, one of which shall be used for a clinical examination:

(A) Assessment of respiration rates.

(B) Monitoring and assessment of lung sounds and ventilation with a pretracheal/precordial stethoscope.

(C) Monitoring oxygen saturation with a pulse oximeter.

(D) Use of an oxygen delivery system.

(*l*) With respect to drug identification and draw:

(1) Didactic instruction shall include:

(A) Characteristics of syringes and needles including use, types, gauges, lengths, and components.

(B) Characteristics of drug, medication, and fluid storage units, use, type, components, identification of label including generic and brand names, strength, potential adverse reactions, expiration date, and contraindications.

(C) Characteristics of drug draw including armamentaria, label verification, ampule and vial preparation, and drug withdrawal techniques.

(2) Laboratory instruction shall include at least three experiences in the withdrawal of fluids from a vial or ampule in the amount specified by faculty, one of which shall be for a practical examination.

(3) Clinical instruction shall include at least three experiences in the evaluation of vial or container labels for identification of content, dosage, and strength and in the withdrawal of fluids from a vial or ampule in the amount specified by faculty or the extramural facility dentist.

(m) With respect to adding drugs, medications, and fluids to IV lines:

(1) Didactic instruction shall include:

(A) Characteristics of adding drugs, medications, and fluids to IV lines in the presence of a licensed dentist.

(B) Armamentaria.

(C) Procedures for adding drugs, medications, and fluids, including amount and time intervals.

(D) Procedures for adding drugs, medications, and fluids by IV bolus.

(E) Characteristics of patient observation for signs and symptoms of drug response.

(2) Laboratory instruction shall include at least three experiences of adding fluids to an existing IV line on a venipuncture training arm or in a simulated environment, one of which shall be used for a practical examination.

(3) Clinical instruction shall include at least three experiences adding fluids to existing IV lines on at least three patients in the presence of a licensed dentist.

(n) With respect to the removal of IV lines:

(1) Didactic instruction shall include overview and procedures for the removal of an IV line.

(2) Laboratory instruction shall include at least three experiences on a venipuncture training arm or in a simulated environment for IV removal, one of which shall be used for a practical examination.

(3) Clinical instruction shall include at least three experiences removing IV lines on at least three patients in the presence of a licensed dentist.

(o) Each student shall pass a written examination that reflects the curriculum content, which may be administered at intervals throughout the course as determined by the course director.

(p) 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. 39. Section 1757 of the Business and Professions Code is amended and renumbered to read:

1753.6. (a) Each person who holds a license as a registered dental assistant in extended functions on the operative date of this section may only perform those procedures that a registered dental assistant is allowed to perform as specified in and limited by Section 1752.4, and the procedures specified in paragraphs (1) to (6), inclusive, until he or she provides evidence of having completed a board-approved course in the additional procedures specified in paragraphs (1), (2), (5), and (7) to (11), inclusive, of subdivision (b) of Section 1753.5, and an examination as specified in Section 1753.4:

(1) Cord retraction of gingiva for impression procedures.

(2) Take final impressions for permanent indirect restorations.

(3) Formulate indirect patterns for endodontic post and core castings.

(4) Fit trial endodontic filling points.

(5) Apply pit and fissure sealants.

(6) Remove excess cement from subgingival tooth surfaces with a hand instrument.

(b) This section shall become operative on January 1, 2010.

SEC. 40. Section 1757 is added to the Business and Professions Code, to read:

1757. (a) A registered dental assistant program shall receive board approval prior to operation.

(1) In order for a registered dental assistant program to secure and maintain approval by the board, it shall meet the requirements of Section 1755 and the following requirements:

(A) Programs approved on or after January 1, 2009, shall meet all of the requirements of this section.

(B) Programs approved prior to January 1, 2009, shall meet all of the requirements of this section except as otherwise specified. Such a program shall continue to be approved only if it has certified to the board no later than April 30, 2009, on a form specified by the board, that it shall, no later than July 1, 2009, comply with all of the requirements of this section in providing instruction in all duties that registered dental assistants will be allowed to perform on and after January 1, 2010. The certification to the board shall contain the date on which the program will begin teaching those duties.

(2) A program shall notify the board in writing if it wishes to increase the maximum student enrollment for which it is approved and shall provide whatever additional documentation the board requires to reapprove the program for the increased enrollment prior to accepting additional students.

(3) 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 continued approval.

(4) The board may, in lieu of conducting its own investigation, accept the findings of any commission or accreditation agency approved by the board and adopt those findings as its own.

(b) Programs shall have an advisory committee consisting of an equal number of registered dental assistants and dentists, including at least two registered dental assistants and two dentists, all currently licensed by the board. The advisory committee shall meet at least once each academic year with the program director, faculty, and appropriate institutional personnel to monitor the ongoing quality and performance of the program. Programs that admit students at different phases shall meet at least twice each year.

(c) Adequate provision for the supervision and operation of the program shall be made. In addition to the requirements of Section 1755, the following requirements shall be met:

(1) Each program faculty member shall have successfully completed a board-approved course in the application of pit and fissure sealants.

(2) By January 1, 2010, each faculty member shall have completed a board-approved course in instructional methodology of at least 30 hours, unless he or she holds any one of the following: a postgraduate degree in education, a Ryan Designated Subjects Vocational Education Teaching Credential, a Standard Designated Subjects Teaching Credential, or, a Community College Teaching Credential. Each faculty member employed on or after January 1, 2010, shall complete a course in instructional methodology within six months of employment.

(3) The program director shall have teaching responsibilities that are less than those of a full-time faculty member. He or she shall actively

participate in and be responsible for the day-to-day administration of the program including the following:

(A) Participating in budget preparation and fiscal administration, curriculum development and coordination, determination of teaching assignments, supervision and evaluation of faculty, establishment of mission criteria and procedures, design and operation of program facilities, and selection of extramural facilities and coordination of instruction in those facilities.

(B) Holding periodic faculty meetings to provide for subject matter correlation and curriculum evaluation, and coordinating activities of full-time, part-time, and volunteer faculty.

(C) Maintaining for not less than five years' copies of minutes of all advisory committee meetings.

(4) The owner or school administrator shall be responsible for the compliance of the program director with the provisions of this section and Section 1755.

(d) The program shall have sufficient financial resources available to support the program and to comply with this section. If the program or school requires approval by any other governmental agency, that approval shall be obtained prior to application to the board for approval and shall be maintained at all times. The failure to maintain that approval shall result in the automatic withdrawal of board approval of the program.

(e) The program shall be of sufficient duration for the student to develop minimum competence in performing dental assistant and registered dental assistant duties, but in no event less than 800 hours, including at least 275 hours of didactic instruction, at least 260 hours of laboratory instruction, and at least 85 hours of preclinical and clinical instruction conducted in the program's facilities under the direct supervision of program faculty. No more than 20 hours shall be devoted to instruction in clerical, administrative, practice management, or similar duties. A program approved prior to January 1, 2009, shall comply with board regulations with regard to required program hours until the date specified in the written certification from the program to the board that it will begin teaching the duties that registered dental assistants will be authorized to perform on and after January 1, 2010.

(f) In addition to the requirements of Section 1755 with regard to extramural instruction, no more than 25 percent of the required clinical instruction shall take place in extramural clinical facilities, and no more than 25 percent of extramural clinical instruction shall take place in a speciality dental practice.

(g) Facilities and class scheduling shall provide each student with sufficient opportunity, with instructor supervision, to develop minimum competency in all duties that registered dental assistants are authorized

to perform. The following requirements are in addition to those contained in Section 1755:

(1) The following are minimum requirements for equipment and armamentaria during laboratory, preclinical, and clinical sessions as appropriate to each type of session and in ratios specified in Section 1070.2 of Title 16 of the California Code of Regulations: amalgamator, model trimmers, dental rotary equipment, vibrators, light curing devices, functional typodont and bench mounts, functional orthodontically banded typodonts, facebows, automated blood pressure device, EKG machine, pulse oximeters, capnograph or simulated device, sets of hand instruments for each procedure, respiration device, camera for intraoral use, camera for extraoral use, CAD machine or simulated device, caries detection device, and all other equipment and armamentaria required to teach dental assistant and registered dental assistant duties.

(2) One permanently preassembled tray for each procedure shall be provided for reference purposes.

(3) Provision shall be made for reasonable access to current and diverse dental and medical reference texts, current journals, audiovisual materials, and other necessary resources. Library holdings, which may include access through the Internet, shall include materials relating to all subject areas of the program curriculum.

(4) Emergency materials shall include, but not be limited to, an oxygen tank that is readily available and functional. Medical materials for treating patients with life-threatening conditions shall be available for instruction and accessible to the operatories. Facilities that do not treat patients shall maintain a working model of a kit of such emergency materials for instructional purposes.

(h) The curriculum shall be established, reviewed, and amended as necessary to allow for changes in the practice of dentistry and registered dental assisting. Programs that admit students in phases shall provide students with basic instruction prior to participation in any other portion of the program that shall, at a minimum, include tooth anatomy, tooth numbering, general program guidelines and safety precautions, and infection control and sterilization protocols associated with and required for patient treatment. All programs shall provide students with additional instruction in the infection control regulations and guidelines of the board and Cal-DOSH prior to the student's performance of procedures on patients.

(i) (1) A program approved prior to January 1, 2009, shall comply with board regulations with regard to program content until the date specified in the written certification from the program to the board, as specified in subparagraph (B) of paragraph (1) of subdivision (a), after

which time the program content shall meet the requirements of paragraph (2).

(2) Programs receiving initial approval on or after January 1, 2009, shall meet all the requirements of Section 1755, and subdivisions (j) and (k) of this section, and shall include the following additional content:

(A) A radiation safety course that meets all of the requirements of the regulations of the board.

(B) A coronal polishing course that meets all of the requirements of the regulations of the board.

(C) A pit and fissure sealant course that meets all of the requirements of the regulations of the board.

(D) A course in basic life support provided by an instructor approved by the American Red Cross or the American Heart Association, or any other course approved by the board as equivalent.

(3) On and after January 1, 2009, a program that desires to provide instruction in the following areas shall apply separately for approval to provide the following courses:

(A) A course in the removal of excess cement with an ultrasonic scaler, which course shall meet the requirements of the regulations of the board.

(B) An orthodontic assistant permit course that shall meet the requirements of Section 1756.1, except that a program shall not be required to obtain separate approval to teach the duties of placing ligature ties and archwires, removing orthodontic bands, and removing excess cement from surfaces of teeth with a hand instrument. Notwithstanding Section 1756.1, an orthodontic assistant permit course provided by a registered dental assistant program, to the students enrolled in such program, shall be no less than 60 hours, including at least 12 hours of didactic instruction, at least 26 hours of preclinical instruction, and at least 22 hours of clinical instruction.

(C) A dental sedation assistant permit course that shall meet the requirements of Section 1756.2.

(j) General didactic instruction shall include, at a minimum, the following:

(1) Principles of general anatomy, physiology, oral embryology, tooth histology, and head-neck anatomy.

(2) Principles of abnormal conditions related to and including oral pathology, orthodontics, periodontics, endodontics, pediatric dentistry, oral surgery, prosthodontics, and esthetic dentistry.

(3) Legal requirements and ethics related to scope of practice, unprofessional conduct, and, patient records and confidentiality.

(4) Principles of infection control and hazardous communication requirements in compliance with the board's regulations and other federal, state, and local requirements.

(5) Principles and federal, state, and local requirements related to pharmacology.

(6) Principles of medical-dental emergencies and first aid management, including symptoms and treatment.

(7) Principles of the treatment planning process including medical health history data collection, patient and staff confidentiality, and charting.

(8) Principles of record classifications including management, storage, and retention protocol for all dental records.

(9) Principles and protocols of special needs patient management.

(10) Principles, protocols, and armamentaria associated with all dental assisting chairside procedures.

(11) Principles, protocols, manipulation, use, and armamentaria for dental materials.

(12) Principles and protocols for oral hygiene preventative methods including, plaque identification, toothbrushing and flossing techniques, and nutrition.

(13) Principles, protocols, armamentaria, and procedures associated with operative and specialty dentistry.

(14) Principles, protocols, armamentaria, and procedures for each duty that dental assistants and registered dental assistants are allowed to perform.

(k) Laboratory and clinical instruction shall be of sufficient duration and content for each student to achieve minimum competence in the performance of each procedure that dental assistant and registered dental assistant is authorized to perform.

(*l*) Each student shall pass a written examination that reflects the curriculum content, which may be administered at intervals throughout the course as determined by the course director.

(m) 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. 41. Section 1758 is added to the Business and Professions Code, to read:

1758. (a) In addition to the requirements of Section 1755, the following criteria shall be met by an educational program for registered dental assistants in extended functions (RDAEF) to secure and maintain approval by the board. A program approved prior to January 1, 2009, shall comply with board regulations with regard to program content until the date specified in a written certification from the program to the board

that it will begin teaching the duties that RDAEFs will be allowed to perform beginning January 1, 2010, which may include the instruction of existing RDAEFs in the additional duties specified in Section 1753.6. The certification shall be filed with the board no later than July 1, 2009, and the date on which the program shall comply with the program content specified in this section shall be no later than January 1, 2010.

(1) A program applying for approval to teach all of the duties specified in Section 1753.5 shall comply with all of the requirements of this section. The board may approve RDAEF programs prior to January 1, 2010, and recognize the completion of these approved programs by students prior to January 1, 2010, but shall not issue a license to students graduating from such programs until on or after January 1, 2010.

(2) A program applying for approval to teach existing RDAEFs the additional duties specified in Section 1753.6 shall comply with all of the requirements of this section, except as follows:

(A) The program shall be no less than 288 hours, including at least 76 hours of didactic instruction, at least 180 hours of laboratory instruction, and at least 32 hours of clinical instruction.

(B) Students shall not be required to complete instruction related to the placement of gingival retraction cord, the taking of final impressions for permanent indirect restorations, or the fitting of master and accessory points.

(b) In order to be admitted to the program, each student shall possess a valid, active, and current license as a registered dental assistant issued by the board and shall provide evidence of successful completion of a board-approved pit and fissure sealant course.

(c) Adequate provision for the supervision and operation of the program shall be made. Notwithstanding the requirements of Section 1755, the program director and each faculty member of an approved RDAEF program shall possess a valid, active, and current license as a dentist or an RDAEF. In addition to the requirements of Section 1755, all faculty members responsible for clinical evaluation shall have completed a six-hour teaching methodology course in clinical evaluation prior to conducting clinical evaluations of students.

(d) The program shall be of sufficient duration for the student to develop minimum competence in all of the duties that RDAEFs are authorized to perform, but in no event less than 380 hours, including at least 100 hours of didactic instruction, at least 200 hours of laboratory instruction, and at least 80 hours of clinical instruction. All instruction shall be provided under the direct supervision of program staff.

(e) The following requirements are in addition to the requirements of Section 1755:

(1) The following are minimum requirements for equipment and armamentaria:

(A) Laboratory facilities with individual seating stations for each student and equipped with air, gas and air, or electric driven rotary instrumentation capability. Each station or operatory shall allow an articulated typodont to be mounted in a simulated head position.

(B) Clinical simulation facilities that provide simulated patient heads mounted in appropriate position and accommodating an articulated typodont in an enclosed intraoral environment, or mounted on a dental chair in a dental operatory. Clinical simulation spaces shall be sufficient to permit one simulation space for each two students at any one time.

(C) Articulated typodonts of both deciduous and permanent dentitions with flexible gingival tissues and with prepared teeth for each procedure to be performed in the laboratory and clinical simulation settings. One of each type of typodont is required for each student.

(D) A selection of restorative instruments and adjunct materials for all procedures that RDAEFs are authorized to perform.

(2) Notwithstanding Section 1755, there shall be at least one operatory for every two students who are simultaneously engaged in clinical instruction.

(f) Areas of instruction shall include, at a minimum, the instruction specified in subdivisions (g) to (m), inclusive. In addition to the requirements of those subdivisions, didactic instruction shall include the following:

(1) The following instruction as it relates to each of the procedures that RDAEFs are authorized to perform: restorative and prosthetic treatment review; charting; patient education; legal requirements; indications and contraindications; problem solving techniques; laboratory, preclinical, and clinical criteria and evaluation; and infection control protocol implementation.

(2) Dental science, including dental and oral anatomy, histology, oral pathology, normal or abnormal anatomical and physiological tooth descriptions, tooth morphology, basic microbiology relating to infection control, and occlusion.

(3) Characteristics and manipulation of dental materials related to each procedure.

(4) Armamentaria for all procedures.

(5) Principles, techniques, criteria, and evaluation for performing each procedure, including implementation of infection control protocols.

(6) Occlusion: the review of articulation of maxillary and mandibular arches in maximum intercuspation.

(7) Tooth isolation and matrix methodology review.

(g) General laboratory instruction shall include:

(1) Rubber dam application for tooth isolation in both maxillary and mandibular arches and for deciduous and permanent dentitions. A minimum of four experiences per arch is required, with two anterior and two posterior applications, with one of the applications used for a practical examination.

(2) Matrix placement for amalgam, and nonmetallic restorative material restorations in both primary and permanent dentitions, with three experiences for each cavity classification and for each material.

(3) Base, liner, and etchant placement on three posterior teeth for each base, liner, or etchant, with one of the three teeth used for a practical examination.

(h) With respect to preliminary evaluation of the patient's oral health, including, but not limited to, charting, intraoral and extraoral evaluation of soft tissue, classifying occlusion, and myofunctional evaluation:

(1) Didactic instruction shall include the following:

(A) Normal anatomical structures: oral cavity proper, vestibule, and lips.

(B) Deviations from normal to hard tissue abnormalities to soft tissue abnormalities.

(C) Overview of classifications of occlusion and myofunction.

(D) Sequence of oral inspection: armamentaria, general patient assessment, review of medical history form, review of dental history form, oral cavity mouth-mirror inspection, and charting existing conditions.

(2) Preclinical instruction shall include performing an oral inspection on at least two other students.

(3) Clinical instruction shall include performing an oral inspection on at least two patients, with one of the two patients used for a clinical examination.

(i) With respect to sizing, fitting, and cementing endodontic master points and accessory points:

(1) Didactic instruction shall include the following:

(A) Review of objectives, canal preparation, filling of root canal space.

(B) Description and goals of filling technique using lateral condensation techniques.

(C) Principles and techniques of fitting, cementing master and accessory points using lateral condensation including, characteristics, manipulation, use of gutta percha and related materials, and criteria for an acceptable master and accessory points technique using lateral condensation.

(2) Laboratory instruction shall include fitting master and cementing cones on extracted teeth or assimilated teeth with canals, with two experiences each on a posterior and anterior tooth.

(j) With respect to gingival retraction, general instruction shall include:

(1) Review of characteristics of tissue management as it relates to gingival retraction with cord and electrosurgery.

(2) Description and goals of cord retraction.

(3) Principles of cord retraction, including characteristics and manipulation of epinephrine, chemical salts classification of cord, characteristics of single versus double cord technique, and techniques and criteria for an acceptable cord retraction technique.

(k) With respect to final impressions for permanent indirect and toothborne restorations:

(1) Didactic instruction shall include the following:

(A) Review of characteristics of impression material and custom.

(B) Description and goals of impression taking for permanent indirect restorations and toothborne prosthesis.

(C) Principles, techniques, criteria, and evaluation of impression taking for permanent indirect restorations and toothborne prosthesis.

(2) Laboratory instruction shall include the following:

(A) Cord retraction and final impressions for permanent indirect restorations, including impression taking of prepared teeth in maxillary and mandibular arches, one time per arch with elastomeric impression materials.

(B) Impressions for toothborne removable prostheses, including taking a total of four impressions on maxillary and mandibular arches with simulated edentulous sites and rest preparations on at least two supporting teeth in each arch.

(3) Clinical instruction shall include taking final impressions on five cord retraction patients, with one used for a clinical examination.

(*l*) With respect to placing, contouring, finishing, and adjusting direct restorations:

(1) Didactic instruction shall include the following:

(A) Review of cavity preparation factors and restorative material.

(B) Review of cavity liner, sedative, and insulating bases.

(C) Characteristics and manipulation of direct filling materials.

(D) Amalgam restoration placement, carving, adjusting and finishing, which includes principles, techniques, criteria and evaluation, and description and goals of amalgam placement, adjusting and finishing in children and adults.

(E) Glass-ionomer restoration placement, carving, adjusting, contouring and finishing, which includes, principles, techniques, criteria

and evaluation, and description and goals of glass-ionomer placement and contouring in children and adults.

(F) Composite restoration placement, carving, adjusting, contouring and finishing in all cavity classifications, which includes, principles, techniques, criteria, and evaluation.

(2) Laboratory instruction shall include typodont experience on the following:

(A) Placement of Class I, II, and V amalgam restorations in eight prepared permanent teeth for each classification, and in four deciduous teeth for each classification.

(B) Placement of Class I, II, III, and V composite resin restorations in eight prepared permanent teeth for each classification, and in four deciduous teeth for each classification.

(C) Placement of Class I, II, III, and V glass-ionomer restorations in four prepared permanent teeth for each classification, and in four deciduous teeth for each classification.

(3) Clinical simulation and clinical instruction shall include experience with typodonts mounted in simulated heads on a dental chair or in a simulation laboratory as follows:

(A) Placement of Class I, II, and V amalgam restorations in four prepared permanent teeth for each classification, with one of each classification used for a clinical examination.

(B) Placement of Class I, II, III, and V composite resin restorations in four prepared permanent teeth for each classification, with one of each classification used for a clinical examination.

(C) Placement of Class I, II, III, and V glass-ionomer restorations in four prepared permanent teeth for each classification, with one of each classification used for a clinical examination.

(m) With respect to adjusting and cementing permanent indirect restorations:

(1) Didactic instruction shall include the following:

(A) Review of fixed prosthodontics related to classification and materials for permanent indirect restorations, general crown preparation for permanent indirect restorations, and laboratory fabrication of permanent indirect restorations.

(B) Interocclusal registrations for fixed prosthesis, including principles, techniques, criteria, and evaluation.

(C) Permanent indirect restoration placement, adjustment, and cementation, including principles, techniques, criteria, and evaluation.

(2) Laboratory instruction shall include:

(A) Interocclusal registrations using elastomeric and resin materials. Two experiences with each material are required.

(B) Fitting, adjustment, and cementation of permanent indirect restorations on one anterior and one posterior tooth for each of the following materials, with one of each type used for a practical examination: ceramic, ceramometal, and cast metallic.

(3) Clinical experience for interocclusal registrations shall be performed on four patients who are concurrently having final impressions recorded for permanent indirect restorations, with one experience used for a clinical examination.

(n) Each student shall pass a written examination that reflects the curriculum content, which may be administered at intervals throughout the course as determined by the course director.

(o) 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. 42. Section 1765 of the Business and Professions Code is amended to read:

1765. No person other than a licensed dental hygienist or a licensed dentist may engage in the practice of dental hygiene or perform dental hygiene procedures on patients, including, but not limited to, supragingival and subgingival scaling, dental hygiene assessment, and treatment planning, except for the following persons:

(a) A student enrolled in a dental or a dental hygiene school who is performing procedures as part of the regular curriculum of that program under the supervision of the faculty of that program.

(b) A dental assistant, registered dental assistant, or registered dental assistant in extended functions acting in accordance with the provisions of this chapter.

(c) A registered dental hygienist, registered dental hygienist in alternative practice, or registered dental hygienist in extended functions licensed in another jurisdiction performing a clinical demonstration for educational purposes.

SEC. 43. Section 1770 of the Business and Professions Code, as amended by Section 25 of Chapter 588 of the Statutes of 2007, is amended and renumbered to read:

1753.7. (a) A licensed dentist may simultaneously utilize in his or her practice no more than two registered dental assistants in extended functions or registered dental hygienists in extended functions licensed pursuant to Sections 1753.1 and 1918.

(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. 44. Section 1770 of the Business and Professions Code, as amended by Section 26 of Chapter 588 of the Statutes of 2007, is amended and renumbered to read:

1753.7. (a) A licensed dentist may simultaneously utilize in his or her practice no more than three registered dental assistants in extended functions or registered dental hygienists in extended functions licensed pursuant to Section 1753 or 1918.

(b) This section shall become operative on January 1, 2010.

SEC. 45. Section 1771 of the Business and Professions Code is amended to read:

1771. Any person, other than a person who has been issued a license or permit by the board, who holds himself or herself out as a registered dental assistant, orthodontic assistant permitholder, dental sedation assistant permitholder, or registered dental assistant in extended functions, or uses any other term indicating or implying he or she is licensed or permitted by the board as such, is guilty of a misdemeanor.

SEC. 46. Section 1777 of the Business and Professions Code is amended to read:

1777. While employed by or practicing in a primary care clinic or specialty clinic licensed pursuant to Section 1204 of the Health and Safety Code, in a primary care clinic exempt from licensure pursuant to subdivision (c) of Section 1206 of the Health and Safety Code, or a clinic owned and operated by a hospital that maintains the primary contract with a county government to fill the county's role under Section 17000 of the Welfare and Institutions Code, the following shall apply:

(a) A dental assistant, registered dental assistant, or registered dental assistant in extended functions may perform any extraoral duty under the direct supervision of a registered dental hygienist or registered dental hygienist in alternative practice.

(b) A registered dental assistant or a registered dental assistant in extended functions may perform the following procedures under the direct supervision of a registered dental hygienist or a registered dental hygienist in alternative practice, pursuant to subdivision (b) of Section 1763:

(1) Coronal polishing.

(2) Application of topical fluoride.

(3) Application of sealants, after providing evidence to the board of having completed a board-approved course in that procedure.

SEC. 47. 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 500

An act to amend Sections 40120.1, 40122, 40141, 40160, 40192, 40194, 43209, 43214, 44100, 44306, 45000, 45002, 45005, 45010, 45011, 45012, 45013, 45017, 45019, 45020, 45021, 45022, 45023, and 45040 of, to add Sections 40115.5, 40116.1, 40150.2, 40162, 44000.5, 45003, 45010.1, and 45010.2 to, to add Chapter 2 (commencing with Section 45025) to Part 5 of Division 30 of, and to repeal Sections 40123 and 45033 of, the Public Resources Code, relating to solid waste.

[Approved by Governor September 28, 2008. Filed with Secretary of State September 28, 2008.]

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

SECTION 1. Section 40115.5 is added to the Public Resources Code, to read:

40115.5. "Closed disposal site" means a disposal site that ceases to accept solid waste and is closed in accordance with applicable statutes, regulations, and local ordinances in effect at the time of the closure.

SEC. 2. Section 40116.1 is added to the Public Resources Code, to read:

40116.1. "Composting" means the controlled or uncontrolled biological decomposition of organic wastes.

SEC. 3. Section 40120.1 of the Public Resources Code is amended to read:

40120.1. "Disposal" or "dispose" has the same meaning as "solid waste disposal" as defined in Section 40192.

SEC. 4. Section 40122 of the Public Resources Code is amended to read:

40122. "Disposal site" or "site" means the place, location, tract of land, area, or premises in use, intended to be used, or which has been used, for the disposal of solid wastes.

SEC. 5. Section 40123 of the Public Resources Code is repealed.

SEC. 6. Section 40141 of the Public Resources Code is amended to read:

40141. (a) "Hazardous waste" means a waste, defined as a "hazardous waste" in accordance with Section 25117 of the Health and

Safety Code, or a combination of wastes, which because of its quantity, concentration, or physical, chemical, or infectious characteristics may do either of the following:

(1) Cause, or significantly contribute to, an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness.

(2) Pose a substantial present or potential hazard to human health or environment when improperly treated, stored, transported, or disposed of, or otherwise managed.

(b) Unless expressly provided otherwise, "hazardous waste" includes extremely hazardous waste and acutely hazardous waste.

SEC. 7. Section 40150.2 is added to the Public Resources Code, to read:

40150.2. "Minor violation" means the failure of a person to comply with a requirement or condition of an applicable law, regulation, permit, information request, order, variance, or other requirement, whether procedural or substantive, that an enforcement agency or the board is authorized to implement or enforce pursuant to Part 5 (commencing with Section 45000) and that does not otherwise include any of the following:

(a) A violation that results in injury to persons or property or that presents a significant threat to human health or the environment.

(b) A knowing, willful, or intentional violation.

(c) A violation that is a chronic violation or that is committed by a recalcitrant violator. In determining whether a violation is chronic or a violator is recalcitrant, the enforcement agency or board, whichever issues the notice to comply, shall consider whether there is evidence indicating that the violator has engaged in a pattern of neglect or disregard with respect to applicable regulatory requirements.

(d) A violation that results in an emergency response from a public safety agency.

(e) A violation that enables the violator to benefit economically from the noncompliance, either by reduced costs or competitive advantage.

SEC. 8. Section 40160 of the Public Resources Code is amended to read:

40160. "Operator" means a person who operates a solid waste facility or operates a disposal site.

SEC. 9. Section 40162 is added to the Public Resources Code, to read:

40162. "Owner" means a person who holds fee title to, or a leasehold or other possessory interest in, real property that is presently in use as a solid waste facility or is a disposal site.

SEC. 10. Section 40192 of the Public Resources Code is amended to read:

40192. (a) Except as provided in subdivisions (b) and (c), "solid waste disposal," "disposal," or "dispose" means the final deposition of solid wastes onto land, into the atmosphere, or into the waters of the state.

(b) For purposes of Part 2 (commencing with Section 40900), "solid waste disposal," "dispose," or "disposal" means the management of solid waste through landfill disposal or transformation at a permitted solid waste facility, unless the term is expressly defined otherwise.

(c) For purposes of Chapter 16 (commencing with Section 42800) and Chapter 19 (commencing with Section 42950) of Part 3, Part 4 (commencing with Section 43000), Part 5 (commencing with Section 45000), Part 6 (commencing with Section 45030), and Chapter 2 (commencing with Section 47901) of Part 7, "solid waste disposal," "dispose," or "disposal" means the final deposition of solid wastes onto land.

SEC. 11. Section 40194 of the Public Resources Code is amended to read:

40194. "Solid waste facility" includes a solid waste transfer or processing station, a composting facility, a gasification facility, a transformation facility, and a disposal facility. For purposes of Part 5 (commencing with Section 45000), "solid waste facility" additionally includes a solid waste operation that may be carried out pursuant to an enforcement agency notification, as provided in regulations adopted by the board.

SEC. 12. Section 43209 of the Public Resources Code is amended to read:

43209. The enforcement agency, within its jurisdiction and consistent with its certification by the board, shall do all of the following:

(a) Enforce applicable provisions of this part, regulations adopted under this part, and terms and conditions of permits issued pursuant to Chapter 3 (commencing with Section 44001).

(b) Request enforcement by appropriate federal, state, and local agencies of their respective laws governing solid waste storage, handling, and disposal.

(c) File with the board, upon its request, information the board determines to be necessary.

(d) Develop, implement, and maintain inspection, enforcement, permitting, and training programs.

(e) (1) Establish and maintain an enforcement program consistent with regulations adopted by the board to implement this chapter, the standards adopted pursuant to this chapter, and the terms and conditions of permits issued pursuant to Chapter 3 (commencing with Section 44001).

(2) The enforcement agency may establish specific local standards for solid waste handling and disposal subject to approval by a majority vote of its local governing body, by resolution or ordinance.

(3) A standard established pursuant to this subdivision shall be consistent with this division and all regulations adopted by the board.

(f) Keep and maintain records of its inspection, enforcement, permitting, training, and regulatory programs, and of any other official action in accordance with regulations adopted by the board.

(g) (1) Consult, as appropriate, with the appropriate local health agency concerning all actions which involve health standards.

(2) The consultation required by this subdivision shall include affording the health agency adequate notice and opportunity to conduct and report the evaluation as it reasonably determines is appropriate.

(h) Establish and maintain an inspection program.

(1) The inspection program required by this subdivision shall be designed to determine whether any solid waste facility is operating under any of the following:

(A) The facility is operating without a permit.

(B) The facility is operating in violation of state minimum standards.

(C) The facility is operating in violation of the terms and conditions of its solid waste facilities permit.

(D) The facility may pose a significant threat to public health and safety or to the environment, based on any relevant information.

(2) The inspection program established pursuant to this subdivision shall also ensure frequent inspections of solid waste facilities that have an established pattern of noncompliance with this division, regulations adopted pursuant to this division, or the terms and conditions of a solid waste facilities permit. The inspection program may include public awareness activities, enforcement to prevent the illegal dumping of solid waste, and the abatement of the illegal dumping of solid waste.

SEC. 13. Section 43214 of the Public Resources Code is amended to read:

43214. (a) The board shall develop performance standards for evaluating certified local enforcement agencies and shall periodically review each certified enforcement agency and its implementation of the permit, inspection, and enforcement program. The board's review shall include periodic inspections of solid waste facilities and disposal sites within the jurisdiction of each enforcement agency for the purpose of evaluating whether the enforcement agency is appropriately applying and enforcing state minimum standards within its jurisdiction.

(b) Following initial certification of an enforcement agency by the board, the board shall conduct a performance review of the enforcement agency every three years, or more frequently as determined by the board.

(c) In conducting performance reviews of enforcement agencies, the board shall, based on the performance standards developed pursuant to subdivision (a), determine whether each enforcement agency is in compliance with the requirements of this article and the regulations adopted to implement this article. If the board finds that an enforcement agency is not fulfilling its responsibilities pursuant to this article and if the board also finds that this lack of compliance has contributed to significant noncompliance with state minimum standards at solid waste facilities or disposal sites within the jurisdiction of the enforcement agency, the board shall withdraw its approval of designation pursuant to Sections 43215 and 43216. Notwithstanding Sections 43215 and 43216, if the board finds that conditions at solid waste facilities or disposal sites within the jurisdiction of the enforcement agency threaten public health and safety or the environment, the board shall, within 10 days of notifying the enforcement agency, become the enforcement agency until another enforcement agency is designated locally and certified by the board.

(d) The board shall find that an enforcement agency is not fulfilling its responsibilities pursuant to this article, and may take action as prescribed by subdivision (c), if the board, in conducting its performance review, makes one or more of the following findings with regard to compliance with this part and Part 5 (commencing with Section 45000):

(1) The enforcement agency has failed to exercise due diligence in the inspection of solid waste facilities and disposal sites.

(2) The enforcement agency has intentionally misrepresented the results of inspections.

(3) The enforcement agency has failed to prepare, or cause to be prepared, permits, permit revisions, or closure and postclosure maintenance plans.

(4) The enforcement agency has approved permits, permit revisions, or closure and postclosure maintenance plans that are not consistent with this part and Part 5 (commencing with Section 45000).

(5) The enforcement agency has failed to take appropriate enforcement actions.

(6) The enforcement agency has failed to comply with, or has taken actions that are inconsistent with, or that are not authorized by, this division or the regulations adopted by the board pursuant to this division. However, nothing in this paragraph is intended to affect the authority of enforcement agencies pursuant to subdivision (e) of Section 43209.

SEC. 14. Section 44000.5 is added to the Public Resources Code, to read:

44000.5. (a) With respect only to solid waste disposed of in this state, a person shall not dispose of solid waste, cause solid waste to be

disposed of, arrange for the disposal of solid waste, transport solid waste for purposes of disposal, or accept solid waste for disposal, except at a solid waste disposal facility for which a solid waste facilities permit has been issued pursuant to this chapter or as otherwise authorized pursuant to this division and the regulations adopted by the board pursuant to this division.

(b) A violation of this section is an unlawful act.

SEC. 15. Section 44100 of the Public Resources Code is amended to read:

44100. (a) The enforcement agency, in issuing or reviewing a solid waste facilities permit or in connection with an action relating to a solid waste facilities permit or as otherwise authorized by this division, may investigate the operation of a solid waste facility, a transfer or processing station, a disposal site, collection or handling equipment, or a storage area for solid wastes.

(b) In the investigation, the enforcement agency may require a person, who is, or proposes to become, an operator of a solid waste facility, a transfer or processing station, a disposal site, collection or handling equipment, or a storage area for solid wastes, or a person that the enforcement agency believes may have information concerning a suspected violation of this division, to furnish, under penalty of perjury, any nonprivileged technical or monitoring program or other reports that the enforcement agency may specify.

(c) If the owner of property upon which solid waste is unlawfully stored, stockpiled, disposed, handled, or maintained refuses to allow or provide the board, the enforcement agency, or a contractor of the board or enforcement agency with access to enter onto the property and perform all necessary cleanup, abatement, or remedial work as authorized pursuant to Section 45000 or 48020, the court may issue the board, the enforcement agency, or a contractor of the board or enforcement agency a warrant pursuant to the procedure set forth in Title 13 (commencing with Section 1822.50) of Part 3 of the Code of Civil Procedure to permit reasonable access to the property to perform that activity, if the following conditions have been met:

(1) An administrative order requiring corrective action has been issued or obtained pursuant to Section 45000 against the property owner.

(2) The board or enforcement agency finds that there is a significant threat to public health or the environment.

SEC. 16. Section 44306 of the Public Resources Code is amended to read:

44306. The enforcement agency may, after holding a hearing in accordance with the procedures set forth in Section 44310, revoke a solid

waste facilities permit if the enforcement agency determines any of the following:

(a) The permit was obtained by a material misrepresentation or failure to disclose relevant factual information.

(b) The operator has, during the previous three years, been convicted of, or been issued a final order for, one or more violations of this division, regulations adopted pursuant to this division, or the terms and conditions of the permit, and the violation meets both of the following criteria:

(1) The violation demonstrates a chronic recurring pattern of noncompliance that has posed, or may pose, a significant risk to public health and safety or to the environment.

(2) The violation has not been corrected or reasonable progress toward correction has not been achieved.

(c) The operator has failed to pay in full any monetary penalty imposed pursuant to Part 5 (commencing with Section 45000) within 90 days from the date when the penalty is required to be paid and after the expiration of the time period during which the permitholder may appeal the ruling, or after the denial of the permitholder's timely appeal up to, and including, an appeal to the superior court.

SEC. 17. Section 45000 of the Public Resources Code is amended to read:

45000. (a) Except as provided in subdivision (b), the enforcement agency or the board may issue an administrative order requiring the owner or operator of a solid waste facility or disposal site or a person in violation of Section 44000.5, to take corrective action as necessary to abate a nuisance, or to protect human health and safety or the environment. If both the board and the enforcement agency issue an administrative order regarding the same facility, disposal site, or person, the order issued by the board shall prevail if there is a conflict between the orders.

(b) An administrative order shall not be issued for a minor violation that is corrected immediately in the presence of the inspector. Immediate compliance in that manner shall be noted in the inspection report.

(c) The enforcement agency or the board may contract for corrective action after an order issued pursuant to subdivision (a) becomes final and the owner or operator fails to comply with the order by the date specified in the order.

(d) If an enforcement agency or the board expends any funds pursuant to subdivision (b), the owner or operator of the solid waste facility or disposal site or a person in violation of Section 44000.5 shall reimburse the enforcement agency or the board for the amount expended, including, but not limited to, a reasonable amount for contract administration, and an amount equal to the interest that would have been earned on the

expended funds. The amount expended shall be recoverable in a civil action by the Attorney General, upon request of the local enforcement agency or the board.

(e) A contract for corrective action entered into by the board is exempt from approval by the Department of General Services pursuant to Section 10295 of the Public Contract Code.

(f) A corrective action shall incorporate by reference applicable waste discharge requirements issued by the state water board or a regional water board, and shall be consistent with all applicable water quality control plans adopted pursuant to Section 13170 of, and Article 3 (commencing with Section 13240) of Chapter 4 of Division 7 of, the Water Code, and state policies for water quality control adopted pursuant to Article 3 (commencing with Section 13140) of Chapter 3 of Division 7 of the Water Code, existing at the time of the corrective action or proposed corrective action.

SEC. 18. Section 45002 of the Public Resources Code is amended to read:

45002. (a) Except as provided in subdivision (b), an order issued pursuant to this part or Part 4 (commencing with Section 43000) shall provide the person subject to that order with a notice of that person's right to appeal pursuant to Part 4 (commencing with Section 43000) and Part 6 (commencing with Section 45030).

(b) The recipient of a notice to comply issued pursuant to Section 45003 may request that a hearing be conducted in accordance with Section 44307, but only with respect to an action taken by an enforcement agency of the board that arises from a minor violation that the owner or operator fails to correct or fails to certify, in a timely manner, as having been corrected.

SEC. 19. Section 45003 is added to the Public Resources Code, to read:

45003. (a) (1) An authorized representative of the enforcement agency or board who, in the course of conducting an inspection, detects a minor violation, shall take an enforcement action as to the minor violation only in accordance with this section.

(2) In a proceeding concerning an enforcement action taken pursuant to this section, there shall be a rebuttable presumption upholding the determination made by the enforcement agency or board regarding whether the violation is a minor violation.

(b) A notice to comply shall be the only means by which an enforcement agency or board may cite a minor violation, unless the person cited fails to correct the violation or fails to submit the certification of correction within the time period prescribed in the notice, in which

case the enforcement agency or board may take any enforcement action, including imposing a penalty, as authorized by this part.

(c) (1) The enforcement agency or the board shall commence an enforcement action under this section by serving a notice to comply on the owner or operator of the solid waste facility or disposal site at which a violation has occurred, specifying the violation and the manner in which the violation may be corrected.

(2) A person who receives a notice to comply detailing a minor violation shall have not more than 30 days from the date of the notice to comply in which to correct any violation cited in the notice to comply. Within five working days of correcting the violation, the person cited or an authorized representative shall sign the notice to comply, certifying that any violation has been corrected, and return the notice to the enforcement agency or board, whichever issued the notice to comply.

(3) A false certification that a violation has been corrected is punishable as a misdemeanor.

(4) The effective date of the certification that a violation has been corrected shall be one of the following dates, whichever occurs first:

(A) The date the certification is received by the enforcement agency or the board, whichever issued the notice to comply, including receipt of an electronic or facsimile version of the certification.

(B) The date the certification is postmarked by the United States Postal Service.

(C) The date the certification is accepted for delivery by a national express delivery service as evidenced by a receipt.

(d) If a notice to comply is issued, a single notice to comply shall be issued for all minor violations noted during the inspection, and the notice to comply shall list all of the minor violations and the manner in which each of the minor violations may be brought into compliance.

(e) If a person who receives a notice to comply pursuant to subdivision (c) disagrees with one or more of the alleged violations listed on the notice to comply, the person shall provide the enforcement agency or board that issued the notice to comply a written notice of disagreement specifying the allegations with which the person disagrees along with the returned signed notice to comply, certifying that all of the undisputed violations have been corrected. If the person disagrees with all of the alleged violations, the written notice of disagreement shall be returned in lieu of the signed certification of correction within 30 days of the date of issuance of the notice to comply. If the issuing agency takes administrative enforcement action on the basis of the disputed violation, that action may be appealed in the same manner as any other alleged violation under Section 44307.

(f) This section does not do any of the following:

(1) Prevent a reinspection to ensure compliance with this division or to ensure that minor violations cited in a notice to comply have been corrected and that the solid waste facility or disposal site is in compliance with this division.

(2) Prevent the enforcement agency or board from requiring a person to submit necessary documentation needed to support the person's claim of compliance pursuant to subdivision (c).

(3) Restrict the power of a city attorney, district attorney, county counsel, or the Attorney General to bring, in the name of the people of California, any criminal proceeding otherwise authorized by law.

(4) Prevent the enforcement agency or board from cooperating with, or participating in, a proceeding specified in paragraph (3).

SEC. 20. Section 45005 of the Public Resources Code is amended to read:

45005. An enforcement agency or the board may issue a cease and desist order to any of the following:

(a) A person who is operating, has operated, or proposes to operate a solid waste facility or operates a disposal site in an unauthorized manner, or who is disposing of solid waste in any of the following manners:

(1) In violation of a solid waste facilities permit or in violation of this division, or any regulation adopted pursuant to this division.

(2) Without a solid waste facilities permit.

(3) In a manner that causes or threatens to cause a condition of hazard, pollution, or nuisance.

(b) A person who has violated, is violating, or proposes to violate Section 44000.5.

SEC. 21. Section 45010 of the Public Resources Code is amended to read:

45010. (a) The board and enforcement agencies shall impose civil penalties on the operators of solid waste facilities in a judicious manner and shall impose those penalties only after all reasonable efforts pursuant to Section 45010.2 have been made by enforcement agencies to provide proper notice of violations to alleged violators as well as a reasonable opportunity to bring solid waste facilities and disposal sites into compliance with this division.

(b) An enforcement agency shall not deposit funds collected through the imposition of civil penalties pursuant to this article in the General Fund of the local enforcement agency, but instead shall deposit those funds in a segregated account and use those funds exclusively for enhancing solid waste enforcement within the local enforcement agency's jurisdiction, including, but not limited to, all of the following:

(1) Increasing enforcement programs.

(2) Expanding the agency's enforcement capabilities.

(3) Bringing solid waste facilities into compliance with this division.

(4) Remediating illegal or abandoned solid waste disposal sites.

(c) Civil penalties paid to the board pursuant to this article shall be deposited in the Enforcement Penalty Account, which is hereby established in the Solid Waste Disposal Site Cleanup Trust Fund created pursuant to Section 48027. Notwithstanding subdivision (b) of Section 48027, the moneys in the Enforcement Penalty Account may be expended by the board, upon appropriation by the Legislature, to enforce and implement this division.

SEC. 22. Section 45010.1 is added to the Public Resources Code, to read:

45010.1. (a) The board or an enforcement agency may issue an order imposing a civil penalty of not more than five thousand dollars ($5,000) for each violation, for each day that the violation continues, to a person who violates the terms or conditions of a solid waste facilities permit or who violates a requirement of this division, a regulation adopted pursuant to this division, or an order issued under this chapter, if the requirement, regulation, or order is applicable to a solid waste facility or a disposal site. An enforcement agency or the board may impose the penalty administratively pursuant to this part.

(b) In determining the amount of civil liability to be imposed pursuant to this section, the board or enforcement agency shall take into consideration the factors specified in Section 45016.

SEC. 23. Section 45010.2 is added to the Public Resources Code, to read:

45010.2. Before the board or enforcement agency issues an order under this chapter, except for a notice to comply pursuant to Section 45003, the board or enforcement agency shall do both of the following:

(a) Notify the owner or operator of the solid waste facility or the owner or operator of the disposal site, that the facility or site is in violation of this division, a regulation adopted pursuant to this division, or an order issued under this division, applicable to a solid waste facility or disposal site.

(b) Upon the request of the owner or operator of the solid waste facility or the owner or operator of the disposal site, meet with the owner or operator to clarify the applicable requirements and to determine what actions, if any, that the operator or owner may voluntarily take to bring the facility or site into compliance by the earliest feasible date.

SEC. 24. Section 45011 of the Public Resources Code is amended to read:

45011. If an enforcement agency or the board determines that a solid waste facility or disposal site is in violation of this division, a regulation

adopted pursuant to this division, the terms or conditions of a solid waste facilities permit, an order issued under this division, or poses a potential or actual threat to public health and safety or the environment, or determines that a person has disposed of solid waste at an unpermitted disposal site in violation of Section 44000.5, the enforcement agency or board may issue an order establishing a time schedule according to which the facility or site shall be brought into compliance with this division. The order may also provide for a civil penalty, to be imposed administratively by the enforcement agency or board, in an amount not to exceed five thousand dollars ($5,000) for each day on which a violation occurs, if compliance is not achieved in accordance with that time schedule.

SEC. 25. Section 45012 of the Public Resources Code is amended to read:

45012. (a) If an enforcement agency, despite having made a good faith effort pursuant to its enforcement authority or any other authority, is unable to correct a violation, and the board, acting through its executive director, and the enforcement agency both agree that enforcement by the board is feasible and desirable pursuant to these circumstances, the board, acting through its executive director, may take any appropriate enforcement action pursuant to this section.

(b) (1) Notwithstanding subdivision (a), the board shall not take any enforcement action specified in this part without providing notice to the enforcement agency and the violator of the board's intent to take that action, allowing the enforcement agency and the violator a reasonable opportunity to correct the violation, and conducting a public hearing on the matter.

(2) When taking an enforcement action pursuant to this section, the board is vested, in addition to its other powers, with all of the authority to take an action that an enforcement agency may take pursuant to this division.

(c) Notwithstanding subdivisions (a) and (b), if the board finds that an enforcement agency's failure to take enforcement action constitutes an imminent threat to public health and safety or to the environment, the board may take the enforcement action that the board determines is necessary.

SEC. 26. Section 45013 of the Public Resources Code is amended to read:

45013. The board shall make available guidance and assistance to the enforcement agency regarding the inspection, investigation, enforcement, and remediation of illegal, abandoned, inactive, or closed disposal sites to ensure that public health and safety and the environment are protected.

SEC. 27. Section 45017 of the Public Resources Code is amended to read:

45017. (a) (1) Except as provided in paragraphs (2) and (3), all orders and determinations issued pursuant to this part or Part 4 (commencing with Section 43000) shall take effect immediately upon service.

(2) (A) If an order or determination is issued pursuant to this part or Part 4 (commencing with Section 43000) to the owner or operator of a solid waste facility operating under a solid waste facilities permit issued in accordance with this part, the owner or operator may petition the executive director of the board, pursuant to this subparagraph, to stay the effect of the order or determination, or portion thereof, pending the completion of administrative appeals before the hearing panel or hearing officer or the board.

(B) A petition submitted pursuant to subparagraph (A) shall be in writing and shall state the extraordinary circumstances that justify the stay. The petition shall also state the grounds, if any, on which a finding may be made that the immediate effect of the order or determination will preclude or interfere with the provision of an essential public service so that the public health and safety or the environment will be adversely affected.

(C) If the executive director finds the immediate effect of the order or determination will preclude or interfere with the provision of an essential public service so that the public health and safety or the environment will be adversely affected, the executive director shall consider and act on the petition within three days from the receipt of the petition. The board or the executive director may order the stay to be in effect from the effective date of the order or determination or other appropriate date.

(D) If the executive director does not find that the immediate effect of the order or determination will preclude or interfere with the provision of an essential public service, the board shall act upon the petition within 14 days or at its next scheduled public meeting, whichever date is sooner.

(3) (A) If an order or determination is issued pursuant to this part or Part 4 (commencing with Section 43000) to a person that is not the owner or operator of a permitted solid waste facility, the person subject to the order or determination may petition the board pursuant to this subparagraph to stay the effect of the order or determination, or portion thereof, pending the completion of administrative appeals before the hearing panel or hearing officer or the board.

(B) The board shall act on a petition filed pursuant to subparagraph (A) within 14 days or at its next scheduled public meeting whichever

date is sooner. The board may order the stay to be in effect from the effective date of the order or determination or other appropriate date.

(b) For purposes of this section, service may be effected by any of the following:

(1) Personal delivery.

(2) First-class United States mail, if it is made by certified mail and evidence of delivery is provided.

(3) Express delivery by a national express mail service that provides evidence of delivery.

SEC. 28. Section 45019 of the Public Resources Code is amended to read:

45019. At least 10 days prior to the date of issuance of an enforcement order which is not for an emergency, or within five days from the date of issuance of an enforcement order for an emergency, or within 15 days from the date of discovery of a violation of a state law, regulation, or term or condition of a solid waste facilities permit for a solid waste facility or disposal site, which is likely to result in an enforcement action, the following agencies shall, to the extent that the enforcement action involves a violation that may also be under the jurisdiction of another state regulatory agency, provide a written statement providing an explanation of, and justification for, the enforcement order or a description of the violation in the following manner:

(a) The enforcement agency, as appropriate, shall provide the statement to the regional water board, the board, the air pollution control district or air quality management district, and the Department of Toxic Substances Control.

(b) A regional water board, as appropriate, shall provide the statement to the enforcement agency, the board, the air pollution control district or air quality management district, and the Department of Toxic Substances Control.

(c) An air pollution control district or an air quality management district, as appropriate, shall provide the statement to the enforcement agency, the board, the regional water board, and the Department of Toxic Substances Control.

(d) The Department of Toxic Substances Control, as appropriate, shall provide the report of inspection required by paragraph (1) of subdivision (c) of Section 25185 of the Health and Safety Code to the enforcement agency, the board, the regional water board, and the air pollution control district or air quality management district.

SEC. 29. Section 45020 of the Public Resources Code is amended to read:

45020. (a) Within 30 days from the date of receipt of a notice of the issuance of, or the proposal to issue, an enforcement order pursuant to

Section 45022, the regional water board, the enforcement agency, or the air pollution control district or the air quality management district, and the Department of Toxic Substances Control, as appropriate, shall inspect the solid waste facility or disposal site to determine whether any state law, regulation, or term or condition of a permit, which that board or agency is authorized to enforce, is being violated.

(b) Each agency, to the maximum extent allowed by law, shall do all of the following with respect to enforcement activities at solid waste facilities and disposal sites:

(1) Coordinate enforcement activities to eliminate duplication and facilitate compliance.

(2) Notify the owner and operator of the solid waste facility or owner and operator of the disposal site of a violation before imposing an administrative civil penalty.

(3) Prior to imposing an administrative penalty, and upon the request of the owner or operator of the solid waste facility or owner or operator of the disposal site, meet with the owner or operator to clarify the regulatory requirements and to determine what actions, if any, the owner or operator could voluntarily take to bring the solid waste facility or disposal site into compliance by the earliest feasible date. If a contemporaneous enforcement action or investigation dealing with the same violation or with similar violations is being pursued by another regulatory agency, a city attorney, a county counsel, a district attorney, or the Attorney General, the operator may request a meeting with all those investigating and enforcement entities.

(4) Consider the factors prescribed in Section 45016 in determining appropriate enforcement actions.

SEC. 30. Section 45021 of the Public Resources Code is amended to read:

45021. If any board or agency specified in Section 45019 receives a complaint concerning a solid waste facility or disposal site and the board or agency determines that it is not authorized to take action concerning the complaint, the board or agency shall refer the complaint within 30 days from the date of receipt to another state agency that it determines is authorized to take action.

SEC. 31. Section 45022 of the Public Resources Code is amended to read:

45022. If any agency or board specified in Section 45019 receives a complaint concerning a solid waste facility or disposal site that the agency or board does not refer to another state agency pursuant to Section 45021, or if the agency or board receives this complaint referred to it by another agency or board pursuant to Section 45021, the agency or board shall either take appropriate enforcement action concerning the facility

or site pursuant to this part, or refer the complaint to the Attorney General, the district attorney, the city attorney, or the county counsel, whichever is applicable, or, at the earliest feasible date, not to exceed 60 days, provide the person who filed the complaint with a written statement explaining why an enforcement action would not be appropriate.

SEC. 32. Section 45023 of the Public Resources Code is amended to read:

45023. A civil penalty of not more than ten thousand dollars ($10,000) may be imposed upon a person who for each day the violation or operation occurs:

(a) Owns or operates a solid waste facility or disposal site and who intentionally or negligently violates or causes or permits another to violate the terms and conditions of a solid waste facilities permit or a standard, requirement, or order applicable to a solid waste facility or disposal site.

(b) Operates a solid waste facility without a solid waste facilities permit.

(c) With respect only to a solid waste facility or disposal site, intentionally or negligently violates a provision of this division, or a regulation, administrative order, or standard adopted by the board or an enforcement agency.

SEC. 33. Chapter 2 (commencing with Section 45025) is added to Part 5 of Division 30 of the Public Resources Code, to read:

Chapter 2. Criminal Enforcement

45025. (a) (1) A violation of Part 4 (commencing with Section 43000) is a misdemeanor punishable by a fine of not less than five hundred dollars ($500) and not more than ten thousand dollars ($10,000) for each violation. Each instance of disposal that violates Section 44000.5 is a separate violation.

(2) In addition to a fine under paragraph (1), a violation punishable under paragraph (1) is punishable by imprisonment in a county jail for not more than six months if any of the following circumstances apply to the person convicted of a violation of this section and cause or threaten to cause serious harm to public health or safety or the environment:

(A) The person knowingly makes a false statement in a permit application or other document used for the purpose of compliance with this chapter.

(B) The person knowingly destroys, alters, or conceals any records required to be maintained pursuant to this chapter.

(C) The person withholds information requested by the enforcement agency.

(D) The person is convicted of more than one violation of this division, or is in violation of more than one regulation adopted pursuant to this division or term and condition of a permit.

(E) Upon receipt of an order from the board or a local enforcement agency, the person fails to correct or make reasonable progress toward correcting a violation.

(b) In addition to any fine imposed upon a conviction, the court may require, as a condition of probation and in addition to any other condition of probation, that the person convicted under this section remove, or pay the cost of removing, any solid waste the person unlawfully disposed, caused, or arranged to be disposed, transported, or accepted for disposal.

SEC. 34. Section 45033 of the Public Resources Code is repealed.

SEC. 35. Section 45040 of the Public Resources Code is amended to read:

45040. (a) Within 30 days from the date of service of a copy of a decision or order issued by the board pursuant to Section 45031 or 45032, any aggrieved party may file with the superior court a petition for a writ of mandate for review thereof.

(b) (1) The filing of a petition for writ of mandate shall not stay any enforcement action taken or the accrual of any penalties assessed, pursuant to this part or Part 5 (commencing with Section 45000).

(2) Paragraph (1) shall not prohibit the court from granting any appropriate relief within its jurisdiction.

SEC. 36. 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, or 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 501

An act to amend Section 1798.24 of the Civil Code, to amend Sections 216.3, 1757, and 1935 of, to add Sections 126.7, 131, 139.95, 142.5, 148.5, and 149.3 to, to add Article 6 (commencing with Section 280) to Chapter 2 of Division 1 of, to repeal Sections 1909, 1930, 1931, 1934,

1936, 1937, 1938, 1939, and 1945 of, and to repeal and add Section 4825 of, the Financial Code, and to amend Sections 6254.5 and 6276.06 of the Government Code, relating to financial institutions.

[Approved by Governor September 28, 2008. Filed with Secretary of State September 28, 2008.]

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

SECTION 1. Section 1798.24 of the Civil Code is amended to read:

1798.24. No agency may disclose any personal information in a manner that would link the information disclosed to the individual to whom it pertains unless the information is disclosed, as follows:

(a) To the individual to whom the information pertains.

(b) With the prior written voluntary consent of the individual to whom the record pertains, but only if that consent has been obtained not more than 30 days before the disclosure, or in the time limit agreed to by the individual in the written consent.

(c) To the duly appointed guardian or conservator of the individual or a person representing the individual if it can be proven with reasonable certainty through the possession of agency forms, documents or correspondence that this person is the authorized representative of the individual to whom the information pertains.

(d) To those officers, employees, attorneys, agents, or volunteers of the agency that has custody of the information if the disclosure is relevant and necessary in the ordinary course of the performance of their official duties and is related to the purpose for which the information was acquired.

(e) To a person, or to another agency where the transfer is necessary for the transferee agency to perform its constitutional or statutory duties, and the use is compatible with a purpose for which the information was collected and the use or transfer is accounted for in accordance with Section 1798.25. With respect to information transferred from a law enforcement or regulatory agency, or information transferred to another law enforcement or regulatory agency, a use is compatible if the use of the information requested is needed in an investigation of unlawful activity under the jurisdiction of the requesting agency or for licensing, certification, or regulatory purposes by that agency.

(f) To a governmental entity when required by state or federal law.

(g) Pursuant to the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code).

(h) To a person who has provided the agency with advance, adequate written assurance that the information will be used solely for statistical research or reporting purposes, but only if the information to be disclosed is in a form that will not identify any individual.

(i) Pursuant to a determination by the agency that maintains information that compelling circumstances exist that affect the health or safety of an individual, if upon the disclosure notification is transmitted to the individual to whom the information pertains at his or her last known address. Disclosure shall not be made if it is in conflict with other state or federal laws.

(j) To the State Archives as a record that has sufficient historical or other value to warrant its continued preservation by the California state government, or for evaluation by the Director of General Services or his or her designee to determine whether the record has further administrative, legal, or fiscal value.

(k) To any person pursuant to a subpoena, court order, or other compulsory legal process if, before the disclosure, the agency reasonably attempts to notify the individual to whom the record pertains, and if the notification is not prohibited by law.

(*l*) To any person pursuant to a search warrant.

(m) Pursuant to Article 3 (commencing with Section 1800) of Chapter 1 of Division 2 of the Vehicle Code.

(n) For the sole purpose of verifying and paying government health care service claims made pursuant to Division 9 (commencing with Section 10000) of the Welfare and Institutions Code.

(o) To a law enforcement or regulatory agency when required for an investigation of unlawful activity or for licensing, certification, or regulatory purposes, unless the disclosure is otherwise prohibited by law.

(p) To another person or governmental organization to the extent necessary to obtain information from the person or governmental organization as necessary for an investigation by the agency of a failure to comply with a specific state law that the agency is responsible for enforcing.

(q) To an adopted person and is limited to general background information pertaining to the adopted person's natural parents, provided that the information does not include or reveal the identity of the natural parents.

(r) To a child or a grandchild of an adopted person and disclosure is limited to medically necessary information pertaining to the adopted person's natural parents. However, the information, or the process for obtaining the information, shall not include or reveal the identity of the natural parents. The State Department of Social Services shall adopt

regulations governing the release of information pursuant to this subdivision by July 1, 1985. The regulations shall require licensed adoption agencies to provide the same services provided by the department as established by this subdivision.

(s) To a committee of the Legislature or to a Member of the Legislature, or his or her staff when authorized in writing by the member, where the member has permission to obtain the information from the individual to whom it pertains or where the member provides reasonable assurance that he or she is acting on behalf of the individual.

(t) (1) To the University of California or a nonprofit educational institution conducting scientific research, provided the request for information is approved by the Committee for the Protection of Human Subjects (CPHS) for the California Health and Human Services Agency (CHHSA). The CPHS approval required under this subdivision shall include a review and determination that all the following criteria have been satisfied:

(A) The researcher has provided a plan sufficient to protect personal information from improper use and disclosures, including sufficient administrative, physical, and technical safeguards to protect personal information from reasonable anticipated threats to the security or confidentiality of the information.

(B) The researcher has provided a sufficient plan to destroy or return all personal information as soon as it is no longer needed for the research project, unless the researcher has demonstrated an ongoing need for the personal information for the research project and has provided a long-term plan sufficient to protect the confidentiality of that information.

(C) The researcher has provided sufficient written assurances that the personal information will not be reused or disclosed to any other person or entity, or used in any manner, not approved in the research protocol, except as required by law or for authorized oversight of the research project.

(2) The CPHS shall, at a minimum, accomplish all of the following as part of its review and approval of the research project for the purpose of protecting personal information held in agency databases:

(A) Determine whether the requested personal information is needed to conduct the research.

(B) Permit access to personal information only if it is needed for the research project.

(C) Permit access only to the minimum necessary personal information needed for the research project.

(D) Require the assignment of unique subject codes that are not derived from personal information in lieu of social security numbers if the research can still be conducted without social security numbers.

(E) If feasible, and if cost, time, and technical expertise permit, require the agency to conduct a portion of the data processing for the researcher to minimize the release of personal information.

(3) Reasonable costs to the agency associated with the agency's process of protecting personal information under the conditions of CPHS approval may be billed to the researcher, including, but not limited to, the agency's costs for conducting a portion of the data processing for the researcher, removing personal information, encrypting or otherwise securing personal information, or assigning subject codes.

(4) The CPHS may enter into written agreements to enable other institutional review boards to provide the data security approvals required by this subdivision, provided the data security requirements set forth in this subdivision are satisfied.

(u) To an insurer if authorized by Chapter 5 (commencing with Section 10900) of Division 4 of the Vehicle Code.

(v) Pursuant to Section 280, 282, 8009, or 18396 of the Financial Code.

This article shall not be construed to require the disclosure of personal information to the individual to whom the information pertains when that information may otherwise be withheld as set forth in Section 1798.40.

SEC. 2. Section 126.7 is added to the Financial Code, to read:

126.7. "CAMELS composite rating" shall have the meaning set forth in Section 327.8(j) of Title 12 of the Code of Federal Regulations.

SEC. 3. Section 131 is added to the Financial Code, to read:

131. (a) "Confidential information" means any information regarding a licensee contained in, or related to, any of the following:

(1) Applications filed with the commissioner.

(2) Examination, operating, condition, or any other reports prepared by, on behalf of, or for the use of, the commissioner.

(3) Information received in confidence by the commissioner.

(b) Confidential information is the property of the commissioner.

SEC. 4. Section 139.95 is added to the Financial Code, to read:

139.95. "Licensee" has the following meanings:

(a) Any bank authorized by the commissioner pursuant to Section 401 to transact banking or trust business.

(b) Any industrial bank authorized by the commissioner pursuant to Section 401 to transact industrial banking business.

(c) Any trust company authorized by the commissioner pursuant to Section 401 to transact trust business.

(d) Any foreign (other nation) bank that is licensed under Article 2 (commencing with Section 1725) of Chapter 13.5 or under Article 3 (commencing with Section 1750) of Chapter 13.5.

(e) Any corporation licensed by the commissioner to transmit money pursuant to Section 1802.7.

(f) Any person licensed by the commissioner to issue traveler's checks pursuant to Section 1860.

(g) Any person authorized by the commissioner to conduct the business of a savings association pursuant to Division 2 (commencing with Section 5000).

(h) Any credit union authorized by the commissioner to conduct business pursuant to Section 14154.

(i) Any foreign (other state) credit union licensed by the commissioner to conduct business pursuant to Chapter 11 (commencing with Section 16000) of Division 5.

(j) Any foreign (other nation) credit union licensed by the commissioner to conduct business pursuant to Chapter 12 (commencing with Section 16500) of Division 5.

(k) Any industrial loan company authorized by the commissioner to conduct insurance premium finance business pursuant to Division 7 (commencing with Section 18000).

(*l*) Any corporation licensed by the commissioner as a business and industrial development corporation pursuant to Section 31154.

(m) Any corporation licensed by the commissioner pursuant to Section 33406 to engage in the business of selling payment instruments.

SEC. 5. Section 142.5 is added to the Financial Code, to read:

142.5. "ROCA supervisory rating" shall have the meaning set forth in Section 327.8(k) of Title 12 of the Code of Federal Regulations.

SEC. 6. Section 148.5 is added to the Financial Code, to read:

148.5. "Uniform Interagency Trust Rating System (UITRS)" shall have the meaning set forth in the policy statement regarding the uniform interagency trust rating system published by the Federal Financial Institutions Examination Council on October 13, 1998 (63 Fed. Reg. 54704).

SEC. 7. Section 149.3 is added to the Financial Code, to read:

149.3. "Uniform Rating System for Informational Technology (URSIT)" shall have the meaning set forth in the policy statement regarding the uniform rating system for information technology published by the Federal Financial Institutions Examination Council on January 20, 1999, and implemented on or before April 1, 1999 (64 Fed. Reg. 3109).

SEC. 8. Section 216.3 of the Financial Code is amended to read:

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

(1) "Applicable law" means:

(A) With respect to any bank, Division 1.5 (commencing with Section 4800), and any of the following provisions of Division 1 (commencing with Section 99) of the Financial Code:

(i) Article 5 (commencing with Section 270) of Chapter 2.

(ii) Article 3 (commencing with Section 640) of Chapter 5.

(iii) Article 4.5 (commencing with Section 670) of Chapter 5.

(iv) Article 6 (commencing with Section 690) of Chapter 5.

(v) Chapter 6 (commencing with Section 750).

(vi) Chapter 10 (commencing with Section 1200).

(vii) Article 1 (commencing with Section 1400) of Chapter 11.

(viii) Chapter 12 (commencing with Section 1500).

(ix) Chapter 13.5 (commencing with Section 1700).

(x) Section 286.

(xi) Section 287.

(xii) Section 289.

(xiii) Section 290.

(xiv) Section 1951.

(xv) Section 3359.

(xvi) Chapter 19 (commencing with Section 3500).

(xvii) Chapter 21.5 (commencing with Section 3750).

(xviii) Chapter 22 (commencing with Section 3800).

(B) With respect to any savings association, any provision of Division 1.5 (commencing with Section 4800) and Division 2 (commencing with Section 5000).

(C) With respect to any issuer of traveler's checks, any provision of Chapter 14A (commencing with Section 1851) of Division 1.

(D) With respect to any insurance premium finance company, any provision of Division 7 (commencing with Section 18000).

(E) With respect to any business and development corporation, any provision of Division 15 (commencing with Section 31000).

(F) With respect to any credit union, any of the following provisions:

(i) Section 14252.

(ii) Section 14253.

(iii) Section 14255.

(iv) Article 4 (commencing with Section 14350) of Chapter 3 of Division 5.

(v) Section 14401.

(vi) Section 14404.

(vii) Section 14408, only as that section applies to gifts to directors, volunteers, and employees, and the related family or business interests of the directors, volunteers, and employees.

(viii) Section 14409.

(ix) Section 14410.

(x) Article 5 (commencing with Section 14600) of Chapter 4 of Division 5.

(xi) Article 6 (commencing with Section 14650) of Chapter 4 of Division 5, excluding subdivision (a) of Section 14651.

(xii) Section 14803.

(xiii) Section 14851.

(xiv) Section 14858.

(xv) Section 14860.

(xvi) Section 14861.

(xvii) Section 14863.

(G) With respect to any person licensed to transmit money abroad, any provision of Chapter 14 (commencing with Section 1800).

(H) With respect to any person licensed to sell payment instruments, any provision of Division 16 (commencing with Section 33000).

(2) "Licensee" means any bank, savings association, credit union, transmitter of money abroad, issuer of payment instruments, issuer of traveler's checks, insurance premium finance agency, or business and industrial development corporation that is authorized by the commissioner to conduct business in this state.

(b) Notwithstanding any other provision of this code that applies to a licensee or a subsidiary of a licensee, after notice and an opportunity to be heard, the commissioner may, by order that shall include findings of fact which incorporates a determination made in accordance with subdivision (e), levy civil penalties against any licensee or any subsidiary of a licensee who has violated any provision of applicable law, any order issued by the commissioner, any written agreement between the commissioner and the licensee or subsidiary of the licensee, or any condition of any approval issued by the commissioner. Notwithstanding any other provision of law, neither the commissioner nor any employee of the department shall disclose or permit the disclosure of any record, record of any action, or information contained in a record of any action, taken by the commissioner under the provisions of this section, unless the action was taken pursuant to paragraph (2) of subdivision (b), to persons other than federal or state government employees who are authorized by statute to obtain the records in the performance of their official duties, unless the disclosure is authorized or requested by the affected licensee or the affected subsidiary of the licensee. The commissioner shall have the sole authority to bring any action with respect to a violation of applicable law subject to a penalty imposed under this section.

Except as provided in paragraphs (1) and (2), any penalty imposed by the commissioner may not exceed one thousand dollars ($1,000) a day, provided that the aggregate penalty of all offenses in any one action

against any licensee or subsidiary of a licensee shall not exceed fifty thousand dollars ($50,000).

(1) If the commissioner determines that any licensee or subsidiary of the licensee has recklessly violated any applicable law, any order issued by the commissioner, any provision of any written agreement between the commissioner and the licensee or subsidiary, or any condition of any approval issued by the commissioner, the commissioner may impose a penalty not to exceed five thousand dollars ($5,000) per day, provided that the aggregate penalty of all offenses in an action against any licensee or subsidiary of a licensee shall not exceed seventy-five thousand dollars ($75,000).

(2) If the commissioner determines that any licensee or subsidiary of the licensee has knowingly violated any applicable law, any order issued by the commissioner, any provision of any written agreement between the commissioner and the licensee or subsidiary, or any condition of any approval issued by the commissioner, the commissioner may impose a penalty not to exceed ten thousand dollars ($10,000) per day, provided that the aggregate penalty of all offenses in an action against any licensee or subsidiary of a licensee shall not exceed 1 percent of the total assets of the licensee or subsidiary of a licensee subject to the penalty.

(c) Nothing in this section shall be construed to impair or impede the commissioner from pursuing any other administrative action allowed by law.

(d) Nothing in this section shall be construed to impair or impede the commissioner from bringing an action in court to enforce any law or order he or she has issued, including orders issued under this section. Nothing in this section shall be construed to impair or impede the commissioner from seeking any other damages or injunction allowed by law.

(e) In determining the amount and the appropriateness of initiating a civil money penalty under subdivision (b), the commissioner shall consider all of the following:

(1) Evidence that the violation or practice or breach of duty was intentional or was committed with a disregard of the law or with a disregard of the consequences to the institution.

(2) The duration and frequency of the violations, practices, or breaches of duties.

(3) The continuation of the violations, practices, or breaches of duty after the licensee or subsidiary of the licensee was notified, or, alternatively, its immediate cessation and correction.

(4) The failure to cooperate with the commissioner in effecting early resolution of the problem.

(5) Evidence of concealment of the violation, practice, or breach of duty or, alternatively, voluntary disclosure of the violation, practice, or breach of duty.

(6) Any threat of loss, actual loss, or other harm to the institution, including harm to the public confidence in the institution, and the degree of that harm.

(7) Evidence that a licensee or subsidiary of a licensee received financial gain or other benefit as a result of the violation, practice, or breach of duty.

(8) Evidence of any restitution paid by a licensee or subsidiary of a licensee of losses resulting from the violation, practice, or breach of duty.

(9) History of prior violations, practices, or breaches of duty, particularly where they are similar to the actions under consideration.

(10) Previous criticism of the institution for similar actions.

(11) Presence or absence of a compliance program and its effectiveness.

(12) Tendency to engage in violations of law, unsafe or unsound banking practices, or breaches of duties.

(13) The existence of agreements, commitments, orders, or conditions imposed in writing intended to prevent the violation, practice, or breach of duty.

(14) Whether the violation, practice, or breach of duty causes quantifiable, economic benefit or loss to the licensee or the subsidiary of the licensee. In those cases, removal of the benefit or recompense of the loss usually will be insufficient, by itself, to promote compliance with the applicable law, order, or written agreement. The penalty amount should reflect a remedial purpose and should provide a deterrent to future misconduct.

(15) Other factors as the commissioner may, in his or her opinion, consider relevant to assessing the penalty or establishing the amount of the penalty.

(f) The amounts collected under this section shall be deposited in the appropriate fund of the department. For purposes of this subdivision, the term "appropriate fund" means the fund to which the annual assessments of fined licensees, or the parent licensee of the fined subsidiary, are credited.

SEC. 9. Article 6 (commencing with Section 280) is added to Chapter 2 of Division 1 of the Financial Code, to read:

Article 6. General Operational Provisions

280. (a) In this section, "governmental agency" includes, without limitation, any agency of this state, of any other state of the United States, of the United States, or of any foreign nation.

(b) The commissioner may furnish information to a governmental agency that regulates financial institutions.

(c) The commissioner may furnish to a governmental agency that administers a loan guarantee or similar program, information relating to a person who participates in the program.

(d) The commissioner may furnish to a governmental agency that regulates business activities, other than the type described in subdivision (b), information relating to any of the following:

(1) A suspected violation of a law administered by the agency.

(2) A person involved in an application to the agency for a license, approval, or other authorization.

(e) The commissioner may furnish to a governmental agency that is a law enforcement agency information relating to a suspected crime.

(f) The commissioner may furnish information to any person who provides share insurance or guaranty of the shares of a credit union in accordance with Section 14858, 16004, or 16503.

(g) The commissioner may furnish confidential information regarding a licensee to the directors, officers, employees, attorneys, accountants, and consultants of that licensee in accordance with Section 282.

(h) This section does not prescribe the only circumstances under which the commissioner may furnish information.

281. With the prior approval of the commissioner, a foreign (other state) or foreign (other nation) financial institutions regulatory agency may examine a licensee and any of its offices, provided that the agency has a regulatory interest in the licensee. Any regulatory agency approved by the commissioner under this section shall be considered a supervisory agency under subdivision (f) of Section 7480 of the Government Code.

282. (a) Directors, officers, employees, attorneys, accountants, or consultants of a licensee may not disclose in any manner to any person confidential information regarding the licensee received from the commissioner. The prohibition in this section shall not apply to disclosures of confidential information by directors, officers, employees, attorneys, accountants, or consultants of the licensee:

(1) Made pursuant to a subpoena or other discovery proceeding.

(2) Made to any state or federal prosecuting or investigatory agency or authority.

(3) Made to any state, federal, or foreign (other nation) financial institutions regulatory agency that has a direct regulatory interest in the licensee.

(4) Made to any state or federal taxing agency.

(5) Made as otherwise required by law.

(6) Made as otherwise authorized by the commissioner in writing.

(b) Any director, officer, employee, attorney, accountant, or consultant that discloses confidential information in a manner other than allowed by this section shall be liable for a civil penalty not to exceed fifty thousand dollars ($50,000). The commissioner may impose a penalty under this section in accordance with the procedures set forth in Section 216.3.

(c) The prohibition set forth in subdivision (a) shall not apply to any discussion, analysis, or other use of confidential information provided by the commissioner that occurs between directors, officers, employees, attorneys, accountants, or consultants of the licensee.

283. Every licensee shall make and file with the commissioner whenever required by him or her a report in any form as the commissioner may prescribe and verified in any manner the commissioner prescribes, showing its financial condition and any other information as the commissioner may require at the close of business on any day designated by him or her. Any verification shall state that each of the officers making the verification has a personal knowledge of the matters in the report and that each of them believes that each statement in the report is true.

284. The commissioner shall call for the report specified in Section 283 from all licensees at least four times each year upon dates selected by the commissioner.

285. The commissioner may at any time require any licensee to make and file with him or her a special report furnishing any information as the commissioner may specify when necessary to inform him or her fully of the actual financial condition and all other affairs of the licensee. The reports shall be in the form and filed on a date prescribed by the commissioner and shall, if required by the commissioner, be verified in any manner that he or she prescribes.

286. Every licensee shall keep its corporate records, financial records, and books of account in words and figures of the English language and in form satisfactory to the commissioner.

287. Every licensee shall notify the commissioner of any change in the following officers of the licensee, to the extent that those officers exist within the licensee: chairperson, chief executive officer, president, general manager, managing officer, chief financial officer, and chief credit officer.

288. (a) Each report required under this article, or under any other provision of law administered by the commissioner, shall be filed with the commissioner at the time that the commissioner may require. If any licensee fails to make any required report at the time specified by the commissioner or fails to include therein any matter required by this article, any provision of law administered by the commissioner, or by the commissioner, it shall be liable to the people of this state in the sum of not more than one hundred dollars ($100) for each day that the report is delayed or withheld by the failure or neglect of the licensee.

(b) The provisions of Section 216.3 shall not apply to this section.

289. (a) Every licensee shall file with the commissioner one copy of all material filed by the licensee with any applicable federal financial institutions regulatory agency, law enforcement agency, or other federal agency that is required to be filed by law or order of the agency.

(b) Each copy required to be filed pursuant to subdivision (a) shall be filed with the commissioner on or before the date upon which the original is filed with the federal regulatory agency and shall be available for inspection by the public except to the extent the information contained therein is accorded confidential treatment under federal law or regulations. That material shall be open for inspection by the Attorney General.

290. Any person intentionally making a false statement in any report required to be rendered under this article or other provision of law administered by the commissioner is guilty of perjury.

SEC. 10. Section 1757 of the Financial Code is amended to read:

1757. (a) Whenever the commissioner calls for a report under Section 283 from commercial banks organized under the laws of this state, the commissioner shall call for a report from each foreign (other nation) bank that is licensed to transact business in this state.

(b) (1) A foreign (other nation) bank that is licensed to transact business in this state shall prominently display in the lobby of each agency and branch office, except an automated teller machine branch office (as defined in Section 550), a notice that any person may obtain a financial report from the bank. The notice shall include the address and telephone number of the person or office to be contacted for a financial report. The bank shall, promptly after receiving a request for a financial report, mail or otherwise furnish the financial report to the requester. The first financial report shall be provided without charge.

(2) The financial report called for in this subdivision shall contain either (A) the information that the commissioner may require by regulation or (B) in the absence of a regulation, the last balance sheet and income statement, each without any schedules, that the bank filed with the commissioner pursuant to Section 283.

SEC. 11. Section 1909 of the Financial Code is repealed.

SEC. 12. Section 1930 of the Financial Code is repealed.

SEC. 13. Section 1931 of the Financial Code is repealed.

SEC. 14. Section 1934 of the Financial Code is repealed.

SEC. 15. Section 1935 of the Financial Code is amended to read:

1935. (a) A California state bank shall prominently display in the lobby of its main office and each branch office, except an automated teller machine branch office, as defined in Section 550, a notice that any person may obtain a financial report from the bank. The notice shall include the address and telephone number of the person or office to be contacted for a financial report. The bank shall, promptly after receiving a request for a financial report, mail or otherwise furnish the financial report to the requester. The first financial report shall be provided without charge.

(b) The financial report called for in this section shall contain either (1) the information that the commissioner may require by regulation or (2) in the absence of a regulation, the last balance sheet and income statement, each without any schedules, that the bank filed with the commissioner pursuant to Section 283.

SEC. 16. Section 1936 of the Financial Code is repealed.

SEC. 17. Section 1937 of the Financial Code is repealed.

SEC. 18. Section 1938 of the Financial Code is repealed.

SEC. 19. Section 1939 of the Financial Code is repealed.

SEC. 20. Section 1945 of the Financial Code is repealed.

SEC. 21. Section 4825 of the Financial Code is repealed.

SEC. 22. Section 4825 is added to the Financial Code, to read:

4825. A California state depository corporation may merge with a corporation or other business entity that is not a depository corporation if the California state depository corporation is the surviving corporation of that merger. The merger of a corporation or other business entity with and into a California state depository corporation shall be effected in accordance with Division 1 (commencing with Section 100) of the Corporations Code.

SEC. 23. Section 6254.5 of the Government Code is amended to read:

6254.5. Notwithstanding any other provisions of the law, whenever a state or local agency discloses a public record which is otherwise exempt from this chapter, to any member of the public, this disclosure shall constitute a waiver of the exemptions specified in Sections 6254, 6254.7, or other similar provisions of law. For purposes of this section, "agency" includes a member, agent, officer, or employee of the agency acting within the scope of his or her membership, agency, office, or employment.

This section, however, shall not apply to disclosures:

(a) Made pursuant to the Information Practices Act (commencing with Section 1798 of the Civil Code) or discovery proceedings.

(b) Made through other legal proceedings or as otherwise required by law.

(c) Within the scope of disclosure of a statute which limits disclosure of specified writings to certain purposes.

(d) Not required by law, and prohibited by formal action of an elected legislative body of the local agency which retains the writings.

(e) Made to any governmental agency which agrees to treat the disclosed material as confidential. Only persons authorized in writing by the person in charge of the agency shall be permitted to obtain the information. Any information obtained by the agency shall only be used for purposes which are consistent with existing law.

(f) Of records relating to a financial institution or an affiliate thereof, if the disclosures are made to the financial institution or affiliate by a state agency responsible for the regulation or supervision of the financial institution or affiliate.

(g) Of records relating to any person that is subject to the jurisdiction of the Department of Corporations, if the disclosures are made to the person that is the subject of the records for the purpose of corrective action by that person, or if a corporation, to an officer, director, or other key personnel of the corporation for the purpose of corrective action, or to any other person to the extent necessary to obtain information from that person for the purpose of an investigation by the Department of Corporations.

(h) Made by the Commissioner of Financial Institutions under Section 280, 282, 8009, or 18396 of the Financial Code.

(i) Of records relating to any person that is subject to the jurisdiction of the Department of Managed Health Care, if the disclosures are made to the person that is the subject of the records for the purpose of corrective action by that person, or if a corporation, to an officer, director, or other key personnel of the corporation for the purpose of corrective action, or to any other person to the extent necessary to obtain information from that person for the purpose of an investigation by the Department of Managed Health Care.

SEC. 24. Section 6276.06 of the Government Code is amended to read:

6276.06. Bank and Corporation Tax, disclosure of information, Article 2 (commencing with Section 19542), Chapter 7, Part 10.2, Division 2, Revenue and Taxation Code.

Bank employees, confidentiality of criminal history information, Sections 777.5 and 4990, Financial Code.

Bank reports, confidentiality of, Section 289, Financial Code.

Basic Property Insurance Inspection and Placement Plan, confidential reports, Section 10097, Insurance Code.

Beef Council of California, confidentiality of fee transactions information, Section 64691.1, Food and Agricultural Code.

Bids, confidentiality of, Section 10304, Public Contract Code.

Birth, death, and marriage licenses, confidential information contained in, Sections 102100 and 102110, Health and Safety Code.

Birth defects, monitoring, confidentiality of information collected, Section 103850, Health and Safety Code.

Birth, live, confidential portion of certificate, Sections 102430, 102475, 103525, and 103590, Health and Safety Code.

Blood tests, confidentiality of hepatitis and AIDS carriers, Section 1603.1, Health and Safety Code.

Blood-alcohol percentage test results, vehicular offenses, confidentiality of, Section 1804, Vehicle Code.

Bureau of Fraudulent Claims, investigations or publication of information, Section 12991, Insurance Code.

Business and professions licensee exemption for social security number, Section 30, Business and Professions Code.

SEC. 25. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

CHAPTER 502

An act to amend Section 1365.1 of, and to add Section 1367.6 to, the Civil Code, relating to common interest developments.

[Approved by Governor September 28, 2008. Filed with Secretary of State September 28, 2008.]

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

SECTION 1. 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, but is not obligated to, pay under protest any disputed charge or sum levied by the association, including, but not limited to, an assessment, fine, penalty, late fee, collection cost, or monetary penalty imposed as a disciplinary measure, and by so doing, specifically reserve the right to contest the disputed charge or sum in court or otherwise.

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. 2. Section 1367.6 is added to the Civil Code, to read:

1367.6. (a) If a dispute exists between the owner of a separate interest and the association regarding any disputed charge or sum levied by the association, including, but not limited to, an assessment, fine, penalty, late fee, collection cost, or monetary penalty imposed as a disciplinary measure, and the amount in dispute does not exceed the jurisdictional limits stated in Sections 116.220 and 116.221 of the Code of Civil Procedure, the owner of the separate interest may, in addition to pursuing dispute resolution pursuant to Article 5 (commencing with Section 1363.810) of Chapter 4, pay under protest the disputed amount and all other amounts levied, including any fees and reasonable costs of collection, reasonable attorney's fees, late charges, and interest, if any, pursuant to subdivision (e) of Section 1366, and commence an action in small claims court pursuant to Chapter 5.5 (commencing with Section 116.110) of Title 1 of the Code of Civil Procedure.

(b) Nothing in this section shall impede an association's ability to collect delinquent assessments as provided in Sections 1367.1 and 1367.4.

CHAPTER 503

An act to amend Sections 51201, 51250, 51256, 51257, 51282, 51283, and 51297 of, and to add Section 51223 to, the Government Code, relating to local government.

[Approved by Governor September 28, 2008. Filed with Secretary of State September 28, 2008.]

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

SECTION 1. Section 51201 of the Government Code is amended to read:

51201. As used in this chapter, unless otherwise apparent from the context, the following terms have the following meanings:

(a) "Agricultural commodity" means any and all plant and animal products produced in this state for commercial purposes, including, but not limited to, plant products used for producing biofuels.

(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 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 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).

(6) An area enrolled in the United States Department of Agriculture Conservation Reserve Program or Conservation Reserve Enhancement Program.

(p) "Development" means, as used in Section 51223, the construction of buildings or the use of the restricted property if the buildings or use are unrelated to the agricultural use, the open-space use, or uses compatible with either agricultural or open-space uses of the property, or substantially impair the agricultural, open-space, or a combination of the agricultural and open-space uses of the property. Agricultural use, open-space use, uses compatible with either agricultural or open-space uses, or the acquisition of land or an interest in land are not development.

SEC. 2. Section 51223 is added to the Government Code, to read:

51223. (a) A city council or board of supervisors, as the case may be, shall, prior to rescinding a contract for the purpose of restricting the same land by an open-space contract pursuant to Section 51254 or by entering to an open-space agreement pursuant to Section 51255, determine that the parcel or parcels are large enough to provide open-space benefits, by providing habitat for wildlife, or preserving its natural characteristics, beauty, or openness for the benefit and enjoyment of the public.

(b) Uses or development permitted on land subject to an open-space contract, or subject to an open-space easement agreement pursuant to Section 51255, shall satisfy one or both of the following:

(1) Comply with the provisions of Section 51238.1 or 51238.2.

(2) Consist of, cause, facilitate, or benefit one or more open-space uses on the land.

(c) If an open-space contract is executed pursuant to Section 51205, or if a contract is rescinded for the purpose of restricting the same land by an open-space contract pursuant to Section 51254, or an open-space easement agreement pursuant to Section 51255, either of the following shall apply:

(1) The resulting open-space contract shall not permit new development during the period the contract is in effect, except that uses compatible with or related to the open-space uses would be permitted.

(2) The resulting open-space easement agreement shall not permit new development during the time equal to the time remaining on the contract at the time of its rescission, except that uses compatible with, or related to, the open-space uses would be permitted.

(d) For the purposes of this section, agriculture and uses compatible with agriculture are compatible with open-space uses, unless otherwise provided by local rules or ordinances.

(e) A board or council shall not accept or approve a petition for rescission pursuant to Sections 51254 or 51255 if the city or county, within which the land for which the rescission is sought is located, has discovered or received notice of a likely material breach on the land pursuant to the process specified in Section 51250, unless the rescission is a part of the process specified in Section 51250.

SEC. 3. Section 51250 of the Government Code is amended to read:

51250. (a) The purpose of this section is to identify certain structures that constitute material breaches of contract under this chapter and to provide an alternate remedy to a contract cancellation petition by the landowner. Accordingly, this remedy is in addition to any other available remedies for breach of contract. Except as expressly provided in this section, this section is not intended to change the existing land use

decisionmaking and enforcement authority of cities and counties including the authority conferred upon them by this chapter to administer agricultural preserves and contracts.

(b) For purposes of this section, a breach is material if, on a parcel under contract, both of the following conditions are met:

(1) A commercial, industrial, or residential building is constructed that is not allowed by this chapter or the contract, local uniform rules or ordinances consistent with the provisions of this chapter, and that is not related to an agricultural use or compatible use.

(2) The total area of all of the building or buildings likely causing the breach exceeds 2,500 square feet for either of the following:

(A) All property subject to any contract or all contiguous property subject to a contract or contracts owned by the same landowner or landowners on January 1, 2004.

(B) All property subject to a contract entered into after January 1, 2004, covering property not subject to a contract on January 1, 2004.

For purposes of this subdivision any additional parcels not specified in the legal description that accompanied the contract, as it existed prior to January 1, 2003, including any parcel created or recognized within an existing contract by subdivision, deed, partition, or, pursuant to Section 66499.35, by certificate of compliance, shall not increase the limitation of this subdivision.

(c) The department shall notify the city or county if the department discovers a possible breach.

(d) The city or county shall, upon notification by the department or upon discovery by the city or county of a possible material breach, determine if there is a valid contract and if it is likely that the breach is material. In its investigation, the city or county shall endeavor to contact the landowner or his or her representative to learn the landowner's explanation of the facts and circumstances related to the possible material breach.

(e) Within 10 days of determining whether it is likely that a material breach exists, the city or county shall notify the landowner and the department by certified mail, return receipt requested. This notice shall include the reasons for the determination and a copy of the contract. If either the landowner or the department objects to the preliminary determination of the city or county, the board or council shall schedule a public hearing as provided in subdivision (g).

(f) Within 60 days of receiving notice that it is likely a material breach, the landowner or his or her representative may notify the city or the county that the landowner intends to eliminate the conditions that resulted in the material breach within 60 days. If the landowner eliminates the conditions that resulted in the material breach within 60 days, the city

or county shall take no further action under this section with respect to the building at issue. If the landowner notifies the city or county of the intention to eliminate the conditions but fails to do so, the city or county shall proceed with the hearing required in subdivision (g).

(g) The city or county shall schedule a hearing no more than 120 days after the notice is provided to the landowner and the department, as required in subdivision (e). The city or county shall give notice of the public hearing by certified mail, return receipt requested to the landowner and the department at least 30 days prior to the hearing. The city or county shall give notice of the public hearing by first-class mail to every owner of land under contract, any portion of which is situated within one mile of the exterior boundary of the contracted parcel on which the likely material breach exists. The city or county shall also give published notice pursuant to Section 6061. The notice shall include the date, time, and place of the public hearing. Not less than five days before the hearing, the department may request that the city or county provide the department, at the department's expense, a recorded transcript of the hearing not more than 30 days after the hearing.

(h) At the public hearing, the city or county shall consider any oral or written testimony and then determine whether a material breach exists. The city or county shall support its determination with findings, made on the record and based on substantial evidence, that the property does or does not meet the conditions specified in subdivision (b).

(i) If the city or county determines that a material breach exists, the city or county shall do one of the following:

(1) Order the landowner to eliminate the conditions that resulted in the material breach within 60 days.

(2) Assess the monetary penalty pursuant to subdivision (j) and terminate the contract on that portion of the contracted parcel that has been made incompatible by the material breach.

If the landowner disagrees with the determination, he or she may pursue any other legal remedy that is available.

(j) The monetary penalty shall be 25 percent of the unrestricted fair market value of the land rendered incompatible by the breach, plus 25 percent of the value of the incompatible building and any related improvements on the contracted land. The basis for the valuation of the penalty shall be an independent appraisal of the current unrestricted fair market value of the property that is subject to the contract and affected by the incompatible use or uses, and a valuation of any buildings and any related improvements within the area affected by the incompatible use or uses. If the city or county determines that equity would permit a lesser penalty, the city or county, the landowner, and the department may negotiate a reduction in the penalty based on the factors specified

in subdivision (k), but a reduction in the penalty may not exceed one-half of the penalty. If negotiations are to be held, the city or county shall provide the department 15 days' notice before the first negotiation. If the department chooses not to be a negotiator or fails to send a negotiator, the city or county and the landowner may negotiate the penalty.

(k) In determining the amount of a lesser penalty, the negotiators shall consider:

(1) The nature, circumstances, extent, and gravity of the material breach.

(2) Whether the landowner's actions were willful, knowing, or negligent with respect to the material breach.

(3) The landowner's culpability in contributing to the material breach and whether the actions of prior landowners subject to the contract contributed to the material breach.

(4) Whether the actions of the city or county contributed to the material breach.

(5) Whether the landowner notified the city or county that the landowner would eliminate the conditions that resulted in the material breach within 30 days, but failed to do so.

(6) The willingness of the landowner to rapidly resolve the issue of the material breach.

(7) Any other mitigating or aggravating factors that justice may require.

(*l*) If the landowner is ordered to eliminate the conditions that resulted in the material breach pursuant to paragraph (1) of subdivision (i) but the landowner fails to do so within the time specified by the city or county, the city or county may abate the material breach as a public nuisance pursuant to any applicable provisions of law.

(m) If the city or county terminates the contract pursuant to paragraph (2) of subdivision (i), the city or county shall record a notice of termination following the procedures of Section 51283.4.

(n) The assessment of a monetary penalty pursuant to subdivision (i) shall be secured by a lien payable to the county treasurer of the county within which the property is located, in the amount assessed pursuant to subdivision (j) or (k). Once properly recorded and indexed, the lien shall have the force, effect, and priority of a judgment lien. The lien document shall provide both of the following:

(1) The name of the real property owner of record and shall contain either the legal description or the assessor's parcel number of the real property to which the lien attaches.

(2) A direct telephone number and address that interested parties may contact to determine the final amount of any applicable assessments and penalties owing on the lien pursuant to this section.

(o) If the lien is not paid within 60 days of recording, simple interest shall accrue on the unpaid penalty at the rate of 10 percent per year, and shall continue to accrue until the penalty is paid, prior to all other claims except those with superior status under federal or state law.

(p) Upon payment of the lien, the city or county shall record a release of lien and a certificate of contract termination by breach with the county recorder for the land rendered incompatible by the breach.

(q) The city or county may deduct from any funds received pursuant to this chapter the amount of the actual costs of administering this section and shall transmit the balance of the funds by the county treasurer to the Controller for deposit in the Soil Conservation Fund.

(r) (1) The department may carry out the responsibilities of a city or county under this section if any of the following occurs:

(A) The city or county fails to determine whether there is a material breach within 210 days of the discovery of the breach.

(B) The city or county fails to complete the requirements of this section within 180 days of the determination that a material breach exists.

(2) The city or county may request in writing to the department, the department's approval for an extension of time for the city or county to act and the reasons for the extension. Approval may not be unreasonably withheld by the department.

(3) The department shall notify the city or county 30 days prior to its exercise of any responsibility under this subdivision.

(4) This section shall not be construed to limit the authority of the Secretary of the Resources Agency under Section 16146 or 16147.

(s) (1) This section does not apply to any of the following:

(A) A building constructed prior to January 1, 2004, or a building for which a permit was issued by a city or county prior to January 1, 2004.

(B) A building that was not a material breach at the time of construction but became a material breach because of a change in law or ordinance.

(C) A building owned by the state.

(2) Subject to paragraphs (4) and (5), this section does not apply when a board or council cancels a contract pursuant to Article 5 (commencing with Section 51280), or a city terminates a contract pursuant to Section 51243.5, or when a public agency, as defined by subdivision (a) of Section 51291, acquires land subject to contract by, or in lieu of, eminent domain pursuant to Article 6 (commencing with Section 51290) unless either of the following occurs:

(A) The action terminating the contract is rescinded.

(B) A court determines that the cancellation or termination was not properly executed pursuant to this chapter, or that the land continues to be subject to the contract.

(3) On the motion of any party with standing to bring an action for breach, any court hearing an action challenging the termination of a contract entered into under this chapter shall consolidate any action for breach, including the remedies for material breach available pursuant to this section.

(4) Paragraph (2) shall not be applicable for a cancellation or termination occurring after January 1, 2004, unless the affected landowner provides to the administering board or council and to the department, within 30 days after the cancellation or termination, a notarized statement, in a form acceptable to the department, signed under penalty of perjury and filed with the county recorder, acknowledging that the breach provisions of this section may apply if any of the following conditions are met:

(A) The action by the local government is rescinded.

(B) A court permanently enjoins, voids, or rescinds the cancellation or termination.

(C) For any other reason, the land continues to be subject to the contract.

(5) Paragraph (2) does not apply for a cancellation or termination occurring before January 1, 2004, unless the landowner provides the statement required in paragraph (4) prior to the approval of a building permit necessary for the construction of a commercial, industrial, or residential building.

(t) It is the intent of the Legislature to encourage cities and counties, in consultation with contracting landowners and the department, to review existing Williamson Act enforcement programs and consider any additions or improvements that would make local enforcement more effective, equitable, or widely acceptable to the affected landowners. Cities and counties are also encouraged to include enforcement provisions within the terms of the contracts, with the consent of contracting landowners.

(u) The department and the city or county may agree to extend any deadline to act under this section, upon the request of the city and county, and the written approval of the director of the department.

(v) In order to promote the reasonable and equitable resolution of a potential material breach, if a potential material breach involves extenuating circumstances, the city or county and the landowner may agree to request that the department meet and confer with them for the purpose of developing a resolution of the potential material breach. If the department agrees to meet and confer with the landowner and city or county, the time requirements specified in this section shall be tolled. The resolution may include remedies authorized by law or not prohibited by law that are agreed to by the landowner, city or county, and

department. If the resolution resolves all outstanding issues under this section, the city or county shall terminate all proceedings pursuant to this section upon execution by the landowner, city or county, and department. The agreement executing the resolution shall be recorded in the county in which the affected parcel is located.

(w) A city or county shall not cancel a contract pursuant to Article 5 (commencing with Section 51280) to resolve a material breach except pursuant to this section.

SEC. 4. Section 51256 of the Government Code is amended to read:

51256. Notwithstanding any other provision of this chapter, a city or county, upon petition by a landowner, may enter into an agreement with the landowner to rescind a contract in accordance with the contract cancellation provisions of Section 51282 in order to simultaneously place other land within that city, the county, or the county where the contract is rescinded under an agricultural conservation easement, consistent with the purposes and, except as provided in subdivision (b), the requirements of the California Farmland Conservancy pursuant to Division 10.2 (commencing with Section 10200) of the Public Resources Code, provided that the board or council makes all of the following findings:

(a) The proposed agricultural conservation easement is consistent with the criteria set forth in Section 10251 of the Public Resources Code.

(b) The proposed agricultural conservation easement is evaluated pursuant to the selection criteria in Section 10252 of the Public Resources Code, and particularly subdivisions (a), (c), (e), (f), and (h), and the board or council makes a finding that the proposed easement will make a beneficial contribution to the conservation of agricultural land in its area.

(c) The land proposed to be placed under an agricultural conservation easement is of equal size or larger than the land subject to the contract to be rescinded, and is equally or more suitable for agricultural use than the land subject to the contract to be rescinded. In determining the suitability of the land for agricultural use, the city or county shall consider the soil quality and water availability of the land, adjacent land uses, and any agricultural support infrastructure.

(d) The value of the proposed agricultural conservation easement, as determined pursuant to Section 10260 of the Public Resources Code, is equal to or greater than either of the following:

(1) Twelve and one-half percent of the cancellation valuation of the land subject to the contract to be rescinded, pursuant to subdivision (a) of Section 51283.

(2) Twenty-five percent of the cancellation valuation of the land subject to the contract to be rescinded pursuant to paragraph (3) of

subdivision (c) of Section 51297, if the contract was entered into pursuant to Article 7 (commencing with Section 51296).

(e) The easement value and the cancellation valuation shall be determined within 90 days before the approval of the city or county of an agreement pursuant to this section.

SEC. 5. Section 51257 of the Government Code is amended to read:

51257. (a) To facilitate a lot line adjustment, pursuant to subdivision (d) of Section 66412, and notwithstanding any other provision of this chapter, the parties may mutually agree to rescind the contract or contracts and simultaneously enter into a new contract or contracts pursuant to this chapter, provided that the board or council finds all of the following:

(1) The new contract or contracts would enforceably restrict the adjusted boundaries of the parcel for an initial term for at least as long as the unexpired term of the rescinded contract or contracts, but for not less than 10 years.

(2) There is no net decrease in the amount of the acreage restricted. In cases where two parcels involved in a lot line adjustment are both subject to contracts rescinded pursuant to this section, this finding will be satisfied if the aggregate acreage of the land restricted by the new contracts is at least as great as the aggregate acreage restricted by the rescinded contracts.

(3) At least 90 percent of the land under the former contract or contracts remains under the new contract or contracts.

(4) After the lot line adjustment, the parcels of land subject to contract will be large enough to sustain their agricultural use, as defined in Section 51222.

(5) The lot line adjustment would not compromise the long-term agricultural productivity of the parcel or other agricultural lands subject to a contract or contracts.

(6) The lot line adjustment is not likely to result in the removal of adjacent land from agricultural use.

(7) The lot line adjustment does not result in a greater number of developable parcels than existed prior to the adjustment, or an adjusted lot that is inconsistent with the general plan.

(b) Nothing in this section shall limit the authority of the board or council to enact additional conditions or restrictions on lot line adjustments.

(c) Only one new contract may be entered into pursuant to this section with respect to a given parcel, prior to January 1, 2004.

(d) In the year 2008, the department's Williamson Act Status Report, prepared pursuant to Section 51207, shall include a review of the performance of this section.

(e) This section shall remain in effect only until January 1, 2010, and as of that date is repealed, unless a later enacted statute, that is enacted on or before January 1, 2010, deletes or extends that date.

SEC. 6. Section 51282 of the Government Code is amended to read:

51282. (a) The landowner may petition the board or council for cancellation of any contract as to all or any part of the subject land. The board or council may grant tentative approval for cancellation of a contract only if it makes one of the following findings:

(1) That the cancellation is consistent with the purposes of this chapter.

(2) That cancellation is in the public interest.

(b) For purposes of paragraph (1) of subdivision (a) cancellation of a contract shall be consistent with the purposes of this chapter only if the board or council makes all of the following findings:

(1) That the cancellation is for land on which a notice of nonrenewal has been served pursuant to Section 51245.

(2) That cancellation is not likely to result in the removal of adjacent lands from agricultural use.

(3) That cancellation is for an alternative use which is consistent with the applicable provisions of the city or county general plan.

(4) That cancellation will not result in discontiguous patterns of urban development.

(5) That there is no proximate noncontracted land which is both available and suitable for the use to which it is proposed the contracted land be put, or, that development of the contracted land would provide more contiguous patterns of urban development than development of proximate noncontracted land.

As used in this subdivision "proximate, noncontracted land" means land not restricted by contract pursuant to this chapter, which is sufficiently close to land which is so restricted that it can serve as a practical alternative for the use which is proposed for the restricted land.

As used in this subdivision "suitable" for the proposed use means that the salient features of the proposed use can be served by land not restricted by contract pursuant to this chapter. Such nonrestricted land may be a single parcel or may be a combination of contiguous or discontiguous parcels.

(c) For purposes of paragraph (2) of subdivision (a) cancellation of a contract shall be in the public interest only if the council or board makes the following findings: (1) that other public concerns substantially outweigh the objectives of this chapter; and (2) that there is no proximate noncontracted land which is both available and suitable for the use to which it is proposed the contracted land be put, or that development of the contracted land would provide more contiguous patterns of urban development than development of proximate noncontracted land.

As used in this subdivision "proximate, noncontracted land" means land not restricted by contract pursuant to this chapter, which is sufficiently close to land which is so restricted that it can serve as a practical alternative for the use which is proposed for the restricted land.

As used in this subdivision "suitable" for the proposed use means that the salient features of the proposed use can be served by land not restricted by contract pursuant to this chapter. Such nonrestricted land may be a single parcel or may be a combination of contiguous or discontiguous parcels.

(d) For purposes of subdivision (a), the uneconomic character of an existing agricultural use shall not by itself be sufficient reason for cancellation of the contract. The uneconomic character of the existing use may be considered only if there is no other reasonable or comparable agricultural use to which the land may be put.

(e) The landowner's petition shall be accompanied by a proposal for a specified alternative use of the land. The proposal for the alternative use shall list those governmental agencies known by the landowner to have permit authority related to the proposed alternative use, and the provisions and requirements of Section 51283.4 shall be fully applicable thereto. The level of specificity required in a proposal for a specified alternate use shall be determined by the board or council as that necessary to permit them to make the findings required.

(f) In approving a cancellation pursuant to this section, the board or council shall not be required to make any findings other than or in addition to those expressly set forth in this section, and, where applicable, in Section 21081 of the Public Resources Code.

(g) A board or council shall not accept or approve a petition for cancellation if the land for which the cancellation is sought is currently subject to the process specified in Section 51250, unless the cancellation is a part of the process specified in Section 51250.

SEC. 7. Section 51283 of the Government Code is amended to read:

51283. (a) Prior to any action by the board or council giving tentative approval to the cancellation of any contract, the county assessor of the county in which the land is located shall determine the current fair market value of the land as though it were free of the contractual restriction. The assessor shall certify to the board or council the cancellation valuation of the land for the purpose of determining the cancellation fee. At the same time, the assessor shall send a notice to the landowner and the Department of Conservation indicating the current fair market value of the land as though it were free of the contractual restriction and advise the parties, that upon their request, the assessor shall provide all information relevant to the valuation, excluding third-party information. If any information is confidential or otherwise protected from release,

the department and the landowner shall hold it as confidential and return or destroy any protected information upon termination of all actions relating to valuation or cancellation of the contract on the property. The notice shall also advise the landowner and the department of the opportunity to request formal review from the assessor.

(b) Prior to giving tentative approval to the cancellation of any contract, the board or council shall determine and certify to the county auditor the amount of the cancellation fee that the landowner shall pay the county treasurer upon cancellation. That fee shall be an amount equal to 12½ percent of the cancellation valuation of the property.

(c) If it finds that it is in the public interest to do so, the board or council may waive any payment or any portion of a payment by the landowner, or may extend the time for making the payment or a portion of the payment contingent upon the future use made of the land and its economic return to the landowner for a period of time not to exceed the unexpired period of the contract, had it not been canceled, if all of the following occur:

(1) The cancellation is caused by an involuntary transfer or change in the use which may be made of the land and the land is not immediately suitable, nor will be immediately used, for a purpose which produces a greater economic return to the owner.

(2) The board or council has determined that it is in the best interests of the program to conserve agricultural land use that the payment be either deferred or is not required.

(3) The waiver or extension of time is approved by the Secretary of the Resources Agency. The secretary shall approve a waiver or extension of time if the secretary finds that the granting of the waiver or extension of time by the board or council is consistent with the policies of this chapter and that the board or council complied with this article. In evaluating a request for a waiver or extension of time, the secretary shall review the findings of the board or council, the evidence in the record of the board or council, and any other evidence the secretary may receive concerning the cancellation, waiver, or extension of time.

(d) The first two million five hundred thirty-six thousand dollars ($2,536,000) of revenue paid to the Controller pursuant to subdivision (e) in the 2004–05 fiscal year, and any other amount as approved in the final Budget Act for each fiscal year thereafter, shall be deposited in the Soil Conservation Fund, which is continued in existence. The money in the fund is available, when appropriated by the Legislature, for the support of all of the following:

(1) The cost of the farmlands mapping and monitoring program of the Department of Conservation pursuant to Section 65570.

(2) The soil conservation program identified in Section 614 of the Public Resources Code.

(3) Program support costs of this chapter as administered by the Department of Conservation.

(4) Program support costs incurred by the Department of Conservation in administering the open-space subvention program (Chapter 3 (commencing with Section 16140) of Part 1 of Division 4 of Title 2).

(5) The costs to the Department of Conservation for administering Section 51250.

(e) When cancellation fees required by this section are collected, they shall be transmitted by the county treasurer to the Controller and deposited in the General Fund, except as provided in subdivision (d) of this section and subdivision (b) of Section 51203. The funds collected by the county treasurer with respect to each cancellation of a contract shall be transmitted to the Controller within 30 days of the execution of a certificate of cancellation of contract by the board or council, as specified in subdivision (b) of Section 51283.4.

(f) It is the intent of the Legislature that fees paid to cancel a contract do not constitute taxes but are payments that, when made, provide a private benefit that tends to increase the value of the property.

SEC. 8. Section 51297 of the Government Code is amended to read:

51297. A petition for cancellation of a farmland security zone contract created under this article may be filed only by the landowner with the city or county within which the contracted land is located. The city or county may grant a petition only in accordance with the procedures provided for in Article 5 (commencing with Section 51280) and only if all the following requirements are met:

(a) The city or county shall make both of the findings specified in paragraphs (1) and (2) of subdivision (a) of Section 51282, based on substantial evidence in the record. Subdivisions (b) to (e), inclusive, of Section 51282 shall apply to the findings made by the city or county.

(b) Prior to issuing tentative approval of the cancellation of the contract, the board or council shall determine and certify to the county auditor the amount of the cancellation fee that the landowner will be required to pay the county treasurer upon cancellation of the contract. The cancellation fee shall be in an amount that equals 25 percent of the cancellation valuation of the property.

(c) In its resolution tentatively approving cancellation of the contract, the city or county shall find all of the following:

(1) That no beneficial public purpose would be served by the continuation of the contract.

(2) That the uneconomic nature of the agricultural use is primarily attributable to circumstances beyond the control of the landowner and the local government.

(3) That the landowner has paid a cancellation fee equal to 25 percent of the cancellation valuation calculated in accordance with subdivision (b).

(d) The Director of Conservation approves the cancellation. The director may approve the cancellation after reviewing the record of the tentative cancellation provided by the city or county, only if he or she finds both of the following:

(1) That there is substantial evidence in the record supporting the decision.

(2) That no beneficial public purpose would be served by the continuation of the contract.

(e) A finding that no authorized use may be made of a remnant contract parcel of five acres or less left by public acquisition pursuant to Section 51295, may be substituted for the finding in subdivision (a).

CHAPTER 504

An act to amend Sections 9765 and 9786 of the Business and Professions Code, relating to cemeteries, and making an appropriation therefor.

[Approved by Governor September 28, 2008. Filed with Secretary of State September 28, 2008.]

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

SECTION 1. Section 9765 of the Business and Professions Code is amended to read:

9765. Every cemetery authority operating a cemetery shall pay an annual regulatory charge for each cemetery to be fixed by the bureau at not more than four hundred dollars ($400). In addition to an annual regulatory charge for each cemetery, an additional quarterly charge to be fixed by the bureau at not more than eight dollars and fifty cents ($8.50) for each burial, entombment, or inurnment made during the preceding quarter shall be paid to the bureau and these charges shall be deposited in the Cemetery Fund. If the cemetery authority performs a burial, entombment, or inurnment, and the cremation was performed at a crematory located on the grounds of the cemetery and under common

ownership with the cemetery authority, the total of all additional charges shall be not more than eight dollars and fifty cents ($8.50).

SEC. 2. Section 9786 of the Business and Professions Code is amended to read:

9786. Every crematory licensee operating a crematory pursuant to a license issued in compliance with this article shall pay an annual regulatory charge for each crematory, to be fixed by the bureau at not more than four hundred dollars ($400). In addition to an annual regulatory charge for each crematory, every licensee operating a crematory pursuant to a license issued pursuant to this article shall pay an additional charge to be fixed by the bureau at not more than eight dollars and fifty cents ($8.50) per cremation made during the preceding quarter, which charges shall be deposited in the Cemetery Fund.

CHAPTER 505

An act to add Section 4138 to the Welfare and Institutions Code, relating to state mental hospitals.

[Approved by Governor September 28, 2008. Filed with Secretary of State September 28, 2008.]

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

SECTION 1. Section 4138 is added to the Welfare and Institutions Code, to read:

4138. (a) Upon receiving a request from the director of a state hospital listed in Section 4100, the Director of Mental Health may prohibit the possession or use of tobacco products on the grounds of the requesting facility. The Director of Mental Health shall provide an implementation plan that shall include a phase-in period for any of the state hospitals listed in Section 4100 that prohibits the possession or use of tobacco products by patients or any other persons on hospital grounds, except on the premises of residential staff housing where patients are not present.

(b) This prohibition shall include an exemption for departmentally approved religious ceremonies.

(c) As part of the implementation plan, the department shall provide any requesting patient with a smoking cessation plan that may include, at minimum, an individual medical treatment plan, counseling, prescription drugs, or nicotine replacement, as determined to be medically necessary and appropriate.

(d) Nothing in this section shall be construed to restrict the outside activity time currently available to hospital patients.

(e) If an implementation plan is adopted pursuant to subdivision (a), the store or canteen at any facility subject to the prohibition shall not sell tobacco products.

CHAPTER 506

An act to amend Section 129765 of, and to add Sections 129761 and 129812 to, the Health and Safety Code, relating to health facilities.

[Approved by Governor September 28, 2008. Filed with Secretary of State September 28, 2008.]

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 variety of factors have contributed toward making health care construction costs in California among the highest in the nation. The costs are driven by the escalating price of raw materials, high demand for skilled labor, and the complexity of design, plan review, and approval of hospital construction.

(2) As the industry moves to update the aging health care infrastructure, incorporate advances in medical technology, implement a modern health care delivery system, and improve seismic safety of hospitals through compliance with the Alfred E. Alquist Hospital Facilities Seismic Safety Act of 1983 (hereafter, the act), health care construction activity will increase to unseen levels creating additional economic pressure on the hospital and construction industry.

(3) While California has implemented proactive measures to improve, streamline, and assist hospitals in their efforts at compliance with the act, more than 300 hospitals may need to retrofit or replace their general acute care hospital buildings by 2013 in order to comply with the act.

(4) Improving the efficiency of health care building plan review and construction efforts will not only reduce the time to design, review, and complete hospital construction, but also lower the cost of the project and reduce overall cost pressures on the health care system, allowing more resources to be directed to direct patient services.

(b) It is the intent of the Legislature to do all of the following:

(1) Expedite projects through increased collaboration.

(2) Modernize the review process with an infusion of new technologies, such as electronic review, and it will aid in the implementation of other expediting procedures.

(3) Accelerate health care construction and foster greater cooperation between the health care industry and state government, while continuing to maintain public safety and improve the quality and efficiency of health care facility plan review and approval.

SEC. 2. Section 129761 is added to the Health and Safety Code, to read:

129761. The office shall use, to the extent possible, information technology to facilitate the timely performance of its duties and responsibilities under this chapter.

SEC. 3. Section 129765 of the Health and Safety Code is amended to read:

129765. (a) Except as set forth in subdivision (b), the application for approval of the plans shall be accompanied by the plans, including full, complete, and accurate specifications, and structural design computations, which shall comply with the requirements prescribed by the office. The office may permit electronic submission, review, and approval of plans.

(b) Notwithstanding subdivision (a), the office, in its sole discretion, may enter into a written agreement with the hospital governing authority for the phased submittal and approval of plans. The office shall charge a fee for the review and approval of plans submitted pursuant to this subdivision. This fee shall be based on the estimated cost, but shall not exceed the actual cost, of the entire phased review and approval process for those plans. This fee shall be deducted from the application fee pursuant to Section 129785.

SEC. 4. Section 129812 is added to the Health and Safety Code, to read:

129812. Notwithstanding any other provision of law, the office may utilize an over-the-counter plan review process.

CHAPTER 507

An act to amend Sections 1266, 1269, 1273, and 1274.10 of the Unemployment Insurance Code, relating to unemployment compensation benefits.

[Approved by Governor September 28, 2008. Filed with Secretary of State September 28, 2008.]

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

SECTION 1. Section 1266 of the Unemployment Insurance Code is amended to read:

1266. Experience has shown that the ability of a large number of the population of California to compete for jobs in the labor market is impaired by advancement in technological improvements, the widespread effects of automation and relocation in our economy, and foreign competition as set forth in petitions certified under the federal Trade Act of 1974, as amended (Title 19, United States Code, Sections 2101 et seq.). The Legislature finds that many individuals in California are lacking in skills which would make them competitive in the labor market. They are in need of training or retraining in skills required in demand occupations. It is the policy of this state to assist these individuals by providing unemployment compensation benefits, extended duration benefits, and other federally funded unemployment compensation benefits, including those available under the federal Trade Act of 1974 (Public Law 93-618), as amended by the federal Trade Act of 2002 (Public Law 107-210), during a period of retraining to qualify them for new jobs in demand occupations and thus avoid long-term unemployment.

SEC. 2. Section 1269 of the Unemployment Insurance Code is amended to read:

1269. A determination of potential eligibility for benefits under this article shall be issued to an unemployed individual if the director finds that any of the following apply:

(a) The training is authorized by the federal Workforce Investment Act or by the Employment Training Panel established pursuant to Chapter 3.5 (commencing with Section 10200) of Part 1 of Division 3.

(b) The training is authorized by the federal Trade Act of 1974, (19 U.S.C. Sec. 2101 et seq.), as amended by the federal Trade Act of 2002 (Public Law 107-210), pursuant to a certified petition.

(c) The individual is a participant in the California Work Opportunity and Responsibility to Kids (CalWORKs) program pursuant to Article 3.2 (commencing with Section 11320) or Article 3.3 (commencing with Section 11330) of Chapter 2 of Part 3 of Division 9 of the Welfare and Institutions Code, and has entered into a contract with the county welfare department to participate in an education or training program.

(d) That all of the following apply:

(1) The individual has been unemployed for four or more continuous weeks, or the individual is unemployed and unlikely to return to his or her most recent workplace because work opportunities in the individual's job classification are impaired by a plant closure or a substantial reduction

in employment at the individual's most recent workplace, by advancement in technological improvements, by the effects of automation and relocation in the economy, or because of a mental or physical disability which prohibits the individual from utilizing existing occupational skills.

(2) One of the substantial causes of the individual's unemployment is a lack of sufficient current demand in the individual's labor market area for the occupational skills for which the individual is fitted by training and experience or current physical or mental capacity and that the lack of employment opportunities is expected to continue for an extended period of time, or, if the individual's occupation is one for which there is a seasonal variation in demand in the labor market and the individual has no other skill for which there is current demand.

(3) The training or retraining course of instruction relates to an occupation or skill for which there are, or are expected to be in the immediate future, reasonable employment opportunities in the labor market area in this state in which the individual intends to seek work and there is not a substantial surplus of workers with requisite skills in the occupation in that area.

(4) If the individual is a journey level union member, the training or retraining course of instruction is specific job-related training necessary due to changes in technology, or necessary to retain employment or to become more competitive in obtaining employment.

(5) The training or retraining course of instruction is one approved by the director and can be completed within one year.

(6) The training or retraining course is a full-time course prescribed for the primary purpose of training the applicant in skills that will allow him or her to obtain immediate employment in a demand occupation and is not primarily intended to meet the requirements of any degree from a college, community college, or university.

(7) The individual can be reasonably expected to complete the training or retraining successfully.

(8) The beginning date of training is more than three years after the beginning date of training last approved for the individual under this subdivision.

SEC. 3. Section 1273 of the Unemployment Insurance Code is amended to read:

1273. (a) Notwithstanding any other provision of this article, no payment of benefits during a period of training or retraining as described in this article shall be made to any individual for any week or part of any week with respect to which he or she receives training or retraining benefits, allowances, or stipends pursuant to the provisions of any state or federal law providing for the payment of such benefits, but excluding

costs of training paid pursuant to the federal Trade Act of 1974 (19 U.S.C. Sec. 2101 et seq.), as amended by the federal Trade Act of 2002 (Public Law 107-210).

(b) "Training or retraining benefits, allowances, or stipends," as used in this section, means discretionary use, cash in-hand payments available to the individual to be used as he or she sees fit. Direct and indirect compensation for training costs, such as tuition, books, and supplies, is excluded as a condition of approval.

SEC. 4. Section 1274.10 of the Unemployment Insurance Code is amended to read:

1274.10. This article shall remain in effect only until January 1, 2015, and as of that date is repealed, unless a later enacted statute, which is chaptered before that date, deletes or extends the date.

CHAPTER 508

An act to amend Sections 23039, 23104.2, 25608, and 25663 of, to add Section 23405.3 to, and to repeal Section 25667 of, the Business and Professions Code, relating to alcoholic beverages.

[Approved by Governor September 28, 2008. Filed with Secretary of State September 28, 2008.]

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

SECTION 1. Section 23039 of the Business and Professions Code is amended to read:

23039. (a) "Public premises" means:

(1) Premises licensed with any type of license other than an on-sale beer license, and maintained and operated for the selling or serving of alcoholic beverages to the public for consumption on the premises, and in which food shall not be sold or served to the public as in a bona fide public eating place, but upon which premises food products may be sold or served incidentally to the sale or service of alcoholic beverages, in accordance with rules prescribed by the department.

(2) Premises licensed with an on-sale beer license, in which food shall not be sold or served to the public as in a bona fide public eating place, and in which sandwiches, salads, desserts, and similar short orders shall not be sold and served, in accordance with rules prescribed by the department.

(b) "Public premises" does not include railroad dining or club cars, passenger ships, airplanes, or bona fide clubs after the clubs have been

lawfully operated for not less than one year; nor does it include historic units of the state park system, premises being operated under a temporary on-sale beer license other than permitted pursuant to Section 24045.5, or on-sale beer licensed stadia, auditoria, fairgrounds, or racetracks; nor does it include nonprofit theater companies licensed pursuant to Section 24045.7; nor does it include winegrowers' premises.

SEC. 2. Section 23104.2 of the Business and Professions Code is amended to read:

23104.2. (a) Subject to the exceptions specified in subdivision (b), a retail licensee may return beer to the wholesaler or manufacturer from whom the retail licensee purchased the beer, or any successor thereto, and the wholesaler, manufacturer, or successor thereto may accept that return if the beer is returned in exchange for the identical quantity and brand of beer. No wholesaler or manufacturer, or any successor thereto, shall accept the return of any beer from a retail licensee except when the beer delivered was not the brand or size container ordered by the retail licensee or the amount delivered was other than the amount ordered, in which case the order may be corrected by the wholesaler or manufacturer who sold the beer, or any successor thereto. If a package had been broken or otherwise damaged prior to or at the time of actual delivery, a credit memorandum may be issued for the returned package by the wholesaler or manufacturer who sold the beer, or any successor thereto, in lieu of exchange for an identical package when the return and corrections are completed within 15 days from the date the beer was delivered to the retail licensee.

(b) Notwithstanding subdivision (a), a wholesaler or manufacturer, or any successor thereto, may accept the return of beer purchased from that wholesaler, manufacturer, or successor thereto, as follows:

(1) (A) From a seasonal or temporary licensee if at the termination of the period of the license the seasonal or temporary licensee has beer remaining unsold, or from an annual licensee operating on a temporary basis if at the termination of the temporary period the annual licensee has beer remaining unsold.

(B) For purposes of subparagraph (A), an annual licensee shall be considered to be operating on a temporary basis if he or she operates at seasonal resorts, including summer and winter resorts, or at sporting or entertainment facilities, including racetracks, arenas, concert halls, and convention centers. Temporary status shall be deemed terminated when operations cease for 15 days or more. No wholesaler or manufacturer, or successor thereto, shall accept the return of beer from an annual licensee considered to be operating on a temporary basis unless the licensee notifies that wholesaler or manufacturer, or successor thereto, within 15 days of the date the licensee's operations ceased.

(2) (A) Subject to subparagraph (B), a wholesaler or manufacturer, or any successor thereto, may, with department approval, accept the return of a brand of beer discontinued in a California market area or a seasonal brand of beer from a retail licensee, provided that the beer is exchanged for a quantity of beer of a brand produced or sold by the same manufacturer with a value no greater than the original sales price to the retail licensee of the returned beer. For purposes of this subparagraph, "seasonal brand of beer" means a brand of beer, as defined in Section 23006, that is brewed by a manufacturer to commemorate a specific holiday season and is so identified by appropriate product packaging and labeling.

(B) A discontinued brand of beer may not be reintroduced for a period of 12 months in the same California market area in which a return and exchange of that beer as described in subparagraph (A) has taken place. A seasonal brand of beer may not be reintroduced for a period of six months in the same California market area in which a return and exchange of that beer as described in subparagraph (A) has taken place.

(c) Notwithstanding subdivision (a), a wholesaler or manufacturer, or any successor thereto, may accept the return of beer purchased from that wholesaler or manufacturer, or any successor thereto, by the holder of a retail license following the revocation of, suspension of, voluntary surrender of, or failure to renew the retail license.

(d) A wholesaler or manufacturer, or any successor thereto, may credit the account of the retailer identified in subdivision (c) in an amount not to exceed the original sales price to the retailer of the returned beer, provided that the beer has been paid for in full.

(e) Notwithstanding the 15-day time limit for the return of beer described in subdivision (a), beer that is recalled for health or safety issues may be accepted for return at anytime from a retailer and be picked up by the seller of beer. The seller of beer may exchange the returned beer for identical product, if safe inventory is available, issue a deferred exchange memorandum showing the beer was picked up and is to be replaced when inventory is available, or issue a credit memorandum to the retailer for the returned beer.

SEC. 3. Section 25608 of the Business and Professions Code is amended to read:

25608. (a) Every person who possesses, consumes, sells, gives, or delivers to any other person, any alcoholic beverage in or on any public schoolhouse or any of the grounds thereof, is guilty of a misdemeanor. This section does not, however, make it unlawful for any person to acquire, possess, or use any alcoholic beverage in or on any public schoolhouse, or on any grounds thereof, if any of the following applies:

(1) The alcoholic beverage possessed, consumed, or sold, pursuant to a license obtained under this division, is wine that is produced by a bonded winery owned or operated as part of an instructional program in viticulture and enology.

(2) The alcoholic beverage is acquired, possessed, or used in connection with a course of instruction given at the school and the person has been authorized to acquire, possess, or use it by the governing body or other administrative head of the school.

(3) The public schoolhouse is surplus school property and the grounds thereof are leased to a lessee which is a general law city with a population of less than 50,000, or the public schoolhouse is surplus school property and the grounds thereof are located in an unincorporated area and are leased to a lessee which is a civic organization, and the property is to be used for community center purposes and no public school education is to be conducted thereon by either the lessor or the lessee and the property is not being used by persons under the age of 21 years for recreational purposes at any time during which alcoholic beverages are being sold or consumed on the premises.

(4) The alcoholic beverages are acquired, possessed, or used during events at a college-owned or college-operated veterans stadium with a capacity of over 12,000 people, located in a county with a population of over six million people. As used in this subdivision, "events" mean football games sponsored by a college, other than a public community college, or other events sponsored by noncollege groups.

(5) The alcoholic beverages are acquired, possessed, or used during an event not sponsored by any college at a performing arts facility built on property owned by a community college district and leased to a nonprofit organization which is a public benefit corporation formed under Part 2 (commencing with Section 5110) of Division 2 of Title 1 of the Corporations Code. As used in this subdivision, "performing arts facility" means an auditorium with more than 300 permanent seats.

(6) The alcoholic beverage is wine for sacramental or other religious purposes and is used only during authorized religious services held on or before January 1, 1995.

(7) The alcoholic beverages are acquired, possessed, or used during an event at a community center owned by a community services district and the event is not held at a time when students are attending a public school-sponsored activity at the center.

(8) The alcoholic beverage is wine which is acquired, possessed, or used during an event sponsored by a community college district or an organization operated for the benefit of the community college district where the college district maintains both an instructional program in

viticulture on no less than five acres of land owned by the district and an instructional program in enology, which includes sales and marketing.

(9) The alcoholic beverage is acquired, possessed, or used at a professional minor league baseball game conducted at the stadium of a community college located in a county with a population of less than 250,000 inhabitants, and the baseball game is conducted pursuant to a contract between the community college district and a professional sports organization.

(10) The alcoholic beverages are acquired, possessed, or used during events at a college-owned or college-operated stadium or other facility. As used in this subdivision, "events" means fundraisers held to benefit a nonprofit corporation that has obtained a license pursuant to this division for the event. "Events" does not include football games or other athletic contests sponsored by any college or public community college. This subdivision shall not apply to any public education facility in which any grade from kindergarten to grade 12, inclusive, is schooled.

(11) The alcoholic beverages are possessed, consumed, or sold, pursuant to a license obtained under this division, for an event during the weekend or at other times when pupils are not on the grounds of an overnight retreat facility owned and operated by a county office of education in a county of the 18th class.

(12) The grounds of the public schoolhouse on which the alcoholic beverage is acquired, possessed, used, or consumed is property that has been developed and is used for residential facilities or housing that is offered for rent, lease, or sale exclusively to faculty or staff of a public school or community college.

(13) The grounds of a public schoolhouse on which the alcoholic beverage is acquired, possessed, used, or consumed is property of a community college that is leased, licensed, or otherwise provided for use as a water conservation demonstration garden and community passive recreation resource by a joint powers agency comprised of public agencies, including the community college, and the event at which the alcoholic beverage is acquired, possessed, used, or consumed is conducted pursuant to a written policy adopted by the governing body of the joint powers agency and no public funds are used for the purchase or provision of the alcoholic beverage.

(14) The alcoholic beverage is beer or wine acquired, possessed, used, sold, or consumed only in connection with a course of instruction, sponsored dinner, or meal demonstration given as part of a culinary arts program at a campus of a California community college and the person has been authorized to acquire, possess, use, sell, or consume the beer or wine by the governing body or other administrative head of the school.

(15) The alcoholic beverages are possessed, consumed, or sold, pursuant to a license or permit obtained under this division for special events held at the facilities of a public community college, located in a county of the first class or a county of the fourth class, during the special event. As used in this subdivision, "special event" means festivals, shows, private parties, concerts, theatrical productions, and other events held on the premises of the public community college, pursuant to a license or permit, and for which the principal attendees are members of the general public or invited guests and not students of the public community college.

(b) Any person convicted of a violation of this section shall, in addition to the penalty imposed for the misdemeanor, be barred from having or receiving any privilege of the use of public school property which is accorded by Article 2 (commencing with Section 82537) of Chapter 8 of Part 49 of the Education Code.

SEC. 4. Section 25663 of the Business and Professions Code is amended to read:

25663. (a) Except as provided in subdivision (c), no licensee that sells or serves alcoholic beverages for consumption on the premises shall employ any person under 21 years of age for the purpose of preparing or serving alcoholic beverages. Every person who employs or uses the services of any person under the age of 21 years in or on that portion of any premises, during business hours, which are primarily designed and used for the sale and service of alcoholic beverages for consumption on the premises is guilty of a misdemeanor.

(b) Any off-sale licensee who employs or uses the services of any person under the age of 18 years for the sale of alcoholic beverages shall be subject to suspension or revocation of his or her license, except that a person under the age of 18 years may be employed or used for those purposes if that person is under the continuous supervision of a person 21 years of age or older.

(c) Any person between 18 and 21 years of age employed in any bona fide public eating place, as defined in Sections 23038 and 23038.1, which is licensed for the on-sale of alcoholic beverages, may serve alcoholic beverages to consumers only under the following circumstances: such service occurs in an area primarily designed and used for the sale and service of food for consumption on the premises; and the primary duties of the employee shall be the service of meals to guests, with the service of alcoholic beverages being incidental to such duties. For purposes of this subdivision, "serve" or "service" includes the delivery, presentation, opening, or pouring of an alcoholic beverage.

SEC. 5. Section 23405.3 is added to the Business and Professions Code, to read:

23405.3. If a corporation, limited partnership, or limited liability company holds, directly or indirectly, 10 percent or more of the ownership of a license issued under this division, the licensee shall report any change in the ownership, management, or control of that corporation, limited partnership, or limited liability company, in the same manner as would be required by Sections 23405, 23405.1, and 23405.2, if the corporation, limited partnership, or limited liability company were itself the licensee.

SEC.6 Section 25667 of the Business and Professions Code is repealed.

SEC. 7. The Legislature finds and declares that, because of the unique circumstances in the county of the first class and in the county of the fourth class, that are applicable only to those counties, a statute of general applicability cannot be enacted within the meaning of subdivision (b) of Section 16 of Article IV of the California Constitution, and, therefore, this special statute is necessary.

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 509

An act to amend Sections 19406 and 19568 of the Business and Professions Code, and to amend Section 337f of the Penal Code, relating to horse racing.

[Approved by Governor September 28, 2008. Filed with Secretary of State September 28, 2008.]

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

SECTION 1. Section 19406 of the Business and Professions Code is amended to read:

19406. (a) A "California-bred horse" is a foal dropped by a mare in California after being conceived in California and remaining in California until the foal is weaned.

(b) A "California-bred thoroughbred" is a horse dropped by a mare in California after being conceived in California, or any thoroughbred horse dropped by a mare in California if the mare remains in California to be next bred to a thoroughbred stallion standing in California. If the mare cannot be bred for two successive breeding seasons but remains in California during that period, her foal shall be considered to be a California-bred thoroughbred.

(c) A "California-bred quarter horse" is a quarter horse foal conceived in California by a stallion standing in California at the time of conception.

(d) A "California-bred standardbred horse" is a standardbred foal conceived in California by a stallion registered with the California Standardbred Sires Stakes Program.

(e) A "California-bred Appaloosa horse" is a horse dropped by a mare in California after being conceived in California, or any Appaloosa horse dropped by a mare in California if the mare remains in California to be next bred to an Appaloosa stallion standing in California. If the mare cannot be bred for two successive breeding seasons but remains in California during that period, her foal shall be considered to be a California-bred Appaloosa horse.

(f) A "California-bred paint horse" is a registered paint horse foal conceived in California by a stallion standing in California at the time of the conception, or by a registered paint horse stallion.

(g) A "California-sired horse" is a thoroughbred that was conceived in California by a registered California stallion. A California-sired horse is only eligible for entry in races restricted to California-bred or California-sired horses and is not eligible for any breeder or owner awards.

SEC. 2. Section 19568 of the Business and Professions Code is amended to read:

19568. (a) Every licensee conducting a horse racing meeting shall, each racing day, provide for the running of at least one race limited to California-bred horses and California-sired horses, to be known as the "California-bred race." If, however, sufficient competition cannot be had among horses of that class on any day, the race, with the consent of the board, may be eliminated for that day and a substitute race provided.

(b) For thoroughbred and quarter horse racing only, the total amount distributed to horsemen and horsewomen for California-bred and California-sired stakes races, and for races featuring California-breds upon the approval of the official registering agency, from the purse account, including overnight stakes, shall be not less than 10 percent of the total amount distributed for all stakes races from the purse account, including overnight stakes races, at that meeting of the racing association licensed to conduct live racing.

(c) It is the intent of the Legislature that the thoroughbred racing associations in this state, in conjunction with the official registering agency, and owners and trainers organizations meet and report to the board on the establishment of a coordinated California-bred restricted schedule of stakes races designed to showcase California-bred restricted stakes races and qualify registered California-bred horses for the California Cup and the California Cup Day races. It is also the intent of the Legislature that the report be submitted to the board annually at least 60 days prior to the start of the racing year.

SEC. 3. Section 337f of the Penal Code is amended to read:

337f. (a) Any person who does any of the following is punishable by a fine not exceeding five thousand dollars ($5,000), or by imprisonment in the state prison or in a county jail not exceeding one year, or by both that fine and imprisonment:

(1) Influences, or induces, or conspires with, any owner, trainer, jockey, groom, or other person associated with or interested in any stable, horse, or race in which a horse participates, to affect the result of that race by stimulating or depressing a horse through the administration of any drug to that horse, or by the use of any electrical device or any electrical equipment or by any mechanical or other device not generally accepted as regulation racing equipment, or so stimulates or depresses a horse.

(2) Knowingly enters any horse in any race within a period of 24 hours after any drug has been administered to that horse for the purpose of increasing or retarding the speed of that horse.

(3) Willfully or unjustifiably enters or races any horse in any running or trotting race under any name or designation other than the name or designation assigned to that horse by and registered with the Jockey Club or the United States Trotting Association or willfully sets on foot, instigates, engages in or in any way furthers any act by which any horse is entered or raced in any running or trotting race under any name or designation other than the name or designation duly assigned by and registered with the Jockey Club or the United States Trotting Association.

(b) For purposes of this section, the term "drug" includes all substances recognized as having the power of stimulating or depressing the central nervous system, respiration, or blood pressure of an animal, such as narcotics, hypnotics, benzedrine or its derivatives, but shall not include recognized vitamins or supplemental feeds approved by or in compliance with the rules and regulations or policies of the California Horse Racing Board.

SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred

because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

CHAPTER 510

An act to amend Sections 19596 and 19596.2 of the Business and Professions Code, relating to horse racing, and making an appropriation therefor.

[Approved by Governor September 28, 2008. Filed with Secretary of State September 28, 2008.]

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

SECTION 1. Section 19596 of the Business and Professions Code is amended to read:

19596. (a) Notwithstanding any other provision of law, the board may do any of the following:

(1) Authorize a licensed harness racing association that is conducting a live racing meeting in this state to accept wagers on the full card of races conducted by another racing association on the day that other association conducts the Breeder's Crown Stakes, the Meadowlands Pace, the Hambletonian, Kentucky Futurity, or the North American Cup.

(2) Authorize a licensed quarter horse racing association that is conducting a live racing meeting in this state to accept wagers on races conducted by the racing association that conducts the American Quarter Horse Racing Challenge, if the races are conducted on the same day as the American Quarter Horse Racing Challenge.

(3) Authorize the inclusion of wagers authorized pursuant to this section in the parimutuel pools of the out-of-state association that conducts the races on which the wagers are placed.

(b) The board authorization may be granted under this section only if both of the following conditions are met:

(1) The authorization complies with federal laws, including, but not limited to, Chapter 57 (commencing with Section 3001) of Title 15 of the United States Code.

(2) Wagering is offered only within the racing enclosure and only within seven days of the running of the out-of-state race.

SEC. 2. Section 19596.2 of the Business and Professions Code is amended to read:

19596.2. (a) Notwithstanding any other provision of law and except as provided in Section 19596.4, a thoroughbred racing association or fair may distribute the audiovisual signal and accept wagers on the results of out-of-state thoroughbred races conducted in the United States during the calendar period the association or fair is conducting a race meeting, including days on which there is no live racing being conducted by the association or fair, without the consent of the organization that represents horsemen participating in the race meeting and without regard to the amount of purses. Further, the total number of thoroughbred races imported by associations or fairs on a statewide basis under this section shall not exceed 32 per day on days when live thoroughbred or fair racing is being conducted in the state. The limitation of 32 imported races per day does not apply to any of the following:

(1) Races imported for wagering purposes pursuant to subdivision (c).

(2) Races imported that are part of the race card of the Kentucky Derby, the Kentucky Oaks, the Preakness Stakes, the Belmont Stakes, the Jockey Club Gold Cup, the Travers Stakes, the Breeders' Cup, the Dubai Cup, or the Haskell Invitational.

(3) Races imported into the northern zone when there is no live thoroughbred or fair racing being conducted in the northern zone.

(4) Races imported into the combined central and southern zones when there is no live thoroughbred or fair racing being conducted in the combined central and southern zones.

(b) Any thoroughbred association or fair accepting wagers pursuant to subdivision (a) shall conduct the wagering in accordance with the applicable provisions of Sections 19601, 19616, 19616.1, and 19616.2.

(c) No thoroughbred association or fair may accept wagers pursuant to this section on out-of-state races commencing after 7 p.m., Pacific standard time, without the consent of the harness or quarter horse racing association that is then conducting a live racing meeting in Orange or Sacramento Counties.

CHAPTER 511

An act to amend Section 42007 of the Vehicle Code, relating to vehicles, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 28, 2008. Filed with Secretary of State September 28, 2008.]

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

SECTION 1. Section 42007 of the Vehicle Code is amended to read:

42007. (a) (1) The clerk of the court shall collect a fee from every person who is ordered or permitted to attend a traffic violator school pursuant to Section 42005 or who attends any other court-supervised program of traffic safety instruction. The fee shall be in an amount equal to the total bail set forth for the eligible offense on the uniform countywide bail schedule. As used in this subdivision, "total bail" means the amount established pursuant to Section 1269b of the Penal Code in accordance with the Uniform Statewide Bail Schedule adopted by the Judicial Council, including all assessments, surcharges, and penalty amounts. Where multiple offenses are charged in a single notice to appear, the "total bail" is the amount applicable for the greater of the qualifying offenses. However, the court may determine a lesser fee under this subdivision upon a showing that the defendant is unable to pay the full amount.

The fee shall not include the cost, or any part thereof, of traffic safety instruction offered by the school or other program.

(2) The clerk may accept from a defendant who is ordered or permitted to attend traffic violator school a payment of at least 25 percent of the fee required by paragraph (1) upon filing a written agreement by the defendant to pay the remainder of the fee according to an installment payment schedule of no more than 90 days as agreed upon with the court. The Judicial Council shall prescribe the form of the agreement for payment of the fee in installments. When the defendant signs the Judicial Council form for payment of the fee in installments, the court shall continue the case to the date in the agreement to complete payment of the fee and submit the certificate of completion of traffic violator school to the court. The clerk shall collect a fee of up to thirty-five dollars ($35) to cover the cost of processing an installment payment of the traffic violator school fee under this paragraph.

(3) When a defendant fails to make an installment payment of the fee according to an installment agreement, the court may convert the fee to bail, declare it forfeited, and report the forfeiture as a conviction under Section 1803. The court may also charge a failure to pay under Section 40508 and impose a civil assessment as provided in Section 1214.1 of the Penal Code or issue an arrest warrant for a failure to pay.

(b) Revenues derived from the fee collected under this section shall be deposited in accordance with Section 68084 of the Government Code in the general fund of the county and, as may be applicable, distributed as follows:

(1) In any county in which a fund is established pursuant to Section 76100 or 76101 of the Government Code, the sum of one dollar ($1) for each fund so established shall be deposited with the county treasurer and placed in that fund.

(2) In any county that has established a Maddy Emergency Medical Services Fund pursuant to Section 1797.98a of the Health and Safety Code, an amount equal to the sum of each two dollars ($2) for every seven dollars ($7) that would have been collected pursuant to Section 76000 of the Government Code and, commencing January 1, 2009, an amount equal to the sum of each two dollars ($2) for every ten dollars ($10) that would have been collected pursuant to Section 76000.5 of the Government Code with respect to those counties to which that section is applicable shall be deposited in that fund. Nothing in the act that added this paragraph shall be interpreted in a manner that would result in either of the following:

(A) The utilization of penalty assessment funds that had been set aside, on or before January 1, 2000, to finance debt service on a capital facility that existed before January 1, 2000.

(B) The reduction of the availability of penalty assessment revenues that had been pledged, on or before January 1, 2000, as a means of financing a facility which was approved by a county board of supervisors, but on January 1, 2000, is not under construction.

(3) The amount of the fee that is attributable to Section 70372 of the Government Code shall be transferred pursuant to subdivision (f) of that section.

(c) For fees resulting from city arrests, an amount equal to the amount of base fines that would have been deposited in the treasury of the appropriate city pursuant to paragraph (3) of subdivision (b) of Section 1463.001 of the Penal Code shall be deposited in the treasury of the appropriate city.

(d) As used in this section, "court-supervised program" includes, but is not limited to, any program of traffic safety instruction the successful completion of which is accepted by the court in lieu of adjudicating a violation of this code.

(e) The clerk of the court, in a county that offers traffic school shall include in any courtesy notice mailed to a defendant for an offense that qualifies for traffic school attendance the following statement:

NOTICE: If you are eligible and decide not to attend traffic school your automobile insurance may be adversely affected.

(f) Notwithstanding any other provision of law, a county that has established a Maddy Emergency Medical Services Fund pursuant to

Section 1797.98a of the Health and Safety Code shall not be held liable for having deposited into the fund, prior to January 1, 2009, an amount equal to two dollars ($2) for every ten dollars ($10) that would have been collected pursuant to Section 76000.5 of the Government Code from revenues derived from traffic violator school fees collected pursuant to 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 to properly distribute the revenues derived from traffic violator school fees to the Maddy Emergency Medical Services Fund for the protection of public health and safety, it is necessary for this act to take effect immediately.

CHAPTER 512

An act to amend Section 33302 of the Public Resources Code, relating to the Sierra Nevada Conservancy.

[Approved by Governor September 28, 2008. Filed with Secretary of State September 28, 2008.]

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

SECTION 1. Section 33302 of the Public Resources Code is amended to read:

33302. For the purposes of this division, the following terms have the following meanings:

(a) "Board" means the Governing Board of the Sierra Nevada Conservancy.

(b) "Conservancy" means the Sierra Nevada Conservancy.

(c) "Fund" means the Sierra Nevada Conservancy Fund created pursuant to Section 33355.

(d) "Local public agency" means a city, county, district, or joint powers authority.

(e) "Nonprofit organization" means a private, nonprofit organization that qualifies for exempt status under Section 501(c)(3) of Title 26 of the United States Code, and whose charitable purposes are consistent with the purposes of the conservancy as set forth in this division.

(f) "Region" or "Sierra Nevada Region" means the area lying within the Counties of Alpine, Amador, Butte, Calaveras, El Dorado, Fresno,

Inyo, Kern, Lassen, Madera, Mariposa, Modoc, Mono, Nevada, Placer, Plumas, Shasta, Sierra, Tehama, Tulare, Tuolumne, and Yuba, described as the area bounded as follows:

On the east by the eastern boundary of the State of California; the crest of the White/Inyo ranges; and State Routes 395 and 14 south of Olancha; on the south by State Route 58, Tehachapi Creek, and Caliente Creek; on the west by the line of 1,250 feet above sea level from Caliente Creek to the Kern/Tulare County line; the lower level of the western slope's blue oak woodland, from the Kern/Tulare County line to the Sacramento River near the mouth of Seven-Mile Creek north of Red Bluff; the Sacramento River from Seven-Mile Creek north to Cow Creek below Redding; Cow Creek, Little Cow Creek, Dry Creek, and the Shasta National Forest portion of Bear Mountain Road, between the Sacramento River and Shasta Lake; the Pit River Arm of Shasta Lake; the northerly boundary of the Pit River watershed; the southerly and easterly boundaries of Siskiyou County; and within Modoc County, the easterly boundary of the Klamath River watershed; and on the north by the northern boundary of the State of California; excluding both of the following:

(1) The Lake Tahoe Region, as described in Section 66905.5 of the Government Code, where it is defined as "region."

(2) The San Joaquin River Parkway, as described in Section 32510.

(g) "Subregions" means the six subregions in which the Sierra Nevada Region is located, described as follows:

(1) The north Sierra subregion, comprising the Counties of Lassen, Modoc, and Shasta.

(2) The north central Sierra subregion, comprising the Counties of Butte, Plumas, Sierra, and Tehama.

(3) The central Sierra subregion, comprising the Counties of El Dorado, Nevada, Placer, and Yuba.

(4) The south central Sierra subregion, comprising the Counties of Amador, Calaveras, Mariposa, and Tuolumne.

(5) The east Sierra subregion, comprising the Counties of Alpine, Inyo, and Mono.

(6) The south Sierra subregion, comprising the Counties of Fresno, Kern, Madera, and Tulare.

(h) "Tribal organization" means an Indian tribe, band, nation, or other organized group or community, or a tribal agency authorized by a tribe, which is recognized as eligible for special programs and services provided by the United States to Indians because of their status as Indians and is identified on pages 52829 to 52835, inclusive, of Number 250 of Volume

53 (December 29, 1988) of the Federal Register, as that list may be updated or amended from time to time.

CHAPTER 513

An act to add Section 14673.10 to, and to repeal Section 14669.16 of, the Government Code, relating to state property, and making an appropriation therefor.

[Approved by Governor September 28, 2008. Filed with Secretary of State September 28, 2008.]

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

SECTION 1. Section 14669.16 of the Government Code is repealed.

SEC. 2. Section 14673.10 is added to the Government Code, to read:

14673.10. (a) The Legislature finds and declares all of the following:

(1) Located in the City of San Diego, the state owns approximately 2.7 acres of real property on two city blocks bounded by Ash Street on the north, Front Street on the east, "A" Street on the south, and State Street on the west, with improvements, currently used for state offices.

(2) For purposes of this section, the real property described in paragraph (1) shall be referred to as the "San Diego Property."

(3) Continuing the consolidated operations of the various state agencies in one location will greatly facilitate and improve the efficiency of the administrative operations of the state.

(4) The San Diego Property may be sold, exchanged, leased, or any combination thereof, and the proceeds used to carry out the intent of the Legislature to consolidate various departments and state agencies to protect the health and safety of the people.

(5) The disposition of the San Diego Property authorized in this section does not constitute a sale or other disposition of surplus state property within the meaning of Section 9 of Article III of the California Constitution or subdivision (g) of Section 11011.

(b) The Director of General Services may sell, exchange, lease, or any combination thereof, all or a portion of the San Diego Property. The director shall use the proceeds of any sale, exchange, or lease made pursuant to this subdivision to acquire the land and facilities described in subdivision (g) to consolidate various state departments within the downtown area of the City of San Diego.

(c) Any exchange, lease, or sale of properties carried out pursuant to this section shall be for no less than fair market value, as determined by

an independent appraisal or pursuant to a competitive selection process. Compensation for the San Diego Property may include land, or a combination of land, improvements, and money.

(d) (1) Any funds received from the sale, exchange, or lease of the San Diego Property authorized by this section shall be held in trust and used only for the acquisition, lease, lease-purchase, lease with an option to purchase, or lease-purchase finance of the land and facilities identified in subdivision (g) and are hereby appropriated to the Department of General Services for expenditure for the purposes of this subdivision.

(2) For the purposes of this section, the terms "lease" or "leases" mean the selection and acquisition of a lease-purchase, lease-purchase finance, or lease with an option to purchase pursuant to this subdivision.

(e) The Department of General Services shall be reimbursed for any reasonable cost or expense incurred for the transactions described in this section from the proceeds of the sale, lease, or exchange of the San Diego Property.

(f) For the purposes of this section, the San Diego Property shall not be subject to the provisions of Section 11011.1 or Article 8 (commencing with Section 54220) of Chapter 5 of Part 1 of Division 2 of Title 5.

(g) (1) The director may enter into one or more agreements or leases for the purposes of providing usable office and related space not to exceed 120,000 net square feet in the City of San Diego in order to consolidate various departments and state agencies. It is the intent of the Legislature that the state obtain an equity interest in any land or facility authorized by this subdivision.

(2) Notwithstanding Section 14669, the department shall advertise and award the lease or leases to the proposer offering to provide a building or buildings that meet the state's requirements and that the director determines are in the best interest of the state. The director may also lease all or part of the San Diego Property for a period not to exceed 66 years.

(h) (1) The Department of General Services shall develop the terms and conditions of any agreements or lease, and provide them to the Department of Finance for review prior to soliciting bids. The Department of General Services shall obtain approval from the Department of Finance prior to execution of any agreement or lease.

(2) The Department of General Services shall notify the chairperson of the committee in each house that considers appropriations and the Chairperson of the Joint Legislative Budget Committee, or his or her designee, in writing of the director's intention to enter into a lease or an agreement, not sooner than a lesser time that the Chairperson of the Joint Legislative Budget Committee, or his or her designee, may in each instance determine. If any of the three committees fail to take an action

with respect to the submittal within 45 days after the submittal, this inaction shall be deemed to be approval for purposes of this section.

CHAPTER 514

An act to amend Section 67380 of, to add Sections 66902.5 and 66903.1 to, and to repeal Sections 69563 and 99155 of, the Education Code, relating to postsecondary education.

[Approved by Governor September 28, 2008. Filed with Secretary of State September 28, 2008.]

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

SECTION 1. It is the intent of the Legislature that the need for recurring reports from the California Postsecondary Education Commission be met through clear reporting requirements established in statute. Accordingly, it is the intent of the Legislature that noncodified requests for reports from the commission adopted prior to 2008, including those taking the form of provisional or supplemental language in Budget Acts adopted prior to 2008, shall no longer be in effect. This act does not prevent the Legislature from adopting new reporting requirements of any kind.

SEC. 2. Section 66902.5 is added to the Education Code, to read:

66902.5. Unless otherwise specified, reports submitted to the Legislature by the California Postsecondary Education Commission shall be delivered to the Senate and Assembly budget subcommittees on education, the Senate education and Assembly higher education policy committees, the Legislative Analyst's Office, the office of the Secretary for Education, and the Department of Finance. Unless otherwise specified, these reports may be submitted in PDF format or comparable electronic format.

SEC. 3. Section 66903.1 is added to the Education Code, to read:

66903.1. To the extent that the functions and tasks assigned to the California Postsecondary Education Commission by state law cannot all be performed with the funding provided in the annual Budget Act, it is the intent of the Legislature that the commission prioritize its workload to ensure, at a minimum, that the following responsibilities are completed in a timely manner:

(a) All reviews and recommendations of the need for new institutions for the public higher education segments, inclusive of community colleges, pursuant to subdivision (e) of Section 66903.

(b) All reviews and recommendations of the need for new programs for the public higher education segments, inclusive of community colleges, pursuant to subdivision (f) of Section 66903.

(c) Consistent with the role of the commission pursuant to Section 67002, serve as the designated state educational agency to carry out federal education programs, pursuant to subdivision (o) of Section 66903.

(d) All data management responsibilities pursuant to subdivision (m) of Section 66903 and data reporting pursuant to the adoption of legislation that establishes a higher education accountability framework.

SEC. 4. Section 67380 of the Education Code is amended to read:

67380. (a) The governing board of each community college district, the Trustees of the California State University, the Board of Directors of the Hastings College of the Law, the Regents of the University of California, and the governing board of any postsecondary institution receiving public funds for student financial assistance shall do all of the following:

(1) Require the appropriate officials at each campus within their respective jurisdictions to compile records of both of the following:

(A) All occurrences reported to campus police, campus security personnel, or campus safety authorities of, and arrests for, crimes that are committed on campus and that involve violence, hate violence, theft or destruction of property, illegal drugs, or alcohol intoxication.

(B) All occurrences of noncriminal acts of hate violence reported to, and for which a written report is prepared by, designated campus authorities.

(2) Require any written record of a noncriminal act of hate violence to include, but not be limited to, the following:

(A) A description of the act of hate violence.

(B) Victim characteristics.

(C) Offender characteristics, if known.

(3) Make the information concerning the crimes compiled pursuant to subparagraph (A) of paragraph (1) available within two business days following the request of any student or employee of, or applicant for admission to, any campus within their respective jurisdictions, or to the media, unless the information is the type of information exempt from disclosure pursuant to subdivision (f) of Section 6254 of the Government Code, in which case the information is not required to be disclosed. Notwithstanding paragraph (2) of subdivision (f) of Section 6254 of the Government Code, the name of a victim of any crime defined by Section 261, 262, 264, 264.1, 273a, 273d, 273.5, 286, 288, 288a, 289, 422.6, 422.7, or 422.75 of the Penal Code shall not be disclosed without the permission of the victim, or the victim's parent or guardian if the victim is a minor.

For purposes of this paragraph and subparagraph (A) of paragraph (1), the campus police, campus security personnel, and campus safety authorities described in subparagraph (A) of paragraph (1) shall be included within the meaning of "state or local police agency" and "state and local law enforcement agency," as those terms are used in subdivision (f) of Section 6254 of the Government Code.

(4) Require the appropriate officials at each campus within their respective jurisdictions to prepare, prominently post, and copy for distribution on request a campus safety plan that sets forth all of the following: the availability and location of security personnel, methods for summoning assistance of security personnel, any special safeguards that have been established for particular facilities or activities, any actions taken in the preceding 18 months to increase safety, and any changes in safety precautions expected to be made during the next 24 months. For the purposes of this section, posting and distribution may be accomplished by including relevant safety information in a student handbook or brochure that is made generally available to students.

(5) Require the appropriate officials at each campus within their respective jurisdictions to report information compiled pursuant to paragraph (1) relating to hate violence to the governing board, trustees, board of directors, or regents, as the case may be. The governing board, trustees, board of directors, or regents, as the case may be, shall, upon collection of that information from all of the campuses within their jurisdiction, transmit a report containing a compilation of that information to the California Postsecondary Education Commission no later than January 1 of each year, commencing January 1, 1993. The commission shall make these reports available to the Legislature and the general public on its Internet Web site. It is the intent of the Legislature that the governing board of each community college district, the Trustees of the California State University, the Board of Directors of the Hastings College of the Law, the Regents of the University of California, and the governing board of any postsecondary institution receiving public funds for student financial assistance establish guidelines for identifying and reporting occurrences of hate violence. It is the intent of the Legislature that the guidelines established by these institutions of higher education be as consistent with each other as possible. These guidelines shall be developed in consultation with the Department of Fair Employment and Housing and the California Association of Human Rights Organizations.

(b) Any person who is refused information required to be made available pursuant to subparagraph (A) of paragraph (1) of subdivision (a) may maintain a civil action for damages against any institution that refuses to provide the information, and the court shall award that person

an amount not to exceed one thousand dollars ($1,000) if the court finds that the institution refused to provide the information.

(c) For purposes of this section, "hate violence" means any act of physical intimidation or physical harassment, physical force or physical violence, or the threat of physical force or physical violence, that is directed against any person or group of persons, or the property of any person or group of persons because of the ethnicity, race, national origin, religion, sex, sexual orientation, disability, or political or religious beliefs of that person or group.

(d) This section does not apply to the governing board of any private postsecondary institution receiving funds for student financial assistance with a full-time enrollment of less than 1,000 students.

(e) This section shall apply to a campus of one of the public postsecondary educational systems identified in subdivision (a) only if that campus has a full-time equivalent enrollment of more than 1,000 students.

(f) Notwithstanding any other provision of this section, this section shall not apply to the California Community Colleges unless and until the Legislature makes funds available to the California Community Colleges for the purposes of this section.

SEC. 5. Section 69563 of the Education Code is repealed.

SEC. 6. Section 99155 of the Education Code is repealed.

CHAPTER 515

An act to amend Section 52124 of the Education Code, relating to class size reduction.

[Approved by Governor September 28, 2008. Filed with Secretary of State September 28, 2008.]

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

SECTION 1. Section 52124 of the Education Code, as amended by Section 122 of Chapter 538 of the Statutes of 2006, is amended to read:

52124. (a) A school district that implements a class size reduction program pursuant to this chapter is subject to this section.

(b) A school district may establish a program to reduce class size in kindergarten and grades 1 to 3, inclusive, and that program shall be implemented at each schoolsite according to the following priorities:

(1) If only one grade level is reduced at a schoolsite, the grade level shall be grade 1.

(2) If only two grade levels are reduced at a schoolsite, the grade levels shall be grades 1 and 2.

(3) If three grade levels are reduced at a schoolsite, then those grade levels shall be kindergarten and grades 1 and 2 or grades 1 to 3, inclusive. Priority shall be given to the reduction of class sizes in grades 1 and 2 before the class sizes of kindergarten or grade 3 are reduced.

(4) If four grade levels are reduced at a schoolsite, then those grade levels shall be kindergarten and grades 1 to 3, inclusive. First priority shall be given to the reduction of class sizes in grades 1 and 2, and second priority shall be given to the reduction of class size in kindergarten and grade 3. This paragraph shall be operative only in those fiscal years for which funds are appropriated expressly for the purposes of this paragraph.

(c) It is the intent of the Legislature to continue to permit the use of combination classes of more than one grade level to the extent that school districts are otherwise permitted to use that instructional strategy. However, a school district that uses a combination class in a class for which funding is received pursuant to this chapter shall not claim funding pursuant to this chapter if the total number of pupils in the combination class, regardless of grade level, exceeds 20 pupils per certificated teacher assigned to provide direct instructional services.

(d) The governing board of a school district shall certify to the Superintendent that it has met the requirements of this section in implementing its class size reduction program. If a school district receives funding pursuant to this chapter but has not implemented its class size reduction program for all grades and classes for which it received funding pursuant to this chapter, the Superintendent shall notify the Controller and the school district in writing and the Controller shall deduct an amount equal to the amount received by the school district under this chapter for each class that the school district failed to reduce to a class size of 20 or fewer pupils from the next principal apportionment or apportionments of state funds to the district, other than basic aid apportionments required by Section 6 of Article IX of the California Constitution.

(e) Except for a school district participating pursuant to subdivision (h) of Section 52122, the amount deducted pursuant to subdivision (d) shall be adjusted as follows:

(1) Twenty percent of the amount to which the district would otherwise be eligible for each class for which the annual enrollment determined pursuant to Section 52124.5 is greater than or equal to 20.5 but less than 21.0.

(2) Forty percent of the amount to which the district would otherwise be eligible for each class for which the annual average enrollment

determined pursuant to Section 52124.5 is greater than or equal to 21.0 but less than 21.5.

(3) Eighty percent of the amount to which the district would otherwise be eligible for each class for which the annual average enrollment determined pursuant to Section 52124.5 is greater than or equal to 21.5 but less than 21.9.

(4) The amount deducted pursuant to subdivision (d) for each class for which the annual average enrollment determined pursuant to Section 52124.5 is greater than or equal to 21.9 shall be the amount of funding the district received for the class pursuant to this chapter.

(f) Notwithstanding any other provision of this chapter, a school district located in the County of Los Angeles, Riverside, San Bernardino, San Diego, or Ventura may claim funding pursuant to this chapter for the 2003–04 school year based on enrollment counts before the October 2003 fires, in classes for which the class size reduction program is implemented, if the following criteria are met:

(1) The school district submits to the Superintendent a "Request for Allowance of Attendance because of Emergency Conditions" pursuant to Section 46392 and the emergency conditions were caused by the October 2003 fires.

(2) The school district certifies that it suffered a loss of enrollment in classes in which the class size reduction program is implemented and this loss of enrollment is due to the October 2003 fires and would result in a decrease in funding that the district receives pursuant to this chapter.

(g) This section shall become inoperative on July 1, 2014, and as of January 1, 2015, is repealed, unless a later enacted statute that is enacted before January 1, 2015, deletes or extends the dates on which it becomes inoperative or is repealed.

SEC. 2. Section 52124 of the Education Code, as added by Section 2 of Chapter 910 of the Statutes of 2004, is amended to read:

52124. (a) A school district that implements a class size reduction program pursuant to this chapter is subject to this section.

(b) A school district may establish a program to reduce class size in kindergarten and grades 1 to 3, inclusive, and that program shall be implemented at each schoolsite according to the following priorities:

(1) If only one grade level is reduced at a schoolsite, the grade level shall be grade 1.

(2) If only two grade levels are reduced at a schoolsite, the grade levels shall be grades 1 and 2.

(3) If three grade levels are reduced at a schoolsite, then those grade levels shall be kindergarten and grades 1 and 2 or grades 1 to 3, inclusive. Priority shall be given to the reduction of class sizes in grades 1 and 2 before the class sizes of kindergarten or grade 3 are reduced.

(4) If four grade levels are reduced at a schoolsite, then those grade levels shall be kindergarten and grades 1 to 3, inclusive. First priority shall be given to the reduction of class sizes in grades 1 and 2, second priority shall be given to the reduction of class size in kindergarten and grade 3. This paragraph shall be operative only in those fiscal years for which funds are appropriated expressly for the purposes of this paragraph.

(c) It is the intent of the Legislature to continue to permit the use of combination classes of more than one grade level to the extent that school districts are otherwise permitted to use that instructional strategy. However, a school district that uses a combination class in any class for which funding is received pursuant to this chapter shall not claim funding pursuant to this chapter if the total number of pupils in the combination class, regardless of grade level, exceeds 20 pupils per certificated teacher assigned to provide direct instructional services.

(d) The governing board of a school district shall certify to the Superintendent that it has met the requirements of this section in implementing its class size reduction program.

If a school district receives funding pursuant to this chapter but has not implemented its class size reduction program for all grades and classes for which it received funding pursuant to this chapter, the Superintendent shall notify the Controller and the school district in writing and the Controller shall deduct an amount equal to the amount received by the school district under this chapter for each class that the school district failed to reduce to a class size of 20 or fewer pupils from the school district's next principal apportionment or apportionments of state funds to the district, other than basic aid apportionments required by Section 6 of Article IX of the California Constitution.

(e) This section shall become operative on July 1, 2014.

CHAPTER 516

An act to amend Sections 69613.1, 69613.2, 69613.4, 69613.6, 69613.8, 69614, 69615.4, and 69615.6 of, to add Sections 69612.5 and 69615.8 to, to repeal Section 69613.5 of, and to repeal and add Sections 69612 and 69613 of, the Education Code, relating to teachers.

[Approved by Governor September 28, 2008. Filed with Secretary of State September 28, 2008.]

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

SECTION 1. Section 69612 of the Education Code is repealed.

SEC. 2. Section 69612 is added to the Education Code, to read:

69612. (a) The Legislature finds and declares all of the following:

(1) The growing shortage of high-quality teachers is most serious in particular subject areas, partly due to the shortage of students in these fields who enter the teaching profession.

(2) Many school districts have difficulty recruiting and retaining high-quality teachers for schools ranked in decile 1 or 2 on the Academic Performance Index, for pupils with special needs, for schools serving rural areas or large populations of pupils from low-income and linguistic minority families, and for schools with a high percentage of teachers holding emergency-type permits.

(3) The rising costs of higher education, coupled with a shift in available financial aid from scholarships and grants to loans, make the availability of financial aid and loan repayment assistance options an important consideration in a student's decision to pursue a postsecondary education.

(b) It is, therefore, the intent of the Legislature that the Assumption Program of Loans for Education be designed to provide veteran teachers and outstanding postsecondary students, particularly economically disadvantaged students, with the assurance of financial assistance to encourage them to complete postsecondary education programs leading to teaching credentials, and to seek employment as teachers in designated subject-matter shortage areas or in schools serving a large population of pupils from low-income families, schools with a high percentage of teachers holding emergency-type permits, or schools ranked in the lowest two deciles on the Academic Performance Index.

SEC. 3. Section 69612.5 is added to the Education Code, to read:

69612.5. For purposes of this article, the following terms have the following definitions:

(a) "Eligible institution" means a postsecondary institution that is determined by the Student Aid Commission to meet both of the following requirements:

(1) The institution is eligible to participate in state and federal financial aid programs.

(2) The institution maintains a program of professional preparation that has been approved by the Commission on Teacher Credentialing.

(b) "Eligible school" means a school that meets any of the following criteria:

(1) It serves a large population of pupils from low-income families, as designated by the Superintendent of Public Instruction.

(2) The institution has 20 percent or more teachers holding emergency-type permits including, but not limited to, any of the following:

(A) Provisional internships.
(B) Short-term staff permits.
(C) Credential waivers.
(D) Substitute permits.

(3) It is a school that is ranked in the lowest two deciles on the Academic Performance Index.

(4) It is a school that serves a rural area.

SEC. 4. Section 69613 of the Education Code is repealed.

SEC. 5. Section 69613 is added to the Education Code, to read:

69613. (a) Program participants shall meet all of the following eligibility criteria prior to selection in the program and shall continue to meet these criteria, as appropriate, during the payment periods:

(1) The applicant has completed at least 60 semester units, or the equivalent, and is enrolled in an academic program leading to a baccalaureate degree at an eligible institution, has agreed to participate in a teacher internship program, or has been admitted to a program of professional preparation that has been approved by the Commission on Teacher Credentialing.

(2) The applicant is currently enrolled in, or has been admitted to, a program in which he or she will be enrolled on at least a half-time basis, as determined by the participating institution. The applicant shall agree to maintain satisfactory academic progress and a minimum of half-time enrollment, as defined by the participating eligible institution.

(A) Except as provided in subparagraphs (B) and (C), if a person participating in the program fails to maintain at least half-time enrollment, as required by this article, under the terms of the agreement pursuant to paragraph (2), the loan assumption agreement shall be invalidated and the participant shall assume full liability for all student loan obligations. This subparagraph shall not apply if the participant is in his or her final semester or quarter in school and has no additional coursework required to obtain his or her teaching credential.

(B) Notwithstanding subparagraph (A), if a program participant is unable to maintain at least half-time enrollment due to serious illness, pregnancy, or other natural causes, or is called to active military duty status, the participant is not required to assume full liability for the student loan obligation for a period not to exceed one calendar year, unless approved by the commission for a longer period.

(C) If a natural disaster prevents a program participant from maintaining at least half-time enrollment due to the interruption of instruction at the eligible institution, the term of the loan assumption agreement shall be extended for a period not to exceed one calender year, unless approved by the commission for a longer period.

(3) The applicant has been judged by his or her postsecondary institution, school district, or county office of education to have outstanding ability on the basis of criteria that may include, but need not be limited to, any of the following:

(A) Grade point average.

(B) Test scores.

(C) Faculty evaluations.

(D) Interviews.

(E) Other recommendations.

(4) The applicant has received, or is approved to receive, a loan under one or more of the following designated loan programs:

(A) The Federal Family Education Loan Program (20 U.S.C. Sec. 1071 et seq.).

(B) Any educational loan program approved by the Student Aid Commission.

(5) The applicant has agreed to teach full time for at least four consecutive academic years, or on a part-time basis for the equivalent of four full-time academic years, after obtaining a teaching credential in a public elementary or secondary school in this state, in a subject area that is designated as a current or projected shortage area by the Superintendent of Public Instruction, or, on the date the teacher is hired, at an eligible school.

(b) An agreement shall remain valid even if the subject area under which an applicant becomes eligible to enter into an agreement ceases to be a designated shortage field by the time the applicant becomes a teacher.

(c) For the purposes of calculating eligible years of teaching for the redemption of an award, the designation by the Superintendent of Public Instruction of a newly opened school pursuant to Section 52056 shall apply retroactively from the date the school first opened.

(d) A person participating in the program pursuant to this section shall not enter into more than one agreement.

(e) A person participating in the program pursuant to this section shall not owe a refund on any state or federal educational grant or defaulted on any student loan.

(f) Notwithstanding any other provision of this section, a credentialed teacher teaching in a public school ranked in the lowest two deciles on the Academic Performance Index pursuant to Section 52052, possesses a clear multiple subject or single subject teaching credential or level II education specialist credential and who has not otherwise participated in the program established by this article, is eligible to enter into an agreement for loan assumption pursuant to this article. The number of loan assumption agreements provided pursuant to this subdivision shall

not exceed 400 per year. The commission shall develop and adopt regulations for the implementation of this subdivision by January 1, 2010.

SEC. 6. Section 69613.1 of the Education Code is amended to read:

69613.1. On or before January 1 of each year, the Superintendent of Public Instruction shall furnish the commission with all of the following:

(a) A list of teaching fields that have the most critical shortage of teachers. The Superintendent shall review this list annually and revise the list as he or she deems necessary. The list of shortage areas furnished pursuant to this subdivision shall include the state special schools as a category separate from special education.

(b) A list of schools that serve a large population of pupils from low-income families, as designated for purposes of the Perkins Loan Program, or according to standards the Superintendent deems appropriate.

(c) A list of schools with a high percentage of teachers holding emergency-type permits. The list shall be established according to criteria determined by the Superintendent.

(d) A list of schools serving rural areas. The list shall be established according to standards deemed appropriate by the Superintendent.

(e) A list of schools ranked in the lowest two deciles on the Academic Performance Index.

(f) A list of high priority schools.

SEC. 7. Section 69613.2 of the Education Code is amended to read:

69613.2. The commission shall commence loan assumption payments, as specified in Section 69613.4, upon verification that the applicant has fulfilled all of the following:

(a) The applicant has received a California preliminary or professional clear credential, or an equivalent credential from another state, authorizing service for kindergarten or any of grades 1 to 12, inclusive.

(b) The applicant has provided full-time classroom instruction, or the equivalent on a part-time basis, in a public elementary or secondary school for the equivalent of one school year.

(c) The applicant has met the requirements of the agreement and all other pertinent conditions of this article.

SEC. 8. Section 69613.4 of the Education Code is amended to read:

69613.4. (a) The terms of a loan assumption granted under this article shall be as follows, subject to the specific terms of each agreement:

(1) After a program participant has completed one school year of classroom instruction pursuant to Section 69613.2, the commission shall assume up to two thousand dollars ($2,000) of the participant's outstanding liability under one or more of the designated educational loan programs.

(2) After a program participant has completed two consecutive school years of instruction, the commission shall assume up to an additional three thousand dollars ($3,000) of the participant's outstanding liability under one or more of the designated educational loan programs, for a total loan assumption of up to five thousand dollars ($5,000).

(3) After a program participant has completed three consecutive school years of teaching service, the commission shall assume up to a maximum of an additional three thousand dollars ($3,000) of the participant's outstanding liability under one or more of the designated educational loan programs, for a total loan assumption of up to eight thousand dollars ($8,000).

(4) After a program participant has completed four consecutive school years of teaching service, the commission shall assume up to a maximum of an additional three thousand dollars ($3,000) of the participant's outstanding liability under one or more of the designated educational loan programs, for a total loan assumption of up to eleven thousand dollars ($11,000).

(b) For purposes of this section, "school year" means at least 175 school days or its equivalent.

(c) An applicant who teaches on less than a full-time basis may participate in the program, but shall not be eligible for loan repayment until that person teaches for the equivalent of a full-time academic year.

SEC. 9. Section 69613.5 of the Education Code is repealed.

SEC. 10. Section 69613.6 of the Education Code is amended to read:

69613.6. (a) Except as provided in subdivision (b), if a program participant fails to complete a minimum of four consecutive school years of classroom instruction on a full-time basis or the equivalent on a part-time basis as required by this article, under the terms of the agreement pursuant to paragraph (5) of subdivision (a) of Section 69613, the participant shall assume full liability for all student loan obligations remaining after the commission's assumption of loan liability for the last year of qualifying teaching service pursuant to Section 69613.

(b) Notwithstanding subdivision (a), if a program participant becomes unable to complete one of the four consecutive years of teaching service on a full-time basis or the equivalent on a part-time basis due to serious illness, pregnancy, or other natural causes, or is called to active military duty status, the participant shall receive a deferral of the resumption of full liability for the loan for a period not to exceed one calendar year, unless approved by the commission for a longer period. The commission shall make no further payments under the loan assumption agreement until the applicable teaching requirements specified in Section 69613.2 have been specified.

(c) (1) Notwithstanding subdivision (a), a program participant shall receive a deferral of the resumption of full liability for the loan for a period not to exceed one calendar year, unless approved by the commission for a longer period, if the participant becomes unable to complete one of the four consecutive years of teaching service due to being laid off, reassigned, or other reasons beyond the control of the participant, as determined by the commission.

(2) The commission shall make no further payments under the loan assumption agreement until the applicable teaching requirements specified in Section 69613.2 have been satisfied.

(d) If a program participant fails to redeem an agreement for student loan assumption within 10 years of the agreement's issuance, the participant shall assume full liability for all student loan obligations.

SEC. 11. Section 69613.8 of the Education Code is amended to read:

69613.8. In addition to the amounts set forth in subdivision (a) of Section 69613.4, for each of the four years of classroom instruction referenced in subdivision (a) of Section 69613.4, the following loan assumption benefits shall be granted:

(a) One thousand dollars ($1,000) of additional liability per year shall be assumed for a person who holds a credential appropriate for teaching, and who teaches, mathematics, science, or special education in the lowest 60 percentile of Academic Performance Index rankings.

(b) One thousand dollars ($1,000) of additional liability per year shall be assumed for a person who teaches in a school in the lowest two deciles on the Academic Performance Index rankings. Eligibility for the benefit set forth in this subdivision shall be limited to a person who holds a credential appropriate for teaching, and who teaches, mathematics, science, or special education.

(c) Not more than a total of five million dollars ($5,000,000) shall be expended in any academic year for the purposes of this section.

(d) The commission shall award benefits payable under this section upon receipt of all documentation necessary to establish eligibility for the additional loan assumption benefits. Payments shall be made to applicants in the order received until the five million dollars ($5,000,000) authorized by subdivision (c) has been expended.

SEC. 12. Section 69614 of the Education Code is amended to read:

69614. (a) The commission shall distribute program information and student applications to participate in the loan assumption program to each eligible institution and to each school district or county office of education operating a district intern program pursuant to Section 44381. Each eligible institution shall receive at least one allocation, and the remainder shall be distributed to eligible institutions proportionate to the number of teaching candidates from each institution who completed

the coursework required for a teaching credential based on the most recent data available from the Commission on Teacher Credentialing. In addition, the commission shall reexamine its outreach and marketing strategies to inform both potential undergraduates and persons employed outside of academia about the availability and benefits of the loan assumption program. To this end, the commission shall enlist the advice and support of the California Center for the Teaching Profession, the University of California, the California State University, the Association of Independent California Colleges and Universities, and private employers and their associations throughout the state.

(b) Each eligible institution, school district, and county office of education shall sign an institutional agreement with the commission, certifying its intent to administer the loan assumption program according to all applicable published rules, regulations, and guidelines, and to make special efforts to notify students regarding the availability of the program, particularly economically disadvantaged students.

(c) To the extent feasible, each eligible institution shall coordinate the loan assumption program with other programs designed to recruit students to enter the teaching profession.

SEC. 13. Section 69615.4 of the Education Code is amended to read:

69615.4. The commission shall report annually to the Legislature regarding all of the following, on the basis of sex, age, and ethnicity:

(a) The total number of program participants.

(b) The number of agreements entered into with juniors, seniors, students enrolled in teacher training programs, and persons who agree to enroll in teacher internship programs.

(c) The number of participants who agree to teach in a subject matter shortage area.

(d) The number of participants who agree to teach in schools with a high ratio of pupils from low-income families and in schools ranked in the lowest two deciles on the Academic Performance Index.

(e) The number of participants who agree to teach in schools serving rural areas.

(f) The number of participants who agree to teach in schools with a high percentage of teachers holding provisional internship permits.

(g) The number of participants who receive a loan assumption benefit, classified by payment year.

(h) The number of out-of-state teachers who enter into agreements.

(i) The number of participants who have participated in teacher internship programs, classified by school district or county office of education.

SEC. 14. Section 69615.6 of the Education Code is amended to read:

69615.6. (a) For each school year, all of the following shall apply:

(1) The commission shall enter into agreements for the assumption of up to 6,500 student loans for program participants eligible under this article.

(2) Priority for these agreements shall be given to applicants who are recipients of federally subsidized loans or other need-based loans, as determined by the commission.

(3) Priority for these agreements shall be given to applicants who agree to obtain, or who have obtained, a teaching credential in mathematics, science, or special education.

(b) In any school year, the commission may enter into no more than 100 agreements with applicants who participate in a district intern program operated by a school district or a county office of education.

SEC. 15. Section 69615.8 is added to the Education Code, to read:

69615.8. Notwithstanding any other law, in any fiscal year, the commission shall award no more than the number of loan assumption agreements that are authorized by the Governor and the Legislature in the annual Budget Act for that year for the assumption of loans pursuant to this article.

CHAPTER 517

An act to amend Section 1687 of the Business and Professions Code, relating to dentistry.

[Approved by Governor September 28, 2008. Filed with Secretary of State September 28, 2008.]

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

SECTION 1. Section 1687 of the Business and Professions Code is amended to read:

1687. (a) Notwithstanding any other provision of law, with regard to an individual who is required to register as a sex offender pursuant to Section 290 of the Penal Code, or the equivalent in another state or territory, under military law, or under federal law, the board shall be subject to the following requirements:

(1) The board shall deny an application by the individual for licensure pursuant to this chapter.

(2) If the individual is licensed under this chapter, the board shall revoke the license of the individual. The board shall not stay the revocation and place the license on probation.

(3) The board shall not reinstate or reissue the individual's licensure under this chapter. The board shall not issue a stay of license denial and place the license on probation.

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

(1) An individual who has been relieved under Section 290.5 of the Penal Code of his or her duty to register as a sex offender, or whose duty to register has otherwise been formally terminated under California law or the law of the jurisdiction that requires his or her registration as a sex offender.

(2) An individual who is required to register as a sex offender pursuant to Section 290 of the Penal Code solely because of a misdemeanor conviction under Section 314 of the Penal Code. However, nothing in this paragraph shall prohibit the board from exercising its discretion to discipline a licensee under other provisions of state law based upon the licensee's conviction under Section 314 of the Penal Code.

(3) Any administrative adjudication proceeding under Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code that is fully adjudicated prior to January 1, 2008. A petition for reinstatement of a revoked or surrendered license shall be considered a new proceeding for purposes of this paragraph, and the prohibition against reinstating a license to an individual who is required to register as a sex offender shall be applicable.

CHAPTER 518

An act to amend Sections 44225.7, 44252, 44252.5, 44380, 44385, 44560, 44561, 44830, and 44831 of the Education Code, relating to teachers.

[Approved by Governor September 28, 2008. Filed with Secretary of State September 28, 2008.]

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

SECTION 1. Section 44225.7 of the Education Code is amended to read:

44225.7. (a) The commission may approve a school district request for the assignment of an individual pursuant to subdivision (m) of Section 44225 or Section 44300 if the district has certified by an annual resolution of the governing board that it has made reasonable efforts to recruit a fully prepared teacher for the assignment. If a suitable fully prepared teacher is not available to a school district, the district under all

circumstances shall make reasonable efforts to recruit an individual for the assignment, in the following order:

(1) A candidate who is qualified to participate and enrolls in an approved internship program in the region of the school district.

(2) A candidate who is scheduled to complete preliminary credential requirements within six months. The commission shall assure that the employer will provide orientation, guidance, and assistance to the candidate.

(b) If a suitable individual who meets the priorities listed in subdivision (a) is not available to the school district, the district, as a last resort, may request approval for the assignment of a person who does not meet that criteria.

(c) As the supply of teaching interns increases as a result of legislative efforts to expand the Alternative Certification Program, the commission shall notify school districts that state policy directs the assignment of interns to classrooms when available in a given region, with decreased reliance on persons serving on emergency permits or credential waivers.

(d) As the supply of fully prepared teachers increases as a result of the Legislature's efforts to recruit and retain qualified teachers for California classrooms, the commission shall notify school districts that state policy directs the assignment of fully prepared teachers to California classrooms, with the use of permits or waivers only when school districts are geographically isolated from teacher preparation programs or in the case of unanticipated, short-term need for the assignment of personnel.

(e) As used in this section, a "fully prepared teacher" means an individual who has completed a teacher preparation program. For purposes of this subdivision, a "teacher preparation program" means either a set of courses, including supervised field experience, or an equivalent alternative program, that provides a curriculum of systematic preparation for serving as an educator in California public schools.

SEC. 2. Section 44252 of the Education Code is amended to read:

44252. (a) The commission shall establish standards and procedures for the initial issuance and renewal of credentials.

(b) The commission shall not issue initially a credential, permit, certificate, or renewal of an emergency credential to a person to serve in the public schools unless the person has demonstrated proficiency in basic reading, writing, and mathematics skills in the English language as provided in Section 44252.5 or Section 44252.7. The commission shall exempt the following persons from the basic skills proficiency test requirement:

(1) A person credentialed solely for the purpose of teaching adults in an apprenticeship program.

(2) An applicant for an adult education designated subject credential for other than an academic subject.

(3) A person credentialed in another state who is an applicant for employment in a school district in this state who has passed a basic skills proficiency examination administered by the state where the person is credentialed.

(4) A person credentialed in another state who is an applicant for employment in a school district in this state who has passed a basic skills proficiency examination that has been developed and administered by the school district offering that person employment, by cooperating school districts, or by the appropriate county office of education. School districts administering a basic skills proficiency examination under this paragraph shall comply with the requirements of subdivision (h) of Section 44830. The applicant shall be granted a nonrenewable credential, valid for not longer than one year, pending fulfillment of the basic skills proficiency requirement pursuant to Section 44252.5.

(5) An applicant for a child care center permit or a permit authorizing service in a development center for the handicapped, so long as the holder of the permit is not required to have a baccalaureate degree.

(6) The holder of a credential, permit, or certificate to teach, other than an emergency permit, who seeks an additional authorization to teach.

(7) An applicant for a credential to provide service in the health profession.

(8) An applicant who achieves scores on the writing, reading, and mathematics sections of the College Board SAT Reasoning Test, the enhanced ACT Test, or the California State University Early Assessment Program that are sufficient to waive the English placement test and the entry level mathematics examination administered by the California State University.

(9) An applicant for an eminence credential to be issued pursuant to Section 44262.

(c) The Superintendent shall adopt an appropriate state test to measure proficiency in these basic skills. In adopting the test, the Superintendent shall seek assistance from the commission and an advisory board. A majority of the members of the advisory board shall be classroom teachers. The board also shall include representatives of school boards, school administrators, parents, and postsecondary educational institutions.

The Superintendent shall adopt a normed test that the Superintendent determines will sufficiently test basic skills for purposes of this section.

The Superintendent, in conjunction with the commission and approved teacher training institutions, shall take steps necessary to ensure the effective implementation of this section.

(d) This section does not require the holders of, or applicants for, a designated subjects special subjects credential to pass the state basic skills proficiency test unless the requirements for the specific credential required the possession of a baccalaureate degree. The governing board of each school district, or each governing board of a consortium of school districts, or each governing board involved in a joint powers agreement, which employs a holder of a designated subjects special subjects credential shall establish its own basic skills proficiency criteria for the holders of these credentials and shall arrange for those individuals to be assessed. The basic skills proficiency criteria established by the governing board shall be at least equivalent to the test required by the district, or in the case of a consortium or a joint powers agreement, by any of the participating districts, for graduation from high school. The governing board or boards may charge a fee to individuals being tested to cover the costs of the test, including the costs of developing, administering, and grading the test.

(e) The commission shall compile data regarding the rate of passing the state basic skills proficiency test by persons who have been trained in various institutions of higher education. The data shall be available to members of the public, including to persons who intend to enroll in teacher education programs.

(f) Each applicant to an approved credential program, unless exempted by subdivision (b), shall take the state basic skills proficiency test in order to provide both the prospective applicant and the program with information regarding the proficiency level of the applicant. Test results shall be forwarded to each California postsecondary educational institution to which the applicant has applied. The program shall use test results to ensure that, upon admission, each applicant receives appropriate academic assistance necessary to pass the state basic skills proficiency test. Persons residing outside the state shall take the test no later than the second available administration following their enrollment in a credential program.

It is the intent of the Legislature that applicants for admission to teacher preparation programs not be denied admission on the basis of state basic skills proficiency test results.

SEC. 3. Section 44252.5 of the Education Code is amended to read:

44252.5. (a) The commission shall administer the state basic skills proficiency test pursuant to Sections 44227, 44252, and 44830 in accordance with rules and regulations adopted by the commission. A fee shall be charged to individuals being tested to cover the costs of the test, including the costs of developing, administering, and grading the test. The amount of the fee shall be established by the commission to

recover the cost of examination administration and development pursuant to Section 44235.3.

(b) The commission may enter into agreements with other states permitting the use of the state basic skills proficiency test as a requirement for the issuance of credentials or for teacher preparation program admission in those other states, provided that the use would advance the interests of the State of California and that the other states reimburse the Teacher Credentials Fund for a proportionate share of costs of the development and administration of the test.

(c) An individual who passes the state basic skills proficiency test, as adopted by the Superintendent, shall be considered proficient in the skills of reading, writing, and mathematics, and shall not be required to be retested by this test for purposes of meeting the proficiency requirements of Sections 44227, 44252, and 44830.

(d) An individual who passes one or more components of the state basic skills proficiency test in the subjects of basic reading, writing, or mathematics shall be deemed to have demonstrated his or her proficiency in these subject areas and shall not be required to be retested in these subjects during subsequent test administrations.

SEC. 4. Section 44380 of the Education Code is amended to read:

44380. (a) The Legislature finds and declares that the teaching profession must be able to recruit talented individuals, in addition to college students, from a variety of sources to address geographic and subject area shortages. Many persons changing careers and early retirees from industry and the military are interested in the challenge of teaching.

(b) The Legislature further finds that, in California, there is a serious shortage of qualified teachers in the subjects of mathematics and science, teachers who work with limited-English-proficient pupils, minority teachers, and special education teachers.

(c) Therefore, in enacting this article, the Legislature intends to encourage public school districts, county offices of education, and colleges and universities to design concentrated programs leading to a permanent credential for people with work experience and others who already have a bachelor's degree.

SEC. 5. Section 44385 of the Education Code is amended to read:

44385. The commission, with the assistance of representatives of classroom teachers, school administrators, parents, university and college educators, and others, as appropriate, shall establish criteria for selecting grant applicants to be funded. The criteria shall include the following:

(a) The demonstrated need for more fully prepared credentialed teachers, as defined in Section 44225.7, within each school district included in the application.

(b) The number of participants to be served and the number of credentialed teachers, with at least a preliminary or level 1 credential, at each schoolsite where interns will be assigned, including teachers serving as certificated staff mentors pursuant to Section 44560.

(c) The capacity of the school districts included in the application to provide mentoring support and assistance to intern teachers.

(d) The quality of the instruction, support, and assessment that will be available to interns, as evidenced by the response of the applicant to the commission's standards of quality and effectiveness for preparation programs.

(e) The cost-effectiveness of the program.

SEC. 6. Section 44560 of the Education Code is amended to read:

44560. (a) The Certificated Staff Mentoring Program is hereby established for the purpose of encouraging excellent, experienced teachers to teach in staff priority schools and to assist teacher interns and beginning teachers during their induction and first years of teaching.

(b) The Superintendent shall apportion funds appropriated for purposes of this program to participating school districts and shall determine the amount to be allocated, based on the number of experienced teachers eligible to receive stipends. The total amount allocated under this article shall not exceed the total amount appropriated for the purposes of this article in the annual Budget Act.

SEC. 7. Section 44561 of the Education Code is amended to read:

44561. (a) A school district that maintains classes in kindergarten or any of grades 1 to 12, inclusive, may apply for reimbursement under this article if it meets the conditions of subdivision (b).

(b) To be eligible for funding under this article, a school district must agree to do all of the following:

(1) Provide an annual salary stipend to each experienced mentor teacher that agrees to teach in a staff priority school, as defined in subdivision (d), and meets the criteria and performs services in accordance with Section 44562.

(2) Assure that each experienced teacher receiving a stipend as a certificated staff mentor is providing mentoring and support services first to candidates participating in alternative certification programs pursuant to Article 11 (commencing with Section 44380) of Chapter 2 and then to beginning teachers participating in a Beginning Teacher Support and Assessment program pursuant to Article 4.5 (commencing with Section 44279.1) of Chapter 2. A school district may assign teachers who serve as support providers in programs established pursuant to Article 11 (commencing with Section 44380) of Chapter 2 or Article 4.5 (commencing with Section 44279.1) of Chapter 2 as certificated staff mentors.

(3) Assure that the experienced teacher has received training to serve as a mentor or has served previously in a mentor capacity in programs for new teachers, including, but not limited to, induction and university or district intern programs.

(4) Assure that the experienced teacher will have adequate time and material resources to provide assistance to beginning teachers as specified in subdivision (a) of Section 44562.

(c) The annual allocation to a school district under this article shall be a reimbursement to the district for the cost of stipends actually provided to experienced mentor teachers that meet the criteria and perform services in accordance with Section 44562. In addition, a school district receiving reimbursement of stipend costs shall be entitled to an amount equal to 5 percent of the total stipend reimbursement for administrative costs.

(d) For purposes of this article, "staff priority school" means a school that meets either of the following conditions:

(1) A school that has an aggregate Academic Performance Index, established pursuant to Section 52052, score that was at or below the 30th percentile relative to other public schools in the state in any of the five previous school years.

(2) A juvenile court school, county community school, or community day school operated by a county office of education.

SEC. 8. Section 44830 of the Education Code is amended to read:

44830. (a) The governing board of a school district shall employ for positions requiring certification qualifications, only persons who possess the qualifications for those positions prescribed by law. It is contrary to the public policy of this state for a person or persons charged, by the governing boards, with the responsibility of recommending persons for employment by the boards to refuse or to fail to do so for reasons of race, color, religious creed, sex, or national origin of the applicants for that employment.

(b) The governing board of a school district shall not initially hire on a permanent, temporary, or substitute basis a certificated person seeking employment in the capacity designated in his or her credential unless that person has demonstrated basic skills proficiency as provided in Section 44252.5 or is exempted from the requirement by subdivision (c), (d), (e), (f), (g), (h), (i), (j), or (k).

(1) The governing board of a school district, with the authorization of the Commission on Teacher Credentialing, may administer the state basic skills proficiency test required under Sections 44252 and 44252.5.

(2) The Superintendent, in conjunction with the commission and local governing boards, shall take steps necessary to ensure the effective implementation of this subdivision.

It is the intent of the Legislature that in effectively implementing this subdivision, the governing boards of school districts shall direct superintendents of schools to prepare for emergencies by developing a pool of qualified emergency substitute teachers. This preparation shall include public notice of the test requirements and of the dates and locations of administrations of the tests. The governing board of a school district shall make special efforts to encourage individuals who are known to be qualified in other respects as substitutes to take the state basic skills proficiency test at its earliest administration.

(3) Demonstration of proficiency in reading, writing, and mathematics by a person pursuant to Section 44252 satisfies the requirements of this subdivision.

(c) A certificated person is not required to take the state basic skills proficiency examination if he or she has taken and passed it at least once, achieved a passing score on any of the tests specified in subdivision (b) of Section 44252, or possessed a credential before the enactment of the statute that made the test a requirement.

(d) This section does not require a person employed solely for purposes of teaching adults in an apprenticeship program, approved by the Apprenticeship Standards Division of the Department of Industrial Relations, to pass the state proficiency assessment instrument as a condition of employment.

(e) This section does not require the holder of a child care permit or a permit authorizing service in a development center for the handicapped to take the state basic skills proficiency test, so long as the holder of the permit is not required to have a baccalaureate degree.

(f) This section does not require the holder of a credential issued by the commission who seeks an additional credential or authorization to teach, to take the state basic skills proficiency test.

(g) This section does not require the holder of a credential to provide service in the health profession to take the state basic skills proficiency test if that person does not teach in the public schools.

(h) This section does not require the holder of a designated subjects special subjects credential to pass the state basic skills proficiency test as a condition of employment unless the requirements for the specific credential require the possession of a baccalaureate degree. The governing board of each school district, or each governing board of a consortium of school districts, or each governing board involved in a joint powers agreement, which employs the holder of a designated subjects special subjects credential shall establish its own basic skills proficiency for these credentials and shall arrange for those individuals to be assessed. The basic skills proficiency criteria established by the governing board shall be at least equivalent to the test required by the district, or in the

case of a consortium or a joint powers agreement, by any of the participating districts, for graduation from high school. The governing board or boards may charge a fee to individuals being tested to cover the costs of the test, including the costs of developing, administering, and grading the test.

(i) This section does not require the holder of a preliminary or clear designated subjects career technical education teaching credential to pass the state basic skills proficiency test.

(j) This section does not require certificated personnel employed under a foreign exchange program to take the state basic skills proficiency test. The maximum period of exemption under this subdivision shall be one year.

(k) Notwithstanding any other law, a school district or county office of education may hire certificated personnel who have not taken the state basic skills proficiency test if that person has not yet been afforded the opportunity to take the test. The person shall take the test at the earliest opportunity and may remain employed by the school district pending the receipt of his or her test results.

SEC. 9. Section 44831 of the Education Code is amended to read:

44831. The governing board of a school district shall employ persons in public school service requiring certification qualifications as provided in this code, except that the governing board or a county office of education may contract with or employ an individual who holds a license issued by the Speech-Language Pathology and Audiology Board and has earned a masters degree in communication disorders to provide speech and language services if that individual meets the requirements of Section 44332.6 before employment or execution of the contract.

CHAPTER 519

An act to amend Section 52321 of the Education Code, relating to regional occupational centers and programs.

[Approved by Governor September 28, 2008. Filed with Secretary of State September 28, 2008.]

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

SECTION 1. Section 52321 of the Education Code is amended to read:

52321. (a) (1) Commencing in the 2009–10 fiscal year, a regional occupational center or program established and maintained by school

districts or joint powers agencies pursuant to Section 52301 shall receive in annual operating funds directly from the county office of education in which it is located an amount per unit of average daily attendance equal to the revenue limit received by each of the participating school districts for each unit of average daily attendance generated in the regional occupational center or program by each participating school district.

(2) A regional occupational center or program established and maintained by a county superintendent of schools pursuant to Section 52301 shall receive funding pursuant to Section 2550. A county superintendent of schools shall report average daily attendance to the Superintendent for that funding.

(b) A regional occupational center or program may budget and accumulate an amount necessary to meet the cashflow needs of the regional occupational center or program known as a general reserve, and also may budget and accumulate amounts known as the designated fund balance and as the unappropriated fund balance. Alternatively, a regional occupational center or program may budget and accumulate amounts necessary to meet its long-term program needs in a separate account known as the capital outlay and equipment replacement reserve account, and this account shall be part of the designated fund balance. At the end of each school year, the ending balance in the regional occupational center or program account may be distributed to any of the general reserve, designated fund balance, and unappropriated fund balance accounts, provided that the combined total distributed does not exceed 15 percent of the expenditures for the current school year.

(1) The general reserve, the designated fund balance, including the capital outlay and equipment replacement reserve account, and the unappropriated fund balance shall be available for appropriation only after approval by a majority vote of the governing body of the regional occupational center or program.

(2) Funds of a regional occupational center or program shall be distributed to the capital outlay and equipment replacement reserve account only upon adoption by the governing board of a resolution specifying the general use to which each appropriation from the account would be put.

(c) (1) At the end of each school year, the combined ending balances of the general reserve, the designated fund balance, except the capital outlay and equipment replacement reserve account, and the unappropriated fund balance shall not exceed 15 percent of the expenditures for the current fiscal year.

(2) A regional occupational center or program may accumulate, over a period of two or more school years, an ending balance in the capital

outlay and equipment replacement reserve account of more than 15 percent of the expenditures for the current fiscal year, under provisions of a resolution of the governing board pursuant to paragraph (2) of subdivision (b).

(d) Funds placed in either the general reserve, the designated fund balance, including the capital outlay and equipment replacement reserve account, or the unappropriated fund balance shall be expended only for regional occupational center or program educational purposes.

(e) Commencing in the 2007–08 fiscal year, the Superintendent shall require an annual certification by school districts, county superintendents of schools, and joint powers agencies that the regional occupational center or program funds have been expended as provided in this section. The Superintendent shall withhold from the apportionment of a subsequent fiscal year, any ending fund balance in excess of 15 percent of the expenditures for the year, except those funds specifically set aside by the governing board in the capital outlay and equipment replacement reserve account.

CHAPTER 520

An act to amend Section 1334 of, and to add Section 1335.5 to the Military and Veterans Code, relating to veterans memorials.

[Approved by Governor September 28, 2008. Filed with Secretary of State September 28, 2008.]

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

SECTION 1. Section 1334 of the Military and Veterans Code is amended to read:

1334. (a) The beautification and enhancement of an existing memorial on state grounds is hereby authorized. For the purposes of this act, "state grounds" means that property in the City of Sacramento bounded by "Ninth," "Tenth," "L," and "N" Streets. The actual site for the beautification and enhancement of the memorial shall be the site of the existing memorial and surrounding ground.

(b) Funds for the beautification and enhancement of the memorial shall be provided through private contributions and through existing funds collected under the auspices of the California Mexican American Veterans' Memorial Beautification and Enhancement Commission. The Department of Veterans Affairs may receive contributions for this purpose.

(c) If the California Mexican American Veterans' Memorial Beautification and Enhancement Committee undertakes responsibility to construct a memorial under this chapter, it shall not begin construction until the Department of Finance has determined that sufficient private funding is available to construct, enhance, and maintain the memorial, and the committee signs a maintenance agreement with the state, as created under subdivision (f) of Section 1335.5, to maintain the memorial with private contributions.

SEC. 2. Section 1335.5 is added to the Military and Veterans Code, to read:

1335.5. With respect to the design and construction of an enhanced memorial, the Department of General Services, in consultation with the committee, shall seek to accomplish the following goals:

(a) Review the preliminary design plans to identify potential maintenance concerns.

(b) Compliance with the Americans with Disabilities Act of 1990 (Public Law 101-336) and other safety concerns.

(c) Review and approval of proper California Environmental Quality Act documents prepared for work at the designated state grounds.

(d) Review of final construction documents to ensure that all requirements are met.

(e) Preparation and attainment of the right-of-entry permit outlining the final area of work, final construction documents, construction plans, the contractor hired to perform the work, insurance, bonding, provisions for damage to state property, and inspection requirements.

(f) Prepare a maintenance agreement outlining the California Mexican American Veterans' Memorial Beautification and Enhancement Committee's responsibility for the long-term maintenance of the memorial due to aging, vandalism, or relocation.

(g) Inspect the construction performed by the contractor selected by the California Mexican American Veterans' Memorial Beautification and Enhancement Committee.

CHAPTER 521

An act to amend Sections 50199.7 and 50199.20 of, and to repeal Chapter 3.7 (commencing with Section 50199.50) of Part 1 of Division 31 of, the Health and Safety Code, and to amend Sections 12206, 17058, and 23610.5 of, and to repeal Sections 17053.14, 23608.2, and 23608.3 of, the Revenue and Taxation Code, relating to housing.

[Approved by Governor September 28, 2008. Filed with
Secretary of State September 28, 2008.]

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

SECTION 1. Section 50199.7 of the Health and Safety Code is amended to read:

50199.7. As used in this chapter:

(a) "Committee" means the Mortgage Bond and Tax Credit Allocation Committee, which is renamed the California Tax Credit Allocation Committee. All references to "committee" shall mean the California Tax Credit Allocation Committee.

(b) "Household" has the same meaning as defined in Section 7602 of Title 25 of the California Code of Regulations.

(c) "Housing credit" means the tax credit for low-income rental housing provided under Section 42 of the federal Internal Revenue Code (26 U.S.C. Sec. 42).

(d) "Housing credit applicant" means any owner, sponsor, or developer of a qualifying low-income building or project who applies to the committee for either of the following:

(1) An allocation of a portion of the current state housing credit ceiling.

(2) A reservation of a portion of the anticipated state housing credit ceiling of a subsequent year.

(e) "Housing credit ceiling" means the amount specified in Section 42(h)(3)(C) of the federal Internal Revenue Code (26 U.S.C. Sec. 42(h)(3)(C)).

(f) "Qualified low-income building" or "project" has the meaning specified in Section 42(c)(2) of the federal Internal Revenue Code (26 U.S.C. Sec. 42(c)(2)).

(g) "Agricultural worker" or "farmworker" shall have the same meaning as specified in subdivision (b) of Section 1140.4 of the Labor Code.

(h) "Farmworker housing" means housing for agricultural workers that is available to, and occupied by, only farmworkers and their households. The committee may permit an owner to temporarily house nonfarmworkers in vacant units in the event of a disaster or other critical occurrence. However, such emergency shelter shall only be permitted if there are no pending qualified farmworker household applications for residency.

SEC. 2. Section 50199.20 of the Health and Safety Code is amended to read:

50199.20. (a) Not less than 20 percent of the federal ceiling on low-income housing tax credits shall be set aside for allocation to rural areas as defined in Section 50199.21. Any amount of credit set aside for rural areas remaining after the ranking of credits in the final cycle of any calendar year shall be available for allocation to any eligible project.

(b) Up to 2 percent of the low-income housing tax credit available under this chapter and Sections 12206, 17058, and 23610.5 of the Revenue and Taxation Code may be set aside for small developments as determined by the committee. Any amount of credit set aside for small developments remaining after the ranking of projects in the final cycle of any calendar year shall be available for allocation to any eligible project.

(c) Not less than the amount specified in paragraph (4) of subdivision (g) of Sections 12206, 17058, and 23610.5 of the Revenue and Taxation Code shall be set aside to provide farmworker housing, as defined in subdivision (h) of Section 50199.7 of the Health and Safety Code.

SEC. 3. Chapter 3.7 (commencing with Section 50199.50) of Part 1 of Division 31 of the Health and Safety Code is repealed.

SEC. 4. 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) Except for projects to provide farmworker housing, as defined in subdivision (h) of Section 50199.7 of the Health and Safety Code, that are allocated credits solely under the set-aside described in subdivision (c) of Section 50199.20 of the Health and Safety Code, 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.

(B) The restrictions on rent and income levels will terminate or the federal insured mortgage on the property is eligible for prepayment anytime within five years before or after the date 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.

(4) Five hundred thousand dollars ($500,000) per calendar year for projects to provide farmworker housing, as defined in subdivision (h) of Section 50199.7 of the Health and Safety Code.

(5) The amount of any unallocated or returned credits under former Sections 17053.14, 23608.2, and 23608.3, as those sections read prior to January 1, 2009, until fully exhausted for projects to provide farmworker housing, as defined in subdivision (h) of Section 50199.7 of the Health and Safety Code.

(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. 4.5. 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) Except for projects to provide farmworker housing, as defined in subdivision (h) of Section 50199.7 of the Health and Safety Code, that are allocated credits solely under the set-aside described in subdivision (c) of Section 50199.20 of the Health and Safety Code, 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.

(C) (i) For a project that receives a preliminary reservation of the state low-income housing tax credit, allowed pursuant to subdivision (a), on or after January 1, 2009, and before January 1, 2016, the credit shall be allocated to the partners of a partnership owning the project in accordance with the partnership agreement, regardless of how the federal low-income housing tax credit with respect to the project is allocated to the partners, or whether the allocation of the credit under the terms of the agreement has substantial economic effect, within the meaning of Section 704(b) of the Internal Revenue Code.

(ii) This subparagraph shall not apply to a project that receives a preliminary reservation of state low-income housing tax credits under the set-aside described in subdivision (c) of Section 50199.20 unless the project also receives a preliminary reservation of federal low-income housing tax credits.

(iii) This subparagraph shall cease to be operative with respect to any project that receives a preliminary reservation of a credit on or after January 1, 2016.

(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 1715*l*(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.

(B) The restrictions on rent and income levels will terminate or the federal insured mortgage on the property is eligible for prepayment any time within five years before or after the date 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.

(4) Five hundred thousand dollars ($500,000) per calendar year for projects to provide farmworker housing, as defined in subdivision (h) of Section 50199.7 of the Health and Safety Code.

(5) The amount of any unallocated or returned credits under former Sections 17053.14, 23608.2, and 23608.3, as those sections read prior to January 1, 2009, until fully exhausted for projects to provide farmworker housing, as defined in subdivision (h) of Section 50199.7 of the Health and Safety Code.

(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. 5. Section 17053.14 of the Revenue and Taxation Code is repealed.

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) Except for projects to provide farmworker housing, as defined in subdivision (h) of Section 50199.7 of the Health and Safety Code, that are allocated credits solely under the set-aside described in subdivision (c) of Section 50199.20 of the Health and Safety Code, 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.

(B) The restrictions on rent and income levels will terminate or the federal insured mortgage on the property is eligible for prepayment anytime within five years before or after the date 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.

(4) Five hundred thousand dollars ($500,000) per calendar year for projects to provide farmworker housing, as defined in subdivision (h) of Section 50199.7 of the Health and Safety Code.

(5) The amount of any unallocated or returned credits under former Sections 17053.14, 23608.2, and 23608.3, as those sections read prior to January 1, 2009, until fully exhausted for projects to provide farmworker housing, as defined in subdivision (h) of Section 50199.7 of the Health and Safety Code.

(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. 6.5. 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) Except for projects to provide farmworker housing, as defined in subdivision (h) of Section 50199.7 of the Health and Safety Code, that are allocated credits solely under the set-aside described in subdivision (c) of Section 50199.20 of the Health and Safety Code, 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.

(C) (i) For a project that receives a preliminary reservation of the state low-income housing tax credit, allowed pursuant to subdivision (a), on or after January 1, 2009, and before January 1, 2016, the credit shall be allocated to the partners of a partnership owning the project in accordance with the partnership agreement, regardless of how the federal low-income housing tax credit with respect to the project is allocated to the partners, or whether the allocation of the credit under the terms of the agreement has substantial economic effect, within the meaning of Section 704(b) of the Internal Revenue Code.

(ii) To the extent the allocation of the credit to a partner under this section lacks substantial economic effect, any loss or deduction otherwise allowable under this part that is attributable to the sale or other disposition of that partner's partnership interest made prior to the expiration of the federal credit shall not be allowed in the taxable year in which the sale or other disposition occurs, but shall instead be deferred until and treated as if it occurred in the first taxable year immediately following the taxable year in which the federal credit period expires for the project described in clause (i).

(iii) This subparagraph shall not apply to a project that receives a preliminary reservation of state low-income housing tax credits under the set-aside described in subdivision (c) of Section 50199.20 unless the project also receives a preliminary reservation of federal low-income housing tax credits.

(iv) This subparagraph shall cease to be operative with respect to any project that receives a preliminary reservation of a credit on or after January 1, 2016.

(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 1715*l*(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.

(B) The restrictions on rent and income levels will terminate or the federal insured mortgage on the property is eligible for prepayment any time within five years before or after the date 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.

(4) Five hundred thousand dollars ($500,000) per calendar year for projects to provide farmworker housing, as defined in subdivision (h) of Section 50199.7 of the Health and Safety Code.

(5) The amount of any unallocated or returned credits under former Sections 17053.14, 23608.2, and 23608.3, as those sections read prior to January 1, 2009, until fully exhausted for projects to provide farmworker housing, as defined in subdivision (h) of Section 50199.7 of the Health and Safety Code.

(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 23608.2 of the Revenue and Taxation Code is repealed.

SEC. 8. Section 23608.3 of the Revenue and Taxation Code is repealed.

SEC. 9. 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) Except for projects to provide farmworker housing, as defined in subdivision (h) of Section 50199.7 of the Health and Safety Code, that are allocated credits solely under the set-aside described in subdivision (c) of Section 50199.20 of the Health and Safety Code, 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.

(B) The restrictions on rent and income levels will terminate or the federally insured mortgage on the property is eligible for prepayment anytime within five years before or after the date 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.

(4) Five hundred thousand dollars ($500,000) per calendar year for projects to provide farmworker housing, as defined in subdivision (h) of Section 50199.7 of the Health and Safety Code.

(5) The amount of any unallocated or returned credits under former Sections 17053.14, 23608.2, and 23608.3, as those sections read prior to January 1, 2009, until fully exhausted for projects to provide farmworker housing, as defined in subdivision (h) of Section 50199.7 of the Health and Safety Code.

(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.

SEC. 9.5. 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) Except for projects to provide farmworker housing, as defined in subdivision (h) of Section 50199.7 of the Health and Safety Code, that are allocated credits solely under the set-aside described in subdivision (c) of Section 50199.20 of the Health and Safety Code, 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.

(C) (i) For a project that receives a preliminary reservation of the state low-income housing tax credit, allowed pursuant to subdivision (a), on or after January 1, 2009, and before January 1, 2016, the credit shall be allocated to the partners of a partnership owning the project in accordance with the partnership agreement, regardless of how the federal low-income housing tax credit with respect to the project is allocated to the partners, or whether the allocation of the credit under the terms of the agreement has substantial economic effect, within the meaning of Section 704(b) of the Internal Revenue Code.

(ii) To the extent the allocation of the credit to a partner under this section lacks substantial economic effect, any loss or deduction otherwise allowable under this part that is attributable to the sale or other disposition of that partner's partnership interest made prior to the expiration of the federal credit shall not be allowed in the taxable year in which the sale or other disposition occurs, but shall instead be deferred until and treated as if it occurred in the first taxable year immediately following the taxable year in which the federal credit period expires for the project described in clause (i).

(iii) This subparagraph shall not apply to a project that receives a preliminary reservation of state low-income housing tax credits under the set-aside described in subdivision (c) of Section 50199.20 unless the project also receives a preliminary reservation of federal low-income housing tax credits.

(iv) This subparagraph shall cease to be operative with respect to any project that receives a preliminary reservation of a credit on or after January 1, 2016.

(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 1715*l*(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.

(B) The restrictions on rent and income levels will terminate or the federally insured mortgage on the property is eligible for prepayment any time within five years before or after the date 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.

(4) Five hundred thousand dollars ($500,000) per calendar year for projects to provide farmworker housing, as defined in subdivision (h) of Section 50199.7 of the Health and Safety Code.

(5) The amount of any unallocated or returned credits under former Sections 17053.14, 23608.2, and 23608.3, as those sections read prior to January 1, 2009, until fully exhausted for projects to provide farmworker housing, as defined in subdivision (h) of Section 50199.7 of the Health and Safety Code.

(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.

SEC. 10. Sections 4.5, 6.5, and 9.5 of this bill incorporate amendments to Sections 12206, 17058, and 23610.5 of the Revenue and Taxation Code proposed by both this bill and SB 585. Sections 4.5, 6.5,

and 9.5 shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2009, (2) each bill amends Sections 12206, 17058, and 23610.5 of the Revenue and Taxation Code, and (3) this bill is enacted after SB 585, in which case Sections 12206, 17058, and 23610.5 of the Revenue and Taxation Code as amended by SB 585, shall remain operative only until the operative date of this bill, at which time Sections 4.5, 6.5, and 9.5 of this bill shall become operative, and Sections 4, 6, and 9 of this bill shall not become operative.

CHAPTER 522

An act to amend Sections 224.72, 1712.1, and 1766 of, and to add Section 223.1 to, the Welfare and Institutions Code, relating to juveniles.

[Approved by Governor September 28, 2008. Filed with Secretary of State September 28, 2008.]

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

SECTION 1. Section 223.1 is added to the Welfare and Institutions Code, to read:

223.1. (a) (1) At least one individual who is a parent, guardian, or designated emergency contact of a person in the custody of the Division of Juvenile Facilities, if the individual can reasonably be located, shall be successfully notified within 24 hours by the public officer responsible for the well-being of that person, of any suicide attempt by the person, or any serious injury or serious offense committed against the person. In consultation with division staff, as appropriate, and with concurrence of the public officer responsible for the well-being of that person, the person may designate other persons who should be notified in addition to, or in lieu of, parents or guardians, of any suicide attempt by the person, or any serious injury or serious offense committed against the person.

(2) This section shall not apply if either of the following conditions is met:

(A) A minor requests that his or her parents, guardians, or other persons not be notified, and the director of the division facility, as appropriate, determines it would be in the best interest of the minor not to notify the parents, guardians, or other persons.

(B) A person 18 years of age or older does not consent to the notification.

(b) Upon intake of a person into a division facility, and again upon attaining 18 years of age while in the custody of the division, an appropriate staff person shall explain, using language clearly understandable to the person, all of the provisions of this section, including that the person has the right to (1) request that the information described in paragraph (1) of subdivision (a) not be provided to a parent or guardian, and (2) request that another person or persons in addition to, or in lieu of, a parent or guardian be notified. The division shall provide the person with forms and any information necessary to provide informed consent as to who shall be notified. Any designation made pursuant to paragraph (1) of subdivision (a), the consent to notify parents, guardians, or other persons, and the withholding of that consent, may be amended or revoked by the person, and shall be transferable among facilities.

(c) Staff of the division shall enter the following information into the ward's record, as appropriate, upon its occurrence:

(1) A minor's request that his or her parents, guardians, or other persons not be notified of an emergency pursuant to this section, and the determination of the relevant public officer on that request.

(2) The designation of persons who are emergency contacts, in lieu of parents or guardians, who may be notified pursuant to this section.

(3) The revocation or amendment of a designation or consent made pursuant to this section.

(4) A person's consent, or withholding thereof, to notify parents, guardians, or other persons pursuant to this section.

(d) For purposes of this section:

(1) "Serious offense" means any offense that is chargeable as a felony and that involves violence against another person.

(2) "Serious injury" means any illness or injury that requires hospitalization requires an evaluation for involuntary treatment for a mental health disorder or grave disability under the Lanterman-Petris-Short Act (Part 1 (commencing with Section 5000) of Division 5 of the Welfare and Institutions Code), is potentially life threatening, or that potentially will permanently impair the use of a major body organ, appendage, or limb.

(3) "Suicide attempt" means a self-inflicted destructive act committed with explicit or inferred intent to die.

SEC. 2. Section 224.72 of the Welfare and Institutions Code is amended to read:

224.72. (a) Every facility of the Division of Juvenile Facilities shall provide each youth who is placed in the facility with an age and developmentally appropriate orientation that includes an explanation

and a copy of the rights of the youth, as specified in Section 224.71, and that addresses the youth's questions and concerns.

(b) Each facility of the Division of Juvenile Facilities shall post a listing of the rights provided by Section 224.71 in a conspicuous location. The Office of the Ombudspersons of the Division of Juvenile Facilities shall design posters and provide the posters to each Division of Juvenile Facilities facility subject to this subdivision. These posters shall include the toll-free telephone number of the Office of the Ombudspersons of the Division of Juvenile Facilities.

(c) Consistent with Chapter 17.5 (commencing with Section 7290) of Division 7 of Title 1 of the Government Code, on or before July 1, 2010, the division shall ensure the listing of rights and posters described in this section are translated into Spanish and other languages as determined necessary by the division.

(d) A copy of the rights of the youth shall be included in orientation packets provided to parents or guardians of wards. Copies of the rights of youth in English, Spanish, and other languages shall also be made available in the visiting areas of division facilities and, upon request, to parents or guardians.

SEC. 3. Section 1712.1 of the Welfare and Institutions Code is amended to read:

1712.1. (a) A ward confined in a facility of the Department of Corrections and Rehabilitation, Division of Juvenile Facilities, shall be encouraged to communicate with family members, clergy, and others, and to participate in programs that will facilitate his or her education, rehabilitation, and accountability to victims, and that may help the ward become a law-abiding and productive member of society. If the division or a facility requires a ward to provide a list of allowed visitors, calls, or correspondents, that list shall be transferable from facility to facility, so that the transfer of the ward does not unduly interrupt family and community communication.

(b) A ward shall be allowed a minimum of four telephone calls to his or her family per month. A restriction or reduction of the minimum amount of telephone calls allowed to a ward shall not be imposed as a disciplinary measure. If calls conflict with institutional operations, supervision, or security, telephone usage may be temporarily restricted to the extent reasonably necessary for the continued operation and security of the facility. When speaking by telephone with a family member, clergy, or counsel, a ward may use his or her native language or the native language of the person to whom he or she is speaking.

(c) (1) If a ward's visitation rights are suspended, division or facility staff shall be prepared to inform one or more persons on the list of those

persons allowed to visit the ward, if any of those persons should call to ask.

(2) The division or facility shall maintain a toll-free telephone number that families and others may call to confirm visiting times, and to provide timely updates on interruptions and rescheduling of visiting days, times, and conditions.

(3) (A) The division shall encourage correspondence with family or clergy by providing blank paper, envelopes, pencils, and postage. Materials shall be provided in a manner that protects institutional and public safety.

(B) When corresponding with a family member, clergy, or counsel in writing, the ward may use his or her native language or the native language of the person to whom he or she is writing.

(C) Blank paper, envelopes, and pencils shall not be deemed contraband nor seized except in cases where the staff determines that these items would likely be used to cause bodily harm, injury, or death to the ward or other persons, or, based on specific history of property damage by the individual ward, would likely be used to cause destruction of state property. If the staff asserts that it is necessary to seize materials normally used for correspondence, the reasons for the seizure shall be entered in writing in the ward's file or records.

SEC. 4. Section 1766 of the Welfare and Institutions Code is amended to read:

1766. (a) Subject to Sections 733 and 1767.35, and subdivision (b) of this section, if a person has been committed to the Department of Corrections and Rehabilitation, Division of Juvenile Facilities, the Board of Parole Hearings, according to standardized review and appeal procedures established by the board in policy and regulation and subject to the powers and duties enumerated in subdivision (a) of Section 1719, may do any of the following:

(1) Permit the ward his or her liberty under supervision and upon conditions it believes are best designed for the protection of the public.

(2) Order his or her confinement under conditions it believes best designed for the protection of the public pursuant to the purposes set forth in Section 1700, except that a person committed to the division pursuant to Sections 731 or 1731.5 may not be held in physical confinement for a total period of time in excess of the maximum periods of time set forth in Section 731. Nothing in this subdivision limits the power of the board to retain the minor or the young adult on parole status for the period permitted by Sections 1769, 1770, and 1771.

(3) Order reconfinement or renewed release under supervision as often as conditions indicate to be desirable.

(4) Revoke or modify any parole or disciplinary appeal order.

(5) Modify an order of discharge if conditions indicate that such modification is desirable and when that modification is to the benefit of the person committed to the division.

(6) Discharge him or her from its control when it is satisfied that discharge is consistent with the protection of the public.

(b) The following provisions shall apply to any ward eligible for release on parole on or after September 1, 2007, who was committed to the custody of the Division of Juvenile Facilities for an offense other than one described in subdivision (b) of Section 707 or subdivision (c) of Section 290.008 of the Penal Code:

(1) The county of commitment shall supervise the reentry of any ward released on parole on or after September 1, 2007, who was committed to the custody of the division for committing an offense other than those described in subdivision (b) of Section 707 or subdivision (c) of Section 290.008 of the Penal Code.

(2) Not less than 60 days prior to the scheduled parole consideration hearing of a ward described in this subdivision, the division shall provide to the probation department and the court of the committing county, and the ward's counsel, if known, the most recent written review prepared pursuant to Section 1720, along with notice of the parole consideration hearing date.

(3) (A) Not less than 30 days prior to the scheduled parole consideration hearing, the division shall notify the ward of the date and location of the parole consideration hearing. A ward shall have the right to contact his or her parent or guardian, if he or she can reasonably be located, to inform the parent or guardian of the date and location of the parole consideration hearing. The division shall also allow the ward to inform other persons identified by the ward, if they can reasonably be located, and who are considered by the division as likely to contribute to a ward's preparation for the parole consideration hearing or the ward's postrelease success.

(B) This paragraph shall not apply if either of the following conditions is met:

(i) A minor chooses not to contact his or her parents, guardians, or other persons and the director of the division facility determines it would be in the best interest of the minor not to contact the parents, guardians, or other persons.

(ii) A person 18 years of age or older does not consent to the contact.

(C) Upon intake of a ward into a division facility, and again upon attaining 18 years of age while in the custody of the division, an appropriate staff person shall explain the provisions of subparagraphs (A) and (B), using language clearly understandable to the ward.

(D) Nothing in this paragraph shall be construed to limit the right of a ward to an attorney under any other law.

(4) Not less than 30 days prior to the scheduled parole consideration hearing of a ward described in this subdivision, the probation department of the committing county may provide the division with its written plan for the reentry supervision of the ward. At the parole consideration hearing, the Board of Parole Hearings shall, in determining whether the ward is to be released, consider a reentry supervision plan submitted by the county.

(5) Any ward described in this subdivision who is granted parole shall be placed on parole jurisdiction for up to 15 court days following his or her release. The board shall notify the probation department and the court of the committing county within 48 hours of a decision to release a ward.

(6) Within 15 court days of the release by the division of a ward described in this subdivision, the committing court shall convene a reentry disposition hearing for the ward. The purpose of the hearing shall be for the court to identify those conditions of probation that are appropriate under all the circumstances of the case. The court shall, to the extent it deems appropriate, incorporate a reentry plan submitted by the county probation department and reviewed by the board into its disposition order. At the hearing the ward shall be fully informed of the terms and conditions of any order entered by the court, including the consequences for any violation thereof. The procedure of the reentry disposition hearing shall otherwise be consistent with the rules, rights, and procedures applicable to delinquency disposition hearings as described in Article 17 (commencing with Section 675) of Chapter 2 of Part 1 of Division 2.

(7) The division shall have no further jurisdiction over a ward described in this subdivision who is released on parole by the board upon the ward's court appearance pursuant to paragraph (5).

(c) Within 60 days of intake, the division shall provide the court and the probation department with a treatment plan for the ward.

(d) A ward shall be entitled to an appearance hearing before a panel of board commissioners for any action that would result in the extension of a parole consideration date pursuant to subdivision (d) of Section 5076.1 of the Penal Code.

(e) The department shall promulgate policies and regulations to implement this section.

(f) Commencing on July 1, 2004, and annually thereafter, for the preceding fiscal year, the department shall collect and make available to the public the following information:

(1) The total number of ward case reviews conducted by the division and the board, categorized by guideline category.

(2) The number of parole consideration dates for each category set at guideline, above guideline, and below guideline.

(3) The number of ward case reviews resulting in a change to a parole consideration date, including the category assigned to the ward, the amount of time added to or subtracted from the parole consideration date, and the specific reason for the change.

(4) The percentage of wards who have had a parole consideration date changed to a later date, the percentage of wards who have had a parole consideration date changed to an earlier date, and the average annual time added or subtracted per case.

(5) The number and percentage of wards who, while confined or on parole, are charged with a new misdemeanor or felony criminal offense.

(6) Any additional data or information identified by the department as relevant.

(g) As used in subdivision (f), the term "ward case review" means any review of a ward that changes, maintains, or appreciably affects the programs, treatment, or placement of a ward.

CHAPTER 523

An act to amend the heading of Article 2 (commencing with Section 52720) of Chapter 11 of Part 28 of Division 4 of Title 2 of, and to add Section 52730 to, the Education Code, relating to patriotic exercises.

[Approved by Governor September 28, 2008. Filed with Secretary of State September 28, 2008.]

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

SECTION 1. The heading of Article 2 (commencing with Section 52720) of Chapter 11 of Part 28 of Division 4 of Title 2 of the Education Code is amended to read:

Article 2. Patriotic Exercises and Instruction

SEC. 2. Section 52730 is added to the Education Code, to read:

52730. (a) Providing instruction that promotes understanding the concepts of "pledge," "allegiance," "republic," and "indivisible," and understanding the importance of the pledge as an expression of

patriotism, love of country, and pride in the United States of America shall satisfy the requirement of Section 52720.

(b) When pupils in a public school are instructed with regard to the words of the Pledge of Allegiance to the Flag of the United States of America as part of the patriotic exercises conducted pursuant to this article, that public school shall provide a combination of the giving of the Pledge of Allegiance to the Flag of the United States of America and the instruction specified in subdivision (a). School districts shall provide this instruction during the time allotted for the patriotic exercise.

CHAPTER 524

An act to amend Section 214 of, and to add Section 214.16 to, the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

[Approved by Governor September 28, 2008. Filed with Secretary of State September 28, 2008.]

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

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

(a) That maintaining the affordability of lower income housing fulfills both of the following:

(1) The legal commitment entered into by the Department of Transportation in a consent decree to replace affordable housing stock lost as a result of the construction of the Century Freeway.

(2) Addresses California's serious shortage of decent, safe, and sanitary housing, which persons and families of low or moderate income, including the elderly and handicapped, can afford.

(b) That expanding the criteria for the partial welfare exemption, as provided by this act, extends the application of the partial welfare exemption in a consistent manner to all eligible taxpayers in order to ensure that all eligible and similarly situated taxpayers are treated in a fair and equitable manner.

(c) Therefore, the Legislature finds and declares that this act serves a public purpose of the state.

SEC. 2. Section 214 of the Revenue and Taxation Code is amended to read:

214. (a) Property used exclusively for religious, hospital, scientific, or charitable purposes owned and operated by community chests, funds, foundations, limited liability companies, or corporations organized and

operated for religious, hospital, scientific, or charitable purposes is exempt from taxation, including ad valorem taxes to pay the interest and redemption charges on any indebtedness approved by the voters prior to July 1, 1978, or any bonded indebtedness for the acquisition or improvement of real property approved on or after July 1, 1978, by two-thirds of the votes cast by the voters voting on the proposition, if:

(1) The owner is not organized or operated for profit. However, in the case of hospitals, the organization shall not be deemed to be organized or operated for profit if, during the immediately preceding fiscal year, operating revenues, exclusive of gifts, endowments and grants-in-aid, did not exceed operating expenses by an amount equivalent to 10 percent of those operating expenses. As used herein, operating expenses include depreciation based on cost of replacement and amortization of, and interest on, indebtedness.

(2) No part of the net earnings of the owner inures to the benefit of any private shareholder or individual.

(3) The property is used for the actual operation of the exempt activity, and does not exceed an amount of property reasonably necessary to the accomplishment of the exempt purpose.

(A) For the purposes of determining whether the property is used for the actual operation of the exempt activity, consideration shall not be given to use of the property for either or both of the following described activities if that use is occasional:

(i) The owner conducts fundraising activities on the property and the proceeds derived from those activities are not unrelated business taxable income, as defined in Section 512 of the Internal Revenue Code, of the owner and are used to further the exempt activity of the owner.

(ii) The owner permits any other organization that meets all of the requirements of this subdivision, other than ownership of the property, to conduct fundraising activities on the property and the proceeds derived from those activities are not unrelated business taxable income, as defined in Section 512 of the Internal Revenue Code, of the organization, are not subject to the tax on unrelated business taxable income that is imposed by Section 511 of the Internal Revenue Code, and are used to further the exempt activity of the organization.

(B) For purposes of subparagraph (A):

(i) "Occasional use" means use of the property on an irregular or intermittent basis by the qualifying owner or any other qualifying organization described in clause (ii) of subparagraph (A) that is incidental to the primary activities of the owner or the other organization.

(ii) "Fundraising activities" means both activities involving the direct solicitation of money or other property and the anticipated exchange of

goods or services for money between the soliciting organization and the organization or person solicited.

(C) Subparagraph (A) shall have no application in determining whether paragraph (3) has been satisfied unless the owner of the property and any other organization using the property as provided in subparagraph (A) have filed with the assessor a valid organizational clearance certificate issued pursuant to Section 254.6.

(D) For the purposes of determining whether the property is used for the actual operation of the exempt activity, consideration shall not be given to the use of the property for meetings conducted by any other organization if the meetings are incidental to the other organization's primary activities, are not fundraising meetings or activities as defined in subparagraph (B), are held no more than once per week, and the other organization and its use of the property meet all other requirements of paragraphs (1) to (5), inclusive, of this subdivision. The owner or the other organization also shall file with the assessor a copy of a valid, unrevoked letter or ruling from the Internal Revenue Service or the Franchise Tax Board stating that the other organization, or the national organization of which it is a local chapter or affiliate, qualifies as an exempt organization under Section 501(c)(3) or 501(c)(4) of the Internal Revenue Code or Section 23701d, 23701f, or 23701w.

(E) Nothing in subparagraph (A), (B), (C), or (D) shall be construed to either enlarge or restrict the exemption provided for in subdivision (b) of Section 4 and Section 5 of Article XIII of the California Constitution and this section.

(4) The property is not used or operated by the owner or by any other person so as to benefit any officer, trustee, director, shareholder, member, employee, contributor, or bondholder of the owner or operator, or any other person, through the distribution of profits, payment of excessive charges or compensations, or the more advantageous pursuit of their business or profession.

(5) The property is not used by the owner or members thereof for fraternal or lodge purposes, or for social club purposes except where that use is clearly incidental to a primary religious, hospital, scientific, or charitable purpose.

(6) The property is irrevocably dedicated to religious, charitable, scientific, or hospital purposes and upon the liquidation, dissolution, or abandonment of the owner will not inure to the benefit of any private person except a fund, foundation, or corporation organized and operated for religious, hospital, scientific, or charitable purposes.

(7) The property, if used exclusively for scientific purposes, is used by a foundation or institution that, in addition to complying with the foregoing requirements for the exemption of charitable organizations in

general, has been chartered by the Congress of the United States (except that this requirement shall not apply when the scientific purposes are medical research), and whose objects are the encouragement or conduct of scientific investigation, research, and discovery for the benefit of the community at large.

The exemption provided for herein shall be known as the "welfare exemption." This exemption shall be in addition to any other exemption now provided by law, and the existence of the exemption provision in paragraph (2) of subdivision (a) of Section 202 shall not preclude the exemption under this section for museum or library property. Except as provided in subdivision (e), this section shall not be construed to enlarge the college exemption.

(b) Property used exclusively for school purposes of less than collegiate grade and owned and operated by religious, hospital, or charitable funds, foundations, limited liability companies, or corporations, which property and funds, foundations, limited liability companies, or corporations meet all of the requirements of subdivision (a), shall be deemed to be within the exemption provided for in subdivision (b) of Section 4 and Section 5 of Article XIII of the California Constitution and this section.

(c) Property used exclusively for nursery school purposes and owned and operated by religious, hospital, or charitable funds, foundations, limited liability companies, or corporations, which property and funds, foundations, limited liability companies, or corporations meet all the requirements of subdivision (a), shall be deemed to be within the exemption provided for in subdivision (b) of Section 4 and Section 5 of Article XIII of the California Constitution and this section.

(d) Property used exclusively for a noncommercial educational FM broadcast station or an educational television station, and owned and operated by religious, hospital, scientific, or charitable funds, foundations, limited liability companies, or corporations meeting all of the requirements of subdivision (a), shall be deemed to be within the exemption provided for in subdivision (b) of Section 4 and Section 5 of Article XIII of the California Constitution and this section.

(e) Property used exclusively for religious, charitable, scientific, or hospital purposes and owned and operated by religious, hospital, scientific, or charitable funds, foundations, limited liability companies, or corporations or educational institutions of collegiate grade, as defined in Section 203, which property and funds, foundations, limited liability companies, corporations, or educational institutions meet all of the requirements of subdivision (a), shall be deemed to be within the exemption provided for in subdivision (b) of Section 4 and Section 5 of Article XIII of the California Constitution and this section. As to

educational institutions of collegiate grade, as defined in Section 203, the requirements of paragraph (6) of subdivision (a) shall be deemed to be met if both of the following are met:

(1) The property of the educational institution is irrevocably dedicated in its articles of incorporation to charitable and educational purposes, to religious and educational purposes, or to educational purposes.

(2) The articles of incorporation of the educational institution provide for distribution of its property upon its liquidation, dissolution, or abandonment to a fund, foundation, or corporation organized and operated for religious, hospital, scientific, charitable, or educational purposes meeting the requirements for exemption provided by Section 203 or this section.

(f) Property used exclusively for housing and related facilities for elderly or handicapped families and financed by, including, but not limited to, the federal government pursuant to Section 202 of Public Law 86-372 (12 U.S.C. Sec. 1701q), as amended, Section 231 of Public Law 73-479 (12 U.S.C. Sec. 1715v), Section 236 of Public Law 90-448 (12 U.S.C. Sec. 1715z), or Section 811 of Public Law 101-625 (42 U.S.C. Sec. 8013), and owned and operated by religious, hospital, scientific, or charitable funds, foundations, limited liability companies, or corporations meeting all of the requirements of this section shall be deemed to be within the exemption provided for in subdivision (b) of Section 4 and Section 5 of Article XIII of the California Constitution and this section.

The amendment of this paragraph made by Chapter 1102 of the Statutes of 1984 does not constitute a change in, but is declaratory of, existing law. However, no refund of property taxes shall be required as a result of this amendment for any fiscal year prior to the fiscal year in which the amendment takes effect.

Property used exclusively for housing and related facilities for elderly or handicapped families at which supplemental care or services designed to meet the special needs of elderly or handicapped residents are not provided, or that is not financed by the federal government pursuant to Section 202 of Public Law 86-372 (12 U.S.C. Sec. 1701q), as amended, Section 231 of Public Law 73-479 (12 U.S.C. Sec. 1715v), Section 236 of Public Law 90-448 (12 U.S.C. Sec. 1715z), or Section 811 of Public Law 101-625 (42 U.S.C. Sec. 8013), shall not be entitled to exemption pursuant to this subdivision unless the property is used for housing and related facilities for low- and moderate-income elderly or handicapped families. Property that would otherwise be exempt pursuant to this subdivision, except that it includes some housing and related facilities for other than low- or moderate-income elderly or handicapped families, shall be entitled to a partial exemption. The partial exemption shall be equal to that percentage of the value of the property that is equal to the

percentage that the number of low- and moderate-income elderly and handicapped families occupying the property represents of the total number of families occupying the property.

As used in this subdivision, "low and moderate income" has the same meaning as the term "persons and families of low or moderate income" as defined by Section 50093 of the Health and Safety Code.

(g) (1) Property used exclusively for rental housing and related facilities and owned and operated by religious, hospital, scientific, or charitable funds, foundations, limited liability companies, or corporations, including limited partnerships in which the managing general partner is an eligible nonprofit corporation or eligible limited liability company, meeting all of the requirements of this section, or by veterans' organizations, as described in Section 215.1, meeting all the requirements of paragraphs (1) to (7), inclusive, of subdivision (a), shall be deemed to be within the exemption provided for in subdivision (b) of Section 4 and Section 5 of Article XIII of the California Constitution and this section and shall be entitled to a partial exemption equal to that percentage of the value of the property that the portion of the property serving lower income households represents of the total property in any year in which any of the following criteria applies:

(A) The acquisition, rehabilitation, development, or operation of the property, or any combination of these factors, is financed with tax-exempt mortgage revenue bonds or general obligation bonds, or is financed by local, state, or federal loans or grants and the rents of the occupants who are lower income households do not exceed those prescribed by deed restrictions or regulatory agreements pursuant to the terms of the financing or financial assistance.

(B) The owner of the property is eligible for and receives low-income housing tax credits pursuant to Section 42 of the Internal Revenue Code of 1986, as added by Public Law 99-514.

(C) In the case of a claim, other than a claim with respect to property owned by a limited partnership in which the managing general partner is an eligible nonprofit corporation, that is filed for the 2000–01 fiscal year or any fiscal year thereafter, 90 percent or more of the occupants of the property are lower income households whose rent does not exceed the rent prescribed by Section 50053 of the Health and Safety Code. The total exemption amount allowed under this subdivision to a taxpayer, with respect to a single property or multiple properties for any fiscal year on the sole basis of the application of this subparagraph, may not exceed twenty thousand dollars ($20,000) of tax.

(D) (i) The property was previously purchased and owned by the Department of Transportation pursuant to a consent decree requiring housing mitigation measures relating to the construction of a freeway

and is now solely owned by an organization that qualifies as an exempt organization under Section 501(c)(3) of the Internal Revenue Code.

(ii) This subparagraph shall not apply to property owned by a limited partnership in which the managing partner is an eligible nonprofit corporation.

(2) In order to be eligible for the exemption provided by this subdivision, the owner of the property shall do both of the following:

(A) (i) For any claim filed for the 2000–01 fiscal year or any fiscal year thereafter, certify and ensure, subject to the limitation in clause (ii), that there is an enforceable and verifiable agreement with a public agency, a recorded deed restriction, or other legal document that restricts the project's usage and that provides that the units designated for use by lower income households are continuously available to or occupied by lower income households at rents that do not exceed those prescribed by Section 50053 of the Health and Safety Code, or, to the extent that the terms of federal, state, or local financing or financial assistance conflicts with Section 50053, rents that do not exceed those prescribed by the terms of the financing or financial assistance.

(ii) In the case of a limited partnership in which the managing general partner is an eligible nonprofit corporation, the restriction and provision specified in clause (i) shall be contained in an enforceable and verifiable agreement with a public agency, or in a recorded deed restriction to which the limited partnership certifies.

(B) Certify that the funds that would have been necessary to pay property taxes are used to maintain the affordability of, or reduce rents otherwise necessary for, the units occupied by lower income households.

(3) As used in this subdivision, "lower income households" has the same meaning as the term "lower income households" as defined by Section 50079.5 of the Health and Safety Code.

(h) Property used exclusively for an emergency or temporary shelter and related facilities for homeless persons and families and owned and operated by religious, hospital, scientific, or charitable funds, foundations, limited liability companies, or corporations meeting all of the requirements of this section shall be deemed to be within the exemption provided for in subdivision (b) of Section 4 and Section 5 of Article XIII of the California Constitution and this section. Property that otherwise would be exempt pursuant to this subdivision, except that it includes housing and related facilities for other than an emergency or temporary shelter, shall be entitled to a partial exemption.

As used in this subdivision, "emergency or temporary shelter" means a facility that would be eligible for funding pursuant to Chapter 11 (commencing with Section 50800) of Part 2 of Division 31 of the Health and Safety Code.

(i) Property used exclusively for housing and related facilities for employees of religious, charitable, scientific, or hospital organizations that meet all the requirements of subdivision (a) and owned and operated by funds, foundations, limited liability companies, or corporations that meet all the requirements of subdivision (a) shall be deemed to be within the exemption provided for in subdivision (b) of Section 4 and Section 5 of Article XIII of the California Constitution and this section to the extent the residential use of the property is institutionally necessary for the operation of the organization.

(j) For purposes of this section, charitable purposes include educational purposes. For purposes of this subdivision, "educational purposes" means those educational purposes and activities for the benefit of the community as a whole or an unascertainable and indefinite portion thereof, and do not include those educational purposes and activities that are primarily for the benefit of an organization's shareholders. Educational activities include the study of relevant information, the dissemination of that information to interested members of the general public, and the participation of interested members of the general public.

(k) In the case of property used exclusively for the exempt purposes specified in this section, owned and operated by limited liability companies that are organized and operated for those purposes, the State Board of Equalization shall adopt regulations to specify the ownership, organizational, and operational requirements for those companies to qualify for the exemption provided by this section.

(*l*) The amendments made by Chapter 354 of the Statutes of 2004 shall apply with respect to lien dates occurring on and after January 1, 2005.

SEC. 3. Section 214.16 is added to the Revenue and Taxation Code, to read:

214.16. (a) Any outstanding tax, interest, or penalty that was levied or imposed upon property that qualifies for an exemption pursuant to Section 214 and satisfies the criteria specified in subparagraph (D) of paragraph (1) of subdivision (g) of Section 214 between January 1, 2002, and January 1, 2009, shall be canceled, provided that the owner of the property certifies that all of the following conditions were met at the time the tax was levied:

(1) The owner was not organized and did not operate for profit.

(2) There was a recorded deed restriction or other legal document that restricted the project's usage and that provided that the units designated for use by lower income households were continuously available to or occupied by lower income households at rents not exceeding those prescribed by Section 50053 of the Health and Safety Code.

(3) The funds that would have been necessary to pay property taxes were used to maintain the affordability of, or reduce rents otherwise necessary for, the units occupied by lower income households.

(b) For purposes of this section, "lower income households" has the same meaning as defined by Section 50079.5 of the Health and Safety Code.

SEC. 4. Notwithstanding Section 2229 of the Revenue and Taxation Code, no appropriation is made by this act and the state shall not reimburse any local agency for any property tax revenue lost by it pursuant to this act.

SEC. 5. This act provides for a tax levy within the meaning of Article IV of the Constitution and shall go into immediate effect.

CHAPTER 525

An act to amend Sections 48907, 48950, 66301, and 94367 of the Education Code, relating to education.

[Approved by Governor September 28, 2008. Filed with Secretary of State September 28, 2008.]

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

SECTION 1. It is the intent of the Legislature that nothing in Section 48907 or 48950 of the Education Code shall be construed to diminish a district's ability to take actions authorized by current law in order to maintain instruction that is consistent with the statewide academic standards defined in Article 2 (commencing with Section 60604) of Chapter 5 of Part 33 of Division 4 of Title 2 of the Education Code.

SEC. 2. Section 48907 of the Education Code is amended to read:

48907. (a) Pupils of the public schools shall have the right to exercise freedom of speech and of the press including, but not limited to, the use of bulletin boards, the distribution of printed materials or petitions, the wearing of buttons, badges, and other insignia, and the right of expression in official publications, whether or not the publications or other means of expression are supported financially by the school or by use of school facilities, except that expression shall be prohibited which is obscene, libelous, or slanderous. Also prohibited shall be material that so incites pupils as to create a clear and present danger of the commission of unlawful acts on school premises or the violation of lawful school regulations, or the substantial disruption of the orderly operation of the school.

(b) Each governing board of a school district and each county board of education shall adopt rules and regulations in the form of a written publications code, which shall include reasonable provisions for the time, place, and manner of conducting such activities within its respective jurisdiction.

(c) Pupil editors of official school publications shall be responsible for assigning and editing the news, editorial, and feature content of their publications subject to the limitations of this section. However, it shall be the responsibility of a journalism adviser or advisers of pupil publications within each school to supervise the production of the pupil staff, to maintain professional standards of English and journalism, and to maintain the provisions of this section.

(d) There shall be no prior restraint of material prepared for official school publications except insofar as it violates this section. School officials shall have the burden of showing justification without undue delay prior to a limitation of pupil expression under this section.

(e) "Official school publications" refers to material produced by pupils in the journalism, newspaper, yearbook, or writing classes and distributed to the student body either free or for a fee.

(f) This section does not prohibit or prevent the governing board of a school district from adopting otherwise valid rules and regulations relating to oral communication by pupils upon the premises of each school.

(g) An employee shall not be dismissed, suspended, disciplined, reassigned, transferred, or otherwise retaliated against solely for acting to protect a pupil engaged in the conduct authorized under this section, or refusing to infringe upon conduct that is protected by this section, the First Amendment to the United States Constitution, or Section 2 of Article I of the California Constitution.

SEC. 3. Section 48950 of the Education Code is amended to read:

48950. (a) School districts operating one or more high schools and private secondary schools shall not make or enforce a rule subjecting a high school pupil to disciplinary sanctions solely on the basis of conduct that is speech or other communication that, when engaged in outside of the campus, is protected from governmental restriction by the First Amendment to the United States Constitution or Section 2 of Article I of the California Constitution.

(b) A pupil who is enrolled in a school at the time that the school has made or enforced a rule in violation of subdivision (a) may commence a civil action to obtain appropriate injunctive and declaratory relief as determined by the court. Upon motion, a court may award attorney's fees to a prevailing plaintiff in a civil action pursuant to this section.

(c) This section does not apply to a private secondary school that is controlled by a religious organization, to the extent that the application of this section would not be consistent with the religious tenets of the organization.

(d) This section does not prohibit the imposition of discipline for harassment, threats, or intimidation, unless constitutionally protected.

(e) This section does not supersede, or otherwise limit or modify, the provisions of Section 48907.

(f) The Legislature finds and declares that free speech rights are subject to reasonable time, place, and manner regulations.

(g) An employee shall not be dismissed, suspended, disciplined, reassigned, transferred, or otherwise retaliated against solely for acting to protect a pupil engaged in conduct authorized under this section, or refusing to infringe upon conduct that is protected by this section, the First Amendment to the United States Constitution, or Section 2 of Article I of the California Constitution.

SEC. 4. Section 66301 of the Education Code is amended to read:

66301. (a) Neither the Regents of the University of California, the Trustees of the California State University, the governing board of a community college district, nor an administrator of any campus of those institutions, shall make or enforce a rule subjecting a student to disciplinary sanction solely on the basis of conduct that is speech or other communication that, when engaged in outside a campus of those institutions, is protected from governmental restriction by the First Amendment to the United States Constitution or Section 2 of Article I of the California Constitution.

(b) A student enrolled in an institution, as specified in subdivision (a), at the time that the institution has made or enforced a rule in violation of subdivision (a) may commence a civil action to obtain appropriate injunctive and declaratory relief as determined by the court. Upon a motion, a court may award attorney's fees to a prevailing plaintiff in a civil action pursuant to this section.

(c) This section does not authorize a prior restraint of student speech or the student press.

(d) This section does not prohibit the imposition of discipline for harassment, threats, or intimidation, unless constitutionally protected.

(e) This section does not prohibit an institution from adopting rules and regulations that are designed to prevent hate violence, as defined in subdivision (a) of Section 4 of Chapter 1363 of the Statutes of 1992, from being directed at students in a manner that denies them their full participation in the educational process, if the rules and regulations conform to standards established by the First Amendment to the United

States Constitution and Section 2 of Article I of the California Constitution for citizens generally.

(f) An employee shall not be dismissed, suspended, disciplined, reassigned, transferred, or otherwise retaliated against solely for acting to protect a student engaged in conduct authorized under this section, or refusing to infringe upon conduct that is protected by this section, the First Amendment to the United States Constitution, or Section 2 of Article I of the California Constitution.

SEC. 5. Section 94367 of the Education Code is amended to read:

94367. (a) No private postsecondary educational institution shall make or enforce a rule subjecting a student to disciplinary sanctions solely on the basis of conduct that is speech or other communication that, when engaged in outside the campus or facility of a private postsecondary institution, is protected from governmental restriction by the First Amendment to the United States Constitution or Section 2 of Article I of the California Constitution.

(b) A student enrolled in a private postsecondary institution at the time that the institution has made or enforced any rule in violation of subdivision (a) may commence a civil action to obtain appropriate injunctive and declaratory relief as determined by the court. Upon motion, a court may award attorney's fees to a prevailing plaintiff in a civil action pursuant to this section.

(c) This section does not apply to a private postsecondary educational institution that is controlled by a religious organization, to the extent that the application of this section would not be consistent with the religious tenets of the organization.

(d) This section does not authorize the prior restraint of student speech.

(e) This section does not prohibit the imposition of discipline for harassment, threats, or intimidation, unless constitutionally protected.

(f) This section does not prohibit an institution from adopting rules and regulations that are designed to prevent hate violence, as defined in subdivision (a) of Section 4 of Chapter 1363 of the Statutes of 1992, from being directed at students in a manner that denies them their full participation in the educational process, so long as the rules and regulations conform to standards established by the First Amendment to the United States Constitution and Section 2 of Article I of the California Constitution for citizens generally.

CHAPTER 526

An act to add Section 758.6 to the Insurance Code, relating to insurance.

[Approved by Governor September 28, 2008. Filed with
Secretary of State September 28, 2008.]

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

SECTION 1. The Legislature finds and declares the following:

(a) Today, methodologies that are accepted by both automobile repair shops and insurers are available to determine the cost of paint and related materials. These accepted industry methodologies include manuals and estimating systems that set out the refinish labor units required to paint a particular portion of an automobile, such as a hood, fender, rocker panel, and so forth. The paint and material charge is calculated by multiplying the refinish unit times the refinish rate. Additional accepted industry methodologies that are available involve software programs, which calculate the paint and materials charges.

(b) "Capping" occurs when the cost of paint and related materials determined by any of these accepted industry methodologies is ignored by an insurer. For example, an accepted industry methodology determines a cost of seven hundred dollars ($700.00) for paint and related materials, and the insurer, as a standard practice, offers three hundred fifty dollars ($350.00), an amount that is unrelated to the paint and material charges that would be determined by any of the accepted industry methodologies.

(c) Pricing agreements involving discounts that are entered into voluntarily between an automobile repair shop and an insurance company constitute neither "capping" nor an accepted industry methodology used in determining paint and material charges.

SEC. 2. Section 758.6 is added to the Insurance Code, to read:

758.6. Insurers shall not engage in capping. For the purposes of this section, "capping" means offering or paying an amount that is unrelated to a methodology used in determining paint and materials charges that is accepted by automobile repair shops and insurers.

CHAPTER 527

An act to amend Section 2924b of the Civil Code, relating to common interest developments.

[Approved by Governor September 28, 2008. Filed with
Secretary of State September 28, 2008.]

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

SECTION 1. Section 2924b of the Civil Code is amended to read:

2924b. (a) Any person desiring a copy of any notice of default and of any notice of sale under any deed of trust or mortgage with power of sale upon real property or an estate for years therein, as to which deed of trust or mortgage the power of sale cannot be exercised until these notices are given for the time and in the manner provided in Section 2924 may, at any time subsequent to recordation of the deed of trust or mortgage and prior to recordation of notice of default thereunder, cause to be filed for record in the office of the recorder of any county in which any part or parcel of the real property is situated, a duly acknowledged request for a copy of the notice of default and of sale. This request shall be signed and acknowledged by the person making the request, specifying the name and address of the person to whom the notice is to be mailed, shall identify the deed of trust or mortgage by stating the names of the parties thereto, the date of recordation thereof, and the book and page where the deed of trust or mortgage is recorded or the recorder's number, and shall be in substantially the following form:

"In accordance with Section 2924b, Civil Code, request is hereby made that a copy of any notice of default and a copy of any notice of sale under the deed of trust (or mortgage) recorded _____, ____, in Book _____ page ____ records of ____ County, (or filed for record with recorder's serial number ____, _____ County) California, executed by ____ as trustor (or mortgagor) in which _____ is named as beneficiary (or mortgagee) and _____ as trustee be mailed to _____ at _____.
Name Address
NOTICE: A copy of any notice of default and of any notice of sale will be sent only to the address contained in this recorded request. If your address changes, a new request must be recorded.
Signature _____"

Upon the filing for record of the request, the recorder shall index in the general index of grantors the names of the trustors (or mortgagor) recited therein and the names of persons requesting copies.

(b) The mortgagee, trustee, or other person authorized to record the notice of default or the notice of sale shall do each of the following:

(1) Within 10 business days following recordation of the notice of default, deposit or cause to be deposited in the United States mail an envelope, sent by registered or certified mail with postage prepaid, containing a copy of the notice with the recording date shown thereon,

addressed to each person whose name and address are set forth in a duly recorded request therefor, directed to the address designated in the request and to each trustor or mortgagor at his or her last known address if different than the address specified in the deed of trust or mortgage with power of sale.

(2) At least 20 days before the date of sale, deposit or cause to be deposited in the United States mail an envelope, sent by registered or certified mail with postage prepaid, containing a copy of the notice of the time and place of sale, addressed to each person whose name and address are set forth in a duly recorded request therefor, directed to the address designated in the request and to each trustor or mortgagor at his or her last known address if different than the address specified in the deed of trust or mortgage with power of sale.

(3) As used in paragraphs (1) and (2), the "last known address" of each trustor or mortgagor means the last business or residence physical address actually known by the mortgagee, beneficiary, trustee, or other person authorized to record the notice of default. For the purposes of this subdivision, an address is "actually known" if it is contained in the original deed of trust or mortgage, or in any subsequent written notification of a change of physical address from the trustor or mortgagor pursuant to the deed of trust or mortgage. For the purposes of this subdivision, "physical address" does not include an e-mail or any form of electronic address for a trustor or mortgagor. The beneficiary shall inform the trustee of the trustor's last address actually known by the beneficiary. However, the trustee shall incur no liability for failing to send any notice to the last address unless the trustee has actual knowledge of it.

(4) A "person authorized to record the notice of default or the notice of sale" shall include an agent for the mortgagee or beneficiary, an agent of the named trustee, any person designated in an executed substitution of trustee, or an agent of that substituted trustee.

(c) The mortgagee, trustee, or other person authorized to record the notice of default or the notice of sale shall do the following:

(1) Within one month following recordation of the notice of default, deposit or cause to be deposited in the United States mail an envelope, sent by registered or certified mail with postage prepaid, containing a copy of the notice with the recording date shown thereon, addressed to each person set forth in paragraph (2), provided that the estate or interest of any person entitled to receive notice under this subdivision is acquired by an instrument sufficient to impart constructive notice of the estate or interest in the land or portion thereof that is subject to the deed of trust or mortgage being foreclosed, and provided the instrument is recorded in the office of the county recorder so as to impart that constructive

notice prior to the recording date of the notice of default and provided the instrument as so recorded sets forth a mailing address that the county recorder shall use, as instructed within the instrument, for the return of the instrument after recording, and which address shall be the address used for the purposes of mailing notices herein.

(2) The persons to whom notice shall be mailed under this subdivision are:

(A) The successor in interest, as of the recording date of the notice of default, of the estate or interest or any portion thereof of the trustor or mortgagor of the deed of trust or mortgage being foreclosed.

(B) The beneficiary or mortgagee of any deed of trust or mortgage recorded subsequent to the deed of trust or mortgage being foreclosed, or recorded prior to or concurrently with the deed of trust or mortgage being foreclosed but subject to a recorded agreement or a recorded statement of subordination to the deed of trust or mortgage being foreclosed.

(C) The assignee of any interest of the beneficiary or mortgagee described in subparagraph (B), as of the recording date of the notice of default.

(D) The vendee of any contract of sale, or the lessee of any lease, of the estate or interest being foreclosed that is recorded subsequent to the deed of trust or mortgage being foreclosed, or recorded prior to or concurrently with the deed of trust or mortgage being foreclosed but subject to a recorded agreement or statement of subordination to the deed of trust or mortgage being foreclosed.

(E) The successor in interest to the vendee or lessee described in subparagraph (D), as of the recording date of the notice of default.

(F) The office of the Controller, Sacramento, California, where, as of the recording date of the notice of default, a "Notice of Lien for Postponed Property Taxes" has been recorded against the real property to which the notice of default applies.

(3) At least 20 days before the date of sale, deposit or cause to be deposited in the United States mail an envelope, sent by registered or certified mail with postage prepaid, containing a copy of the notice of the time and place of sale addressed to each person to whom a copy of the notice of default is to be mailed as provided in paragraphs (1) and (2), and addressed to the office of any state taxing agency, Sacramento, California, that has recorded, subsequent to the deed of trust or mortgage being foreclosed, a notice of tax lien prior to the recording date of the notice of default against the real property to which the notice of default applies.

(4) Provide a copy of the notice of sale to the Internal Revenue Service, in accordance with Section 7425 of the Internal Revenue Code

and any applicable federal regulation, if a "Notice of Federal Tax Lien under Internal Revenue Laws" has been recorded, subsequent to the deed of trust or mortgage being foreclosed, against the real property to which the notice of sale applies. The failure to provide the Internal Revenue Service with a copy of the notice of sale pursuant to this paragraph shall be sufficient cause to rescind the trustee's sale and invalidate the trustee's deed, at the option of either the successful bidder at the trustee's sale or the trustee, and in either case with the consent of the beneficiary. Any option to rescind the trustee's sale pursuant to this paragraph shall be exercised prior to any transfer of the property by the successful bidder to a bona fide purchaser for value. A recision of the trustee's sale pursuant to this paragraph may be recorded in a notice of recision pursuant to Section 1058.5.

(5) The mailing of notices in the manner set forth in paragraph (1) shall not impose upon any licensed attorney, agent, or employee of any person entitled to receive notices as herein set forth any duty to communicate the notice to the entitled person from the fact that the mailing address used by the county recorder is the address of the attorney, agent, or employee.

(d) Any deed of trust or mortgage with power of sale hereafter executed upon real property or an estate for years therein may contain a request that a copy of any notice of default and a copy of any notice of sale thereunder shall be mailed to any person or party thereto at the address of the person given therein, and a copy of any notice of default and of any notice of sale shall be mailed to each of these at the same time and in the same manner required as though a separate request therefor had been filed by each of these persons as herein authorized. If any deed of trust or mortgage with power of sale executed after September 19, 1939, except a deed of trust or mortgage of any of the classes excepted from the provisions of Section 2924, does not contain a mailing address of the trustor or mortgagor therein named, and if no request for special notice by the trustor or mortgagor in substantially the form set forth in this section has subsequently been recorded, a copy of the notice of default shall be published once a week for at least four weeks in a newspaper of general circulation in the county in which the property is situated, the publication to commence within 10 business days after the filing of the notice of default. In lieu of publication, a copy of the notice of default may be delivered personally to the trustor or mortgagor within the 10 business days or at any time before publication is completed, or by posting the notice of default in a conspicuous place on the property and mailing the notice to the last known address of the trustor or mortgagor.

(e) Any person required to mail a copy of a notice of default or notice of sale to each trustor or mortgagor pursuant to subdivision (b) or (c) by registered or certified mail shall simultaneously cause to be deposited in the United States mail, with postage prepaid and mailed by first-class mail, an envelope containing an additional copy of the required notice addressed to each trustor or mortgagor at the same address to which the notice is sent by registered or certified mail pursuant to subdivision (b) or (c). The person shall execute and retain an affidavit identifying the notice mailed, showing the name and residence or business address of that person, that he or she is over the age of 18 years, the date of deposit in the mail, the name and address of the trustor or mortgagor to whom sent, and that the envelope was sealed and deposited in the mail with postage fully prepaid. In the absence of fraud, the affidavit required by this subdivision shall establish a conclusive presumption of mailing.

(f) With respect to separate interests governed by an association, as defined in subdivision (a) of Section 1351, the association may cause to be filed in the office of the recorder in the county in which the separate interests are situated a request that a mortgagee, trustee, or other person authorized to record a notice of default regarding any of those separate interests mail to the association a copy of any trustee's deed upon sale concerning a separate interest. The request shall include a legal description or the assessor's parcel number of the separate interests. A request recorded pursuant to this subdivision shall include the name and address of the association and a statement that it is a homeowners' association. Subsequent requests of an association shall supersede prior requests. A request pursuant to this subdivision shall be recorded before the filing of a notice of default. The mortgagee, trustee, or other authorized person shall mail the requested information to the association within 15 business days following the date the trustee's deed is recorded. Failure to mail the request, pursuant to this subdivision, shall not affect the title to real property.

(g) No request for a copy of any notice filed for record pursuant to this section, no statement or allegation in the request, and no record thereof shall affect the title to real property or be deemed notice to any person that any person requesting copies of notice has or claims any right, title, or interest in, or lien or charge upon the property described in the deed of trust or mortgage referred to therein.

(h) "Business day," as used in this section, has the meaning specified in Section 9.

CHAPTER 528

An act to amend, repeal, and add Section 102122 of, and to add and repeal Sections 99171 and 99172 of, the Public Utilities Code, relating to transportation.

[Approved by Governor September 28, 2008. Filed with Secretary of State September 28, 2008.]

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

SECTION 1. Section 99171 is added to the Public Utilities Code, to read:

99171. (a) (1) A transit district may issue a prohibition order to any person to whom either of the following applies:

(A) On at least three separate occasions within a period of 60 consecutive days, the person is cited for an infraction committed in or on a vehicle, bus stop, or light rail station of the transit district for any act that is a violation of paragraph (2) or (5) of subdivision (a) of Section 99170, paragraph (6), (7), (8), or (9) of subdivision (b) of Section 640 or Section 640.5 of the Penal Code.

(B) The person is arrested or convicted for a misdemeanor or felony committed in or on a vehicle, bus stop, or light rail station of the transit district for acts involving violence, threats of violence, lewd or lascivious behavior, or possession for sale or sale of a controlled substance.

(C) The person is convicted of a violation of Section 11532 of the Health and Safety Code or Section 653.22 of the Penal Code.

(2) A person subject to a prohibition order may not enter the property, facilities, or vehicles of the transit district for a period of time deemed appropriate by the transit district, provided that the duration of a prohibition order shall not exceed the following, as applicable:

(A) Thirty days if issued pursuant to subparagraph (A) of paragraph (1), provided that a second prohibition order within one year may not exceed 90 days, and a third or subsequent prohibition order within one year may not exceed 180 days.

(B) Thirty days if issued pursuant to an arrest pursuant to subparagraph (B) of paragraph (1). Upon conviction of a misdemeanor offense, the duration of the prohibition order for the conviction, when added to the duration of the prohibition order for the initial arrest, if any, may not exceed 180 days. Upon conviction of a felony offense, the duration of the prohibition order for the conviction, when added to the duration of the prohibition order for the initial arrest, if any, may not exceed one year.

(3) No prohibition order issued under this subdivision shall be effective unless the transit district first affords the person an opportunity to contest the transit district's proposed action in accordance with procedures adopted by the transit district for this purpose. A transit district's procedures shall provide, at a minimum, for the notice and other protections set forth in subdivisions (b) and (c), and the transit district shall provide reasonable notification to the public of the availability of those procedures.

(b) (1) A notice of a prohibition order issued under subdivision (a) shall set forth a description of the conduct underlying the violation or violations giving rise to the prohibition order, including reference to the applicable statutory provision, ordinance, or transit district rule violated, the date of the violation, the approximate time of the violation, the location where the violation occurred, the period of the proposed prohibition, and the scope of the prohibition. The notice shall include a clear and conspicuous statement indicating the procedure for contesting the prohibition order. The notice of prohibition order shall be personally served upon the violator. The notice of prohibition order, or a copy, shall be considered a record kept in the ordinary course of business of the transit district and shall be prima facie evidence of the facts contained in the notice establishing a rebuttable presumption affecting the burden of producing evidence. For purposes of this paragraph, "clear and conspicuous" means in larger type than the surrounding text, or in contrasting type, font, or color to the surrounding text of the same size, or set off from the surrounding text of the same size by symbols or other marks that call attention to the language.

(2) For purposes of this section, "personal service" shall mean any of the following:

(A) In-person delivery.

(B) Delivery by any form of mail providing for delivery confirmation, postage prepaid, to at least one address provided by the person being served, including, but not limited to, the address set forth in any citation or in court records.

(C) Any alternate method approved in writing by the transit district and the person being served.

(3) If a person served with a notice of prohibition order is not able, or refuses, to provide a mailing address, the notice of prohibition order shall set forth the procedure for obtaining any letters, notices, or orders related to the prohibition order from the administrative offices of the transit district. For purposes of this section, delivery shall be deemed to have been made on the following date, as applicable:

(A) On the date of delivery, if delivered in person.

(B) On the date of confirmed delivery, for any delivery by mail.

(C) For any alternate method of service, as provided in the writing specifying the alternate method.

(4) Proof of service of the notice shall be filed with the transit district.

(5) If a person contests a notice of prohibition order, the transit district shall proceed in accordance with subdivision (c). If the notice of prohibition order is not contested within 10 calendar days after delivery by personal service, the prohibition order shall be deemed final and shall go into effect, without further action by the transit district, for the period of time set forth in the order.

(6) All prohibition orders shall be subject to an automatic stay and shall not take effect until the latest of the following:

(A) Eleven calendar days after delivery of the prohibition order by personal service.

(B) If an initial review is timely requested under paragraph (1) of subdivision (c), 11 calendar days after delivery by personal service of the results of the review.

(C) If an administrative hearing is timely requested under paragraph (1) of subdivision (c), the date the hearing officer's decision is delivered by personal service.

(c) (1) For a period of 10 calendar days from the delivery of the prohibition order by personal service, the person may request an initial review of the prohibition order by the transit district. The request may be made by telephone, in writing, or in person. There shall be no charge for this review. In conducting its review and reaching a determination, the transit district shall determine whether the prohibition order meets the requirements of subdivision (a) and, unless the person has been convicted of the offense or offenses, whether the offense or offenses for which the person was cited or arrested are proven by a preponderance of the evidence. If, following the initial review, based on these findings, the transit district determines that the prohibition order is not adequately supported or that extenuating circumstances make dismissal of the prohibition order appropriate in the interest of justice, the transit district shall cancel the notice. If, following the initial review, based on these findings, the transit district determines that the prohibition order should be upheld in whole or in part, the transit district shall issue a written statement to that effect, including any modification to the period or scope of the prohibition order. The transit district shall serve the results of the initial review to the person contesting the notice by personal service.

(2) The transit district may modify or cancel a prohibition order in the interest of justice. The transit district shall cancel a prohibition order if it determines that the person did not understand the nature and extent of his or her actions or did not have the ability to control his or her actions. If the person is dependent upon the transit system for trips of

necessity, including, but not limited to, travel to or from medical or legal appointments, school or training classes, places of employment, or obtaining food, clothing, and necessary household items, the transit district shall modify a prohibition order to allow for those trips. A person requesting a cancellation or modification in the interest of justice shall have the burden of establishing the qualifying circumstances by a preponderance of the evidence.

(3) If the person is dissatisfied with the results of the initial review, the person may request an administrative hearing of the prohibition order no later than 10 calendar days after the results of the initial review are delivered by personal service. The request may be made by telephone, in writing, or in person. An administrative hearing shall be held within 30 calendar days after the receipt of a request for an administrative hearing. The person requesting the hearing may request one continuance, not to exceed seven calendar days.

(4) The administrative hearing process shall include all of the following:

(A) The person requesting the hearing shall have the choice of a hearing by mail or in person. An in-person hearing shall be conducted within the jurisdiction of the transit district.

(B) The administrative hearing shall be conducted in accordance with written procedures established by the transit district and approved by the governing body or chief executive officer of the transit district. The hearing shall provide an independent, objective, fair, and impartial review of the prohibition order.

(C) The administrative review shall be conducted before a hearing officer designated to conduct the review by the transit district's governing body or chief executive officer. In addition to any other requirements, a hearing officer shall demonstrate the qualifications, training, and objectivity prescribed by the transit agency's governing body or chief executive officer as are necessary to fulfill and that are consistent with the duties and responsibilities set forth in this subdivision. The hearing officer's continued service, performance evaluation, compensation, and benefits, as applicable, shall not be directly or indirectly linked to the number of prohibition orders upheld by the hearing officer.

(D) The person who issued the notice of prohibition order shall not be required to participate in an administrative hearing, unless participation is requested by the person requesting the hearing. The request for participation must be made at least five calendar days prior to the date of the hearing and may be made by telephone, in writing, or in person. The notice of prohibition order, in proper form, shall be prima facie evidence of the violation or violations pursuant to subdivision (a)

establishing a rebuttable presumption affecting the burden of producing evidence.

(E) In issuing a decision, the hearing officer shall determine whether the prohibition order meets the requirements of subdivision (a) and, unless the person has been convicted of the offense or offenses, whether the offense or offenses for which the person was cited or arrested are proven by a preponderance of the evidence. Based upon these findings, the hearing officer may uphold the prohibition order in whole, determine that the prohibition order is not adequately supported, or cancel or modify the prohibition order in the interest of justice. The hearing officer shall cancel a prohibition order if he or she determines that the person did not understand the nature and extent of his or her actions or did not have the ability to control his or her actions. If the person is dependent upon the transit system for trips of necessity, including, but not limited to, travel to or from medical or legal appointments, school or training classes, places of employment, or obtaining food, clothing, and necessary household items, the transit district shall modify a prohibition order to allow for those trips. A person requesting a cancellation or modification in the interest of justice shall have the burden of establishing the qualifying circumstances by a preponderance of the evidence.

(F) The hearing officer's decision following the administrative hearing shall be delivered by personal service.

(G) A person aggrieved by the final decision of the hearing officer may seek judicial review of the decision within 90 days of the date of delivery of the decision by personal service, as provided by Section 1094.6 of the Code of Civil Procedure.

(d) A person issued a prohibition order under subdivision (a) may, within 10 calendar days of the date the order goes into effect under paragraph (5) of subdivision (b), request a refund for any prepaid fare media rendered unusable in whole or in part by the prohibition order, including, but not limited to, monthly passes. If the fare media remain usable for one or more days outside the period of the prohibition order, the refund shall be prorated based on the number of days the fare media will be unusable. The issuance of a refund may be made contingent on surrender of the fare media.

(e) For purposes of this section "transit district" means the Sacramento Regional Transit District or the Fresno Area Express.

(f) 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.

SEC. 2. Section 99172 is added to the Public Utilities Code, to read:

99172. (a) Prior to exercising the authority given in subdivision (a) of Section 99171 to issue prohibition orders, a transit district shall do all of the following:

(1) Establish an advisory committee for the purpose of evaluating the procedures for and issuance of prohibition orders and recommending a course of training for personnel charged with issuance and enforcement of prohibition orders.

(2) Ensure that personnel to be charged with issuance and enforcement of prohibition orders have received training as recommended by the advisory committee.

(3) Provide reasonable notification to transit district riders that persons who engaged in disorderly conduct may be subject to a prohibition order barring the person from the transit district's property, facilities, or vehicles for a period of up to one year. "Reasonable notification" may include, but is not limited to, information on the transit district's Internet Web site, in written materials, at transit stations and on citations issued by the transit district of the types of conduct that may result in issuance of a prohibition order.

(b) The advisory committee shall be composed of at least five members appointed by the legislative body of the transit district. At least one of the members of the advisory committee shall have experience working with individuals with psychiatric, developmental, or other disabilities and at least one member shall be a youth advocate.

(c) The advisory committee shall be tasked, at a minimum, with all of the following:

(1) Providing recommendations, in consultation with the county mental health director within the service area of the transit district, regarding the type and extent of training that should be undertaken by individuals with responsibility for issuance and enforcement of prohibition orders, with particular emphasis on training designed to assist those individuals in identifying and interacting with persons who are homeless or who have psychiatric, developmental, or other disabilities.

(2) Identifying, in consultation with the county mental health director within the service area of the transit district, services and programs to which persons who are homeless or who have psychiatric, developmental, or other disabilities may be referred by transit district enforcement personnel prior to or in conjunction with issuance of a prohibition order.

(3) Monitoring the issuance of prohibition orders to assist the transit district in ensuring compliance with Section 51 of the Civil Code.

(4) Providing the governing board of the transit district and the Legislature with an annual report summarizing the number of prohibition orders that were issued by the transit district during the preceding year, including, but not limited to, the types and numbers of citations by

category, and the number of exclusion orders appealed, the appeals granted, the reasons granted, and other relevant information directly related to those orders.

(d) The transit district may use an existing advisory committee to fulfill the requirements of this section, provided that the composition and purpose of the existing advisory committee meet or are modified to meet the requirements of this section.

(e) For purposes of this section "transit district" means the Sacramento Regional Transit District or the Fresno Area Express.

(f) 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.

SEC. 3. Section 102122 of the Public Utilities Code is amended to read:

102122. (a) The board of directors may adopt ordinances that do any of the following:

(1) Prohibit persons from knowingly giving false identification to a district employee engaged in the enforcement of district ordinances or state laws, or otherwise obstructing the issuance of a citation for violation of district ordinances or state law.

(2) Prohibit unauthorized operation of, interference with, entry into, climbing upon, attaching to, or loitering on or in transit facilities or other transit property.

(3) Prohibit the removal, displacement, injury, destruction, or obstruction of any part of any track, switch, turnout, bridge, culvert, or any other district structure or fixture.

(4) Specify conditions under which a passenger may board a district vehicle with a bicycle and where the bicycle may be stowed.

(b) The board may provide that a violation of any ordinance adopted pursuant to subdivision (a) is an infraction punishable by a fine not exceeding seventy-five dollars ($75), and that a violation by a person after the second conviction is punishable by a fine not to exceed two hundred fifty dollars ($250) and by community service for a total time not to exceed 48 hours over a period not to exceed 30 days which do not conflict with the violator's hours of school attendance or employment.

(c) The board may designate persons regularly employed by the district as inspectors or supervisors whose duties shall include enforcement of district ordinances adopted under subdivision (a), Sections 640 and 640.5 of the Penal Code, and Section 22656 of the Vehicle Code. The designated persons shall have the authority to arrest and to issue citations for misdemeanors and infractions as set forth in Sections 836.5 and 853.5 of the Penal Code, but shall not have authority to make custodial arrests.

(d) This section does not prohibit any person from engaging in activities that are protected under the laws of the United States or of California, including, but not limited to, picketing, demonstrating, or distributing handbills.

(e) 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.

SEC. 4. Section 102122 is added to the Public Utilities Code, to read:

102122. (a) The board of directors may adopt ordinances that do any of the following:

(1) Prohibit persons from knowingly giving false identification to a district employee engaged in the enforcement of district ordinances or state law, or otherwise obstructing the issuance of a citation for violation of district ordinances or state law.

(2) Prohibit unauthorized operation of, interference with, entry into, climbing upon, attaching to, or loitering on or in, transit facilities or other transit property.

(3) Prohibit the removal, displacement, injury, destruction, or obstruction of any part of any track, switch, turnout, bridge, culvert, or any other district structure or fixture.

(4) Specify conditions under which a passenger may board a district vehicle with a bicycle and where the bicycle may be stowed.

(b) The board may provide that a violation of any ordinance adopted pursuant to subdivision (a) is an infraction punishable by a fine not exceeding seventy-five dollars ($75), and that a violation by a person after the second conviction is punishable by a fine not to exceed two hundred fifty dollars ($250) and by community service for a total time not to exceed 48 hours over a period not to exceed 30 days which do not conflict with the violator's hours of school attendance or employment.

(c) The board may designate persons regularly employed by the district as inspectors or supervisors whose duties shall include enforcement of district ordinances adopted under subdivision (a), Sections 640 and 640.5 of the Penal Code, and Section 22656 of the Vehicle Code. The designated persons shall have the authority set forth in Section 836.5 of the Penal Code.

(d) This section does not prohibit any person from engaging in activities that are protected under the laws of the United States or of California, including, but not limited to, picketing, demonstrating, or distributing handbills.

(e) This section shall become operative on January 1, 2012.

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 529

An act to amend Sections 4832, 4841.5, 4842.5, 4866, 4867, 4868, 4869, 4870, 4871, 4873, 4875.4, and 4905 of, to add Sections 4842.7, 4875.1, and 4875.3 to, and to add and repeal Section 4809.8 of, the Business and Professions Code, relating to veterinary medicine, and making an appropriation therefor.

[Approved by Governor September 28, 2008. Filed with Secretary of State September 28, 2008.]

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

SECTION 1. Section 4809.8 is added to the Business and Professions Code, to read:

4809.8. (a) The board shall appoint a voluntary, advisory multidisciplinary committee to assist, advise, and make recommendations for the implementation of rules and regulations necessary to ensure proper administration and enforcement of this chapter. Members of the committee shall be appointed from lists of nominees solicited by the board. The committee shall consist of no more than nine members.

(b) The committee shall be subject to the requirements of Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2 of the Government Code.

(c) Committee members shall receive a per diem as provided in Section 103 and shall be compensated for their actual travel expenses in accordance with the rules and regulations adopted by the Department of Personnel Administration.

(d) 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. The repeal of this section renders the committee subject to the review required by Division 1.2 (commencing with Section 473).

SEC. 2. Section 4832 of the Business and Professions Code, as amended by Section 5 of Chapter 467 of the Statutes of 2004, is amended to read:

4832. (a) The board shall establish an advisory committee on issues pertaining to the practice of veterinary technicians, that shall be known as the Registered Veterinary Technician Committee, hereafter referred to as the committee.

(b) It is the intent of the Legislature that the Veterinary Medical Board, in implementing this article, give specific consideration to the recommendations of the Registered Veterinary Technician Committee.

(c) The committee shall consist of five members appointed by the board commencing January 1, 2009. Three members shall be registered veterinary technicians, one member shall be either a licensed veterinarian or an additional registered veterinary technician, and one member shall be a member of the public. Appointments shall be for a term of three years, and shall be staggered accordingly.

(d) No member of the committee shall serve for more than two terms. The committee shall annually elect one of its members as chairperson.

(e) The committee shall comply with Section 101.7.

(f) The scope of the committee shall not exceed the authority provided under Section 4833.

SEC. 3. Section 4841.5 of the Business and Professions Code is amended to read:

4841.5. To be eligible to take the written and practical examination for registration as a registered veterinary technician, the applicant shall:

(a) Be at least 18 years of age.

(b) (1) Furnish satisfactory evidence of graduation from, at minimum, a two-year curriculum in veterinary technology, in a college or other postsecondary institution approved by the board, or the equivalent thereof as determined by the board. In the case of a private postsecondary institution, the institution shall also be approved by the Bureau for Private Postsecondary and Vocational Education.

(2) For purposes of this subdivision, education or a combination of education and clinical practice experience may constitute the equivalent of the graduation requirement imposed under this subdivision, as determined by the board.

SEC. 4. Section 4842.5 of the Business and Professions Code is amended to read:

4842.5. The amount of fees prescribed by this article is that fixed by the following schedule:

(a) The fee for filing an application for examination shall be set by the board in an amount it determines is reasonably necessary to provide

sufficient funds to carry out the purposes of this chapter, not to exceed three hundred fifty dollars ($350).

(b) The fee for the California registered veterinary technician examination shall be set by the board in an amount it determines is reasonably necessary to provide sufficient funds to carry out the purposes of this chapter, not to exceed three hundred dollars ($300).

(c) The initial registration fee shall be set by the board at not more than three hundred fifty dollars ($350), except that, if the license is issued less than one year before the date on which it will expire, then the fee shall be set by the board at not more than one hundred seventy-five dollars ($175). The board may adopt regulations to provide for the waiver or refund of the initial registration fee where the registration is issued less than 45 days before the date on which it will expire.

(d) The biennial renewal fee shall be set by the board at not more than three hundred fifty dollars ($350).

(e) The delinquency fee shall be set by the board at not more than fifty dollars ($50).

(f) Any charge made for duplication or other services shall be set at the cost of rendering the services.

(g) The fee for filing an application for approval of a school or institution offering a curriculum for training registered veterinary technicians pursuant to Section 4843 shall be set by the board at an amount not to exceed three hundred dollars ($300). The school or institution shall also pay for the actual costs of an onsite inspection conducted by the board pursuant to Section 2065.6 of Title 16 of the California Code of Regulations, including, but not limited to, the travel, food, and lodging expenses incurred by an inspection team sent by the board.

(h) The fee for failure to report a change in the mailing address is twenty-five dollars ($25).

SEC. 5. Section 4842.7 is added to the Business and Professions Code, to read:

4842.7. Every person registered by the board under this article who changes his or her mailing address shall notify the board of his or her new mailing address within 30 days of the change. The board shall not renew the registration of any person who fails to comply with this section unless the person pays the penalty fee prescribed in Section 4842.5. An applicant for the renewal of a registration shall specify in his or her application whether he or she has changed his or her mailing address and the board may accept that statement as evidence of the fact.

SEC. 6. Section 4866 of the Business and Professions Code is amended to read:

4866. (a) The board shall establish criteria for the acceptance, denial, or termination of veterinarians and registered veterinary technicians in a diversion program. Only those veterinarians and registered veterinary technicians who have voluntarily requested diversion treatment and supervision by a diversion evaluation committee shall participate in a program.

(b) The board shall establish criteria for the selection of administrative physicians who shall examine veterinarians and registered veterinary technicians requesting diversion under a program. Any reports made under this article by the administrative physician shall constitute an exception to Sections 994 and 995 of the Evidence Code.

(c) The diversion program may accept no more than 100 participants who are licensees of the board.

SEC. 7. Section 4867 of the Business and Professions Code is amended to read:

4867. The diversion evaluation committee shall inform each veterinarian and registered veterinary technician who requests participation in a program of the procedures followed in the program, of the rights and responsibilities of the veterinarian and registered veterinary technician in the program, and of the possible results of noncompliance with the program.

SEC. 8. Section 4868 of the Business and Professions Code is amended to read:

4868. Each diversion evaluation committee shall have the following duties and responsibilities:

(a) To evaluate those veterinarians and registered veterinary technicians who request participation in the program according to the guidelines prescribed by the board and to consider the recommendation of the administrative physician on the admission of the veterinarian or registered veterinary technician to the diversion program.

(b) To review and designate those treatment facilities to which veterinarians and registered veterinary technicians in a diversion program may be referred.

(c) To receive and review information concerning veterinarians and registered veterinary technicians participating in the program.

(d) To call meetings as necessary to consider the requests of veterinarians and registered veterinary technicians to participate in a diversion program, and to consider reports regarding veterinarians and registered veterinary technicians participating in a program from an administrative physician, or from others.

(e) To consider in the case of each veterinarian and registered veterinary technician participating in a program whether he or she may

with safety continue or resume the practice of veterinary medicine or the assisting in the practice of veterinary medicine.

(f) To set forth in writing for each veterinarian and registered veterinary technician participating in a program a treatment program established for each such veterinarian and registered veterinary technician with the requirements for supervision and surveillance.

(g) To hold a general meeting at least twice a year, which shall be open and public, to evaluate the program's progress, to review data as required in reports to the board, to prepare reports to be submitted to the board, and to suggest proposals for changes in the diversion program.

SEC. 9. Section 4869 of the Business and Professions Code is amended to read:

4869. Notwithstanding the provisions of Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2 of the Government Code, relating to public meetings, a diversion evaluation committee may convene in closed session to consider reports pertaining to any veterinarian or registered veterinary technician requesting or participating in a diversion program. A diversion evaluation committee shall only convene in closed session to the extent that it is necessary to protect the privacy of a veterinarian or registered veterinary technician.

SEC. 10. Section 4870 of the Business and Professions Code is amended to read:

4870. Each veterinarian and registered veterinary technician who requests participation in a diversion program shall agree to cooperate with the treatment program designed by a diversion evaluation committee. Any failure to comply with the provisions of a treatment program may result in termination of the veterinarian's or registered veterinary technician's participation in a program.

SEC. 11. Section 4871 of the Business and Professions Code is amended to read:

4871. (a) After a diversion evaluation committee in its discretion has determined that a veterinarian or registered veterinary technician has been rehabilitated and the diversion program is completed, the diversion evaluation committee shall purge and destroy all records pertaining to the veterinarian's or registered veterinary technician's participation in a diversion program.

(b) All board and diversion evaluation committee records and records of proceedings pertaining to the treatment of a veterinarian or registered veterinary technician in a program shall be kept confidential and are not subject to discovery or subpoena.

SEC. 12. Section 4875.1 is added to the Business and Professions Code, to read:

4875.1. (a) In order to ensure that its resources are maximized for the protection of the public, the board shall prioritize its investigative and prosecutorial resources to ensure that veterinarians and registered veterinary technicians representing the greatest threat of harm are identified and disciplined expeditiously. Cases involving any of the following allegations shall be handled on a priority basis, as follows, with the highest priority being given to cases in paragraph (1):

(1) Negligence or incompetence that involves death or serious bodily injury to an animal patient, such that the veterinarian or registered veterinary technician represents a danger to the public.

(2) Cruelty to animals.

(3) A conviction or convictions for a criminal charge or charges or being subject to a felony criminal proceeding without consideration of the outcome of the proceeding.

(4) Practicing veterinary medicine while under the influence of drugs or alcohol.

(5) Drug or alcohol abuse by a veterinarian or registered veterinary technician involving death or serious bodily injury to an animal patient or to the public.

(6) Self-prescribing of any dangerous drug, as defined in Section 4022, or any controlled substance, as defined in Section 4021.

(7) Repeated acts of excessive prescribing, furnishing, or administering of controlled substances, as defined in Section 4021, or repeated acts of prescribing, dispensing, or furnishing of controlled substances, as defined in Section 4021, without having first established a veterinarian-client-patient relationship pursuant to Section 2032.1 of Title 16 of the California Code of Regulations.

(8) Extreme departures from minimum sanitary conditions such that there is a threat to an animal patient or the public and animal health and safety, only if the case has already been subject to Section 494 and board action.

(b) The board may prioritize cases involving an allegation of conduct that is not described in subdivision (a). Those cases prioritized shall not be assigned a priority equal to or higher than the priorities established in subdivision (a).

(c) The board shall annually report and make publicly available the number of disciplinary actions that are taken in each priority category specified in subdivisions (a) and (b).

SEC. 13. Section 4873 of the Business and Professions Code is amended to read:

4873. The board shall charge each veterinarian and registered veterinary technician who is accepted to participate in the diversion program a diversion program registration fee. The diversion program

registration fee shall be set by the board in an amount not to exceed four thousand dollars ($4,000). In the event that the diversion program registration exceeds five hundred dollars ($500), the board may provide for quarterly payments.

SEC. 14. Section 4875.3 is added to the Business and Professions Code, to read:

4875.3. (a) If the board determines, as a result of its inspection of the premises pursuant to Section 4809.5, or any other place where veterinary medicine, veterinary dentistry, veterinary surgery, or the various branches thereof is practiced, or that is otherwise in the possession of a veterinarian for purpose of that practice, that it is not in compliance with the standards established by the board, the board shall provide a notice of any deficiencies and provide a reasonable time for compliance with those standards prior to commencing any further action pursuant to this article. The board may issue an interim suspension order pursuant to Section 494 in those cases where the violations represent an immediate threat to the public and animal health and safety.

(b) A veterinarian who reviews and investigates an alleged violation pursuant to Section 4875.2 shall be licensed in or employed by the state either full time or part time and shall not have been out of practice for more than four years.

SEC. 15. Section 4875.4 of the Business and Professions Code is amended to read:

4875.4. (a) The board shall, in the manner prescribed in Section 4808, adopt regulations covering the assessment of civil penalties under this article which give due consideration to the appropriateness of the penalty with respect to the following factors:

(1) The gravity of the violation, including, but not limited to, whether the violation is minor.

(2) The good faith of the person being charged.

(3) The history of previous violations.

(b) In no event shall the civil penalty for each citation issued be assessed in an amount greater than five thousand dollars ($5,000).

(c) Regulations adopted by the board shall be pursuant to the procedures for citations and fines in accordance with Section 125.9.

SEC. 16. Section 4905 of the Business and Professions Code is amended to read:

4905. The following fees shall be collected by the board and shall be credited to the Veterinary Medical Board Contingent Fund:

(a) The fee for filing an application for examination shall be set by the board in an amount it determines is reasonably necessary to provide sufficient funds to carry out the purpose of this chapter, not to exceed three hundred fifty dollars ($350).

(b) The fee for the California state board examination shall be set by the board in an amount it determines is reasonably necessary to provide sufficient funds to carry out the purpose of this chapter, not to exceed three hundred fifty dollars ($350).

(c) The fee for the Veterinary Medicine Practice Act examination shall be set by the board in an amount it determines reasonably necessary to provide sufficient funds to carry out the purpose of this chapter, not to exceed one hundred dollars ($100).

(d) The initial license fee shall be set by the board not to exceed five hundred dollars ($500) except that, if the license is issued less than one year before the date on which it will expire, then the fee shall be set by the board at not to exceed two hundred fifty dollars ($250). The board may, by appropriate regulation, provide for the waiver or refund of the initial license fee where the license is issued less than 45 days before the date on which it will expire.

(e) The renewal fee shall be set by the board for each biennial renewal period in an amount it determines is reasonably necessary to provide sufficient funds to carry out the purpose of this chapter, not to exceed five hundred dollars ($500).

(f) The temporary license fee shall be set by the board in an amount it determines is reasonably necessary to provide sufficient funds to carry out the purpose of this chapter, not to exceed two hundred fifty dollars ($250).

(g) The delinquency fee shall be set by the board, not to exceed fifty dollars ($50).

(h) The fee for issuance of a duplicate license is twenty-five dollars ($25).

(i) Any charge made for duplication or other services shall be set at the cost of rendering the service, except as specified in subdivision (h).

(j) The fee for failure to report a change in the mailing address is twenty-five dollars ($25).

(k) The initial and annual renewal fees for registration of veterinary premises shall be set by the board in an amount not to exceed four hundred dollars ($400) annually.

(*l*) If the money transferred from the Veterinary Medical Board Contingent Fund to the General Fund pursuant to the Budget Act of 1991 is redeposited into the Veterinary Medical Board Contingent Fund, the fees assessed by the board shall be reduced correspondingly. However, the reduction shall not be so great as to cause the Veterinary Medical Board Contingent Fund to have a reserve of less than three months of annual authorized board expenditures. The fees set by the board shall not result in a Veterinary Medical Board Contingent Fund reserve of more than 10 months of annual authorized board expenditures.

SEC. 17. 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 530

An act to amend Section 51874 of the Education Code, relating to the California Technology Assistance Project.

[Approved by Governor September 28, 2008. Filed with Secretary of State September 28, 2008.]

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

SECTION 1. Section 51874 of the Education Code is amended to read:

51874. Sections 51871, 51872, 51873, this section, and the heading of this article shall remain in effect only until January 1, 2014, and as of that date are repealed, unless a later enacted statute, that is enacted before January 1, 2014, deletes or extends that date.

CHAPTER 531

An act to add Section 48646 to the Education Code, relating to juvenile court schools.

[Approved by Governor September 28, 2008. Filed with Secretary of State September 28, 2008.]

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

SECTION 1. Section 48646 is added to the Education Code, to read:

48646. (a) The Legislature encourages each county superintendent of schools or school district, as determined by the county board of education pursuant to subdivision (b) of Section 48645.2, and county chief probation officer to enter into a memorandum of understanding or

equivalent mutual agreement to support a collaborative process for meeting the needs of wards of the court who are receiving their education in juvenile court schools. The memorandum of understanding or equivalent mutual agreement may include, but is not limited to, a process for communication, decisionmaking, mutually established goals, and conflict resolution. The purpose of this memorandum of understanding or equivalent mutual agreement is to develop a collaborative model that will foster an educational and residential environment that nurtures the whole child and consistently supports services that will meet the educational needs of the pupils.

(b) A memorandum of understanding or equivalent mutual agreement on providing educational and related services for juvenile court school pupils developed in accordance with this section may include, but is not limited to, the following provisions:

(1) Mutually developed goals and objectives that are reviewed annually, including, but not limited to, the following:

(A) Building resiliency and strengthening life skills.

(B) Fostering prosocial attitudes and behaviors.

(C) Assigning pupils to appropriate classrooms based on their educational needs.

(D) Ensuring regular classroom attendance.

(E) Providing clean, safe, and appropriate educational facilities.

(F) Improving academic achievement and vocational preparation.

(2) Clear delineation of responsibilities among the educational and residential or custodial service providers.

(3) A process for communicating, collaborating, and resolving conflicts. Whenever possible, resolution of issues shall be reached by consensus through a collaborative process that would promote decisionmaking at the site where services are delivered. A working group charged with this responsibility may be appointed by the county superintendent of schools, or the superintendent of the school district with responsibility for providing juvenile court school services, and the county chief probation officer, or their designees. The working group is responsible for establishing and maintaining open communication, collaboration, and resolution of issues that arise.

(4) A clearly identified mechanism for resolving conflicts.

(5) A joint process for performing an intake evaluation for each ward to determine educational needs and ability to participate in all educational settings once the ward enters the local juvenile facility. The process shall recognize the limitations on academic evaluation and planning that can result from short-term placements. The evaluation team shall include staff from the responsible educational agency and the county probation department, and may include other participants as appropriate, and as

mutually agreed upon by the education and probation members of the team. The evaluation process specified in the memorandum of understanding or equivalent mutual agreement may:

(A) Include a timeline for evaluation once a ward is assigned to a local facility.

(B) Result in an educational plan for a ward while assigned to a local juvenile facility that is integrated with other rehabilitative and behavioral management programs, and that supports the educational needs of the pupil.

It is the intent that this shared information about each ward placed in a juvenile court school shall assist both the county superintendent of schools and the county chief probation officer in meeting the needs of wards in their care and promoting a system of comprehensive services.

(c) The memorandum of understanding or equivalent mutual agreement shall not cede responsibility or authority prescribed by statute or regulation from one party to another party unless mutually agreed upon by both parties.

CHAPTER 532

An act to amend Sections 54221, 54222, 54226, 54227, and 54230.5 of, to repeal Sections 11011.2, 11011.3, 11011.4, 11011.6, 11011.8, and 11011.9 of, and to repeal and add Section 11011.1 of, the Government Code, relating to state surplus property.

[Approved by Governor September 28, 2008. Filed with Secretary of State September 28, 2008.]

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

SECTION 1. Section 11011.1 of the Government Code is repealed.

SEC. 2. Section 11011.1 is added to the Government Code, to read:

11011.1. (a) Notwithstanding any other provision of law, except Article 8.5 (commencing with Section 54235) of Chapter 5 of Part 1 of Division 2 of Title 5, the disposal of surplus state real property by the Department of General Services shall be subject to the requirements of this section. For purposes of this section, "surplus state real property" means real property declared surplus by the Legislature and directed to be disposed of by the Department of General Services, including any real property previously declared surplus by the Legislature but not yet disposed of by the Department of General Services prior to the enactment of this section.

(b) (1) The department may dispose of surplus state real property by sale, lease, exchange, a sale combined with an exchange, or other manner of disposition of property, as authorized by the Legislature, upon any terms and conditions and subject to any reservations and exceptions the department deems to be in the best interests of the state.

(2) (A) The Legislature finds and declares that the provision of decent housing for all Californians is a state goal of the highest priority. The disposal of surplus state real property is a direct and substantial public purpose of statewide concern and will serve an important public purpose, including mitigating the environmental effects of state activities. Therefore, it is the intent of the Legislature that priority be given, as specified in this section, to the disposal of surplus state real property to housing for persons and families of low or moderate income, where land is suitable for housing and there is a need for housing in the community.

(B) Surplus state real property that has been determined by the department not to be needed by any state agency shall be offered to any local agency, as defined in subdivision (a) of Section 54221, and then to nonprofit affordable housing sponsors, prior to being offered for sale to private entities or individuals. As used in this subdivision, "nonprofit affordable housing sponsor" means any of the following:

(i) A nonprofit corporation incorporated pursuant to Division 2 (commencing with Section 5000) of Title 1 of the Corporations Code.

(ii) A cooperative housing corporation which is a stock cooperative, as defined by Section 11003.2 of the Business and Professions Code.

(iii) A limited-dividend housing corporation.

(C) The department, subject to this section, shall maintain a list of surplus state real property in a conspicuous place on its Internet Web site. The department shall provide local agencies and, upon request, members of the public, with electronic notification of updates to the list of properties.

(D) To be considered as a potential priority buyer of the surplus state real property, a local agency or nonprofit affordable housing sponsor shall notify the department of its interest in the surplus state real property within 90 days of the department posting on its Internet Web site the notice of the availability of the surplus state real property on the department's Internet Web site. The local agency or nonprofit affordable housing sponsor shall demonstrate, to the satisfaction of the department, that the surplus state real property, or portion of that surplus state real property, is to be used by the local agency or nonprofit affordable housing sponsor for open space, public parks, affordable housing projects, or development of local government-owned facilities. When more than one local agency expresses an interest in the surplus state real property, then priority shall be given to the local agency that intends to use the surplus

state real property for affordable housing. If no agreement or transfer of title occurs, then the priority shall next be given to the local agency that intends to use the surplus state real property for open space, public parks, or development of local government-owned facilities. The sales agreement shall be executed by the local agency or nonprofit affordable housing sponsor within 60 days after the director determines the local agency or nonprofit affordable housing sponsor is to receive the surplus state real property. The sale of the surplus state real property to a local agency or nonprofit affordable housing sponsor pursuant to this section shall be completed, and title transferred, within 60 days of the date the department executes the sales agreement, or, if required by law, no later than 60 days after the State Public Works Board has authorized the sale. If the sale of a surplus state real property to a local agency or nonprofit affordable housing sponsor is not completed within the timeframe specified in this subparagraph, then the department shall proceed with the process for disposal to other private entities or individuals.

(c) (1) If more than one local agency desires the surplus state real property for use as an open space, a public park, or the development of a local government-owned facility, then the department shall transfer the surplus state real property to the local agency offering the highest price above fair market value. If more than one local agency desires the surplus state real property for use as an affordable housing project, then the department shall transfer the surplus state real property to the local agency offering the greatest number of affordable housing units. If more than one nonprofit affordable housing sponsor desires the surplus state real property for use as an affordable housing project, then the department shall transfer the surplus state real property to the nonprofit affordable housing sponsor offering the greatest number of affordable housing units.

(2) If no local agency or nonprofit affordable housing sponsor is interested, or an agreement, as provided above, is not reached, then the disposal of the surplus state real property to private entities or individuals shall be pursuant to a public bidding process designed to obtain the highest most certain return for the state from a responsible bidder, and any transaction based on such a bidding process shall be deemed to be the fair market value for the purposes of the reporting requirements pursuant to subdivision (d).

(3) Notwithstanding any other provision of law, the department may sell surplus state real property, or a portion of surplus state real property, to a local agency, or to a nonprofit affordable housing sponsor if no local agency is interested in the surplus state real property, for affordable housing projects at a sales price less than fair market value if the department determines that such a discount will enable the provision of housing for persons and families of low or moderate income. Nothing

shall preclude a local agency that purchases the surplus state real property for affordable housing from reconveying the surplus state real property to a nonprofit affordable housing sponsor for development of affordable housing. Transfer of title to the surplus state real property or lease of the surplus state real property for affordable housing shall be conditioned upon continued use of the surplus state real property as housing for persons and families of low and moderate income for at least 40 years and the department shall record a regulatory agreement that imposes affordability covenants, conditions, and restrictions on the surplus state real property. The regulatory agreement shall be a first priority lien on the surplus state real property and last for a period of at least 40 years, and if another state agency is lending funds for a project, then a combined regulatory agreement shall be utilized. Notwithstanding any other provision of law, the regulatory agreement shall not be subordinated to any other lien or encumbrance except for any federal loan program whose statutes or regulations require a first lien priority for that federal loan.

(4) Notwithstanding any other provision of law, the Director of General Services may transfer surplus state real property to a local agency for less than fair market value if the local agency uses the surplus state real property for parks or open-space purposes. The deed or other instrument of transfer shall provide that the surplus state real property would revert to the state if the use changed to a use other than parks or open-space purposes during the period of 25 years after the transfer date. For the purpose of this paragraph, "open-space purposes" means the use of land for public recreation, enjoyment of scenic beauty, or conservation or use of natural resources.

(d) Thirty days prior to executing a transaction for a sale, lease, exchange, a sale combined with an exchange, or other manner of disposition of the surplus state real property for less than fair market value or for affordable housing, or as authorized by the Legislature, the Director of General Services shall report to the chairs of the fiscal committees of the Legislature all of the following:

(1) The financial terms of the transaction.

(2) A comparison of fair market value for the surplus state real property and the terms listed in paragraph (1).

(3) The basis for agreeing to terms and conditions other than fair market value.

(e) As to surplus state real property sold and or exchanged pursuant to this section, the director shall except and reserve to the state all mineral deposits, as defined in Section 6407 of the Public Resources Code, together with the right to prospect for, mine, and remove the deposits. If, however, the director determines that there is little or no potential for mineral deposits, the reservation may be without surface right of entry

above a depth of 500 feet, or the rights to prospect for, mine, and remove the deposits shall be limited to those areas of the surplus state real property conveyed that the director determines to be reasonably necessary for the removal of the deposits.

(f) The failure to comply with this section, except for subdivision (d), shall not invalidate the transfer or conveyance of surplus state real property to a purchaser for value.

(g) For purposes of this section, fair market value is established by an appraisal and economic evaluation conducted by the department or approved by the department.

SEC. 3. Section 11011.2 of the Government Code is repealed.

SEC. 4. Section 11011.3 of the Government Code is repealed.

SEC. 5. Section 11011.4 of the Government Code is repealed.

SEC. 6. Section 11011.6 of the Government Code is repealed.

SEC. 7. Section 11011.8 of the Government Code is repealed.

SEC. 8. Section 11011.9 of the Government Code is repealed.

SEC. 9. Section 54221 of the Government Code is amended to read:

54221. (a) As used in this article, the term "local agency" means every city, whether organized under general law or by charter, county, city and county, and district, including school districts of any kind or class, empowered to acquire and hold real property.

(b) As used in this article, the term "surplus land" means land owned by any local agency, that is determined to be no longer necessary for the agency's use, except property being held by the agency for the purpose of exchange.

(c) As used in this article, the term "open-space purposes" means the use of land for public recreation, enjoyment of scenic beauty, or conservation or use of natural resources.

(d) As used in this article, the term "persons and families of low or moderate income" means the same as provided under Section 50093 of the Health and Safety Code.

(e) As used in this article, the term "exempt surplus land" means either of the following:

(1) Surplus land that is transferred pursuant to Section 25539.4.

(2) Surplus land that is (A) less than 5,000 square feet in area, (B) less than the minimum legal residential building lot size for the jurisdiction in which the parcel is located, or 5,000 square feet in area, whichever is less, or (C) has no record access and is less than 10,000 square feet in area; and is not contiguous to land owned by a state or local agency that is used for park, recreational, open-space, or low- and moderate-income housing purposes and is located neither within an enterprise zone pursuant to Section 7073 nor a designated program area as defined in Section 7082. If the surplus land is not sold to an owner of

contiguous land, it is not considered exempt surplus land and is subject to this article.

(f) Notwithstanding subdivision (e), the following properties are not considered exempt surplus land and are subject to this article:

(1) Lands within the coastal zone.

(2) Lands within 1,000 yards of a historical unit of the State Parks System.

(3) Lands within 1,000 yards of any property that has been listed on, or determined by the State Office of Historic Preservation to be eligible for, the National Register of Historic Places.

(4) Lands within the Lake Tahoe region as defined in Section 66905.5.

SEC. 10. Section 54222 of the Government Code is amended to read:

54222. Any local agency disposing of surplus land shall send, prior to disposing of that property, a written offer to sell or lease the property as follows:

(a) A written offer to sell or lease for the purpose of developing low- and moderate-income housing shall be sent to any local public entity, as defined in Section 50079 of the Health and Safety Code, within whose jurisdiction the surplus land is located. Housing sponsors, as defined by Section 50074 of the Health and Safety Code, shall be sent, upon written request, a written offer to sell or lease surplus land for the purpose of developing low- and moderate-income housing. All notices shall be sent by first-class mail and shall include the location and a description of the property. With respect to any offer to purchase or lease pursuant to this subdivision, priority shall be given to development of the land to provide affordable housing for lower income elderly or disabled persons or households, and other lower income households.

(b) A written offer to sell or lease for park and recreational purposes or open-space purposes shall be sent:

(1) To any park or recreation department of any city within which the land may be situated.

(2) To any park or recreation department of the county within which the land is situated.

(3) To any regional park authority having jurisdiction within the area in which the land is situated.

(4) To the State Resources Agency or any agency that may succeed to its powers.

(c) A written offer to sell or lease land suitable for school facilities construction or use by a school district for open-space purposes shall be sent to any school district in whose jurisdiction the land is located.

(d) A written offer to sell or lease for enterprise zone purposes any surplus property in an area designated as an enterprise zone pursuant to

Section 7073 shall be sent to the nonprofit neighborhood enterprise association corporation in that zone.

(e) A written offer to sell or lease for the purpose of developing property located within an infill opportunity zone designated pursuant to Section 65088.4 or within an area covered by a transit village plan adopted pursuant to the Transit Village Development Planning Act of 1994 (Article 8.5 (commencing with Section 65460) of Chapter 3 of Division 1 of Title 7) shall be sent to any county, city, city and county, community redevelopment agency, public transportation agency, or housing authority within whose jurisdiction the surplus land is located.

(f) The entity or association desiring to purchase or lease the surplus land for any of the purposes authorized by this section shall notify in writing the disposing agency of its intent to purchase or lease the land within 60 days after receipt of the agency's notification of intent to sell the land.

SEC. 11. Section 54226 of the Government Code is amended to read:

54226. Nothing in this article shall be interpreted to limit the power of any local agency to sell or lease surplus land at fair market value or at less than fair market value, and nothing in this article shall be interpreted to empower any local agency to sell or lease surplus land at less than fair market value. No provision of this article shall be applied when it conflicts with any other provision of statutory law.

SEC. 12. Section 54227 of the Government Code is amended to read:

54227. In the event that any local agency disposing of surplus land receives offers for the purchase or lease of that land from more than one of the entities to which notice and an opportunity to purchase or lease shall be given pursuant to this article, the local agency shall give first priority to the entity that agrees to use the site for housing for persons and families of low or moderate income, except that first priority shall be given to an entity that agrees to use the site for park or recreational purposes if the land being offered is already being used and will continue to be used for park or recreational purposes, or if the land is designated for park and recreational use in the local general plan and will be developed for that purpose.

SEC. 13. Section 54230.5 of the Government Code is amended to read:

54230.5. The failure by a local agency to comply with this article shall not invalidate the transfer or conveyance of real property to a purchaser or encumbrancer for value.

CHAPTER 533

An act to add Section 12841.4 to the Food and Agricultural Code, relating to agriculture.

[Approved by Governor September 28, 2008. Filed with Secretary of State September 28, 2008.]

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

SECTION 1. Section 12841.4 is added to the Food and Agricultural Code, to read:

12841.4. (a) Every person who is the first to sell any agricultural- or structural-use pesticide product for use in this state that is packaged in rigid, nonrefillable, high-density polyethylene (HDPE) containers of 55 gallons or less shall establish a recycling program, or demonstrate participation in a recycling program to ensure HDPE containers are recycled. Container recycling must comply with the American National Standard Institute (ANSI) American Society of Agriculture and Biological Engineers (ASABE) Standard S596, entitled Recycling Plastic Containers from Pesticides and Pesticide-Related Products, as published in February 2006. The recycling program must be certified by an ANSI-accredited third-party organization as being in compliance with the ANSI/ASABE Standard S596. The records required by these standards shall be maintained for three years and shall be subject to audit by the director.

(b) Any person who is required to establish or participate in a recycling program pursuant to this section shall provide to the director, at least annually, a document certifying that this requirement has been met.

(c) (1) The director may adopt regulations to carry out the purposes of this section. Upon a federal pesticide container recycling program being adopted, the director may adopt regulations to conform to the federal program.

(2) It is the intent of the Legislature in enacting this section that any regulatory standards adopted by the department shall be at least as stringent as those standards referred to in subdivision (a).

(d) Commencing September 1, 2010, the department shall estimate a recycling rate for pesticide containers and propose suggestions for program improvements and post this information annually on its Internet Web site.

CHAPTER 534

An act to amend Sections 7612, 7613, 7630, 7660.5, 7662, 8632.5, 8700, 8714.5, 8802, and 8814.5 of, and to add Section 8639 to, the Family Code, and to amend Section 1510 of the Probate Code, relating to adoption.

[Approved by Governor September 28, 2008. Filed with Secretary of State September 28, 2008.]

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

SECTION 1. Section 7612 of the Family Code is amended to read:

7612. (a) Except as provided in Chapter 1 (commencing with Section 7540) and Chapter 3 (commencing with Section 7570) of Part 2 or in Section 20102, a presumption under Section 7611 is a rebuttable presumption affecting the burden of proof and may be rebutted in an appropriate action only by clear and convincing evidence.

(b) If two or more presumptions arise under Section 7610 or 7611 that conflict with each other, or if a presumption under Section 7611 conflicts with a claim pursuant to Section 7610, the presumption which on the facts is founded on the weightier considerations of policy and logic controls.

(c) The presumption under Section 7611 is rebutted by a judgment establishing paternity of the child by another man.

SEC. 2. Section 7613 of the Family Code is amended to read:

7613. (a) If, under the supervision of a licensed physician and surgeon and with the consent of her husband, a wife is inseminated artificially with semen donated by a man not her husband, the husband is treated in law as if he were the natural father of a child thereby conceived. The husband's consent must be in writing and signed by him and his wife. The physician and surgeon shall certify their signatures and the date of the insemination, and retain the husband's consent as part of the medical record, where it shall be kept confidential and in a sealed file. However, the physician and surgeon's failure to do so does not affect the father and child relationship. All papers and records pertaining to the insemination, whether part of the permanent record of a court or of a file held by the supervising physician and surgeon or elsewhere, are subject to inspection only upon an order of the court for good cause shown.

(b) The donor of semen provided to a licensed physician and surgeon or to a licensed sperm bank for use in artificial insemination or in vitro

fertilization of a woman other than the donor's wife is treated in law as if he were not the natural father of a child thereby conceived.

SEC. 3. 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) (1) If a proceeding has been filed under Chapter 2 (commencing with Section 7820) of Part 4, an action under subdivision (a) or (b) shall be consolidated with that proceeding. The parental rights of the presumed father shall be determined as set forth in Sections 7820 to 7829, inclusive.

(2) If a proceeding pursuant to Section 7662 has been filed under Chapter 5 (commencing with Section 7660), an action under subdivision (c) shall be consolidated with that proceeding. The parental rights of the alleged natural father shall be determined as set forth in Section 7664.

(3) The consolidated action under paragraph (1) or (2) shall be heard in the court in which the proceeding under Section 7662 or Chapter 2 (commencing with Section 7820) of Part 4 is filed, unless the court 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.

(e) (1) If any prospective adoptive parent who has physical custody of the child, or any licensed California adoption agency that has legal custody of the child, has not been joined as a party to an action to determine the existence of a father and child relationship under subdivision (a), (b), or (c), or an action for custody by the alleged natural father, the court shall join the prospective adoptive parent or licensed California adoption agency as a party upon application or on its own motion, without the necessity of a motion for joinder. A joined party shall not be required to pay a fee in connection with this action.

(2) If a man brings an action to determine paternity and custody of a child who he has reason to believe is in the physical or legal custody of an adoption agency, or of one or more persons other than the child's mother who are prospective adoptive parents, he shall serve his entire pleading on, and give notice of all proceedings to, the adoption agency or the prospective adoptive parents, or both.

(f) A party to an assisted reproduction agreement may bring an action at any time to establish a parent and child relationship consistent with the intent expressed in that assisted reproduction agreement.

SEC. 4. Section 7660.5 of the Family Code is amended to read:

7660.5. Notwithstanding any other provision of law, a presumed father may waive the right to notice of any adoption proceeding by executing a form developed by the department before an authorized representative of the department, an authorized representative of a licensed public or private adoption agency, or a notary public or other person authorized to perform notarial acts. The waiver of notice form may be validly executed before or after the birth of the child, and once signed no notice, relinquishment for, or consent to adoption of the child shall be required from the father for the adoption to proceed. This shall be a voluntary and informed waiver without undue influence. If the child is an Indian child as defined under the Indian Child Welfare Act (ICWA), any waiver of consent by an Indian presumed father shall be executed in accordance with the requirements for voluntary adoptions set forth in Section 1913 of Title 25 of the United States Code. The waiver shall not affect the rights of any known federally recognized Indian tribe or tribes from which the child or the presumed father may be descended to notification of, or participation in, adoption proceedings as provided by the ICWA. Notice that the waiver has been executed shall be given to any known federally recognized Indian tribe or tribes from which the child or the presumed father may be descended, as required by the ICWA.

SEC. 5. Section 7662 of the Family Code is amended to read:

7662. (a) If a mother relinquishes for or consents to, or proposes to relinquish for or consent to, the adoption of a child who does not have a presumed father under Section 7611, or if a child otherwise becomes

the subject of an adoption proceeding, the agency or person to whom the child has been or is to be relinquished, or the mother or the person having physical or legal custody of the child, or the prospective adoptive parent, shall file a petition to terminate the parental rights of the father, unless one of the following occurs:

(1) The father's relationship to the child has been previously terminated or determined not to exist by a court.

(2) The father has been served as prescribed in Section 7666 with a written notice alleging that he is or could be the natural father of the child to be adopted or placed for adoption and has failed to bring an action for the purpose of declaring the existence of the father and child relationship pursuant to subdivision (c) of Section 7630 within 30 days of service of the notice or the birth of the child, whichever is later.

(3) The alleged father has executed a written form developed by the department to waive notice, to deny his paternity, relinquish the child for adoption, or consent to the adoption of the child.

(b) The birth father may validly execute a waiver or denial of paternity before or after the birth of the child, and once signed, no notice of, relinquishment for, or consent to adoption of the child shall be required from the birth father for the adoption to proceed.

(c) All proceedings affecting a child under Divisions 8 (commencing with Section 3000) to 11 (commencing with Section 6500), inclusive, and Parts 1 (commencing with Section 7500) to 3 (commencing with Section 7600), inclusive, of this division, other than an action brought pursuant to this section, shall be stayed pending final determination of proceedings to terminate the parental rights of the father pursuant to this section.

(d) Nothing in this section may limit the jurisdiction of the court pursuant to Part 3 (commencing with Section 6240) and Part 4 (commencing with Section 6300) of Division 10 with respect to domestic violence orders.

SEC. 6. Section 8632.5 of the Family Code is amended to read:

8632.5. (a) The department shall establish and adopt regulations for a statewide registration and enforcement process for adoption facilitators. The department shall also establish and adopt regulations to require adoption facilitators to post a bond as required by this section.

(b) The department may adapt the process it uses to register adoption service providers in order to provide a similar registration process for adoption facilitators. The process used by the department shall include a procedure for determining the status of bond compliance by adoption facilitators, a means for accepting or denying organizations seeking inclusion in the adoption facilitator registry, a means for removing adoption facilitators from the adoption facilitator registry, and an appeals

process for those entities denied inclusion in or removed from the adoption facilitator registry. The department may deny or revoke inclusion in the registry for adoption facilitators to an applicant who does not possess a criminal record clearance or exemption issued by the department pursuant to Section 1522 of the Health and Safety Code and the criminal record clearance regulations applicable to personnel of private adoption agencies. Criminal record clearances and exemptions granted to adoption facilitators are not transferable.

(c) Upon the establishment by the department of a registration process, all adoption facilitators that operate independently from a licensed public or private adoption agency or an adoption attorney in this state shall be required to register with the department.

(d) An adoption facilitator, when posting a bond, shall also file with the department a disclosure form containing the adoption facilitator's name, date of birth, residence address, business address, residence telephone number, business telephone number, and the number of adoptions facilitated for the previous year. Along with the disclosure form, the adoption facilitator shall provide all of the following information to the department:

(1) Proof that the facilitator and any member of the staff who provides direct adoption services has completed two years of college courses, with at least half of the units and hours focusing on social work or a related field.

(2) Proof that the facilitator and any member of the staff who provides direct adoption services has a minimum of three years of experience employed by a public or private adoption agency licensed by the department, a registered adoption facilitator, or an adoption attorney who assists in bringing adopting persons and placing parents together for the purpose of adoption placement.

(A) An adoption facilitator and any member of the staff subject to this paragraph may waive the educational and experience requirements by satisfying all of the following requirements:

(i) He or she has over five years of work experience providing direct adoption services for a licensed adoption agency.

(ii) He or she has not been found liable of malfeasance in connection with providing adoption services.

(iii) He or she provides three separate letters of support attesting to his or her ethics and work providing direct adoption services from any of the following:

(I) A licensed public or private adoption agency.

(II) A member of the Academy of California Adoption Lawyers.

(III) The State Department of Social Services.

(B) An adoption facilitator who is registered with the department may also register staff members under the designation of "trainee." A trainee may provide direct adoption services without meeting the requirements of this paragraph. Any trainee registered with the department shall be directly supervised by an individual who meets all registration requirements.

(3) A valid business license.

(4) A valid, current, government-issued identification to determine the adoption facilitator's identity, such as a California driver's license, identification card, passport, or other form of identification that is acceptable to the department.

(5) Fingerprint images for a background check to be used by the department for the purposes described in this section.

(e) The State Department of Social Services may submit fingerprint images of adoption facilitators to the Department of Justice for the purpose of obtaining criminal offender record information regarding state- and federal-level convictions and arrests, including arrests for which the Department of Justice establishes that the person is free on bail or on his or her recognizance pending trial or appeal.

(1) The Department of Justice shall forward to the Federal Bureau of Investigation requests for federal summary criminal history information received pursuant to this section. The Department of Justice shall review the information returned from the Federal Bureau of Investigation and compile and disseminate a response to the department.

(2) The Department of Justice shall provide a response to the department pursuant to subdivision (m) of Section 11105 of the Penal Code.

(3) The department shall request from the Department of Justice subsequent arrest notification service, as provided pursuant to Section 11105.2 of the Penal Code.

(4) The Department of Justice shall charge a fee sufficient to cover the cost of processing the request described in this section.

(5) The department may only release an applicant's criminal record information search response as provided in subparagraph (G) of paragraph (4) of subdivision (a) of Section 1522 of the Health and Safety Code.

(f) The department may impose a fee upon applicants for each set of classifiable fingerprint cards that it processes pursuant to paragraph (5) of subdivision (d).

(g) The department shall post on its Internet Web site the registration and bond requirements required by this chapter and a list of adoption facilitators in compliance with the registration and bond requirements

of this chapter. The department shall ensure that the information is current and shall update the information at least once every 30 days.

(h) The department shall develop the disclosure form required pursuant to subdivision (d) and shall make it available to any adoption facilitator posting a bond.

(i) The department may charge adoption facilitators an annual filing fee to recover all costs associated with the requirements of this section and that fee shall be set by regulation.

(j) The department may create an Adoption Facilitator Account for deposit of fees received from registrants.

(k) On or before January 1, 2008, the department shall make recommendations for the registry program to the Legislature, including a recommendation on how to implement a department program to accept and compile complaints against registered adoption facilitators and to provide public access to those complaints, by specific facilitator, through the department's Internet Web site.

(*l*) The adoption facilitator registry established pursuant to this section shall become operative on the first day of the first month following an appropriation from the Adoption Facilitator Account to the State Department of Social Services for the startup costs and the costs of administration of the adoption facilitator registry.

SEC. 7. Section 8639 is added to the Family Code, to read:

8639. (a) Notwithstanding any other provision of this chapter, any adoption facilitator who operates without having met the requirements established in Section 8632.5 for inclusion into the adoption facilitator registry may be assessed by the department an immediate civil penalty in the amount of one hundred dollars ($100) per day of the violation.

(b) The civil penalty authorized in subdivision (a) shall be imposed if an adoption facilitator is involved in the facilitation of adoptions and the adoption facilitator refuses to seek inclusion in the adoption facilitator registry or if the adoption facilitator's application for inclusion into the adoption facilitator registry is denied and the adoption facilitator continues to facilitate adoptions, unless other available remedies, including criminal prosecution, are deemed more effective by the department.

(c) An adoption facilitator may appeal the assessment to the director.

(d) The department shall adopt regulations implementing this section, including the appeal process authorized in subdivision (c).

SEC. 8. Section 8700 of the Family Code is amended to read:

8700. (a) Either birth parent may relinquish a child to the department or a licensed adoption agency for adoption by a written statement signed before two subscribing witnesses and acknowledged before an authorized official of the department or agency. The relinquishment, when reciting

that the person making it is entitled to the sole custody of the child and acknowledged before the officer, is prima facie evidence of the right of the person making it to the sole custody of the child and the person's sole right to relinquish.

(b) A relinquishing parent who is a minor has the right to relinquish his or her child for adoption to the department or a licensed adoption agency, and the relinquishment is not subject to revocation by reason of the minority.

(c) If a relinquishing parent resides outside this state and the child is being cared for and is or will be placed for adoption by the department or a licensed adoption agency, the relinquishing parent may relinquish the child to the department or agency by a written statement signed by the relinquishing parent before a notary on a form prescribed by the department, and previously signed by an authorized official of the department or agency, that signifies the willingness of the department or agency to accept the relinquishment.

(d) If a relinquishing parent and child reside outside this state and the child will be cared for and will be placed for adoption by the department or a licensed adoption agency, the relinquishing parent may relinquish the child to the department or agency by a written statement signed by the relinquishing parent, after that parent has satisfied the following requirements:

(1) Prior to signing the relinquishment, the relinquishing parent shall have received, from a representative of an agency licensed or otherwise approved to provide adoption services under the laws of the relinquishing parent's state of residence, the same counseling and advisement services as if the relinquishing parent resided in this state.

(2) The relinquishment shall be signed before a representative of an agency licensed or otherwise approved to provide adoption services under the laws of the relinquishing parent's state of residence whenever possible or before a licensed social worker on a form prescribed by the department, and previously signed by an authorized official of the department or agency, that signifies the willingness of the department or agency to accept the relinquishment.

(e) (1) The relinquishment authorized by this section has no effect until a certified copy is sent to, and filed with, the department. The licensed adoption agency shall send that copy by certified mail, return receipt requested, or by overnight courier or messenger, with proof of delivery, to the department no earlier than the end of the business day following the signing thereof. The agency shall inform the birth parent that during this time period he or she may request that the relinquishment be withdrawn and that, if he or she makes the request, the relinquishment shall be withdrawn. The relinquishment shall be final 10 business days

after receipt of the filing by the department, unless any of the following apply:

(A) The department sends written acknowledgment of receipt of the relinquishment prior to the expiration of that 10-day period, at which time the relinquishment shall be final.

(B) A longer period of time is necessary due to a pending court action or some other cause beyond control of the department.

(2) After the relinquishment is final, it may be rescinded only by the mutual consent of the department or licensed adoption agency to which the child was relinquished and the birth parent or parents relinquishing the child.

(f) The relinquishing parent may name in the relinquishment the person or persons with whom he or she intends that placement of the child for adoption be made by the department or licensed adoption agency.

(g) Notwithstanding subdivision (e), if the relinquishment names the person or persons with whom placement by the department or licensed adoption agency is intended and the child is not placed in the home of the named person or persons or the child is removed from the home prior to the granting of the adoption, the department or agency shall mail a notice by certified mail, return receipt requested, to the birth parent signing the relinquishment within 72 hours of the decision not to place the child for adoption or the decision to remove the child from the home.

(h) The relinquishing parent has 30 days from the date on which the notice described in subdivision (g) was mailed to rescind the relinquishment.

(1) If the relinquishing parent requests rescission during the 30-day period, the department or licensed adoption agency shall rescind the relinquishment.

(2) If the relinquishing parent does not request rescission during the 30-day period, the department or licensed adoption agency shall select adoptive parents for the child.

(3) If the relinquishing parent and the department or licensed adoption agency wish to identify a different person or persons during the 30-day period with whom the child is intended to be placed, the initial relinquishment shall be rescinded and a new relinquishment identifying the person or persons completed.

(i) If the parent has relinquished a child, who has been found to come within Section 300 of the Welfare and Institutions Code or is the subject of a petition for jurisdiction of the juvenile court under Section 300 of the Welfare and Institutions Code, to the department or a licensed adoption agency for the purpose of adoption, the department or agency

accepting the relinquishment shall provide written notice of the relinquishment within five court days to all of the following:

(1) The juvenile court having jurisdiction of the child.

(2) The child's attorney, if any.

(3) The relinquishing parent's attorney, if any.

(j) The filing of the relinquishment with the department terminates all parental rights and responsibilities with regard to the child, except as provided in subdivisions (g) and (h).

(k) The department shall adopt regulations to administer the provisions of this section.

SEC. 9. Section 8714.5 of the Family Code is amended to read:

8714.5. (a) The Legislature finds and declares the following:

(1) It is the intent of the Legislature to expedite legal permanency for children who cannot return to their parents and to remove barriers to adoption by relatives of children who are already in the dependency system or who are at risk of entering the dependency system.

(2) This goal will be achieved by empowering families, including extended families, to care for their own children safely and permanently whenever possible, by preserving existing family relationships, thereby causing the least amount of disruption to the child and the family, and by recognizing the importance of sibling and half-sibling relationships.

(b) A relative desiring to adopt a child may for that purpose file a petition in the county in which the petitioner resides. Where a child has been adjudged to be a dependent of the juvenile court pursuant to Section 300 of the Welfare and Institutions Code, and thereafter has been freed for adoption by the juvenile court, the petition may be filed either in the county where the petitioner resides or in the county where the child was freed for adoption.

(c) Upon the filing of a petition for adoption by a relative, the clerk of the court shall immediately notify the State Department of Social Services in Sacramento in writing of the pendency of the proceeding and of any subsequent action taken.

(d) If the adopting relative has entered into a postadoption contact agreement with the birth parent as set forth in Section 8616.5 the agreement, signed by the participating parties, shall be attached to and filed with the petition for adoption under subdivision (b).

(e) The caption of the adoption petition shall contain the name of the relative petitioner. The petition shall state the child's name, sex, and date of birth.

(f) If the child is the subject of a guardianship petition, the adoption petition shall so state and shall include the caption and docket number or have attached a copy of the letters of the guardianship or temporary guardianship. The petitioner shall notify the court of any petition for

adoption. The guardianship proceeding shall be consolidated with the adoption proceeding, and the consolidated case shall be heard and decided in the court in which the adoption is pending.

(g) The order of adoption shall contain the child's adopted name and, if requested by the adopting relative, or if requested by the child who is 12 years of age or older, the name the child had before adoption.

(h) For purposes of this section, "relative" means an adult who is related to the child or the child's half-sibling by blood or affinity, including all relatives whose status is preceded by the words "step," "great," "great-great," or "grand," or the spouse of any of these persons, even if the marriage was terminated by death or dissolution.

SEC. 10. Section 8802 of the Family Code is amended to read:

8802. (a) (1) Any of the following persons who desire to adopt a child may, for that purpose, file a petition in the county in which the petitioner resides or, if the petitioner is not a resident of this state, in the county in which the placing birth parent or birth parents resided when the adoption placement agreement was signed, or the county in which the placing birth parent or birth parents resided when the petition was filed:

(A) An adult who is related to the child or the child's half sibling by blood or affinity, including all relatives whose status is preceded by the words "step," "great," "great-great," or "grand," or the spouse of any of these persons, even if the marriage was terminated by death or dissolution.

(B) A person named in the will of a deceased parent as an intended adoptive parent where the child has no other parent.

(C) A person with whom a child has been placed for adoption.

(D) (i) A legal guardian who has been the child's legal guardian for more than one year.

(ii) If the child is alleged to have been abandoned pursuant to Section 7822, a legal guardian who has been the child's legal guardian for more than six months. The legal guardian may file a petition pursuant to Section 7822 in the same court and concurrently with a petition under this section.

(iii) However, if the parent nominated the guardian for a purpose other than adoption for a specified time period, or if the guardianship was established pursuant to Section 360 of the Welfare and Institutions Code, the guardianship shall have been in existence for not less than three years.

(2) If the child has been placed for adoption, a copy of the adoptive placement agreement shall be attached to the petition. The court clerk shall immediately notify the department at Sacramento in writing of the pendency of the proceeding and of any subsequent action taken.

(3) If the petitioner has entered into a postadoption contact agreement with the birth parent as set forth in Section 8616.5, the agreement, signed by the participating parties, shall be attached to and filed with the petition for adoption.

(b) The petition shall contain an allegation that the petitioners will file promptly with the department or delegated county adoption agency information required by the department in the investigation of the proposed adoption. The omission of the allegation from a petition does not affect the jurisdiction of the court to proceed or the validity of an adoption order or other order based on the petition.

(c) The caption of the adoption petition shall contain the names of the petitioners, but not the child's name. The petition shall state the child's sex and date of birth and the name the child had before adoption.

(d) If the child is the subject of a guardianship petition, the adoption petition shall so state and shall include the caption and docket number or have attached a copy of the letters of the guardianship or temporary guardianship. The petitioners shall notify the court of any petition for guardianship or temporary guardianship filed after the adoption petition. The guardianship proceeding shall be consolidated with the adoption proceeding, and the consolidated case shall be heard and decided in the court in which the adoption is pending.

(e) The order of adoption shall contain the child's adopted name, but not the name the child had before adoption.

SEC. 11. Section 8814.5 of the Family Code is amended to read:

8814.5. (a) After a consent to the adoption is signed by the birth parent or parents pursuant to Section 8801.3 or 8814, the birth parent or parents signing the consent shall have 30 days to take one of the following actions:

(1) Sign and deliver to the department or delegated county adoption agency a written statement revoking the consent and requesting the child to be returned to the birth parent or parents. After revoking consent, in cases where the birth parent or parents have not regained custody, or the birth parent or parents have failed to make efforts to exercise their rights under subdivision (b) of Section 8815, a written notarized statement reinstating the original consent may be signed and delivered to the department or delegated county adoption agency, in which case the revocation of consent shall be void and the remainder of the original 30-day period shall commence. After revoking consent, in cases in which the birth parent or parents have regained custody or made efforts to exercise their rights under subdivision (b) of Section 8815 by requesting the return of the child, upon the delivery of a written notarized statement reinstating the original consent to the department or delegated county adoption agency, the revocation of consent shall be void and a new

30-day period shall commence. The birth mother shall be informed of the operational timelines associated with this section at the time of signing of the statement reinstating the original consent.

(2) (A) Sign a waiver of the right to revoke consent on a form prescribed by the department in the presence of any of the following:

(i) A representative of the department or delegated county adoption agency.

(ii) A judicial officer of a court of record if the birth parent is represented by independent legal counsel.

(iii) An adoption service provider if the birth parent or parents are represented by independent legal counsel. The adoption service provider shall ensure that the waiver is delivered to the department, the petitioners, or their counsel no earlier than the end of the business day following the signing of the waiver. The adoption service provider shall inform the birth parent that during this time period he or she may request that the waiver be withdrawn and that, if he or she makes that request, the waiver shall be withdrawn.

(B) An adoption service provider may assist the birth parent or parents in any activity where the primary purpose of that activity is to facilitate the signing of the waiver with the department, a delegated county agency, or a judicial officer. The adoption service provider or another person designated by the birth parent or parents may also be present at any interview conducted pursuant to this section to provide support to the birth parent or parents, except when the interview is conducted by independent legal counsel for the birth parent or parents.

(C) The waiver of the right to revoke consent may not be signed until an interview has been completed by the department or delegated county adoption agency unless the waiver of the right to revoke consent is signed in the presence of a judicial officer of a court of record or an adoption service provider as specified in this section. If the waiver is signed in the presence of a judicial officer, the interview and the witnessing of the signing of the waiver shall be conducted by the judicial officer. If the waiver is signed in the presence of an adoption service provider, the interview shall be conducted by the independent legal counsel for the birth parent or parents. If the waiver is signed in the presence of an adoption service provider, the waiver shall be reviewed by the independent legal counsel who (i) counsels the birth parent or parents about the nature of his or her intended waiver and (ii) signs and delivers to the birth parent or parents and the department a certificate in substantially the following form:

I, (name of attorney), have counseled my client, (name of client), on the nature and legal effect of the waiver of right to revoke consent to adoption. I am so disassociated from the interest of the

petitioner(s)/prospective adoptive parent(s) as to be in a position to advise my client impartially and confidentially as to the consequences of the waiver. (Name of client) is aware that California law provides for a 30-day period during which a birth parent may revoke consent to adoption. On the basis of this counsel, I conclude that it is the intent of (name of client) to waive the right to revoke, and make a permanent and irrevocable consent to adoption. (Name of client) understands that he/she will not be able to regain custody of the child unless the petitioner(s)/prospective adoptive parent(s) agree(s) to withdraw their petition for adoption or the court denies the adoption petition. Within 10 working days of a request made after the department or the delegated county adoption agency has received a copy of the petition for the adoption and the names and addresses of the persons to be interviewed, the department or the delegated county adoption agency shall interview, at the department or agency office, any birth parent requesting to be interviewed. However, the interview, and the witnessing of the signing of a waiver of the right to revoke consent of a birth parent residing outside of California or located outside of California for an extended period of time unrelated to the adoption may be conducted in the state where the birth parent is located, by any of the following:

(I) A representative of a public adoption agency in that state.

(II) A judicial officer in that state where the birth parent is represented by independent legal counsel.

(III) An adoption service provider.

(3) Allow the consent to become a permanent consent on the 31st day after signing.

(b) The consent may not be revoked after a waiver of the right to revoke consent has been signed or after 30 days, beginning on the date the consent was signed or as provided in paragraph (1) of subdivision (a), whichever occurs first.

SEC. 12. Section 1510 of the Probate Code is amended to read:

1510. (a) A relative or other person on behalf of the minor, or the minor if 12 years of age or older, may file a petition for the appointment of a guardian of the minor.

(b) The petition shall request that a guardian of the person or estate of the minor, or both, be appointed, shall specify the name and address of the proposed guardian and the name and date of birth of the proposed ward, and shall state that the appointment is necessary or convenient.

(c) The petition shall set forth, so far as is known to the petitioner, the names and addresses of all of the following:

(1) The parents of the proposed ward.

(2) The person having legal custody of the proposed ward and, if that person does not have the care of the proposed ward, the person having the care of the proposed ward.

(3) The relatives of the proposed ward within the second degree.

(4) In the case of a guardianship of the estate, the spouse of the proposed ward.

(5) Any person nominated as guardian for the proposed ward under Section 1500 or 1501.

(6) In the case of a guardianship of the person involving an Indian child, any Indian custodian and the Indian child's tribe.

(d) If the proposed ward is a patient in or on leave of absence from a state institution under the jurisdiction of the State Department of Mental Health or the State Department of Developmental Services and that fact is known to the petitioner, the petition shall state that fact and name the institution.

(e) The petition shall state, so far as is known to the petitioner, whether or not the proposed ward is receiving or is entitled to receive benefits from the Veterans Administration and the estimated amount of the monthly benefit payable by the Veterans Administration for the proposed ward.

(f) If the petitioner has knowledge of any pending adoption, juvenile court, marriage dissolution, domestic relations, custody, or other similar proceeding affecting the proposed ward, the petition shall disclose the pending proceeding.

(g) If the petitioners have accepted or intend to accept physical care or custody of the child with intent to adopt, whether formed at the time of placement or formed subsequent to placement, the petitioners shall so state in the guardianship petition, whether or not an adoption petition has been filed.

(h) If the proposed ward is or becomes the subject of an adoption petition, the court shall order the guardianship petition consolidated with the adoption petition, and the consolidated case shall be heard and decided in the court in which the adoption is pending.

(i) If the proposed ward is or may be an Indian child, the petition shall state that fact.

CHAPTER 535

An act to amend Sections 218 , 218.3, and 739.5 of, and to add Article 3 (commencing with Section 2868) to Chapter 9 of Part 2 of Division 1 of, the Public Utilities Code, relating to electricity.

[Approved by Governor September 28, 2008. Filed with
Secretary of State September 28, 2008.]

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

SECTION 1. Section 218 of the Public Utilities Code is amended to read:

218. (a) "Electrical corporation" includes every corporation or person owning, controlling, operating, or managing any electric plant for compensation within this state, except where electricity is generated on or distributed by the producer through private property solely for its own use or the use of its tenants and not for sale or transmission to others.

(b) "Electrical corporation" does not include a corporation or person employing cogeneration technology or producing power from other than a conventional power source for the generation of electricity solely for any one or more of the following purposes:

(1) Its own use or the use of its tenants.

(2) The use of or sale to not more than two other corporations or persons solely for use on the real property on which the electricity is generated or on real property immediately adjacent thereto, unless there is an intervening public street constituting the boundary between the real property on which the electricity is generated and the immediately adjacent property and one or more of the following applies:

(A) The real property on which the electricity is generated and the immediately adjacent real property is not under common ownership or control, or that common ownership or control was gained solely for purposes of sale of the electricity so generated and not for other business purposes.

(B) The useful thermal output of the facility generating the electricity is not used on the immediately adjacent property for petroleum production or refining.

(C) The electricity furnished to the immediately adjacent property is not utilized by a subsidiary or affiliate of the corporation or person generating the electricity.

(3) Sale or transmission to an electrical corporation or state or local public agency, but not for sale or transmission to others, unless the corporation or person is otherwise an electrical corporation.

(c) "Electrical corporation" does not include a corporation or person employing landfill gas technology for the generation of electricity for any one or more of the following purposes:

(1) Its own use or the use of not more than two of its tenants located on the real property on which the electricity is generated.

(2) The use of or sale to not more than two other corporations or persons solely for use on the real property on which the electricity is generated.

(3) Sale or transmission to an electrical corporation or state or local public agency.

(d) "Electrical corporation" does not include a corporation or person employing digester gas technology for the generation of electricity for any one or more of the following purposes:

(1) Its own use or the use of not more than two of its tenants located on the real property on which the electricity is generated.

(2) The use of or sale to not more than two other corporations or persons solely for use on the real property on which the electricity is generated.

(3) Sale or transmission to an electrical corporation or state or local public agency, if the sale or transmission of the electricity service to a retail customer is provided through the transmission system of the existing local publicly owned electric utility or electrical corporation of that retail customer.

(e) "Electrical corporation" does not include an independent solar energy producer, as defined in Article 3 (commencing with Section 2868) of Chapter 9 of Part 2.

(f) The amendments made to this section at the 1987 portion of the 1987–88 Regular Session of the Legislature do not apply to any corporation or person employing cogeneration technology or producing power from other than a conventional power source for the generation of electricity that physically produced electricity prior to January 1, 1989, and furnished that electricity to immediately adjacent real property for use thereon prior to January 1, 1989.

SEC. 2. Section 218.3 of the Public Utilities Code is amended to read:

218.3. (a) "Electric service provider" means an entity that offers electrical service to customers within the service territory of an electrical corporation and includes the unregulated affiliates and subsidiaries of an electrical corporation.

(b) "Electric service provider" does not include an entity that offers electrical service solely to service customer load consistent with subdivision (b) of Section 218, and does not include an electrical corporation or a public agency that offers electrical service to residential and small commercial customers within its jurisdiction, or within the service territory of a local publicly owned electric utility.

(c) "Electric service provider" does not include an independent solar energy producer, as defined in Article 3 (commencing with Section 2868) of Chapter 9 of Part 2.

SEC. 3. Section 739.5 of the Public Utilities Code is amended to read:

739.5. (a) The commission shall require that, whenever gas or electric service, or both, is provided by a master-meter customer to users who are tenants of a mobilehome park, apartment building, or similar residential complex, the master-meter customer shall charge each user of the service at a rate not to exceed the rate that would be applicable if the user were receiving gas or electricity, or both, directly from the gas or electrical corporation. The commission shall require the corporation furnishing service to the master-meter customer to establish uniform rates for master-meter service at a level that will provide a sufficient differential to cover the reasonable average costs to master-meter customers of providing submeter service, except that these costs shall not exceed the average cost that the corporation would have incurred in providing comparable services directly to the users of the service.

(b) Every master-meter customer of a gas or electrical corporation subject to subdivision (a) who, on or after January 1, 1978, receives any rebate from the corporation shall distribute to, or credit to the account of, each current user served by the master-meter customer that portion of the rebate which the amount of gas or electricity, or both, consumed by the user during the last billing period bears to the total amount furnished by the corporation to the master-meter customer during that period.

(c) An electrical or gas corporation furnishing service to a master-meter customer shall furnish to each user of the service within a submetered system every public safety customer service that it provides beyond the meter to its other residential customers. The corporation shall furnish a list of those services to the master-meter customer who shall post the list in a conspicuous place accessible to all users. Every corporation shall provide these public safety customer services to each user of electrical or gas service under a submetered system without additional charge unless the corporation has included the average cost of these services in the rate differential provided to the master-meter customer on January 1, 1984, in which case the commission shall deduct the average cost of providing these public safety customer services when approving rate differentials for master-meter customers.

(d) Every master-meter customer is responsible for maintenance and repair of its submeter facilities beyond the master-meter, and nothing in this section requires an electrical or gas corporation to make repairs to or perform maintenance on the submeter system.

(e) Every master-meter customer shall provide an itemized billing of charges for electricity or gas, or both, to each individual user generally in accordance with the form and content of bills of the corporation to its

residential customers, including, but not limited to, the opening and closing readings for the meter, and the identification of all rates and quantities attributable to each block in the applicable rate structure. The master-meter customer shall also post, in a conspicuous place, the applicable prevailing residential gas or electrical rate schedule, as published by the corporation.

(f) The commission shall require that every electrical and gas corporation shall notify each master-meter customer of its responsibilities to its users under this section.

(g) The commission shall accept and respond to complaints concerning the requirements of this section through the consumer affairs branch, in addition to any other staff that the commission deems necessary to assist the complainant. In responding to the complaint, the commission shall consider the role that the office of the county sealer in the complainant's county of residence may have in helping to resolve the complaint and, where appropriate, coordinate with that office.

SEC. 4. Article 3 (commencing with Section 2868) is added to Chapter 9 of Part 2 of Division 1 of the Public Utilities Code, to read:

Article 3. Independent Solar Energy Producers

2868. The following definitions shall apply for purposes of this article:

(a) "Electric utility" means an electrical corporation as defined in Section 218, a local publicly owned electric utility as defined in Section 9604, or an electrical cooperative as defined in Section 2776.

(b) "Independent solar energy producer" means a corporation or person employing one or more solar energy systems for the generation of electricity for any one or more of the following purposes:

(1) Its own use or the use of its tenants.

(2) The use of, or sale to, not more than two other entities or persons per generation system solely for use on the real property on which the electricity is generated, or on real property immediately adjacent thereto.

(c) "Real property" means a single parcel of land.

(d) "Solar energy system" means any configuration of solar energy devices that collects and distributes solar energy for the purpose of generating electricity and that has a single interconnection with the electric utility transmission or distribution network.

2869. (a) (1) An independent solar energy producer contracting for the use or sale of electricity or the lease of a solar energy system, to an entity or person, for use in a residence shall include a disclosure to the buyer or lessee that, at a minimum, includes all of the following:

(A) A good faith estimate of the kilowatthours to be delivered by the solar energy system.

(B) A plain language explanation of the terms under which the pricing will be calculated over the life of the contract and a good faith estimate of the price per kilowatthour.

(C) A plain language explanation of operation and maintenance responsibilities of the contract parties.

(D) A plain language explanation of the contract provisions regulating the disposition or transfer of the contract in the event of a transfer of ownership of the residence, as well as the costs or potential costs associated with the disposition or transfer of the contract.

(E) A plain language explanation of the disposition of the solar energy system at the end of the term of the contract.

(2) The commission may require, as a condition of receiving ratepayer funded incentives, that an independent solar energy producer provide additional disclosure to the buyer or lessee, the commission, or both.

(b) An independent solar energy producer contracting for the use or sale of electricity or the lease of a solar energy system, to an entity or person, for use in a residence shall record a Notice of an Independent Solar Energy Producer Contract, within 30 days of the signing of the contract, against the title to the real property on which the electricity is generated, and against the title to any adjacent real property on which the electricity will be used, in the office of the county recorder for the county in which the real property is located. The notice shall include all of the following and may include additional information:

(1) (A) If the solar energy system is located on the real property, a prominent title at the top of the document in 14-point type stating "Notice of an Independent Solar Energy Producer Contract" and the following statement:

"This real property is receiving part of its electric service from an independent solar energy producer that has retained ownership of a solar electric generation system that is located on the real property. The independent solar energy producer provides electric service to the current owner of this real property through a long-term contract for electric service. The independent solar energy producer is required to provide a copy of the contract to a prospective buyer of the real property within ten (10) days of the receipt of a written request from the current owner of this real property."

(B) If the solar energy system is located on an adjacent real property, a prominent title at the top of the document in 14-point type stating "Notice of an Independent Solar Energy Producer Contract" and the following statement:

"This real property is receiving part of its electric service from an independent solar energy producer that has retained ownership of a solar electric generation system that is located on an adjacent real property. The independent solar energy producer provides electric service to the current owner of this real property through a long-term contract for electric service. The independent solar energy producer is required to provide a copy of the contract to a prospective buyer of this real property within ten (10) days of the receipt of a written request from the current owner of this real property."

(2) The address and assessor's parcel number of the real property against which the notice is recorded.

(3) The name, address, and telephone number of the independent solar energy producer, and any other contact information deemed necessary by the independent solar energy producer.

(4) A statement identifying whether the contract is a contract for the sale of electricity or for the lease of a solar energy system, and providing the dates on which the contract commences and terminates.

(5) A plain language summary of the potential costs, consequences, and assignment of responsibilities, if any, that could result in the event the contract is terminated.

(c) (1) The recorded Notice of an Independent Solar Energy Producer Contract does not constitute a title defect, lien, or encumbrance against the real property, and the independent solar energy producer shall be solely responsible for the accuracy of the information provided in the notice and for recording the document with the county recorder.

(2) The independent solar energy producer shall record a subsequent document extinguishing the Notice of an Independent Solar Energy Producer Contract if the contract is voided, terminated, sold, assigned, or transferred. If the independent solar energy producer transfers its obligation under the contract or changes its contact information, it shall record a new notice reflecting these changes within 30 days of their occurrence.

(3) Within 30 days of the termination of a contract for the use or sale of electricity or the lease of a solar energy system, the independent solar energy producer shall record a subsequent document extinguishing the Notice of an Independent Solar Energy Producer Contract from the title to the real property on which the electricity is generated, and from the title to any adjacent real property on which the electricity was used, in the office of the county recorder for the county in which the real property is located.

(d) An independent solar energy producer contracting for the use or sale of electricity or the lease of a solar energy system shall provide a copy of the existing contract to a prospective buyer of the real property

where the electricity is used or generated within ten (10) days of the receipt of a written request from the current owner of the real property.

(e) (1) All contracts for the sale of electricity by an independent solar energy producer to an entity or person, for use in a residential dwelling shall be made available to the commission upon its request, and shall be confidential, except as provided for in this subdivision. The disclosures required by subdivision (a) may be made open to public inspection or made public by the commission.

(2) A contract provided to the commission pursuant to this subdivision shall not be open to public inspection or made public, except on order of the commission, or by the commission or a commissioner in the course of a hearing or proceeding.

(3) This subdivision does not eliminate or modify any rule or provision of law that provides for the confidentiality of information submitted to the commission in the course of its proceedings.

(f) A master-meter customer of an electric utility who purchases electricity or leases a solar energy system from an independent solar energy producer, and who provides electric service to users who are tenants of a mobilehome park, apartment building, or similar residential complex, shall do both of the following:

(1) Charge each user of the electric service that is under a submetered system a rate for the solar generated electricity not to exceed the rate charged by the independent solar energy producer or the electric utility's rate for an equivalent amount of electricity, whichever is lower.

(2) Comply with the provisions of Section 739.5 or 12821.5, and any rules set forth by an electric utility for master-meter customers.

(g) No transfer of real property subject to this article shall be invalidated solely because of the failure of any person to comply with any provision of this article. Any person who willfully or negligently violates or fails to perform any duty prescribed by any provision of this article shall be civilly liable in the amount of actual damages suffered by a transferee or transferor of the real property as a consequence of that violation or failure.

CHAPTER 536

An act to amend Section 739.5 of the Public Utilities Code, relating to public utilities.

[Approved by Governor September 28, 2008. Filed with Secretary of State September 28, 2008.]

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

SECTION 1. Section 739.5 of the Public Utilities Code is amended to read:

739.5. (a) The commission shall require that, whenever gas or electric service, or both, is provided by a master-meter customer to users who are tenants of a mobilehome park, apartment building, or similar residential complex, the master-meter customer shall charge each user of the service at the same rate that would be applicable if the user were receiving gas or electricity, or both, directly from the gas or electrical corporation. The commission shall require the corporation furnishing service to the master-meter customer to establish uniform rates for master-meter service at a level that will provide a sufficient differential to cover the reasonable average costs to master-meter customers of providing submeter service, except that these costs shall not exceed the average cost that the corporation would have incurred in providing comparable services directly to the users of the service.

(b) Every master-meter customer of a gas or electrical corporation subject to subdivision (a) who, on or after January 1, 1978, receives any rebate from the corporation shall distribute to, or credit to the account of, each current user served by the master-meter customer that portion of the rebate which the amount of gas or electricity, or both, consumed by the user during the last billing period bears to the total amount furnished by the corporation to the master-meter customer during that period.

(c) An electrical or gas corporation furnishing service to a master-meter customer shall furnish to each user of the service within a submetered system every public safety customer service which it provides beyond the meter to its other residential customers. The corporation shall furnish a list of those services to the master-meter customer who shall post the list in a conspicuous place accessible to all users. Every corporation shall provide these public safety customer services to each user of electrical or gas service under a submetered system without additional charge unless the corporation has included the average cost of these services in the rate differential provided to the master-meter customer on January 1, 1984, in which case the commission shall deduct the average cost of providing these public safety customer services when approving rate differentials for master-meter customers.

(d) Every master-meter customer is responsible for maintenance and repair of its submeter facilities beyond the master-meter, and nothing in this section requires an electrical or gas corporation to make repairs to or perform maintenance on the submeter system.

(e) Every master-meter customer shall provide an itemized billing of charges for electricity or gas, or both, to each individual user generally in accordance with the form and content of bills of the corporation to its residential customers, including, but not limited to, the opening and closing readings for the meter, and the identification of all rates and quantities attributable to each block in the applicable rate structure. The master-meter customer shall also post, in a conspicuous place, the applicable prevailing residential gas or electrical rate schedule, as published by the corporation.

(f) The commission shall require that every electrical and gas corporation shall notify each master-meter customer of its responsibilities to its users under this section.

(g) The commission shall accept and respond to complaints concerning the requirements of this section through the consumer affairs branch, in addition to any other staff that the commission deems necessary to assist the complainant. In responding to the complaint, the commission shall consider the role that the office of the county sealer in the complainant's county of residence may have in helping to resolve the complaint and, where appropriate, coordinate with that office.

(h) Notwithstanding any other provision of law or decision of the commission, the commission shall not deny eligibility for the California Alternative Rates for Energy (CARE) program, created pursuant to Section 739.1, for a residential user of gas or electric service who is a submetered resident or tenant served by a master-meter customer on the basis that some residential units in the master-meter customer's mobilehome park, apartment building, or similar residential complex do not receive gas or electric service through a submetered system.

CHAPTER 537

An act to amend Sections 25620 and 25620.5 of the Public Resources Code, and to amend Section 379.6 of the Public Utilities Code, relating to energy.

[Approved by Governor September 28, 2008. Filed with Secretary of State September 28, 2008.]

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

SECTION 1. (a) It is the intent of the Legislature that California's leadership in energy efficiency and greenhouse gas emission reductions translate into economic benefits for California through job creation,

workforce training and retraining, manufacturing retention and development, and the development of a green technology industry in the state by using the state's existing investments, incentives, and support for clean and greenhouse gas emission reducing technologies and applications that assist the state in meeting its greenhouse gas emission reduction targets.

(b) It is further the intent of the Legislature that the State Air Resources Board, the State Energy Resources Conservation and Development Commission, and the Public Utilities Commission provide additional consideration, priority, or preference to projects that result in job creation and economic benefits in California in administering incentive programs for energy efficiency, including renewable energy, and the reduction of greenhouse gas emissions, to the maximum extent feasible and consistent with the provisions of law governing these incentive programs.

SEC. 3. Section 25620 of the Public Resources Code is amended to read:

25620. The Legislature hereby finds and declares all of the following:

(a) It is in the best interests of the people of this state that the quality of life of its citizens be improved by providing environmentally sound, safe, reliable, and affordable energy services and products.

(b) To improve the quality of life of this state's citizens, it is proper and appropriate for the state to undertake public interest energy research, development, and demonstration projects that are not adequately provided for by competitive and regulated energy markets.

(c) Public interest energy research, demonstration, and development projects should advance energy science or technologies of value to California citizens and should be consistent with the policies of this chapter.

(d) It is in the best interest of the people of California for the commission to positively contribute to the overall economic climate of the state within the roles and responsibilities of the commission as defined by statute, regulation, and other official government authority, including, but not limited to, providing economic benefits to California-based entities.

SEC. 3.5. Section 25620 of the Public Resources Code is amended to read:

25620. The Legislature hereby finds and declares all of the following:

(a) It is in the best interests of the people of this state that the quality of life of its citizens be improved by providing environmentally sound, safe, reliable, and affordable energy services and products.

(b) To improve the quality of life of this state's citizens, it is proper and appropriate for the state to undertake public interest energy research,

development, and demonstration projects that are not adequately provided for by competitive and regulated energy markets.

(c) Public interest energy research, demonstration, and development projects should advance energy science or technologies of value to California citizens and should be consistent with the policies of this chapter.

(d) It is in the best interest of the people of California for the commission to positively contribute to the overall economic climate of the state within the roles and responsibilities of the commission as defined by statute, regulation, and other official government authority, including, but not limited to, providing economic benefits to California-based entities.

(e) Public interest energy research, demonstration, and development projects should be coordinated with other related state programs and research needs to meet overall state policy objectives related to energy efficiency, environmental protection, greenhouse gas emission reduction, clean technology job creation, and climate change adaptation in the most efficient manner possible.

SEC. 4. Section 25620.5 of the Public Resources Code is amended to read:

25620.5. (a) The commission may solicit applications for awards, using a sealed competitive bid, competitive negotiation process, commission-issued intradepartmental master agreement, the methods for selection of professional services firms set forth in Chapter 10 (commencing with Section 4525) of Division 5 of Title 1 of the Government Code, interagency agreement, single source, or sole source method. When scoring teams are convened to review and score proposals, the scoring teams may include persons not employed by the commission, as long as employees of the state constitute no less than 50 percent of the membership of the scoring team. A person participating on a scoring team may not have any conflict of interest with respect to the proposal before the scoring team.

(b) A sealed bid method may be used when goods and services to be acquired can be described with sufficient specificity so that bids can be evaluated against specifications and criteria set forth in the solicitation for bids.

(c) The commission may use a competitive negotiation process in any of the following circumstances:

(1) Whenever the desired award is not for a fixed price.

(2) Whenever project specifications cannot be drafted in sufficient detail so as to be applicable to a sealed competitive bid.

(3) Whenever there is a need to compare the different price, quality, and structural factors of the bids submitted.

(4) Whenever there is a need to afford bidders an opportunity to revise their proposals.

(5) Whenever oral or written discussions with bidders concerning the technical and price aspects of their proposals will provide better results to the state.

(6) Whenever the price of the award is not the determining factor.

(d) The commission may establish interagency agreements.

(e) The commission may provide awards on a single source basis by choosing from among two or more parties or by soliciting multiple applications from parties capable of supplying or providing similar goods or services. The cost to the state shall be reasonable and the commission may only enter into a single source agreement with a particular party if the commission determines that it is in the state's best interests.

(f) The commission, in accordance with subdivision (g) and in consultation with the Department of General Services, may provide awards on a sole source basis when the cost to the state is reasonable and the commission makes any of the following determinations:

(1) The proposal was unsolicited and meets the evaluation criteria of this chapter.

(2) The expertise, service, or product is unique.

(3) A competitive solicitation would frustrate obtaining necessary information, goods, or services in a timely manner.

(4) The award funds the next phase of a multiphased proposal and the existing agreement is being satisfactorily performed.

(5) When it is determined by the commission to be in the best interests of the state.

(g) The commission may not use a sole source basis for an award pursuant to subdivision (f), unless both of the following conditions are met:

(1) The commission, at least 60 days prior to taking an action pursuant to subdivision (f), notifies the Joint Legislative Budget Committee and the relevant policy committees in both houses of the Legislature, in writing, of its intent to take the proposed action.

(2) The Joint Legislative Budget Committee either approves or does not disapprove the proposed action within 60 days from the date of notification required by paragraph (1).

(h) The commission shall give priority to California-based entities in making awards pursuant to this chapter.

(i) The provisions of this section are severable. If any provision of this section or its application is held to be invalid, that invalidity does not affect other provisions or applications that can be given effect without the invalid provision or application.

For purposes of this Section and Section 25620, "California-based entity" means either of the following:

A corporation or other business form organized for the transaction of business that has its headquarters in California and manufactures in California the product that qualifies for the incentive or award, or a corporation or other business form organized for the transaction of business that has an office for the transaction of business in California and substantially manufactures in California the product that qualifies for the incentive or award, or substantially develops within California the research that qualifies for the incentive or award, as determined by the agency issuing the incentive or award.

SEC. 5. Section 379.6 of the Public Utilities Code is amended to read:

379.6. (a) (1) The commission, in consultation with the State Energy Resources Conservation and Development Commission, shall administer, until January 1, 2012, the self-generation incentive program for distributed generation resources originally established pursuant to Chapter 329 of the Statutes of 2000.

(2) Except as provided in paragraph (3), the extension of the program pursuant to Chapter 894 of the Statutes of 2003, as amended by Chapter 675 of the Statutes of 2004 and Chapter 22 of the Statutes of 2005, shall apply to all eligible technologies, as determined by the commission, until January 1, 2008.

(3) The commission shall administer solar technologies separately, after January 1, 2007, pursuant to the California Solar Initiative adopted by the commission in Decision 06-01-024.

(b) Commencing January 1, 2008, until January 1, 2012, eligibility for the program pursuant to paragraphs (1) and (2) of subdivision (a) shall be limited to fuel cells and wind distributed generation technologies that meet or exceed the emissions standards required under the distributed generation certification program requirements of Article 3 (commencing with Section 94200) of Subchapter 8 of Chapter 1 of Division 3 of Title 17 of the California Code of Regulations.

(c) Eligibility for the self-generation incentive program's level 3 incentive category shall be subject to the following conditions:

(1) Commencing January 1, 2007, all combustion-operated distributed generation projects using fossil fuel shall meet an oxides of nitrogen (NO_x) emissions rate standard of 0.07 pounds per megawatthour and a minimum efficiency of 60 percent. A minimum efficiency of 60 percent shall be measured as useful energy output divided by fuel input. The efficiency determination shall be based on 100 percent load.

(2) Combined heat and power units that meet the 60-percent efficiency standard may take a credit to meet the applicable NO_x emissions standard

of 0.07 pounds per megawatthour. Credit shall be at the rate of one megawatthour for each 3.4 million British thermal units (Btus) of heat recovered.

(3) Notwithstanding paragraph (1), a project that does not meet the applicable NO_x emissions standard is eligible if it meets both of the following requirements:

(A) The project operates solely on waste gas. The commission shall require a customer that applies for an incentive pursuant to this paragraph to provide an affidavit or other form of proof, that specifies that the project shall be operated solely on waste gas. Incentives awarded pursuant to this paragraph shall be subject to refund and shall be refunded by the recipient to the extent the project does not operate on waste gas. As used in this paragraph, "waste gas" means natural gas that is generated as a byproduct of petroleum production operations and is not eligible for delivery to the utility pipeline system.

(B) The air quality management district or air pollution control district, in issuing a permit to operate the project, determines that operation of the project will produce an onsite net air emissions benefit, compared to permitted onsite emissions if the project does not operate. The commission shall require the customer to secure the permit prior to receiving incentives.

(d) In determining the eligibility for the self-generation incentive program, minimum system efficiency shall be determined either by calculating electrical and process heat efficiency as set forth in Section 218.5, or by calculating overall electrical efficiency.

(e) In administering the self-generation incentive program, the commission may adjust the amount of rebates, include other ultraclean and low-emission distributed generation technologies, as defined in Section 353.2, and evaluate other public policy interests, including, but not limited to, ratepayers, and energy efficiency and environmental interests.

(f) On or before November 1, 2008, the State Energy Resources Conservation and Development Commission, in consultation with the commission and the State Air Resources Board, shall evaluate the costs and benefits, including air pollution, efficiency, and transmission and distribution system improvements, of providing ratepayer subsidies for renewable and fossil fuel "ultraclean and low-emission distributed generation," as defined in Section 353.2, as part of the integrated energy policy report adopted pursuant to Chapter 4 (commencing with Section 25300) of Division 15 of the Public Resources Code. The State Energy Resources Conservation and Development Commission shall include recommendations for changes in the eligibility of technologies and fuels under the program, and whether the level of subsidy should be adjusted,

after considering its conclusions on costs and benefits pursuant to this subdivision.

(g) (1) In administering the self-generation incentive program, the commission shall provide an additional incentive of 20 percent from existing program funds for the installation of eligible distributed generation resources from a California supplier.

(2) "California supplier" as used in this subdivision means any sole proprietorship, partnership, joint venture, corporation, or other business entity that manufactures eligible distributed generation resources in California and that meets either of the following criteria:

(A) The owners or policymaking officers are domiciled in California and the permanent principal office, or place of business from which the supplier's trade is directed or managed, is located in California.

(B) A business or corporation, including those owned by, or under common control of, a corporation, that meets all of the following criteria continuously during the five years prior to providing eligible distributed generation resources to a self-generation incentive program recipient:

(i) Owns and operates a manufacturing facility located in California that builds or manufactures eligible distributed generation resources.

(ii) Is licensed by the state to conduct business within the state.

(iii) Employs California residents for work within the state.

(3) For purposes of qualifying as a California supplier, a distribution or sales management office or facility does not qualify as a manufacturing facility.

SEC. 5.5. Section 3.5 of this bill incorporates amendments to Section 25620 of the Public Resources Code proposed by both this bill and SB 1760. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2009, (2) each bill amends Section 25620 of the Public Resources Code, and (3) this bill is enacted after SB 1760, in which case Section 3 of this bill shall not become operative.

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

CHAPTER 538

An act to amend Section 73 of the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

[Approved by Governor September 28, 2008. Filed with Secretary of State September 28, 2008.]

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

SECTION 1. Section 73 of the Revenue and Taxation Code is amended to read:

73. (a) Pursuant to the authority granted to the Legislature pursuant to paragraph (1) of subdivision (c) of Section 2 of Article XIII A of the California Constitution, the term "newly constructed," as used in subdivision (a) of Section 2 of Article XIII A of the California Constitution, does not include the construction or addition of any active solar energy system, as defined in subdivision (b).

(b) (1) "Active solar energy system" means a system that uses solar devices, which are thermally isolated from living space or any other area where the energy is used, to provide for the collection, storage, or distribution of solar energy.

(2) "Active solar energy system" does not include solar swimming pool heaters or hot tub heaters.

(3) Active solar energy systems may be used for any of the following:

(A) Domestic, recreational, therapeutic, or service water heating.

(B) Space conditioning.

(C) Production of electricity.

(D) Process heat.

(E) Solar mechanical energy.

(c) For purposes of this section, "occupy or use" has the same meaning as defined in Section 75.12.

(d) (1) (A) The Legislature finds and declares that the definition of spare parts in this paragraph is declarative of the intent of the Legislature, in prior statutory enactments of this section that excluded active solar energy systems from the term "newly constructed," as used in the California Constitution, thereby creating a tax appraisal exclusion.

(B) An active solar energy system that uses solar energy in the production of electricity includes storage devices, power conditioning equipment, transfer equipment, and parts related to the functioning of those items. In general, the use of solar energy in the production of electricity involves the transformation of sunlight into electricity through the use of devices such as solar cells or other solar collecting equipment.

However, an active solar energy system used in the production of electricity includes only equipment used up to, but not including, the stage of conveyance or use of the electricity. For the purpose of this paragraph, the term "parts" includes spare parts that are owned by the owner of, or the maintenance contractor for, an active solar energy system that uses solar energy in the production of electricity and which spare parts were specifically purchased, designed, or fabricated by or for that owner or maintenance contractor for installation in an active solar energy system that uses solar energy in the production of electricity, thereby including those parts in the tax appraisal exclusion created by this section.

(2) An active solar energy system that uses solar energy in the production of electricity also includes pipes and ducts that are used exclusively to carry energy derived from solar energy. Pipes and ducts that are used to carry both energy derived from solar energy and from energy derived from other sources are active solar energy system property only to the extent of 75 percent of their full cash value.

(3) An active solar energy system that uses solar energy in the production of electricity does not include auxiliary equipment, such as furnaces and hot water heaters, that use a source of power other than solar energy to provide usable energy. An active solar energy system that uses solar energy in the production of electricity does include equipment, such as ducts and hot water tanks, that is utilized by both auxiliary equipment and solar energy equipment, that is, dual use equipment. That equipment is active solar energy system property only to the extent of 75 percent of its full cash value.

(e) (1) Notwithstanding any other law, for purposes of this section, "the construction or addition of any active solar energy system" includes the construction of an active solar energy system incorporated by the owner-builder in the initial construction of a new building that the owner-builder does not intend to occupy or use. The exclusion from "newly constructed" provided by this subdivision applies to the initial purchaser who purchased the new building from the owner-builder, but only if the owner-builder did not receive an exclusion under this section for the same active solar energy system and only if the initial purchaser purchased the new building prior to that building becoming subject to reassessment to the owner-builder, as described in subdivision (d) of Section 75.12. The assessor shall administer this subdivision in the following manner:

(A) The initial purchaser of the building shall file a claim with the assessor and provide to the assessor any documents necessary to identify the value attributable to the active solar energy system included in the purchase price of the new building. The claim shall also identify the amount of any rebate for the active solar energy system provided to

either the owner-builder or the initial purchaser by the Public Utilities Commission, the State Energy Resources Conservation and Development Commission, an electrical corporation, a local publicly owned electric utility, or any other agency of the State of California.

(B) The assessor shall evaluate the claim and determine the portion of the purchase price that is attributable to the active solar energy system. The assessor shall then reduce the new base year value established as a result of the change in ownership of the new building by an amount equal to the difference between the following two amounts:

(i) That portion of the value of the new building attributable to the active solar energy system.

(ii) The total amount of all rebates, if any, described in subparagraph (A) that were provided to either the owner-builder or the initial purchaser.

(C) The extension of the new construction exclusion to the initial purchaser of a newly constructed new building shall remain in effect only until there is a subsequent change in ownership of the new building.

(2) The State Board of Equalization, in consultation with the California Assessors' Association, shall prescribe the manner, documentation, and form for claiming the new construction exclusion required by this subdivision.

(f) This section applies to property tax lien dates for the 1999–2000 fiscal year to the 2015–16 fiscal year, inclusive.

(g) The amendments made to this section by the act that added this subdivision apply beginning with the lien date for the 2008–09 fiscal year.

(h) This section shall remain in effect only until January 1, 2017, and as of that date is repealed.

SEC. 2. Notwithstanding Section 2229 of the Revenue and Taxation Code, no appropriation is made by this act and the state shall not reimburse any local agency for any property tax revenues lost by it pursuant to this act.

SEC. 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.

SEC. 4. The provisions of this act are severable. If any provision of this act or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

SEC. 5. This act provides for a tax levy within the meaning of Article IV of the Constitution and shall go into immediate effect.

CHAPTER 539

An act to amend Section 714 of the Civil Code, relating to solar energy.

[Approved by Governor September 28, 2008. Filed with Secretary of State September 28, 2008.]

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

SECTION 1. Section 714 of the Civil Code is amended to read:

714. (a) Any covenant, restriction, or condition contained in any deed, contract, security instrument, or other instrument affecting the transfer or sale of, or any interest in, real property that effectively prohibits or restricts the installation or use of a solar energy system is void and unenforceable.

(b) This section does not apply to provisions that impose reasonable restrictions on solar energy systems. However, it is the policy of the state to promote and encourage the use of solar energy systems and to remove obstacles thereto. Accordingly, reasonable restrictions on a solar energy system are those restrictions that do not significantly increase the cost of the system or significantly decrease its efficiency or specified performance, or that allow for an alternative system of comparable cost, efficiency, and energy conservation benefits.

(c) (1) A solar energy system shall meet applicable health and safety standards and requirements imposed by state and local permitting authorities.

(2) A solar energy system for heating water shall be certified by the Solar Rating Certification Corporation (SRCC) or other nationally recognized certification agencies. SRCC is a nonprofit third party supported by the United States Department of Energy. The certification shall be for the entire solar energy system and installation.

(3) A solar energy system for producing electricity shall also meet all applicable safety and performance standards established by the National Electrical Code, the Institute of Electrical and Electronics Engineers, and accredited testing laboratories such as Underwriters Laboratories and, where applicable, rules of the Public Utilities Commission regarding safety and reliability.

(d) For the purposes of this section:

(1) (A) For solar domestic water heating systems or solar swimming pool heating systems that comply with state and federal law, "significantly" means an amount exceeding 20 percent of the cost of the system or decreasing the efficiency of the solar energy system by an amount exceeding 20 percent, as originally specified and proposed.

(B) For photovoltaic systems that comply with state and federal law, "significantly" means an amount not to exceed two thousand dollars ($2,000) over the system cost as originally specified and proposed, or a decrease in system efficiency of an amount exceeding 20 percent as originally specified and proposed.

(2) "Solar energy system" has the same meaning as defined in paragraphs (1) and (2) of subdivision (a) of Section 801.5.

(e) (1) Whenever approval is required for the installation or use of a solar energy system, the application for approval shall be processed and approved by the appropriate approving entity in the same manner as an application for approval of an architectural modification to the property, and shall not be willfully avoided or delayed.

(2) For an approving entity that is a homeowners' association, as defined in subdivision (a) of Section 1351, and that is not a public entity, both of the following shall apply:

(A) The approval or denial of an application shall be in writing.

(B) If an application is not denied in writing within 60 days from the date of receipt of the application, the application shall be deemed approved, unless that delay is the result of a reasonable request for additional information.

(f) Any entity, other than a public entity, that willfully violates this section shall be liable to the applicant or other party for actual damages occasioned thereby, and shall pay a civil penalty to the applicant or other party in an amount not to exceed one thousand dollars ($1,000).

(g) In any action to enforce compliance with this section, the prevailing party shall be awarded reasonable attorney's fees.

(h) (1) A public entity that fails to comply with this section may not receive funds from a state-sponsored grant or loan program for solar energy. A public entity shall certify its compliance with the requirements of this section when applying for funds from a state-sponsored grant or loan program.

(2) A local public entity may not exempt residents in its jurisdiction from the requirements of this section.

SEC. 2. Section 714 of the Civil Code is amended to read:

714. (a) Any covenant, restriction, or condition contained in any deed, contract, security instrument, or other instrument affecting the transfer or sale of, or any interest in, real property, and any provision of a governing document, as defined in subdivision (j) of Section 1351,

that effectively prohibits or restricts the installation or use of a solar energy system is void and unenforceable.

(b) This section does not apply to provisions that impose reasonable restrictions on solar energy systems. However, it is the policy of the state to promote and encourage the use of solar energy systems and to remove obstacles thereto. Accordingly, reasonable restrictions on a solar energy system are those restrictions that do not significantly increase the cost of the system or significantly decrease its efficiency or specified performance, or that allow for an alternative system of comparable cost, efficiency, and energy conservation benefits.

(c) (1) A solar energy system shall meet applicable health and safety standards and requirements imposed by state and local permitting authorities.

(2) A solar energy system for heating water shall be certified by the Solar Rating Certification Corporation (SRCC) or other nationally recognized certification agencies. SRCC is a nonprofit third party supported by the United States Department of Energy. The certification shall be for the entire solar energy system and installation.

(3) A solar energy system for producing electricity shall also meet all applicable safety and performance standards established by the National Electrical Code, the Institute of Electrical and Electronics Engineers, and accredited testing laboratories such as Underwriters Laboratories and, where applicable, rules of the Public Utilities Commission regarding safety and reliability.

(d) For the purposes of this section:

(1) (A) For solar domestic water heating systems or solar swimming pool heating systems that comply with state and federal law, "significantly" means an amount exceeding 20 percent of the cost of the system or decreasing the efficiency of the solar energy system by an amount exceeding 20 percent, as originally specified and proposed.

(B) For photovoltaic systems that comply with state and federal law, "significantly" means an amount not to exceed two thousand dollars ($2,000) over the system cost as originally specified and proposed, or a decrease in system efficiency of an amount exceeding 20 percent as originally specified and proposed.

(2) "Solar energy system" has the same meaning as defined in paragraphs (1) and (2) of subdivision (a) of Section 801.5.

(e) (1) Whenever approval is required for the installation or use of a solar energy system, the application for approval shall be processed and approved by the appropriate approving entity in the same manner as an application for approval of an architectural modification to the property, and shall not be willfully avoided or delayed.

(2) For an approving entity that is a homeowners' association, as defined in subdivision (a) of Section 1351, and that is not a public entity, both of the following shall apply:

(A) The approval or denial of an application shall be in writing.

(B) If an application is not denied in writing within 60 days from the date of receipt of the application, the application shall be deemed approved, unless that delay is the result of a reasonable request for additional information.

(f) Any entity, other than a public entity, that willfully violates this section shall be liable to the applicant or other party for actual damages occasioned thereby, and shall pay a civil penalty to the applicant or other party in an amount not to exceed one thousand dollars ($1,000).

(g) In any action to enforce compliance with this section, the prevailing party shall be awarded reasonable attorney's fees.

(h) (1) A public entity that fails to comply with this section may not receive funds from a state-sponsored grant or loan program for solar energy. A public entity shall certify its compliance with the requirements of this section when applying for funds from a state-sponsored grant or loan program.

(2) A local public entity may not exempt residents in its jurisdiction from the requirements of this section.

SEC. 3. Section 2 of this bill incorporates amendments to Section 714 of the Civil Code proposed by both this bill and AB 1892. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2009, (2) each bill amends Section 714 of the Civil Code, and (3) this bill is enacted after AB 1892, in which case Section 1 of this bill shall not become operative.

CHAPTER 540

An act to add Chapter 7.5 (commencing with Section 2830) to Part 2 of Division 1 of the Public Utilities Code, relating to energy.

[Approved by Governor September 28, 2008. Filed with Secretary of State September 28, 2008.]

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

SECTION 1. Chapter 7.5 (commencing with Section 2830) is added to Part 2 of Division 1 of the Public Utilities Code, to read:

Chapter 7.5. Local Government Renewable Energy Self-Generation Program

2830. (a) As used in this section, the following terms have the following meanings:

(1) "Benefiting account" means an electricity account, or more than one account, located within the geographical boundaries of a local government, that is mutually agreed upon by the local government and an electrical corporation.

(2) "Bill credit" means an amount of money credited to a benefiting account that is calculated based upon the time-of-use electricity generation component of the electricity usage charge of the generating account, multiplied by the quantities of electricity generated by an eligible renewable generating facility that are exported to the grid during the corresponding time period. Electricity is exported to the grid if it is generated by an eligible renewable generating facility, is not utilized onsite by the local government, and the electricity flows through the meter site and on to the electrical corporation's distribution or transmission infrastructure.

(3) "Eligible renewable generating facility" means a generation facility that has a generating capacity of no more than one megawatt, is an eligible renewable energy resource pursuant to the California Renewables Portfolio Standard Program, is located within the geographical boundary of, and is owned, operated, or on property under the control of, the local government, and is sized to offset all or part of the electrical load of the benefiting account. For these purposes, premises that are leased by a local government are under the control of the local government.

(4) "Generating account" means the time-of-use electric service account of the local government where the eligible renewable generating facility is located.

(5) "Local government" means a city, county, whether general law or chartered, city and county, special district, school district, political subdivision, or other local public agency, if authorized by law to generate electricity, but shall not mean the state, any agency or department of the state, or joint powers authority.

(b) Subject to the limitation in subdivision (h), a local government may elect to receive electric service pursuant to this section, if all of the following conditions are met:

(1) The local government designates one or more benefiting accounts to receive a bill credit.

(2) A benefiting account receives service under a time-of-use rate schedule.

(3) The benefiting account is the responsibility of, and serves property that is owned, operated, or on property under the control of the same local government that owns, operates, or controls the eligible renewable generating facility.

(4) The electrical output of the eligible renewable generating facility is metered for time of use to allow calculation of the bill credit based upon when the electricity is exported to the grid.

(5) All costs associated with the metering requirements of paragraphs (2) and (4) are the responsibility of the local government.

(6) All costs associated with interconnection are the responsibility of the local government. For purposes of this paragraph, "interconnection" has the same meaning as defined in Section 2803, except that it applies to the interconnection of an eligible renewable generating facility rather than the energy source of a private energy producer.

(7) The local government does not sell electricity exported to the electrical grid to a third party.

(8) All electricity exported to the grid by the local government that is generated by the eligible renewable generating facility becomes the property of the electrical corporation to which the facility is interconnected, but shall not be counted toward the electrical corporation's total retail sales for purposes of Article 16 (commencing with Section 399.11) of Chapter 2.3 of Part 1. Ownership of the renewable energy credits, as defined in Section 399.12, shall be the same as the ownership of the renewable energy credits associated with electricity that is net metered pursuant to Section 2827.

(c) (1) A benefiting account shall be billed for all electricity usage, and for each bill component, at the rate schedule applicable to the benefiting account, including any cost-responsibility surcharge or other cost recovery mechanism, as determined by the commission, to reimburse the Department of Water Resources for purchases of electricity, pursuant to Division 27 (commencing with Section 80000) of the Water Code.

(2) The bill shall then subtract the bill credit applicable to the benefiting account. The generation component credited to the benefiting account may not include the cost-responsibility surcharge or other cost recovery mechanism, as determined by the commission, to reimburse the Department of Water Resources for purchases of electricity, pursuant to Division 27 (commencing with Section 80000) of the Water Code. The electrical corporation shall ensure that the local government receives the full bill credit.

(3) If, during the billing cycle, the generation component of the electricity usage charges exceeds the bill credit, the benefiting account shall be billed for the difference.

(4) If, during the billing cycle, the bill credit applied pursuant to paragraph (2) exceeds the generation component of the electricity usage charges, the difference shall be carried forward as a financial credit to the next billing cycle.

(5) After the electricity usage charge pursuant to paragraph (1) and the credit pursuant to paragraph (2) are determined for the last billing cycle of a 12-month period, any remaining credit resulting from the application of this section shall be reset to zero.

(d) The commission shall ensure that the transfer of a bill credit to a benefiting account does not result in a shifting of costs to bundled service subscribers. The costs associated with the transfer of a bill credit shall include all billing-related expenses.

(e) Not more frequently than once per year, and upon providing the electrical corporation with a minimum of 60 days' notice, the local government may elect to change a benefiting account. Any credit resulting from the application of this section earned prior to the change in a benefiting account that has not been used as of the date of the change in the benefiting account, shall be applied, and may only be applied, to a benefiting account as changed.

(f) A local government shall provide the electrical corporation to which the eligible renewable generating facility will be interconnected with not less than 60 days' notice prior to the eligible renewable generating facility becoming operational. The electrical corporation shall file an advice letter with the commission, that complies with this section, not later than 30 days after receipt of the notice, proposing a rate tariff for a benefiting account. The commission, within 30 days of the date of filing, shall approve the proposed tariff, or specify conforming changes to be made by the electrical corporation to be filed in a new advice letter.

(g) The local government may terminate its election pursuant to subdivision (b), upon providing the electrical corporation with a minimum of 60 days' notice. Should the local government sell its interest in the eligible renewable generating facility, or sell the electricity generated by the eligible renewable generating facility, in a manner other than required by this section, upon the date of either event, and the earliest date if both events occur, no further bill credit pursuant to paragraph (3) of subdivision (b) may be earned. Only credit earned prior to that date shall be made to a benefiting account.

(h) An electrical corporation is not obligated to provide a bill credit to a benefiting account that is not designated by a local government prior to the point in time that the combined statewide cumulative rated generating capacity of all eligible renewable generating facilities within the service territories of the state's three largest electrical corporations reaches 250 megawatts. Only those eligible renewable generating

facilities that are providing bill credits to benefiting accounts pursuant to this section shall count toward reaching this 250-megawatt limitation. Each electrical corporation shall only be required to offer service or contracts under this section until that electrical corporation reaches its proportionate share of the 250-megawatt limitation based on the ratio of its peak demand to the total statewide peak demand of all electrical corporations.

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 541

An act to amend Section 2851 of the Public Utilities Code, relating to solar energy.

[Approved by Governor September 28, 2008. Filed with Secretary of State September 28, 2008.]

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

SECTION 1. Section 2851 of the Public Utilities Code is amended to read:

2851. (a) In implementing the California Solar Initiative, the commission shall do all of the following:

(1) The commission shall authorize the award of monetary incentives for up to the first megawatt of alternating current generated by solar energy systems that meet the eligibility criteria established by the State Energy Resources Conservation and Development Commission pursuant to Chapter 8.8 (commencing with Section 25780) of Division 15 of the Public Resources Code. The commission shall determine the eligibility of a solar energy system, as defined in Section 25781 of the Public Resources Code, to receive monetary incentives until the time the State Energy Resources Conservation and Development Commission establishes eligibility criteria pursuant to Section 25782. Monetary incentives shall not be awarded for solar energy systems that do not meet the eligibility criteria. The incentive level authorized by the commission

shall decline each year following implementation of the California Solar Initiative, at a rate of no less than an average of 7 percent per year, and shall be zero as of December 31, 2016. The commission shall adopt and publish a schedule of declining incentive levels no less than 30 days in advance of the first decline in incentive levels. The commission may develop incentives based upon the output of electricity from the system, provided those incentives are consistent with the declining incentive levels of this paragraph and the incentives apply to only the first megawatt of electricity generated by the system.

(2) The commission shall adopt a performance-based incentive program so that by January 1, 2008, 100 percent of incentives for solar energy systems of 100 kilowatts or greater and at least 50 percent of incentives for solar energy systems of 30 kilowatts or greater are earned based on the actual electrical output of the solar energy systems. The commission shall encourage, and may require, performance-based incentives for solar energy systems of less than 30 kilowatts. Performance-based incentives shall decline at a rate of no less than an average of 7 percent per year. In developing the performance-based incentives, the commission may:

(A) Apply performance-based incentives only to customer classes designated by the commission.

(B) Design the performance-based incentives so that customers may receive a higher level of incentives than under incentives based on installed electrical capacity.

(C) Develop financing options that help offset the installation costs of the solar energy system, provided that this financing is ultimately repaid in full by the consumer or through the application of the performance-based rebates.

(3) By January 1, 2008, the commission, in consultation with the State Energy Resources Conservation and Development Commission, shall require reasonable and cost-effective energy efficiency improvements in existing buildings as a condition of providing incentives for eligible solar energy systems, with appropriate exemptions or limitations to accommodate the limited financial resources of low-income residential housing.

(4) Notwithstanding subdivision (g) of Section 2827, the commission may develop a time-variant tariff that creates the maximum incentive for ratepayers to install solar energy systems so that the system's peak electricity production coincides with California's peak electricity demands and that assures that ratepayers receive due value for their contribution to the purchase of solar energy systems and customers with solar energy systems continue to have an incentive to use electricity efficiently. In developing the time-variant tariff, the commission may

exclude customers participating in the tariff from the rate cap for residential customers for existing baseline quantities or usage by those customers of up to 130 percent of existing baseline quantities, as required by Section 80110 of the Water Code. Nothing in this paragraph authorizes the commission to require time-variant pricing for ratepayers without a solar energy system.

(b) Notwithstanding subdivision (a), in implementing the California Solar Initiative, the commission may authorize the award of monetary incentives for solar thermal and solar water heating devices, in a total amount up to one hundred million eight hundred thousand dollars ($100,800,000).

(c) (1) In implementing the California Solar Initiative, the commission shall not allocate more than fifty million dollars ($50,000,000) to research, development, and demonstration that explores solar technologies and other distributed generation technologies that employ or could employ solar energy for generation or storage of electricity or to offset natural gas usage. Any program that allocates additional moneys to research, development, and demonstration shall be developed in collaboration with the Energy Commission to ensure there is no duplication of efforts, and adopted by the commission through a rulemaking or other appropriate public proceeding. Any grant awarded by the commission for research, development, and demonstration shall be approved by the full commission at a public meeting. This subdivision does not prohibit the commission from continuing to allocate moneys to research, development, and demonstration pursuant to the self-generation incentive program for distributed generation resources originally established pursuant to Chapter 329 of the Statutes of 2000, as modified pursuant to Section 379.6.

(2) The Legislature finds and declares that a program that provides a stable source of monetary incentives for eligible solar energy systems will encourage private investment sufficient to make solar technologies cost effective.

(3) On or before June 30, 2009, and by June 30th of every year thereafter, the commission shall submit to the Legislature an assessment of the success of the California Solar Initiative program. That assessment shall include the number of residential and commercial sites that have installed solar thermal devices for which an award was made pursuant to subdivision (b) and the dollar value of the award, the number of residential and commercial sites that have installed solar energy systems, the electrical generating capacity of the installed solar energy systems, the cost of the program, total electrical system benefits, including the effect on electrical service rates, environmental benefits, how the program affects the operation and reliability of the electrical grid, how the program

has affected peak demand for electricity, the progress made toward reaching the goals of the program, whether the program is on schedule to meet the program goals, and recommendations for improving the program to meet its goals. If the commission allocates additional moneys to research, development, and demonstration that explores solar technologies and other distributed generation technologies pursuant to paragraph (1), the commission shall include in the assessment submitted to the Legislature, a description of the program, a summary of each award made or project funded pursuant to the program, including the intended purposes to be achieved by the particular award or project, and the results of each award or project.

(d) (1) The commission shall not impose any charge upon the consumption of natural gas, or upon natural gas ratepayers, to fund the California Solar Initiative.

(2) Notwithstanding any other provision of law, any charge imposed to fund the program adopted and implemented pursuant to this section shall be imposed upon all customers not participating in the California Alternate Rates for Energy (CARE) or family electric rate assistance (FERA) programs as provided in paragraph (2), including those residential customers subject to the rate cap required by Section 80110 of the Water Code for existing baseline quantities or usage up to 130 percent of existing baseline quantities of electricity.

(3) The costs of the program adopted and implemented pursuant to this section may not be recovered from customers participating in the California Alternate Rates for Energy or CARE program established pursuant to Section 739.1, except to the extent that program costs are recovered out of the nonbypassable system benefits charge authorized pursuant to Section 399.8.

(e) In implementing the California Solar Initiative, the commission shall ensure that the total cost over the duration of the program does not exceed three billion three hundred fifty million eight hundred thousand dollars ($3,350,800,000). The financial components of the California Solar Initiative shall consist of the following:

(1) Programs under the supervision of the commission funded by charges collected from customers of San Diego Gas and Electric Company, Southern California Edison Company, and Pacific Gas and Electric Company. The total cost over the duration of these programs shall not exceed two billion one hundred sixty-six million eight hundred thousand dollars ($2,166,800,000) and includes moneys collected directly into a tracking account for support of the California Solar Initiative and moneys collected into other accounts that are used to further the goals of the California Solar Initiative.

(2) Programs adopted, implemented, and financed in the amount of seven hundred eighty-four million dollars ($784,000,000), by charges collected by local publicly owned electric utilities pursuant to Section 387.5. Nothing in this subdivision shall give the commission power and jurisdiction with respect to a local publicly owned electric utility or its customers.

(3) Programs for the installation of solar energy systems on new construction, administered by the State Energy Resources Conservation and Development Commission pursuant to Chapter 8.6 (commencing with Section 25740) of Division 15 of the Public Resources Code, and funded by nonbypassable charges in the amount of four hundred million dollars ($400,000,000), collected from customers of San Diego Gas and Electric Company, Southern California Edison Company, and Pacific Gas and Electric Company pursuant to Article 15 (commencing with Section 399).

CHAPTER 542

An act to add Section 2851.5 to the Public Utilities Code, relating to energy.

[Approved by Governor September 28, 2008. Filed with Secretary of State September 28, 2008.]

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

SECTION 1. Section 2851.5 is added to the Public Utilities Code, to read:

2851.5. (a) A school district or community college district may request an extension of a reservation expiration date for monetary incentives for a solar energy system. The commission may grant a maximum of three extensions of 180 calendar days for each extension.

(b) An extension request pursuant to subdivision (a) shall be made in writing, submitted to the program administrators, and shall include a written explanation of the need for the extension and the amount of additional time needed. In describing the need for the time extension request, the school district or community college district shall provide information on the circumstances, that are beyond the control of the district, that prevent the solar energy system from being installed as previously described in the initial reservation request. A failure to submit the incentive claim form package by the original or extended reservation expiration date shall result in the cancellation of the request.

(c) An approval of a request for a change in the reservation expiration date for monetary incentives for a solar energy system shall not modify any other condition of a reservation for incentives.

CHAPTER 543

An act to amend Sections 26003, 26011, 26011.6, and 26022 of, and to add Section 26001.5 to, the Public Resources Code, relating to energy.

[Approved by Governor September 28, 2008. Filed with Secretary of State September 28, 2008.]

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

SECTION 1. Section 26001.5 is added to the Public Resources Code, to read:

26001.5. (a) It is the intent of the Legislature, in enacting Senate Bill 1754 of the 2008–09 Regular Session, to only provide authority for the California Alternative Energy and Advanced Transportation Financing Authority to use bonds to finance power purchase agreement arrangements, and not to alter or supersede other provisions of law addressing criteria associated with energy generation or advanced transportation technologies, such as direct-access, the use, size, or statewide caps, or the net-metering or feed-in tariff provisions.

(b) When the authority uses bonds to finance the power purchase agreements, the construction, alteration, demolition, installation, repair, and maintenance work on the projects financed by the arrangements are subject to Chapter 1 (commencing with Section 1720) of Part 7 of Division 2 of the Labor Code and the authority shall incorporate reference to that provision in its agreements with participating parties.

SEC. 2. Section 26003 of the Public Resources Code is amended to read:

26003. As used in this division, unless the context otherwise requires:

(a) "Authority" means the California Alternative Energy and Advanced Transportation Financing Authority established pursuant to Section 26004, and any board, commission, department, or officer succeeding to the functions of the authority, or to which the powers conferred upon the authority by this division shall be given.

(b) "Cost" as applied to a project or portion thereof financed under this division means all or part of the cost of construction and acquisition of all lands, structures, real or personal property or an interest therein, rights, rights-of-way, franchises, easements, and interests acquired or

used for a project; the cost of demolishing or removing any buildings or structures on land so acquired, including the cost of acquiring any lands to which those buildings or structures may be moved; the cost of all machinery, equipment, and furnishings, financing charges, interest prior to, during, and for a period after, completion of construction as determined by the authority; the cost of the purchase or sale of energy derived from an alternative source pursuant to subdivision (g) of Section 26011; provisions for working capital; reserves for principal and interest and for extensions, enlargements, additions, replacements, renovations, and improvements; the cost of architectural, engineering, financial, accounting, auditing and legal services, plans, specifications, estimates, administrative expenses, and other expenses necessary or incident to determining the feasibility of constructing any project or incident to the construction, acquisition, or financing of a project.

(c) (1) "Alternative sources" means the application of cogeneration technology, as defined in Section 25134; the conservation of energy; or the use of solar, biomass, wind, geothermal, hydroelectricity under 30 megawatts, or any other source of energy, the efficient use of which will reduce the use of fossil and nuclear fuels, and is intended primarily to offset part or all of the customer's own electrical requirements.

(2) "Alternative sources" does not include a hydroelectric facility that does not meet state laws pertaining to the control, appropriation, use, and distribution of water, including, but not limited to, the obtaining of applicable licenses and permits.

(d) "Advanced transportation technologies" means emerging commercially competitive transportation-related technologies identified by the authority as capable of creating long-term, high value-added jobs for Californians while enhancing the state's commitment to energy conservation, pollution reduction, and transportation efficiency. Those technologies may include, but are not limited to, any of the following:

(1) Intelligent vehicle highway systems.

(2) Advanced telecommunications for transportation.

(3) Command, control, and communications for public transit vehicles and systems.

(4) Electric vehicles and ultralow-emission vehicles.

(5) High-speed rail and magnetic levitation passenger systems.

(6) Fuel cells.

(e) "Financial assistance" includes, but is not limited to, either, or any combination, of the following:

(1) Loans, loan loss reserves, interest rate reductions, proceeds of bonds issued by the authority, insurance, guarantees or other credit enhancements or liquidity facilities, contributions of money, property,

labor, or other items of value, or any combination thereof, as determined by, and approved by the resolution of, the board.

(2) Any other type of assistance the authority determines is appropriate.

(f) "Participating party" means either of the following:

(1) A person or an entity or group of entities engaged in business or operations in the state, whether organized for profit or not for profit, that does either of the following:

(A) Applies for financial assistance from the authority for the purpose of implementing a project in a manner prescribed by the authority.

(B) Participates in the purchase or sale of energy derived from an alternative source pursuant to subdivision (g) of Section 26011.

(2) A public agency or nonprofit corporation that does either of the following:

(A) Applies for financial assistance from the authority for the purpose of implementing a project in a manner prescribed by the authority.

(B) Participates in the purchase or sale of energy derived from an alternative source pursuant to subdivision (g) of Section 26011.

(g) "Project" means a land, building, improvement to the land or building, rehabilitation, work, property, or structure, real or personal, stationary or mobile, including, but not limited to, machinery and equipment, whether or not in existence or under construction, that utilizes, or is designed to utilize, an alternative source, or that is utilized for the design, technology transfer, manufacture, production, assembly, distribution, or service of advanced transportation technologies, or an arrangement for the purchase, including prepayment, or sale of energy derived from an alternative source pursuant to subdivision (g) of Section 26011.

(h) "Public agency" means a federal or state agency, department, board, authority, state or community college, university, or commission, or a county, city and county, city, regional agency, public district, school district, or other political entity.

(i) (1) "Renewable energy" means a device or technology that conserves or produces heat, processes heat, space heating, water heating, steam, space cooling, refrigeration, mechanical energy, electricity, or energy in any form convertible to these uses, that does not expend or use conventional energy fuels, and that uses any of the following electrical generation technologies:

(A) Biomass.

(B) Solar thermal.

(C) Photovoltaic.

(D) Wind.

(E) Geothermal.

(2) For purposes of this subdivision, "conventional energy fuel" means any fuel derived from petroleum deposits, including, but not limited to, oil, heating oil, gasoline, fuel oil, or natural gas, including liquefied natural gas, or nuclear fissionable materials.

(3) Notwithstanding paragraph (1), for purposes of this section, "renewable energy" also means ultralow-emission equipment for energy generation based on thermal energy systems such as natural gas turbines and fuel cells.

(j) "Revenue" means all rents, receipts, purchase payments, loan repayments, and all other income or receipts derived by the authority from a project, or the sale, lease, or other disposition of alternative source or advanced transportation technology facilities, or the making of loans to finance alternative source or advanced transportation technology facilities, and any income or revenue derived from the investment of money in any fund or account of the authority.

SEC. 3. Section 26011 of the Public Resources Code is amended to read:

26011. The authority is authorized and empowered:

(a) To adopt an official seal.

(b) To sue and be sued in its own name.

(c) To issue bonds, notes, bond anticipation notes, and other obligations of the authority, including, at the option of the authority, obligations bearing interest that is taxable for purposes of federal income taxation, for any of its purposes and to fund or refund the same, all as provided in this division.

(d) To determine the location and character of a project to be financed under the provisions of this division, to lend financial assistance to a participating party, to enter into loan agreements with a participating party for the financing of a project including creating a lien or security interest in the property, to construct, reconstruct, renovate, replace, lease, as lessor or lessee, and regulate the same, and to enter into contracts for the sale of a project, including installment sales or sales under conditional sales contracts.

(e) To fix fees and charges for projects, and interest rates with respect to loans for projects, and to revise from time to time the fees and charges and interest rates, and to collect rates, rents, fees, and charges for the use of, and for a facility or service furnished, or to be furnished, by a project or part of the project and to contract with a person, partnership, association, corporation, or public agency with respect to the project, and to fix the terms and conditions upon which a project may be sold or disposed of, whether upon installment sales contracts or otherwise.

(f) To employ and fix the compensation of bond counsel, financial consultants, and advisers as may be necessary in its judgment in

connection with the issuance and sale of any bonds, notes, bond anticipation notes, or other obligations of the authority; to contract for engineering, architectural, accounting, or other services of appropriate state agencies as may be necessary in the judgment of the authority for the successful development of a project; and to pay the reasonable costs of consulting engineers, architects, accountants, and construction experts employed by a participating party if, in the judgment of the authority, the services are necessary to the successful development of a project, and the services are not obtainable from a state agency.

(g) To purchase alternative source energy or projects from a person or entity for sale to a participating party, or to make a loan to a participating party to purchase alternative source energy or projects, or to purchase from a person or entity that has contracted to sell alternative source energy to a participating party the right to receive purchase payments and related rights under that contract or any related contracts. Notwithstanding any other applicable law, the authority and a public agency, for purposes of a program or financing, shall have the power to enter into contractual arrangements and related agreements or instruments, including, without limitation, a prepayment purchase contract, lease, loan, construction, security, operation and maintenance, or other agreement or instrument, with the authority or with a participating party, upon the terms and subject to the conditions that may be necessary or convenient to accomplish the purposes of this subdivision.

(h) To do all things generally necessary or convenient to carry out the purposes of this division.

SEC. 4. Section 26011.6 of the Public Resources Code is amended to read:

26011.6. (a) The authority shall establish a renewable energy program to provide financial assistance to public power entities, independent generators, utilities, or businesses manufacturing components or systems, or both, to generate new and renewable energy sources, develop clean and efficient distributed generation, and demonstrate the economic feasibility of new technologies, such as solar, photovoltaic, wind, and ultralow-emission equipment. The authority shall give preference to utility-scale projects that can be rapidly deployed to provide a significant contribution as a renewable energy supply. The program established pursuant to this subdivision shall include financial assistance provided pursuant to subdivision (g) of Section 26011.

(b) The authority shall make every effort to expedite the operation of renewable energy systems, and shall adopt regulations for purposes of this section and Section 26011.5 as emergency regulations in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division

3 of Title 2 of the Government Code. For purposes of that Chapter 3.5, including Section 11349.6 of the Government Code, the adoption of the regulations shall be considered by the Office of Administrative Law to be necessary for the immediate preservation of the public peace, health and safety, and general welfare. Notwithstanding the 120-day limitation specified in subdivision (e) of Section 11346.1 of the Government Code, the regulations shall be repealed 180 days after their effective date, unless the authority complies with Sections 11346.2 to 11347.3, inclusive, as provided in subdivision (e) of Section 11346.1 of the Government Code.

(c) The authority shall consult with the State Energy Resources Conservation and Development Commission regarding the financing of projects to avoid duplication of other renewable energy projects.

(d) The authority shall ensure that any financed project shall offer its power within California on a long-term contract basis.

(e) The authority shall ensure that a financed project is limited to resources that the authority determines support the state's goals for the reduction of emissions of greenhouse gases pursuant to the California Global Warming Solutions Act of 2006 (Division 25.5 (commencing with Section 38500) of the Health and Safety Code).

SEC. 5. Section 26022 of the Public Resources Code is amended to read:

26022. (a) The authority is authorized from time to time to issue its negotiable bonds, notes, debentures, or other securities (hereinafter collectively called "bonds") for any of its purposes. The bonds may be authorized, without limiting the generality of the foregoing, to finance a single project for a single participating party, a series of projects for a single participating party, a single project for several participating parties, or several projects for several participating parties, or the purchase and sale of alternative source energy or projects pursuant to subdivision (g) of Section 26011. In anticipation of the sale of bonds as authorized by Section 26020, or as may be authorized pursuant to Section 26021, the authority may issue negotiable bond anticipation notes and may renew the notes from time to time. The bond anticipation notes may be paid from the proceeds of sale of the bonds of the authority in anticipation of which they were issued. Notes and agreements relating to the notes and bond anticipation notes, collectively called notes, and the resolution or resolutions authorizing the notes may contain any provisions, conditions or limitations that a bond, agreement relating to the bond, and bond resolution of the authority may contain. However, a note or renewal of the note shall mature at a time not exceeding two years from the date of issue of the original note.

(b) Except as may otherwise be expressly provided by the authority, every issue of its bonds, notes, or other obligations shall be general

obligations of the authority payable from any revenues or moneys of the authority available for these purposes and not otherwise pledged, subject only to any agreements with the holders of particular bonds, notes, or other obligations pledging any particular revenues or moneys and subject to any agreements with any participating party. Notwithstanding that the bonds, notes, or other obligations may be payable from a special fund, they are for all purposes negotiable instruments, subject only to the provisions of the bonds, notes, or other obligations for registration.

(c) Subject to the limitations in Sections 26020 and 26021, the bonds may be issued as serial bonds or as term bonds, or the authority, in its discretion, may issue bonds of both types. The bonds shall be authorized by resolution of the authority and shall bear the date or dates, mature at the time or times, not exceeding 50 years from their respective dates, bear interest at the rate or rates, be payable at the time or times, be in the denominations, be in the form, either coupon or registered, carry the registration privileges, be executed in a manner, be payable in lawful money of the United States of America at a place or places, and be subject to terms of redemption, as the resolution or resolutions may provide. The bonds or notes shall be sold by the Treasurer within 60 days of receipt of a certified copy of the authority's resolution authorizing the sale of the bonds. However, the authority, at its discretion, may adopt a resolution extending the 60-day period. The sales may be a public or private sale, and for the price or prices and on the terms and conditions, as the authority shall determine after giving due consideration to the recommendations of any participating party to be assisted from the proceeds of the bonds or notes. Pending preparation of the definitive bonds, the Treasurer may issue interim receipts, certificates, or temporary bonds that shall be exchanged for the definitive bonds. The Treasurer may sell bonds, notes, or other evidence of indebtedness at a price below their par value. However, the discount on a security sold pursuant to this section shall not exceed 6 percent of the par value.

(d) A resolution or resolutions authorizing bonds or an issue of bonds may contain provisions that shall be a part of the contract with the holders of the bonds to be authorized, as to all of the following:

(1) Pledging the full faith and credit of the authority or pledging all or part of the revenues of a project or a revenue-producing contract or contracts made by the authority with an individual, partnership, corporation, or association or other body, public or private, or other moneys of the authority, to secure the payment of the bonds or of any particular issue of bonds, subject to the agreements with bondholders as may then exist.

(2) The rentals, fees, purchase payments, loan repayments, and other charges to be charged, and the amounts to be raised in each year by the charges, and the use and disposition of the revenues.

(3) The setting aside of reserves or sinking funds, and the regulation and disposition of the reserves or sinking funds.

(4) Limitations on the right of the authority or its agent to restrict and regulate the use of the project or projects to be financed out of the proceeds of the bonds or any particular issue of bonds.

(5) Limitations on the purpose to which the proceeds of sale of an issue of bonds then or thereafter to be issued may be applied and pledging those proceeds to secure the payment of the bonds or the issue of the bonds.

(6) Limitations on the issuance of additional bonds, the terms upon which additional bonds may be issued and secured, and the refunding of outstanding bonds.

(7) The procedure, if any, by which the terms of a contract with bondholders may be amended or abrogated, the amount of bonds the holders of which must consent to the amendment or abrogation, and the manner in which that consent may be given.

(8) Limitations on expenditures for operating, administrative, or other expenses of the authority.

(9) Defining the acts or omissions to act that constitute a default in the duties of the authority to holders of its obligations and providing the rights and remedies of the holders in the event of a default.

(10) The mortgaging of a project and the site of the project for the purpose of securing the bondholders.

(11) The mortgaging of land, improvements, or other assets owned by a participating party for the purpose of securing the bondholders.

(12) Procedures for the selection of projects to be financed with the proceeds of the bonds authorized by the resolution, if the bonds are to be sold in advance of the designation of the projects and participating parties to receive the financing.

(e) Neither the members of the authority nor a person executing the bonds or notes shall be liable personally on the bonds or notes or be subject to personal liability or accountability by reason of the issuance of the bond or note.

(f) The authority shall have power out of any funds available for these purposes to purchase its bonds or notes. The authority may hold, pledge, cancel, or resell those bonds, subject to and in accordance with agreements with bondholders.

CHAPTER 544

An act to amend Section 399.20 of the Public Utilities Code, relating to energy.

[Approved by Governor September 28, 2008. Filed with Secretary of State September 28, 2008.]

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

SECTION 1. Section 399.20 of the Public Utilities Code is amended to read:

399.20. (a) It is the policy of this state and the intent of the Legislature to encourage energy production from renewable energy resources.

(b) As used in this section, "electric generation facility" means an electric generation facility, owned and operated by a retail customer of an electrical corporation, and that meets all of the following criteria:

(1) Has an effective capacity of not more than one and one-half megawatts and is located on property owned or under the control of the customer.

(2) Is interconnected and operates in parallel with the electric transmission and distribution grid.

(3) Is strategically located and interconnected to the electric transmission system in a manner that optimizes the deliverability of electricity generated at the facility to load centers.

(4) Is an eligible renewable energy resource, as defined in Section 399.12.

(c) Every electrical corporation shall file with the commission a standard tariff for electricity generated by an electric generation facility.

(d) The tariff shall provide for payment for every kilowatthour of electricity generated by an electric generation facility at the market price as determined by the commission pursuant to Section 399.15 for a period of 10, 15, or 20 years, as authorized by the commission.

(e) Every electrical corporation shall make this tariff available to customers that own and operate an electric generation facility within the service territory of the electrical corporation, upon request, on a first-come-first-served basis, until the combined statewide cumulative rated generating capacity of those electric generation facilities equals 500 megawatts. An electrical corporation may make the terms of the tariff available to customers in the form of a standard contract subject to commission approval. Each electrical corporation shall only be required to offer service or contracts under this section until that electrical

corporation meets its proportionate share of the 500 megawatts based on the ratio of its peak demand to the total statewide peak demand of all electrical corporations.

(f) Every kilowatthour of electricity generated by the electric generation facility shall count toward the electrical corporation's renewables portfolio standard annual procurement targets for purposes of paragraph (1) of subdivision (b) of Section 399.15.

(g) The physical generating capacity of an electric generation facility shall count toward the electrical corporation's resource adequacy requirement for purposes of Section 380.

(h) The commission may modify or adjust the requirements of this section for any electrical corporation with less than 100,000 service connections, as individual circumstances merit.

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

SEC. 3. This bill shall not become operative if Senate Bill 1714 of the 2007–08 Regular Session is enacted on or before January 1, 2009, and amends Section 399.20 of the Public Utilities Code.

CHAPTER 545

An act to amend Section 8738 of the Health and Safety Code, relating to cemeteries.

[Approved by Governor September 28, 2008. Filed with Secretary of State September 28, 2008.]

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

SECTION 1. Section 8738 of the Health and Safety Code is amended to read:

8738. An endowment care cemetery is one which has deposited in its endowment care fund the minimum amounts heretofore required by law and shall hereafter have deposited in its endowment care fund at the time of or not later than completion of the initial sale not less than the following amounts for plots sold or disposed of:

(a) Four dollars and fifty cents ($4.50) a square foot for each grave.

(b) Seventy dollars ($70) for each niche.

(c) Two hundred twenty dollars ($220) for each crypt; provided, however, that for companion crypts, there shall be deposited two hundred twenty dollars ($220) for the first crypt and one hundred ten dollars ($110) for each additional crypt.

(d) Seventy dollars ($70) for the cremated remains of each deceased person scattered in the cemetery at a garden or designated open area that is not an interment site subject to subdivision (a).

CHAPTER 546

An act to amend Section 14029.5 of, and to add Section 14011.10 to, the Welfare and Institutions Code, relating to Medi-Cal.

[Approved by Governor September 28, 2008. Filed with Secretary of State September 28, 2008.]

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

SECTION 1. Section 14011.10 is added to the Welfare and Institutions Code, to read:

14011.10. (a) Benefits provided under this chapter to an individual under 21 years of age who is an inmate of a public institution shall be suspended in accordance with Section 1396d(a)(28)(A) of Title 42 of the United States Code as provided in subdivision (c).

(b) County welfare departments shall be required to notify the department within 10 days of receiving information that an individual under 21 years of age on Medi-Cal in the county is or will be an inmate of a public institution.

(c) If an individual under 21 years of age is a Medi-Cal beneficiary on the date he or she becomes an inmate of a public institution, his or her benefits under this chapter and under Chapter 8 (commencing with Section 14200) shall be suspended effective the date he or she becomes an inmate of a public institution. The suspension will end on the date he or she is no longer an inmate of a public institution or one year from the date he or she becomes an inmate of a public institution, whichever is sooner.

(d) Nothing in this section shall create a state-funded benefit or program. Health care services under this chapter and Chapter 8 (commencing with Section 14200) shall not be available to inmates of

public institutions whose Medi-Cal benefits have been suspended under this section.

(e) This section shall be implemented only if and to the extent allowed by federal law. This section shall be implemented only to the extent that any necessary federal approval of state plan amendments or other federal approvals are obtained.

(f) If any part of this section is in conflict with or does not comply with federal law, this entire section shall be inoperable.

(g) This section shall be implemented on January 1, 2010, or the date when all necessary federal approvals are obtained, whichever is later.

(h) By January 1, 2010, or the date when all necessary federal approvals are obtained, whichever is later, the department, in consultation with the Chief Probation Officers of California and the County Welfare Directors Association, shall establish the protocols and procedures necessary to implement this section, including any needed changes to the protocols and procedures previously established to implement Section 14029.5.

(i) Notwithstanding Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, the department shall implement this section by means of all-county letters or similar instructions without taking regulatory action. Thereafter, the department shall adopt regulations in accordance with the requirements of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

SEC. 2. Section 14029.5 of the Welfare and Institutions Code is amended to read:

14029.5. (a) (1) Commencing January 1, 2008, immediately following the issuance of an order of the juvenile court, pertaining to the disposition of a ward of the county, committing that ward to a juvenile hall, camp, or ranch for 30 days or longer, the county juvenile detention facility shall provide the appropriate county welfare department with the ward's name, his or her scheduled or actual release date, any known information regarding the ward's Medi-Cal status prior to disposition, and sufficient information, when available, for the county welfare department to begin the process of determining the ward's eligibility for benefits under this chapter, including, if the ward is a minor, contact information for the ward's parent or guardian, if available.

(2) If the ward is a minor, prior to providing information to the county welfare department pursuant to paragraph (1), the county juvenile detention facility shall notify the parent or guardian, in writing, of its intention to submit the information required by that paragraph to the county welfare department. The parent or guardian shall be given a reasonable time to opt out of the Medi-Cal eligibility determination

provided for under this section, in which case the county juvenile detention facility shall not comply with paragraph (1).

(3) For purposes of this section, "ward" means a person in the custody of a county juvenile detention facility.

(b) (1) Upon receipt of the information described in paragraph (1) of subdivision (a), and pursuant to the protocols and procedures developed pursuant to subdivision (c), the county welfare department shall initiate an application for any ward not already enrolled in the Medi-Cal program, and determine the individual's eligibility for benefits under the Medi-Cal program. If the ward is a minor, the county welfare department shall promptly contact the parent or guardian to arrange for completion of the application. If the cooperation of the minor's parent or guardian is necessary to complete the application, but the parent or guardian fails to cooperate in completing the application, the county welfare department shall deny the application in accordance with due process requirements. The county shall expedite the application of a ward who, according to the information provided pursuant to paragraph (1) of subdivision (a), is scheduled to be released in fewer than 45 days.

(2) If the county welfare department determines that the ward does not meet the eligibility requirements for the Medi-Cal program, the county welfare department, with the consent of the ward's parent or guardian, if the ward is a minor, shall forward the ward's information to the appropriate entity to determine eligibility for the Healthy Families Program, or other appropriate health coverage program, as determined by the department.

(3) If the county welfare department determines that a ward meets eligibility requirements for the Medi-Cal program, the county shall provide sufficient documentation to enable the ward to obtain necessary medical care upon his or her release from custody.

(c) Notwithstanding Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, the department shall implement this section by means of all-county letters or similar instructions, without taking any further regulatory action. Thereafter, the department shall adopt regulations, as necessary, to implement this section in accordance with the requirements of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(d) The department shall seek any federal waivers necessary for the implementation of this section.

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 547

An act to add Section 149.9 to the Streets and Highways Code, relating to transportation.

[Approved by Governor September 28, 2008. Filed with Secretary of State September 28, 2008.]

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

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

(a) For two decades, the Los Angeles region has led the nation in traffic congestion and has been identified as the region with the worst air quality and congestion in the United States.

(b) The region's population is expected to increase by another 2.4 million by 2030, while the number of registered vehicles in the county has surpassed 7 million.

(c) The population growth and economic demands on the region will only continue to deteriorate the air quality and transportation infrastructure within Los Angeles County.

(d) The Los Angeles region must find innovative ways to use its current transportation infrastructure in a manner consistent with trying to reduce vehicle miles traveled, and must help the state meet its greenhouse gas reduction goals and air quality improvement goals while increasing its investment in public transportation.

(e) The United States Department of Transportation has entered into a memorandum of understanding with the Los Angeles County Metropolitan Transportation Authority (LACMTA) and the Department of Transportation to award $210.6 million in federal transit funding for the purpose of enabling LACMTA to carry out a demonstration program where high-occupancy vehicle lanes on selected freeways in Los Angeles County would be converted into high-occupancy toll lanes during the demonstration period.

(f) Value-pricing is an important tool that will allow the Los Angeles region to use its current highway system more efficiently by allowing solo commuters to use designated high-occupancy vehicle lanes on State Highway Route 110 and Interstate 10 where capacity exists to absorb added commuters.

(g) Nothing in this act shall be construed to require the Department of Transportation to take any action that is inconsistent with any applicable federal law.

(h) It is the intent of the Legislature that the Department of Transportation, in implementing this act and to the extent not inconsistent with any other law, shall consider measures to maximize vehicular travel on Interstate Highway 10 in the vicinity of the El Monte Expressway. These measures may include, but are not limited to, restriping the highway to add an additional lane in both directions of the highway.

(i) It is the intent of the Legislature that the LACMTA, to the extent consistent with the purposes of this act, shall use a portion of the tolls collected on Interstate Highway 10 pursuant to this act to fund a bus maintenance facility in El Monte.

SEC. 2. Section 149.9 is added to the Streets and Highways Code, to read:

149.9. (a) Pursuant to Section 149.7 and the memorandum of understanding between the Los Angeles County Metropolitan Transportation Authority (LACMTA), the United States Department of Transportation, and the department, as adopted on July 24, 2008, and any subsequent, mutually agreed upon changes to that memorandum, the LACMTA may operate a value-pricing and transit development demonstration program involving high-occupancy toll (HOT) lanes to be conducted, administered, developed, and operated on State Highway Route 110 and Interstate Highway 10 in Los Angeles County by the LACMTA.

(b) The LACMTA may implement the program in cooperation with the department pursuant to a cooperative agreement that addresses all matters related to design, construction, maintenance, and operation of state highway system facilities in connection with the value-pricing and transit program. With the assistance of the department, the LACMTA may establish appropriate traffic flow guidelines for the purpose of ensuring optimal use of the express lanes by high-occupancy vehicles without adversely affecting other traffic on the state highway system.

(c) The LACMTA and the department may implement the demonstration program under the following conditions:

(1) The value-pricing program may be operated on State Highway Route 110 and Interstate 10 in Los Angeles County on designated high-occupancy vehicle (HOV) lanes.

(2) (A) Single-occupant vehicles, or those vehicles that do not meet minimum occupancy requirements, may be authorized to enter and use the HOV lanes in the identified corridors, under conditions as determined by the LACMTA.

(B) The LACMTA may not change the vehicle occupancy requirement for access to the HOV lanes in the identified corridors during the demonstration period that is authorized under this section.

(3) As part of the demonstration program, each proposed HOT lane shall have nontolled alternative lanes available for public use in the same corridor as the proposed HOT lanes.

(4) The LACMTA shall implement a public outreach and communications plan in order to solicit public input into the development of the demonstration program.

(5) In implementing the program, the LACMTA shall identify the affected communities in the respective corridors and work with those communities to identify impacts and develop mitigation measures.

(6) The amount of the toll shall be established by the LACMTA, and collected and administered in a manner determined by the LACMTA. The LACMTA shall conduct a public hearing 30 days prior to setting or increasing the toll.

(7) The LACMTA shall assess the impacts of the program on commuters of low income and shall provide mitigation to those impacted commuters. Mitigation measures may include, but are not limited to, reduced toll charges and toll credits for transit users. Eligible commuters for reduced toll charges or toll credits for transit users shall meet the eligibility requirements for assistance programs under Chapter 2 (commencing with Section 11200) or Chapter 3 (commencing with Section 12000) of Part 3 of, Part 5 (commencing with Section 17000) of, or Chapter 10 (commencing with Section 18900), Chapter 10.1 (commencing with Section 18930), or Chapter 10.3 (commencing with Section 18937) of Part 6 of, Division 9 of the Welfare and Institutions Code.

(8) Toll paying commuters shall have the option to purchase any necessary toll paying equipment, prepay tolls, and renew toll payments by cash or by using a credit card.

(9) The LACMTA may operate the demonstration program until January 15, 2013, during which time it may not issue bonds for the demonstration program.

(10) The LACMTA and the department shall report to the Legislature by December 31, 2012. The report shall include, but not be limited to, a summary of the demonstration program, a survey of its users, the impact on carpoolers, revenues generated, how transit service or alternative modes of transportation were impacted, any potential effect on traffic congestion in the HOV lane and in the neighboring lanes, the number of toll paying vehicles that utilized the HOT lanes, any potential reductions in the greenhouse gas emissions that are attributable to congestion reduction resulting from the HOT lane demonstration project,

and a description of the mitigation measures on the affected communities and commuters in this demonstration program.

(11) Pursuant to Section 149.7, the revenue generated from the program may be available to the LACMTA for the direct expenses related to the maintenance, administration, and operation, including collection and enforcement, of the demonstration program. Administrative expenses shall not exceed 3 percent of the revenues.

(12) All remaining revenue generated by the demonstration program shall be used in the corridor from which the revenue was generated exclusively for preconstruction, construction, and other related costs of high-occupancy vehicle facilities and the improvement of transit service in the corridor, including, but not limited to, support for transit operations pursuant to an expenditure plan adopted by the LACMTA.

CHAPTER 548

An act to amend Sections 1695.1, 1695.5, 1695.6, 1697, 1698, 2361, 2365, 2366, 2367, 2369, 2663, 2665, 2666, 2770.1, 2770.7, 2770.8, 2770.11, 2770.12, 3501, 3534.1, 3534.3, 3534.4, 3534.9, and 4371 of, and to add Article 3.6 (commencing with Section 315) to Chapter 4 of Division 1 of, the Business and Professions Code, relating to health care.

[Approved by Governor September 28, 2008. Filed with Secretary of State September 28, 2008.]

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

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

(a) Substance abuse is an increasing problem in the health care professions, where the impairment of a health care practitioner for even one moment can mean irreparable harm to a patient.

(b) Several health care licensing boards have "diversion programs" designed to identify substance-abusing licensees, direct them to treatment and monitoring, and return them to practice in a manner that will not endanger the public health and safety.

(c) Substance abuse monitoring programs, particularly for health care professionals, must operate with the highest level of integrity and consistency. Patient protection is paramount.

(d) The diversion program of the Medical Board of California, created in 1981, has been subject to five external performance audits in its 27-year history and has failed all five audits, which uniformly concluded

that the program has inadequately monitored substance-abusing physicians and has failed to promptly terminate from the program, and appropriately refer for discipline, physicians who do not comply with the terms and conditions of the program, thus placing patients at risk of harm.

(e) The medical board's diversion program has failed to protect patients from substance-abusing physicians, and the medical board has properly decided to cease administering the program effective June 30, 2008.

(f) The administration of diversion programs created at other health care boards has been contracted to a series of private vendors, and none of those vendors has ever been subject to a performance audit, such that it is not possible to determine whether those programs are effective in monitoring substance-abusing licensees and assisting them to recover from their addiction in the long term.

(g) Various health care licensing boards have inconsistent or nonexistent standards that guide the way they deal with substance-abusing licensees.

(h) Patients would be better protected from substance-abusing licensees if their regulatory boards agreed to and enforced consistent and uniform standards and best practices in dealing with substance-abusing licensees.

SEC. 2. It is the intent of the Legislature that:

(a) Pursuant to Section 156.1 of the Business and Professions Code and Section 8546.7 of the Government Code, that the Department of Consumer Affairs conduct a thorough audit of the effectiveness, efficiency, and overall performance of the vendor chosen by the department to manage diversion programs for substance-abusing licensees of health care licensing boards created in the Business and Professions Code, and make recommendations regarding the continuation of the programs and any changes or reforms required to ensure that individuals participating in the programs are appropriately monitored, and the public is protected from health care practitioners who are impaired due to alcohol or drug abuse or mental or physical illness.

(b) The audit shall identify, by type of board licensee, the percentage of self-referred participants, board-referred participants, and board-ordered participants. The audit shall describe in detail the diversion services provided by the vendor, including all aspects of bodily fluids testing, including, but not limited to, frequency of testing, randomnicity, method of notice to participants, number of hours between the provision of notice and the test, standards for specimen collectors, procedures used by specimen collectors, such as whether the collection process is observed by the collector, location of testing, and average timeframe from the date

of the test to the date the result of the test becomes available; group meeting attendance requirements, including, but not limited to, required qualifications for group meeting facilitators, frequency of required meeting attendance, and methods of documenting and reporting attendance or nonattendance by program participants; standards used in determining whether inpatient or outpatient treatment is necessary; and, if applicable, worksite monitoring requirements and standards. The audit shall review the timeliness of diversion services provided by the vendor; the thoroughness of documentation of treatment, aftercare, and monitoring services received by participants; and the thoroughness of documentation of the effectiveness of the treatment and aftercare services received by participants. In determining the effectiveness and efficiency of the vendor, the audit shall evaluate the vendor's approval process for providers or contractors that provide diversion services, including specimen collectors, group meeting facilitators, and worksite monitors; the vendor's disapproval of providers or contractors that fail to provide effective or timely diversion services; and the vendor's promptness in notifying the boards when a participant fails to comply with the terms of his or her diversion contract or the rules of the board's program. The audit shall also recommend whether the vendor should be more closely monitored by the department, including whether the vendor should provide the department with periodic reports demonstrating the timeliness and thoroughness of documentation of noncompliance with diversion program contracts and regarding its approval and disapproval of providers and contractors that provide diversion services.

(c) The vendor and its staff shall cooperate with the department and shall provide data, information, and case files as requested by the department to perform all of his or her duties. The provision of confidential data, information, and case files from health care-related boards and the vendor to the department 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. It is the Legislature's intent that the audit be completed by June 30, 2010, and on subsequent years thereafter as determined by the department.

SEC. 3. Article 3.6 (commencing with Section 315) is added to Chapter 4 of Division 1 of the Business and Professions Code, to read:

Article 3.6. Uniform Standards Regarding Substance-Abusing Healing Arts Licensees

315. (a) For the purpose of determining uniform standards that will be used by healing arts boards in dealing with substance-abusing

licensees, there is established in the Department of Consumer Affairs the Substance Abuse Coordination Committee. The committee shall be comprised of the executive officers of the department's healing arts boards established pursuant to Division 2 (commencing with Section 500), the State Board of Chiropractic Examiners, the Osteopathic Medical Board of California, and a designee of the State Department of Alcohol and Drug Programs. The Director of Consumer Affairs shall chair the committee and may invite individuals or stakeholders who have particular expertise in the area of substance abuse to advise the committee.

(b) The committee shall be subject to the Bagley-Keene Open Meeting Act (Article 9 (commencing with Section 11120) of Division 3 of Title 2 of the Government Code).

(c) By January 1, 2010, the committee shall formulate uniform and specific standards in each of the following areas that each healing arts board shall use in dealing with substance-abusing licensees, whether or not a board chooses to have a formal diversion program:

(1) Specific requirements for a clinical diagnostic evaluation of the licensee, including, but not limited to, required qualifications for the providers evaluating the licensee.

(2) Specific requirements for the temporary removal of the licensee from practice, in order to enable the licensee to undergo the clinical diagnostic evaluation described in subdivision (a) and any treatment recommended by the evaluator described in subdivision (a) and approved by the board, and specific criteria that the licensee must meet before being permitted to return to practice on a full-time or part-time basis.

(3) Specific requirements that govern the ability of the licensing board to communicate with the licensee's employer about the licensee's status and condition.

(4) Standards governing all aspects of required testing, including, but not limited to, frequency of testing, randomnicity, method of notice to the licensee, number of hours between the provision of notice and the test, standards for specimen collectors, procedures used by specimen collectors, the permissible locations of testing, whether the collection process must be observed by the collector, backup testing requirements when the licensee is on vacation or otherwise unavailable for local testing, requirements for the laboratory that analyzes the specimens, and the required maximum timeframe from the test to the receipt of the result of the test.

(5) Standards governing all aspects of group meeting attendance requirements, including, but not limited to, required qualifications for group meeting facilitators, frequency of required meeting attendance, and methods of documenting and reporting attendance or nonattendance by licensees.

(6) Standards used in determining whether inpatient, outpatient, or other type of treatment is necessary.

(7) Worksite monitoring requirements and standards, including, but not limited to, required qualifications of worksite monitors, required methods of monitoring by worksite monitors, and required reporting by worksite monitors.

(8) Procedures to be followed when a licensee tests positive for a banned substance.

(9) Procedures to be followed when a licensee is confirmed to have ingested a banned substance.

(10) Specific consequences for major violations and minor violations. In particular, the committee shall consider the use of a "deferred prosecution" stipulation similar to the stipulation described in Section 1000 of the Penal Code, in which the licensee admits to self-abuse of drugs or alcohol and surrenders his or her license. That agreement is deferred by the agency unless or until the licensee commits a major violation, in which case it is revived and the license is surrendered.

(11) Criteria that a licensee must meet in order to petition for return to practice on a full-time basis.

(12) Criteria that a licensee must meet in order to petition for reinstatement of a full and unrestricted license.

(13) If a board uses a private-sector vendor that provides diversion services, standards for immediate reporting by the vendor to the board of any and all noncompliance with any term of the diversion contract or probation; standards for the vendor's approval process for providers or contractors that provide diversion services, including, but not limited to, specimen collectors, group meeting facilitators, and worksite monitors; standards requiring the vendor to disapprove and discontinue the use of providers or contractors that fail to provide effective or timely diversion services; and standards for a licensee's termination from the program and referral to enforcement.

(14) If a board uses a private-sector vendor that provides diversion services, the extent to which licensee participation in that program shall be kept confidential from the public.

(15) If a board uses a private-sector vendor that provides diversion services, a schedule for external independent audits of the vendor's performance in adhering to the standards adopted by the committee.

(16) Measurable criteria and standards to determine whether each board's method of dealing with substance-abusing licensees protects patients from harm and is effective in assisting its licensees in recovering from substance abuse in the long term.

SEC. 4. Section 1695.1 of the Business and Professions Code is amended to read:

1695.1. As used in this article:

(a) "Board" means the Board of Dental Examiners of California.

(b) "Committee" means a diversion evaluation committee created by this article.

(c) "Program manager" means the staff manager of the diversion program, as designated by the executive officer of the board. The program manager shall have background experience in dealing with substance abuse issues.

SEC. 5. Section 1695.5 of the Business and Professions Code is amended to read:

1695.5. (a) The board shall establish criteria for the acceptance, denial, or termination of licentiates in a diversion program. Unless ordered by the board as a condition of licentiate disciplinary probation, only those licentiates who have voluntarily requested diversion treatment and supervision by a committee shall participate in a diversion program.

(b) A licentiate who is not the subject of a current investigation may self-refer to the diversion program on a confidential basis, except as provided in subdivision (f).

(c) A licentiate under current investigation by the board may also request entry into the diversion program by contacting the board's Diversion Program Manager. The Diversion Program Manager may refer the licentiate requesting participation in the program to a diversion evaluation committee for evaluation of eligibility. Prior to authorizing a licentiate to enter into the diversion program, the Diversion Program Manager may require the licentiate, while under current investigation for any violations of the Dental Practice Act or other violations, to execute a statement of understanding that states that the licentiate understands that his or her violations of the Dental Practice Act or other statutes that would otherwise be the basis for discipline, may still be investigated and the subject of disciplinary action.

(d) If the reasons for a current investigation of a licentiate are based primarily on the self-administration of any controlled substance or dangerous drugs or alcohol under Section 1681 of the Business and Professions Code, or the illegal possession, prescription, or nonviolent procurement of any controlled substance or dangerous drugs for self-administration that does not involve actual, direct harm to the public, the board shall close the investigation without further action if the licentiate is accepted into the board's diversion program and successfully completes the requirements of the program. If the licentiate withdraws or is terminated from the program by a diversion evaluation committee, and the termination is approved by the program manager, the investigation shall be reopened and disciplinary action imposed, if warranted, as determined by the board.

(e) Neither acceptance nor participation in the diversion program shall preclude the board from investigating or continuing to investigate, or taking disciplinary action or continuing to take disciplinary action against, any licentiate for any unprofessional conduct committed before, during, or after participation in the diversion program.

(f) All licentiates shall sign an agreement of understanding that the withdrawal or termination from the diversion program at a time when a diversion evaluation committee determines the licentiate presents a threat to the public's health and safety shall result in the utilization by the board of diversion treatment records in disciplinary or criminal proceedings.

(g) Any licentiate terminated from the diversion program for failure to comply with program requirements is subject to disciplinary action by the board for acts committed before, during, and after participation in the diversion program. A licentiate who has been under investigation by the board and has been terminated from the diversion program by a diversion evaluation committee shall be reported by the diversion evaluation committee to the board.

SEC. 6. Section 1695.6 of the Business and Professions Code is amended to read:

1695.6. A committee created under this article operates under the direction of the program manager. The program manager has the primary responsibility to review and evaluate recommendations of the committee. Each committee shall have the following duties and responsibilities:

(a) To evaluate those licentiates who request to participate in the diversion program according to the guidelines prescribed by the board and to make recommendations. In making the recommendations, a committee shall consider the recommendations of any licentiates designated by the board to serve as consultants on the admission of the licentiate to the diversion program.

(b) To review and designate those treatment facilities to which licentiates in a diversion program may be referred.

(c) To receive and review information concerning a licentiate participating in the program.

(d) To consider in the case of each licentiate participating in a program whether he or she may with safety continue or resume the practice of dentistry.

(e) To perform such other related duties, under the direction of the board or program manager, as the board may by regulation require.

SEC. 7. Section 1697 of the Business and Professions Code is amended to read:

1697. Each licentiate who requests participation in a diversion program shall agree to cooperate with the treatment program designed by the committee and approved by the program manager and to bear all

costs related to the program, unless the cost is waived by the board. Any failure to comply with the provisions of a treatment program may result in termination of the licentiate's participation in a program.

SEC. 8. Section 1698 of the Business and Professions Code is amended to read:

1698. (a) After the committee and the program manager in their discretion have determined that a licentiate has been rehabilitated and the diversion program is completed, the committee shall purge and destroy all records pertaining to the licentiate's participation in a diversion program.

(b) Except as authorized by subdivision (f) of Section 1695.5, all board and committee records and records of proceedings pertaining to the treatment of a licentiate in a program shall be kept confidential and are not subject to discovery or subpoena.

SEC. 9. Section 2361 of the Business and Professions Code is amended to read:

2361. As used in this article:

(a) "Board" means the Osteopathic Medical Board of California.

(b) "Diversion program" means a treatment program created by this article for osteopathic physicians and surgeons whose competency may be threatened or diminished due to abuse of drugs or alcohol.

(c) "Committee" means a diversion evaluation committee created by this article.

(d) "Participant" means a California licensed osteopathic physician and surgeon.

(e) "Program manager" means the staff manager of the diversion program, as designated by the executive officer of the board. The program manager shall have background experience in dealing with substance abuse issues.

SEC. 10. Section 2365 of the Business and Professions Code is amended to read:

2365. (a) The board shall establish criteria for the acceptance, denial, or termination of participants in the diversion program. Unless ordered by the board as a condition of disciplinary probation, only those participants who have voluntarily requested diversion treatment and supervision by a committee shall participate in the diversion program.

(b) A participant who is not the subject of a current investigation may self-refer to the diversion program on a confidential basis, except as provided in subdivision (f).

(c) A participant under current investigation by the board may also request entry into the diversion program by contacting the board's Diversion Program Manager. The Diversion Program Manager may refer the participant requesting participation in the program to a diversion

evaluation committee for evaluation of eligibility. Prior to authorizing a licentiate to enter into the diversion program, the Diversion Program Manager may require the licentiate, while under current investigation for any violations of the Medical Practice Act or other violations, to execute a statement of understanding that states that the licentiate understands that his or her violations of the Medical Practice Act or other statutes that would otherwise be the basis for discipline may still be investigated and the subject of disciplinary action.

(d) If the reasons for a current investigation of a participant are based primarily on the self-administration of any controlled substance or dangerous drugs or alcohol under Section 2239, or the illegal possession, prescription, or nonviolent procurement of any controlled substance or dangerous drugs for self-administration that does not involve actual, direct harm to the public, the board may close the investigation without further action if the licentiate is accepted into the board's diversion program and successfully completes the requirements of the program. If the participant withdraws or is terminated from the program by a diversion evaluation committee, and the termination is approved by the program manager, the investigation may be reopened and disciplinary action imposed, if warranted, as determined by the board.

(e) Neither acceptance nor participation in the diversion program shall preclude the board from investigating or continuing to investigate, or taking disciplinary action or continuing to take disciplinary action against, any participant for any unprofessional conduct committed before, during, or after participation in the diversion program.

(f) All participants shall sign an agreement of understanding that the withdrawal or termination from the diversion program at a time when a diversion evaluation committee determines the licentiate presents a threat to the public's health and safety shall result in the utilization by the board of diversion treatment records in disciplinary or criminal proceedings.

(g) Any participant terminated from the diversion program for failure to comply with program requirements is subject to disciplinary action by the board for acts committed before, during, and after participation in the diversion program. A participant who has been under investigation by the board and has been terminated from the diversion program by a diversion evaluation committee shall be reported by the diversion evaluation committee to the board.

SEC. 11. Section 2366 of the Business and Professions Code is amended to read:

2366. A committee created under this article operates under the direction of the diversion program manager. The program manager has the primary responsibility to review and evaluate recommendations of

the committee. Each committee shall have the following duties and responsibilities:

(a) To evaluate those licensees who request participation in the program according to the guidelines prescribed by the board, and to make recommendations.

(b) To review and designate those treatment facilities and services to which a participant in the program may be referred.

(c) To receive and review information concerning participants in the program.

(d) To consider whether each participant in the treatment program may safely continue or resume the practice of medicine.

(e) To prepare quarterly reports to be submitted to the board, which include, but are not limited to, information concerning the number of cases accepted, denied, or terminated with compliance or noncompliance and a cost analysis of the program.

(f) To promote the program to the public and within the profession, including providing all current licentiates with written information concerning the program.

(g) To perform such other related duties, under the direction of the board or the program manager, as the board may by regulation require.

SEC. 12. Section 2367 of the Business and Professions Code is amended to read:

2367. (a) Each licensee who requests participation in a treatment program shall agree to cooperate with the treatment program designed by the committee and approved by the program manager. The committee shall inform each participant in the program of the procedures followed, the rights and responsibilities of the participant, and the possible results of noncompliance with the program. Any failure to comply with the treatment program may result in termination of participation.

(b) Participation in a program under this article shall not be a defense to any disciplinary action which may be taken by the board. Further, no provision of this article shall preclude the board from commencing disciplinary action against a licensee who is terminated from a program established pursuant to this article.

SEC. 13. Section 2369 of the Business and Professions Code is amended to read:

2369. (a) After the committee and the program manager, in their discretion, have determined that a participant has been rehabilitated and the program is completed, the committee shall purge and destroy all records pertaining to the participation in a treatment program.

(b) Except as authorized by subdivision (f) of Section 2365, all board and committee records and records of proceedings pertaining to the treatment of a participant in a program shall be confidential and are not

subject to discovery or subpoena except in the case of discovery or subpoena in any criminal proceeding.

SEC. 14. Section 2663 of the Business and Professions Code is amended to read:

2663. The board shall establish and administer a diversion program for the rehabilitation of physical therapists and physical therapist assistants whose competency is impaired due to the abuse of drugs or alcohol. The board may contract with any other state agency or a private organization to perform its duties under this article. The board may establish one or more diversion evaluation committees to assist it in carrying out its duties under this article. Any diversion evaluation committee established by the board shall operate under the direction of the diversion program manager, as designated by the executive officer of the board. The program manager has the primary responsibility to review and evaluate recommendations of the committee.

SEC. 15. Section 2665 of the Business and Professions Code is amended to read:

2665. Each diversion evaluation committee has the following duties and responsibilities:

(a) To evaluate physical therapists and physical therapist assistants who request participation in the program and to make recommendations. In making recommendations, the committee shall consider any recommendations from professional consultants on the admission of applicants to the diversion program.

(b) To review and designation of treatment facilities to which physical therapists and physical therapist assistants in the diversion program may be referred.

(c) To receive and review information concerning physical therapists and physical therapist assistants participating in the program.

(d) Calling meetings as necessary to consider the requests of physical therapists and physical therapist assistants to participate in the diversion program, to consider reports regarding participants in the program, and to consider any other matters referred to it by the board.

(e) To consider whether each participant in the diversion program may with safety continue or resume the practice of physical therapy.

(f) To set forth in writing the terms and conditions of the diversion agreement that is approved by the program manager for each physical therapist and physical therapist assistant participating in the program, including treatment, supervision, and monitoring requirements.

(g) Holding a general meeting at least twice a year, which shall be open and public, to evaluate the diversion program's progress, to prepare reports to be submitted to the board, and to suggest proposals for changes in the diversion program.

(h) For the purposes of Division 3.6 (commencing with Section 810) of Title 1 of the Government Code, any member of a diversion evaluation committee shall be considered a public employee. No board or diversion evaluation committee member, contractor, or agent thereof, shall be liable for any civil damage because of acts or omissions which may occur while acting in good faith in a program established pursuant to this article.

SEC. 16. Section 2666 of the Business and Professions Code is amended to read:

2666. (a) Criteria for acceptance into the diversion program shall include all of the following:

(1) The applicant shall be licensed as a physical therapist or approved as a physical therapist assistant by the board and shall be a resident of California.

(2) The applicant shall be found to abuse dangerous drugs or alcoholic beverages in a manner which may affect his or her ability to practice physical therapy safely or competently.

(3) The applicant shall have voluntarily requested admission to the program or shall be accepted into the program in accordance with terms and conditions resulting from a disciplinary action.

(4) The applicant shall agree to undertake any medical or psychiatric examination ordered to evaluate the applicant for participation in the program.

(5) The applicant shall cooperate with the program by providing medical information, disclosure authorizations, and releases of liability as may be necessary for participation in the program.

(6) The applicant shall agree in writing to cooperate with all elements of the treatment program designed for him or her.

Any applicant may be denied participation in the program if the board, the program manager, or a diversion evaluation committee determines that the applicant will not substantially benefit from participation in the program or that the applicant's participation in the program creates too great a risk to the public health, safety, or welfare.

(b) A participant may be terminated from the program for any of the following reasons:

(1) The participant has successfully completed the treatment program.

(2) The participant has failed to comply with the treatment program designated for him or her.

(3) The participant fails to meet any of the criteria set forth in subdivision (a) or (c).

(4) It is determined that the participant has not substantially benefited from participation in the program or that his or her continued participation in the program creates too great a risk to the public health, safety, or

welfare. Whenever an applicant is denied participation in the program or a participant is terminated from the program for any reason other than the successful completion of the program, and it is determined that the continued practice of physical therapy by that individual creates too great a risk to the public health, safety, and welfare, that fact shall be reported to the executive officer of the board and all documents and information pertaining to and supporting that conclusion shall be provided to the executive officer. The matter may be referred for investigation and disciplinary action by the board. Each physical therapist or physical therapy assistant who requests participation in a diversion program shall agree to cooperate with the recovery program designed for him or her. Any failure to comply with that program may result in termination of participation in the program.

The diversion evaluation committee shall inform each participant in the program of the procedures followed in the program, of the rights and responsibilities of a physical therapist or physical therapist assistant in the program, and the possible results of noncompliance with the program.

(c) In addition to the criteria and causes set forth in subdivision (a), the board may set forth in its regulations additional criteria for admission to the program or causes for termination from the program.

SEC. 17. Section 2770.1 of the Business and Professions Code is amended to read:

2770.1. As used in this article:

(a) "Board" means the Board of Registered Nursing.

(b) "Committee" means a diversion evaluation committee created by this article.

(c) "Program manager" means the staff manager of the diversion program, as designated by the executive officer of the board. The program manager shall have background experience in dealing with substance abuse issues.

SEC. 18. Section 2770.7 of the Business and Professions Code is amended to read:

2770.7. (a) The board shall establish criteria for the acceptance, denial, or termination of registered nurses in the diversion program. Only those registered nurses who have voluntarily requested to participate in the diversion program shall participate in the program.

(b) A registered nurse under current investigation by the board may request entry into the diversion program by contacting the board. Prior to authorizing a registered nurse to enter into the diversion program, the board may require the registered nurse under current investigation for any violations of this chapter or any other provision of this code to execute a statement of understanding that states that the registered nurse understands that his or her violations that would otherwise be the basis

for discipline may still be investigated and may be the subject of disciplinary action.

(c) If the reasons for a current investigation of a registered nurse are based primarily on the self-administration of any controlled substance or dangerous drug or alcohol under Section 2762, or the illegal possession, prescription, or nonviolent procurement of any controlled substance or dangerous drug for self-administration that does not involve actual, direct harm to the public, the board shall close the investigation without further action if the registered nurse is accepted into the board's diversion program and successfully completes the requirements of the program. If the registered nurse withdraws or is terminated from the program by a diversion evaluation committee, and the termination is approved by the program manager, the investigation shall be reopened and disciplinary action imposed, if warranted, as determined by the board.

(d) Neither acceptance nor participation in the diversion program shall preclude the board from investigating or continuing to investigate, or taking disciplinary action or continuing to take disciplinary action against, any registered nurse for any unprofessional conduct committed before, during, or after participation in the diversion program.

(e) All registered nurses shall sign an agreement of understanding that the withdrawal or termination from the diversion program at a time when the program manager or diversion evaluation committee determines the licentiate presents a threat to the public's health and safety shall result in the utilization by the board of diversion treatment records in disciplinary or criminal proceedings.

(f) Any registered nurse terminated from the diversion program for failure to comply with program requirements is subject to disciplinary action by the board for acts committed before, during, and after participation in the diversion program. A registered nurse who has been under investigation by the board and has been terminated from the diversion program by a diversion evaluation committee shall be reported by the diversion evaluation committee to the board.

SEC. 19. Section 2770.8 of the Business and Professions Code is amended to read:

2770.8. A committee created under this article operates under the direction of the diversion program manager. The program manager has the primary responsibility to review and evaluate recommendations of the committee. Each committee shall have the following duties and responsibilities:

(a) To evaluate those registered nurses who request participation in the program according to the guidelines prescribed by the board, and to make recommendations.

(b) To review and designate those treatment services to which registered nurses in a diversion program may be referred.

(c) To receive and review information concerning a registered nurse participating in the program.

(d) To consider in the case of each registered nurse participating in a program whether he or she may with safety continue or resume the practice of nursing.

(e) To call meetings as necessary to consider the requests of registered nurses to participate in a diversion program, and to consider reports regarding registered nurses participating in a program.

(f) To make recommendations to the program manager regarding the terms and conditions of the diversion agreement for each registered nurse participating in the program, including treatment, supervision, and monitoring requirements.

SEC. 20. Section 2770.11 of the Business and Professions Code is amended to read:

2770.11. (a) Each registered nurse who requests participation in a diversion program shall agree to cooperate with the rehabilitation program designed by the committee and approved by the program manager. Any failure to comply with the provisions of a rehabilitation program may result in termination of the registered nurse's participation in a program. The name and license number of a registered nurse who is terminated for any reason, other than successful completion, shall be reported to the board's enforcement program.

(b) If the program manager determines that a registered nurse, who is denied admission into the program or terminated from the program, presents a threat to the public or his or her own health and safety, the program manager shall report the name and license number, along with a copy of all diversion records for that registered nurse, to the board's enforcement program. The board may use any of the records it receives under this subdivision in any disciplinary proceeding.

SEC. 21. Section 2770.12 of the Business and Professions Code is amended to read:

2770.12. (a) After the committee and the program manager in their discretion have determined that a registered nurse has successfully completed the diversion program, all records pertaining to the registered nurse's participation in the diversion program shall be purged.

(b) All board and committee records and records of a proceeding pertaining to the participation of a registered nurse in the diversion program shall be kept confidential and are not subject to discovery or subpoena, except as specified in subdivision (b) of Section 2770.11 and subdivision (c).

(c) A registered nurse shall be deemed to have waived any rights granted by any laws and regulations relating to confidentiality of the diversion program, if he or she does any of the following:

(1) Presents information relating to any aspect of the diversion program during any stage of the disciplinary process subsequent to the filing of an accusation, statement of issues, or petition to compel an examination pursuant to Article 12.5 (commencing with Section 820) of Chapter 1. The waiver shall be limited to information necessary to verify or refute any information disclosed by the registered nurse.

(2) Files a lawsuit against the board relating to any aspect of the diversion program.

(3) Claims in defense to a disciplinary action, based on a complaint that led to the registered nurse's participation in the diversion program, that he or she was prejudiced by the length of time that passed between the alleged violation and the filing of the accusation. The waiver shall be limited to information necessary to document the length of time the registered nurse participated in the diversion program.

SEC. 22. Section 3501 of the Business and Professions Code is amended to read:

3501. As used in this chapter:

(a) "Board" means the Medical Board of California.

(b) "Approved program" means a program for the education of physician assistants that has been formally approved by the committee.

(c) "Trainee" means a person who is currently enrolled in an approved program.

(d) "Physician assistant" means a person who meets the requirements of this chapter and is licensed by the committee.

(e) "Supervising physician" means a physician and surgeon licensed by the board or by the Osteopathic Medical Board of California who supervises one or more physician assistants, who possesses a current valid license to practice medicine, and who is not currently on disciplinary probation for improper use of a physician assistant.

(f) "Supervision" means that a licensed physician and surgeon oversees the activities of, and accepts responsibility for, the medical services rendered by a physician assistant.

(g) "Committee" or "examining committee" means the Physician Assistant Committee.

(h) "Regulations" means the rules and regulations as contained in Chapter 13.8 (commencing with Section 1399.500) of Title 16 of the California Code of Regulations.

(i) "Routine visual screening" means uninvasive nonpharmacological simple testing for visual acuity, visual field defects, color blindness, and depth perception.

(j) "Program manager" means the staff manager of the diversion program, as designated by the executive officer of the board. The program manager shall have background experience in dealing with substance abuse issues.

SEC. 23. Section 3534.1 of the Business and Professions Code is amended to read:

3534.1. The examining committee shall establish and administer a diversion program for the rehabilitation of physician assistants whose competency is impaired due to the abuse of drugs or alcohol. The examining committee may contract with any other state agency or a private organization to perform its duties under this article. The examining committee may establish one or more diversion evaluation committees to assist it in carrying out its duties under this article. As used in this article, "committee" means a diversion evaluation committee. A committee created under this article operates under the direction of the diversion program manager, as designated by the executive officer of the examining committee. The program manager has the primary responsibility to review and evaluate recommendations of the committee.

SEC. 23. Section 3534.3 of the Business and Professions Code is amended to read:

3534.3. Each committee has the following duties and responsibilities:

(a) To evaluate physician assistants who request participation in the program and to make recommendations to the program manager. In making recommendations, a committee shall consider any recommendations from professional consultants on the admission of applicants to the diversion program.

(b) To review and designate treatment facilities to which physician assistants in the diversion program may be referred, and to make recommendations to the program manager.

(c) The receipt and review of information concerning physician assistants participating in the program.

(d) To call meetings as necessary to consider the requests of physician assistants to participate in the diversion program, to consider reports regarding participants in the program, and to consider any other matters referred to it by the examining committee.

(e) To consider whether each participant in the diversion program may with safety continue or resume the practice of medicine.

(f) To set forth in writing the terms and conditions of the diversion agreement that is approved by the program manager for each physician assistant participating in the program, including treatment, supervision, and monitoring requirements.

(g) To hold a general meeting at least twice a year, which shall be open and public, to evaluate the diversion program's progress, to prepare

reports to be submitted to the examining committee, and to suggest proposals for changes in the diversion program.

(h) For the purposes of Division 3.6 (commencing with Section 810) of Title 1 of the Government Code, any member of a committee shall be considered a public employee. No examining committee or committee member, contractor, or agent thereof, shall be liable for any civil damage because of acts or omissions which may occur while acting in good faith in a program established pursuant to this article.

SEC. 24. Section 3534.4 of the Business and Professions Code is amended to read:

3534.4. Criteria for acceptance into the diversion program shall include all of the following: (a) the applicant shall be licensed as a physician assistant by the examining committee and shall be a resident of California; (b) the applicant shall be found to abuse dangerous drugs or alcoholic beverages in a manner which may affect his or her ability to practice medicine safely or competently; (c) the applicant shall have voluntarily requested admission to the program or shall be accepted into the program in accordance with terms and conditions resulting from a disciplinary action; (d) the applicant shall agree to undertake any medical or psychiatric examination ordered to evaluate the applicant for participation in the program; (e) the applicant shall cooperate with the program by providing medical information, disclosure authorizations, and releases of liability as may be necessary for participation in the program; and (f) the applicant shall agree in writing to cooperate with all elements of the treatment program designed for him or her.

An applicant may be denied participation in the program if the examining committee, the program manager, or a committee determines that the applicant will not substantially benefit from participation in the program or that the applicant's participation in the program creates too great a risk to the public health, safety, or welfare.

SEC. 25. Section 3534.9 of the Business and Professions Code is amended to read:

3534.9. If the examining committee contracts with any other entity to carry out this section, the executive officer of the examining committee or the program manager shall review the activities and performance of the contractor on a biennial basis. As part of this review, the examining committee shall review files of participants in the program. However, the names of participants who entered the program voluntarily shall remain confidential, except when the review reveals misdiagnosis, case mismanagement, or noncompliance by the participant.

SEC. 26. Section 4371 of the Business and Professions Code is amended to read:

4371. (a) The executive officer of the board shall designate a program manager of the pharmacists recovery program. The program manager shall have background experience in dealing with substance abuse issues.

(b) The program manager shall review the pharmacists recovery program on a quarterly basis. As part of this evaluation, the program manager shall review files of all participants in the pharmacists recovery program.

(c) The program manager shall work with the contractor administering the pharmacists recovery program to evaluate participants in the program according to established guidelines and to develop treatment contracts and evaluate participant progress in the program.

SEC. 27. The responsibilities imposed on a licensing board by this act shall be considered a current operating expense of that board, and shall be paid from the fund generally designated to provide operating expenses for that board, subject to the appropriation provisions applicable to that fund.

CHAPTER 549

An act to amend Section 5600 of the Business and Professions Code, to add Section 55.3 to, and to add Part 2.52 (commencing with Section 55.51) and Part 2.53 (commencing with Section 55.55) to Division 1 of, the Civil Code, to amend Sections 4450 and 4459.5 of, and to add Chapter 3.7 (commencing with Section 8299) to Division 1 of Title 2 of, the Government Code, and to amend Section 18949.29 of the Health and Safety Code, relating to disability access, and making an appropriation therefor.

[Approved by Governor September 28, 2008. Filed with Secretary of State September 28, 2008.]

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

SECTION 1. Section 5600 of the Business and Professions Code is amended to read:

5600. (a) All licenses issued or renewed under this chapter shall expire at 12 midnight on the last day of the birth month of the licenseholder in each odd-numbered year following the issuance or renewal of the license.

(b) To renew an unexpired license, the licenseholder shall, before the time at which the license would otherwise expire, apply for renewal on

a form prescribed by the board and pay the renewal fee prescribed by this chapter.

(c) The renewal form shall include a statement specifying whether the licensee was convicted of a crime or disciplined by another public agency during the preceding renewal period and that the licensee's representations on the renewal form are true, correct, and contain no material omissions of fact, to the best knowledge and belief of the licensee.

(d) (1) As a condition of license renewal, a licensee shall have completed coursework regarding disability access requirements pursuant to paragraphs (2) and (3). A licensee shall certify to the board, as a part of the license renewal process, that he or she has completed the required coursework prior to approval of his or her license renewal and shall provide documentation from the course provider that shall include the course title, subjects covered, name of provider and trainer or educator, date of completion, number of hours completed, and a statement about the trainer or educator's knowledge and experience background.

(2) (A) For licenses renewed on and after July 1, 2009, and before January 1, 2010, a licensee shall have completed one hour of coursework.

(B) For licenses renewed on and after January 1, 2010, and before January 1, 2011, a licensee shall have completed two and one-half hours of coursework.

(C) For licenses renewed on and after January 1, 2011, a licensee shall have completed five hours of coursework within the previous two years.

(3) Coursework regarding disability access requirements shall include information and practical guidance concerning requirements imposed by the Americans with Disabilities Act of 1990 (Public Law 101-336; 42 U.S.C. Sec. 12101 et seq.), state laws that govern access to public facilities, and federal and state regulations adopted pursuant to those laws. Coursework provided pursuant to this paragraph shall be presented by trainers or educators with knowledge and expertise in these requirements. The board shall require that a licensee certify that he or she has satisfied the requirements of this subdivision as a condition of license renewal.

SEC. 2. Section 55.3 is added to the Civil Code, to read:

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

(1) "Complaint" means a civil complaint that is filed or is to be filed with a court and is sent to or served upon a defendant on the basis of one or more construction-related accessibility claims, as defined in this section.

(2) "Demand for money" means a written document that is provided to a building owner or tenant, or an agent or employee of a building

owner or tenant, that contains a request for money on the basis of one or more construction-related accessibility claims, as defined in paragraph (3).

(3) "Construction-related accessibility claim" means any claim of a violation of any construction-related accessibility standard, as defined by paragraph (6) of subdivision (a) of Section 55.52, with respect to a place of public accommodation. "Construction-related accessibility claim" does not include a claim of interference with housing within the meaning of paragraph (2) of subdivision (b) of Section 54.1, or any claim of interference caused by something other than the construction-related accessibility condition of the property, including, but not limited to, the conduct of any person.

(b) An attorney shall provide a written advisory with each demand for money or complaint sent to or served by him or her upon a defendant, in the form described in subdivision (c), and on a page or pages that are separate and clearly distinguishable from the demand for money or complaint, as follows:

IMPORTANT INFORMATION FOR BUILDING OWNERS AND TENANTS

This form is available in English, Spanish, Chinese, Vietnamese, and Korean through the Judicial Council of California. Persons with visual impairments can get assistance in viewing this form through the Judicial Council Internet Web site at http://www.courtinfo.ca.gov.

Existing law requires that you receive this information because the demand for money or complaint you received with this document claims that your building or property does not comply with one or more existing construction-related accessibility laws or regulations protecting the civil rights of persons with disabilities to access public places.

YOU HAVE IMPORTANT LEGAL OBLIGATIONS. Compliance with disability access laws is a serious and significant responsibility that applies to all California building owners and tenants with buildings open for business to the public. You may obtain information about your legal obligations and how to comply with disability access laws through the Division of the State Architect. Commencing September 1, 2009, information will also be available from the California Commission on Disability Access Internet Web site.

YOU HAVE IMPORTANT LEGAL RIGHTS. You are not required to pay any money unless and until a court finds you liable.

Moreover, RECEIPT OF THIS ADVISORY DOES NOT NECESSARILY MEAN YOU WILL BE FOUND LIABLE FOR ANYTHING.

You may wish to promptly consult an attorney experienced in this area of the law to get helpful legal advice or representation in responding to the demand for money or complaint you received. You may contact the local bar association in your county for information on available attorneys in your area. If you have insurance, you may also wish to contact your insurance provider. You have the right to seek assistance or advice about this demand for money or complaint from any person of your choice, and no one may instruct you otherwise. Your best interest may be served by seeking legal advice or representation from an attorney.

If a complaint has been filed and served on you and your property has been inspected by a Certified Access Specialist (CASp; see www.dsa.dgs.ca.gov/casp), you may have the right to a court stay (temporary stoppage) and early evaluation conference to evaluate the merits of the construction-related accessibility claim against you pursuant to Civil Code Section 55.54. At your option, you may be, but need not be, represented by an attorney to file a reply and to file an application for a court stay and early evaluation conference. If you choose not to hire an attorney to represent you, you may obtain additional information about how to represent yourself and how to file a reply without hiring an attorney through the Judicial Council Internet Web site at http://www.courtinfo.ca.gov/selfhelp/. You may also obtain a form to file your reply to the lawsuit, as well as the form and information for filing an application to request the court stay and early evaluation conference at that same Web site.

If you choose to hire an attorney to represent you, the attorney who sent you the demand for money or complaint is prohibited from contacting you further unless your attorney has given the other attorney permission to contact you. If the other attorney does try to contact you, you should immediately notify your attorney.

(c) On or before July 1, 2009, the Judicial Council shall adopt a form that may be used by attorneys to comply with the requirements of subdivision (b). The form shall be in substantially the same format and include all of the text set forth in subdivision (b). The form shall be available in English, Spanish, Chinese, Vietnamese, and Korean, and shall include a statement that the form is available in additional languages, and the Judicial Council Internet Web site address where the different versions of the form may be located. The form shall include

Internet Web site information for the Division of the State Architect and, when operational, the California Commission on Disability Access.

(d) Subdivision (b) shall apply only to a demand for money or complaint made by an attorney. Nothing in this section is intended to affect the right to file a civil complaint under any other law or regulation protecting the physical access rights of persons with disabilities. Additionally, nothing in this section requires a party acting in propria persona to provide or send a demand for money to another party before proceeding against that party with a civil complaint.

(e) This section shall not apply to any action brought by the Attorney General, or by any district attorney, city attorney, or county counsel.

SEC. 3. Part 2.52 (commencing with Section 55.51) is added to Division 1 of the Civil Code, to read:

PART 2.52. CONSTRUCTION-RELATED ACCESSIBILITY STANDARDS COMPLIANCE

55.51. This part shall be known, and may be cited, as the Construction-Related Accessibility Standards Compliance Act. Notwithstanding any other provision of law, the provisions of this part shall apply to any construction-related accessibility claim, as defined in this part, including, but not limited to, any claim brought under Section 51, 54, 54.1, or 55.

55.52. (a) For purposes of this part, the following definitions apply:

(1) "Construction-related accessibility claim" means any civil claim in a civil action with respect to a place of public accommodation, including, but not limited to, a claim brought under Section 51, 54, 54.1, or 55, based wholly or in part on an alleged violation of any construction-related accessibility standard, as defined in paragraph (6).

(2) "Application for stay and early evaluation conference" means an application to be filed with the court that meets the requirements of subdivision (c) of Section 55.54.

(3) "Certified access specialist" or "CASp" means any person who has been certified pursuant to Section 4459.5 of the Government Code.

(4) "CASp-inspected" means the site was inspected by a CASp and determined to meet all applicable construction-related accessibility standards pursuant to paragraph (1) of subdivision (a) of Section 55.53.

(5) "CASp determination pending" means the site was inspected by a CASp and is pending a determination by the CASp that the site meets applicable construction-related accessibility standards pursuant to paragraph (2) of subdivision (a) of Section 55.53.

(6) "Construction-related accessibility standard" means a provision, standard, or regulation under state or federal law requiring compliance

with standards for making new construction and existing facilities accessible to persons with disabilities, including, but not limited to, any such provision, standard, or regulation set forth in Section 51, 54, 54.1, or 55 of this code, Section 19955.5 of the Health and Safety Code, the California Building Standards Code (Title 24 of the California Code of Regulations), the Americans with Disabilities Act of 1990 (Public Law 101-336; 42 U.S.C. Sec. 12101 et seq.), and the Americans with Disabilities Act Accessibility Guidelines (Appendix A to Part 36, Title 28, Code of Federal Regulations).

(7) "Place of public accommodation" has the same meaning as "public accommodation," as set forth in Section 12181(7) of Title 42 of the United States Code and the federal regulations adopted pursuant to that section.

(8) "Qualified defendant" means a defendant in an action that includes a construction-related accessibility claim that is asserted against a place of public accommodation that met the requirements of "CASp-inspected" or "CASp determination pending" prior to the date the defendant was served with the summons and complaint in that action. To be a qualified defendant, the defendant is not required to have been the party who hired any CASp, so long as the basis of the alleged liability of the defendant is a construction-related accessibility claim. To determine whether a defendant is a qualified defendant, the court need not make a finding that the place of public accommodation complies with all applicable construction-related accessibility standards as a matter of law. The court need only determine that the place of public accommodation has a status of "CASp-inspected" or "CASp determination pending."

(9) "Site" means a place of public accommodation.

(b) Unless otherwise indicated, terms used in this part relating to civil procedure have the same meanings that those terms have in the Code of Civil Procedure.

55.53. (a) For purposes of this part, a certified access specialist shall, upon completion of the inspection of a site, comply with the following:

(1) For a CASp-inspected site, if the CASp determines the site meets all applicable construction-related accessibility standards, the CASp shall provide a written inspection report to the requesting party that includes both of the following:

(A) An identification and description of the inspected structures and areas of the site.

(B) A signed and dated statement of compliance that includes both of the following:

(i) A statement that, in the opinion of the CASp, the inspected structures and areas of the site meet construction-related accessibility standards. The statement shall clearly indicate whether the determination

of the CASp includes an assessment of readily achievable barrier removal.

(ii) If corrections were made as a result of the CASp inspection, an itemized list of all corrections and dates of completion.

(2) For a CASp determination pending site, if the CASp determines that corrections are needed to the site in order for the site to meet all applicable construction-related accessibility standards, the CASp shall provide a signed and dated written inspection report to the requesting party that includes all of the following:

(A) An identification and description of the inspected structures and areas of the site.

(B) A statement that, in the opinion of the CASp, the inspected structures and areas of the site need correction to meet construction-related accessibility standards. This statement shall clearly indicate whether the determination of the CASp includes an assessment of readily achievable barrier removal.

(C) An identification and description of the structures or areas of the site that need correction and the correction needed.

(D) A schedule of completion for each of the corrections within a reasonable timeframe.

(b) For purposes of this section, in determining whether the site meets applicable construction-related accessibility standards when there is a conflict or difference between a state and federal provision, standard, or regulation, the state provision, standard, or regulation shall apply unless the federal provision, standard, or regulation is more protective of accessibility rights.

(c) Every CASp who conducts an inspection of a place of public accommodation shall, upon completing the inspection of the site, provide the building owner or tenant who requested the inspection with the following notice, which the State Architect shall make available as a form on the State Architect's Internet Web site:

NOTICE TO PRIVATE PROPERTY OWNER/TENANT:

YOU ARE ADVISED TO KEEP IN YOUR RECORDS ANY WRITTEN INSPECTION REPORT AND ANY OTHER DOCUMENTATION CONCERNING YOUR PROPERTY SITE THAT IS GIVEN TO YOU BY A CERTIFIED ACCESS SPECIALIST.

IF YOU BECOME A DEFENDANT IN A LAWSUIT THAT INCLUDES A CLAIM CONCERNING A SITE INSPECTED BY A CERTIFIED ACCESS SPECIALIST, YOU MAY BE ENTITLED TO A STAY (TEMPORARY STOPPAGE) OF THE CLAIM AND AN EARLY EVALUATION CONFERENCE.

IN ORDER TO REQUEST THE STAY AND EARLY EVALUATION CONFERENCE, YOU WILL NEED TO VERIFY THAT A CERTIFIED ACCESS SPECIALIST HAS INSPECTED THE SITE THAT IS THE SUBJECT OF THE CLAIM. YOU WILL ALSO BE REQUIRED TO PROVIDE THE COURT AND THE PLAINTIFF WITH THE COPY OF A WRITTEN INSPECTION REPORT BY THE CERTIFIED ACCESS SPECIALIST, AS SET FORTH IN CIVIL CODE SECTION 55.54. THE APPLICATION FORM AND INFORMATION ON HOW TO REQUEST A STAY AND EARLY EVALUATION CONFERENCE MAY BE OBTAINED AT http://www.courtinfo.ca.gov/selfhelp/.

YOU ARE ENTITLED TO REQUEST, FROM A CERTIFIED ACCESS SPECIALIST WHO HAS CONDUCTED AN INSPECTION OF YOUR PROPERTY, A WRITTEN INSPECTION REPORT AND OTHER DOCUMENTATION AS SET FORTH IN CIVIL CODE SECTION 55.53. YOU ARE ALSO ENTITLED TO REQUEST THE ISSUANCE OF A DISABILITY ACCESS INSPECTION CERTIFICATE, WHICH YOU MAY POST ON YOUR PROPERTY.

(d) (1) Commencing July 1, 2010, a local agency shall employ or retain at least one building inspector who is a certified access specialist. The certified access specialist shall provide consultation to the local agency, permit applicants, and members of the public on compliance with state construction-related accessibility standards with respect to inspections of a place of public accommodation that relate to permitting, plan checks, or new construction, including, but not limited to, inspections relating to tenant improvements that may impact access. If a local agency employs or retains two or more certified access specialists to comply with this subdivision, at least one-half of the certified access specialists shall be building inspectors who are certified access specialists.

(2) Commencing January 1, 2014, a local agency shall employ or retain a sufficient number of building inspectors who are certified access specialists to conduct permitting and plan check services to review for compliance with state construction-related accessibility standards by a place of public accommodation with respect to new construction, including, but not limited to, projects relating to tenant improvements that may impact access. If a local agency employs or retains two or more certified access specialists to comply with this subdivision, at least one-half of the certified access specialists shall be building inspectors who are certified access specialists.

(3) If a permit applicant or member of the public requests consultation from a certified access specialist, the local agency may charge an amount limited to a reasonable hourly rate, an estimate of which shall be provided

upon request in advance of the consultation. A local government may additionally charge or increase permitting, plan check, or inspection fees to the extent necessary to offset the costs of complying with this subdivision. Any revenues generated from an hourly or other charge or fee increase under this subdivision shall be used solely to offset the costs incurred to comply with this subdivision. A CASp inspection pursuant to subdivision (a) by a building inspector who is a certified access specialist shall be treated equally for legal and evidentiary purposes as an inspection conducted by a private CASp. Nothing in this subdivision shall preclude permit applicants or any other person with a legal interest in the property from retaining a private CASp at any time.

(e) (1) Every CASp who completes an inspection of a place of public accommodation shall, upon a determination that the site either meets applicable construction-related accessibility standards pursuant to paragraph (1) of subdivision (a) or is "CASp determination pending" pursuant to paragraph (2) of subdivision (a), provide the building owner or tenant requesting the inspection with a numbered disability access inspection certificate indicating that the site has been inspected by a certified access specialist. The disability access inspection certificate shall be dated and signed by the CASp inspector, and shall contain the inspector's name and license number. Upon issuance of a certificate, the CASp shall record the issuance of the numbered certificate, the name and address of the recipient, and the type of report issued pursuant to subdivision (a) in a record book the CASp shall maintain for that purpose.

(2) Beginning March 1, 2009, the State Architect shall make available for purchase by any local building department or CASp sequentially numbered disability access inspection certificates that are printed with a watermark or other feature to deter forgery and that comply with the information requirements specified in subdivision (a). The certificate shall be in substantially the following form:


These premises have been inspected
by a Certified Access Specialist
ACCESS
Inspection Date: _____ Inspector License#: _____
Name of CASp Inspector: _____
http://www.dsa.dgs.ca.gov/casp

(3) The disability access inspection certificate may be posted on the premises of the place of public accommodation, unless, following the date of inspection, the inspected site has been modified or construction has commenced to modify the inspected site in a way that may impact compliance with construction-related accessibility standards.

(f) Nothing in this section or any other provision of law is intended to require a property owner or tenant to hire a CASp. A property owner's or tenant's election not to hire a CASp shall not be admissible to prove that person's lack of intent to comply with the law.

55.54. (a) (1) An attorney who causes a summons and complaint to be served in an action that includes a construction-related accessibility claim, including, but not limited to, a claim brought under Section 51, 54, 54.1, or 55, shall, at the same time, cause to be served a copy of the application form specified in subdivision (c) and a copy of the following notice to the defendant on separate papers that shall be served with the summons and complaint:

NOTICE TO DEFENDANT

YOU MAY BE ENTITLED TO ASK FOR A STAY (TEMPORARY STOPPAGE) AND EARLY EVALUATION CONFERENCE IN THIS LAWSUIT.

If the construction-related accessibility claim pertains to a site that has been inspected by a Certified Access Specialist (CASp) and you have an inspection report for that site, you may make an immediate request for a court stay and early evaluation conference in the construction-related accessibility claim by filing the attached application form with the court. You may be entitled to the court stay and early evaluation conference regarding the accessibility claim only if ALL of the statements in the application form are true.

The court will schedule the conference to be held within 50 days after you file the attached application form. The court will also issue an immediate stay of the proceedings unless the plaintiff has obtained a temporary restraining order in the construction-related accessibility claim. At your option, you may be, but need not be, represented by an attorney to file the application to request the early evaluation conference. You may obtain a copy of the application form, filing instructions, and additional information about the stay and early evaluation conference through the Judicial Council Internet Web site at http://www.courtinfo.ca.gov/selfhelp/.

You may file the application after you are served with a summons and complaint, but no later than your first court pleading or appearance in this case, which is due within 30 days after you receive

the summons and complaint. If you do not have an attorney, you will need to file the application within 30 days after you receive the summons and complaint to request the stay and early evaluation conference. If you do not file the application, you will still need to file your reply to the lawsuit within 30 days after you receive the summons and complaint to contest it. You may obtain more information about how to represent yourself and how to file a reply without hiring an attorney at http://www.courtinfo.ca.gov/selfhelp/. If a plaintiff representing himself or herself hires an attorney after the case is filed, you will have 30 days to file an application for a court stay and early evaluation conference after you receive a Notice of Substitution of Counsel, unless an early evaluation conference or settlement conference has already been held.

You may file the application form without the assistance of an attorney, but it may be in your best interest to immediately seek the assistance of an attorney experienced in disability access laws when you receive a summons and complaint. You may make an offer to settle the case, and it may be in your interest to put that offer in writing so that it may be considered under Civil Code Section 55.55.

(2) An attorney who files a Notice of Substitution of Counsel to appear as counsel for a plaintiff who, acting in propia persona, had previously filed a complaint in an action that includes a construction-related accessibility claim, including, but not limited to, a claim brought under Section 51, 54, 54.1, or 55, shall, at the same time, cause to be served a copy of the application form specified in subdivision (c) and a copy of the notice specified in paragraph (1) upon the defendant on separate pages that shall be attached to the Notice of Substitution of Counsel.

(b) (1) Notwithstanding any other provision of law, upon being served with a summons and complaint asserting a construction-related accessibility claim, including, but not limited to, a claim brought under Section 51, 54, 54.1, or 55, a qualified defendant may file a request for a court stay and early evaluation conference in the proceedings of that claim prior to or simultaneous with the qualified defendant's responsive pleading or other initial appearance in the action that includes the claim. If the qualified defendant filed a timely request for stay and early evaluation conference before a responsive pleading was due, the period for filing a responsive pleading shall be tolled until the stay is lifted. Any responsive pleading filed simultaneously with a request for stay and early evaluation conference may be amended without prejudice, and the period for filing that amendment shall be tolled until the stay is lifted.

(2) Notwithstanding any other provision of law, if the plaintiff had acted in propia persona in filing a complaint that includes a

construction-related accessibility claim, including, but not limited to, a claim brought under Section 51, 54, 54.1, or 55, a qualified defendant who is served with a Notice of Substitution of Counsel shall have 30 days to file an application for a stay and an early evaluation conference. The application may be filed prior to or after the defendant's filing of a responsive pleading or other initial appearance in the action that includes the claim, except that an application may not be filed in a claim in which an early evaluation conference or settlement conference has already been held on the claim.

(c) (1) An application for an early evaluation conference and stay shall include a signed declaration that declares both of the following:

(A) The site identified in the complaint has been CASp-inspected or is CASp determination pending and, if the site is CASp-inspected, there have been no modifications completed or commenced since the date of inspection that may impact compliance with construction-related accessibility standards to the best of the defendant's knowledge.

(B) An inspection report pertaining to the site has been issued by a CASp. The inspection report shall be provided to the court and the plaintiff at least 15 days prior to the court date set for the early evaluation conference.

(2) The following provisional request form may be used and filed by a qualified defendant until a form is adopted by the Judicial Council for that purpose pursuant to subdivision (k):

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number if attorney, and address): *TELEPHONE NO.:* *FAX NO. (Optional):* *E-MAIL ADDRESS (Optional):* *ATTORNEY FOR (Name):*	*FOR COURT USE ONLY*
SUPERIOR COURT OF CALIFORNIA, COUNTY OF _____ *STREET ADDRESS:* *MAILING ADDRESS:* *CITY AND ZIP CODE:* *BRANCH NAME:*	
PLAINTIFF: *DEFENDANT:*	
DEFENDANT'S APPLICATION FOR STAY AND EARLY EVALUATION CONFERENCE PURSUANT TO CIVIL CODE SECTION 55.54 (CONSTRUCTION-RELATED ACCESSIBILITY CLAIM)	*CASE NUMBER:*

(Information about this application and the filing instructions may be obtained at http://www.courtinfo.ca.gov/selfhelp/.)

1. *Defendant (name)* _____ *requests a stay of proceedings and early evaluation conference pursuant to Civil Code Section 55.54.*
2. *The complaint in this case alleges a construction-related accessibility claim as defined under Civil Code Section 55.52(a)(1).*
3. *The claim concerns a site that (check the box if the statement is true):*
   a. _____ *Has been inspected by a Certified Access Specialist (CASp) and determined to be CASp inspected or CASp determination pending and, if CASp inspected, there have been no modifications completed or commenced since the date of inspection that may impact compliance with construction-related accessibility standards to the best of defendant's knowledge; and*
   b. _____ *An inspection report by a Certified Access Specialist (CASp) relating to the site has been issued.*
   (Both (a) and (b) must be met for the court to order a Stay and Early Evaluation Conference.)
4. *I am requesting the court to:*
   a. Stay the proceedings relating to the construction-related accessibility claim.
   b. Schedule an Early Evaluation Conference.
   c. Order Defendant to file a copy of the Certified Access Specialist (CASp) report with the court under seal and serve a copy of the report on the Plaintiff at least fifteen (15) days before the Early Evaluation Conference date, which shall be subject to a protective order.
   d. Order Plaintiff to file the statement required by Civil Code Section 55.54(d)(5)(A)-(D) with the court and serve a copy of the statement on the Defendant at least fifteen (15) days before the date of the Early Evaluation Conference.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date:

_____ _____
(TYPE OR PRINT NAME OF DECLARANT) *(SIGNATURE OF DECLARANT)*

_____
(TITLE OF DECLARANT)

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number if attorney, and address): *TELEPHONE NO.:* *FAX NO. (Optional):* *E-MAIL ADDRESS (Optional):* *ATTORNEY FOR (Name):*	*FOR COURT USE ONLY*
SUPERIOR COURT OF CALIFORNIA, COUNTY OF _____ *STREET ADDRESS:* *MAILING ADDRESS:* *CITY AND ZIP CODE:* *BRANCH NAME:*	
PLAINTIFF: *DEFENDANT:*	
NOTICE OF STAY OF PROCEEDINGS AND EARLY EVALUATION CONFERENCE (CONSTRUCTION-RELATED ACCESSIBILITY CLAIM)	*CASE NUMBER:*

Stay of Proceeding

For a period of 90 days from the date of the filing of this court notice, unless otherwise ordered by the court, the parties are stayed from taking any further action relating to the construction-related accessibility claim or claims in this case.

This stay does not apply to any construction-related accessibility claim in which the plaintiff has obtained temporary injunctive relief which is still in place.

Notice of Early Evaluation Conference

1. *This action includes a construction-related accessibility claim under Civil Code Section 55.52(a)(1) or other provision of law.*
2. *A defendant has requested an early evaluation conference and a stay of proceedings under Civil Code Section 55.54.*
3. *The early evaluation conference is scheduled as follows:*

   a. *Date:* *Time:* *Dept.* *Room:*

   b. *The conference will be held at _____ the court address shown above, or _____ at:*

4. *The plaintiff and defendant shall attend with any other person needed for settlement of the case unless, with court approval, a party's disability requires the party's participation by a telephone appearance or other alternate means or through the personal appearance of an authorized representative.*
5. *The defendant that requested the conference and stay of proceedings must file with the court under seal and serve on all parties a copy of the CASp report for the site that is the subject of the construction-related accessibility claim at least fifteen (15) days before the date set for the early evaluation conference, which shall be subject to a protective order to maintain its confidentiality.*
6. *The plaintiff shall file with the court and serve on all parties at least fifteen (15) days before the date set for the early evaluation conference a statement of, to the extent known, all of the following:*
   a. *An itemized list of specific issues on the subject premises that are the basis of the claimed construction-related accessibility violations in the plaintiff's complaint;*
   b. *The amount of damages claimed;*
   c. *The amount of attorney's fees and costs incurred to date, if any, that are being claimed; and*
   d. *Any demand for settlement of the case in its entirety*

7. *A copy of this Notice and Order and the Defendant's Application shall be served on the plaintiff or plaintiff's attorney by hand delivering it or mailing it to the address listed on the complaint on the same date that the court issues this Notice and Order of Stay of Proceeding and Early Evaluation Conference.*

Date: *Clerk, by* _____, *Deputy*

More information about this Notice and Order and the defendant's application, and instructions to assist plaintiff and defendants in complying with this Notice and Order, may be obtained at http://www.courtinfo.ca.gov/selfhelp/.)

Requests for Accommodation

Assistive listening systems, computer-assisted real-time captioning, or sign language interpreter services are available if you ask at least 5 days before the date on which you are to appear. Contact the clerk's office or go to www.courtinfo.ca.gov/forms for Request for Accommodations by Persons with Disabilities and Order (form MC-410). (Civil Code Section 54.8)

Proof of Service

(Required from Defendant Filing Application for Stay and Early Evaluation Conference)

I served a copy of the defendant's Application For Stay and Early Evaluation Conference Pursuant To Civil Code Section 55.54 and the court Notice and Order of Stay of Proceedings and Early Evaluation Conference (check one):

_____ *On the Plaintiff's attorney*

_____ *On the Plaintiff who is not represented by an attorney*

By hand delivering it or mailing it to the address listed on the complaint on the day the Court issued this Notice and Order of Stay of Proceedings and Early Evaluation Conference.

I declare under penalty of perjury of the laws of the State of California that the foregoing is true and correct.

Dated: _____

_____ _____

Type or Print Name *Signature*

_____

Address of named person

(3) The provisional form and any replacement Judicial Council form shall also provide space for the court's order pursuant to subdivision (d), the defendant's declaration of proof of service of the application, and the notice of the court's order.

(d) Upon the filing of an application for stay and early evaluation conference by a qualified defendant, the court shall immediately issue an order that does all of the following:

(1) Grants a 90-day stay of the proceedings with respect to the construction-related accessibility claim, unless the plaintiff has obtained temporary injunctive relief that is still in place for the construction-related accessibility claim.

(2) Schedules a mandatory early evaluation conference for a date as soon as possible from the date of the order, but in no event later than 50 days after issuance of the order, and in no event earlier than 21 days after the filing of the request.

(3) Directs the parties, and any other person whose authority is required to negotiate and enter into settlement, to appear in person at the time set for the conference. Appearance by counsel shall not satisfy the requirement that the parties or those with negotiation and settlement authority personally appear, provided, however, that the court may allow a party who is unable to attend in person due to his or her disability to participate in the hearing by telephone or other alternative means or through a representative authorized to settle the case.

(4) Directs the defendant to file with the court under seal and serve on the plaintiff a copy of any relevant CASp inspection report at least 15 days before the date of the conference, which shall be subject to a protective court order maintaining the confidentiality of the report.

(5) Directs the plaintiff to file with the court and serve on the defendant at least 15 days before the date of the conference a statement that includes, to the extent reasonably known, for use solely for the purpose of the early evaluation conference, all of the following:

(A) An itemized list of specific conditions on the subject premises that are the basis of the claimed violations of construction-related accessibility standards in the plaintiff's complaint.

(B) The amount of damages claimed.

(C) The amount of attorney's fees and costs incurred to date, if any, that are being claimed.

(D) Any demand for settlement of the case in its entirety.

(e) (1) A party failing to comply with any court order may be subject to court sanction at the court's discretion.

(2) The court shall lift the stay when the defendant has failed to file and serve the CASp inspection report prior to the early evaluation conference and has failed also to produce the report at the time of the

early evaluation conference, unless the defendant shows good cause for that failure.

(3) The court may lift the stay at the conclusion of the early evaluation conference upon a showing of good cause by the plaintiff. Good cause may include the defendant's failure to make reasonably timely progress toward completion of corrections noted by a CASp.

(4) The court may lift the seal and protective order on a CASp inspection report filed and served pursuant to subdivision (d) at the conclusion of the stay or a later time upon a showing of good cause by any party. Good cause may include the defendant's failure to make reasonably timely progress toward completion of corrections noted by a CASp. Any protective order or court seal imposed pursuant to subdivision (d) shall terminate upon the conclusion of the claim.

(f) All discussions at the early evaluation conference shall be subject to Section 1152 of the Evidence Code. It is the intent of the Legislature that the purpose of the evaluation conference shall include, but not be limited to, evaluation of all of the following:

(1) Whether the defendant is entitled to the 90-day stay for some or all of the identified issues in the case, as a qualified defendant.

(2) The current condition of the site and the status of any plan of corrections, including whether the qualified defendant has corrected or is willing to correct the alleged violations, and the timeline for doing so.

(3) Whether the case, including any claim for damages or injunctive relief, can be settled in whole or in part.

(4) Whether the parties should share other information that may facilitate early evaluation and resolution of the dispute.

(g) Nothing in this section precludes any party from making an offer to compromise pursuant to Section 998 of the Code of Civil Procedure.

(h) The court may schedule additional conferences and may extend the 90-day stay for good cause shown, but not to exceed one additional 90-day extension.

(i) Early evaluation conferences shall be conducted by a superior court judge or commissioner, or a court early evaluation conference officer. A commissioner shall not be qualified to conduct early evaluation conferences pursuant to this subdivision unless he or she has received training regarding disability access requirements imposed by the Americans with Disabilities Act of 1990 (Public Law 101-336; 42 U.S.C. Sec. 12101 et seq.), state laws that govern access to public facilities, and federal and state regulations adopted pursuant to those laws. For purposes of this subdivision, a "court early evaluation conference officer" means an attorney employed by the court who has received training regarding disability access requirements imposed by the Americans with Disabilities Act of 1990, state laws that govern access to public facilities, and federal

and state regulations adopted pursuant to those laws. Attorneys serving in this capacity may also be utilized by the court for other purposes not related to these proceedings.

(j) Nothing in this part shall be deemed to make any inspection report, opinion, statement, or other finding or conclusion of a CASp binding on the court, or to abrogate in any manner the ultimate authority of the court to make all appropriate findings of fact and law. The CASp inspection report and any opinion, statement, finding, or conclusion therein shall be given the weight the trier of fact finds that it deserves.

(k) Nothing in this part shall be construed to invalidate or limit any California construction-related accessibility standard that provides greater or equal protection for the rights of individuals with disabilities than is afforded by the Americans with Disabilities Act (Public Law 101-336; 42 U.S.C. Sec. 12101 et seq.) and the federal regulations adopted pursuant to that act.

(*l*) (1) The Judicial Council shall prepare and post on its Internet Web site instructions and a form for a qualified defendant to use to file an application for stay and early evaluation conference as provided in subdivisions (b) and (c), and a form for the court's notice of stay and early evaluation conference. Until those forms are adopted, the Judicial Council shall post on its Internet Web site the provisional forms set forth in subdivision (c).

(2) The Judicial Council shall also prepare and post on its Internet Web site instructions and a cover page to assist plaintiffs and defendants, respectively, to comply with their filing responsibilities under subdivision (d). The cover page shall also provide for the party's declaration of proof of service of the pertinent document served under the court order.

(m) The stay provisions shall not apply to any construction-related accessibility claim in which the plaintiff has been granted temporary injunctive relief that remains in place.

(n) This section shall not apply to any action brought by the Attorney General, or by any district attorney, city attorney, or county counsel.

(o) This part shall apply only to claims filed on or after January 1, 2009. Nothing in this part is intended to affect litigation filed before that date.

(p) Nothing in this part is intended to affect existing law regarding class action requirements.

SEC. 4. Part 2.53 (commencing with Section 55.55) is added to Division 1 of the Civil Code, to read:

PART 2.53. ATTORNEY'S FEES AND STATUTORY DAMAGES IN CONSTRUCTION-RELATED ACCESSIBILITY STANDARDS CLAIMS

55.55. Notwithstanding subdivision (f) of Section 55.54, in determining an award of reasonable attorney's fees and recoverable costs with respect to any construction-related accessibility claim, the court may consider, along with other relevant information, written settlement offers made and rejected by the parties. Nothing in this section affects or modifies the inadmissibility of evidence regarding offers of compromise pursuant to Section 1152 of the Evidence Code, including, but not limited to, inadmissibility to prove injury or damage.

55.56. (a) Statutory damages under either subdivision (a) of Section 52 or subdivision (a) of Section 54.3 may be recovered in a construction-related accessibility claim against a place of public accommodation only if a violation or violations of one or more construction-related accessibility standards denied the plaintiff full and equal access to the place of public accommodation on a particular occasion.

(b) A plaintiff is denied full and equal access only if the plaintiff personally encountered the violation on a particular occasion, or the plaintiff was deterred from accessing a place of public accommodation on a particular occasion.

(c) A violation personally encountered by a plaintiff may be sufficient to cause a denial of full and equal access if the plaintiff experienced difficulty, discomfort, or embarrassment because of the violation.

(d) A plaintiff demonstrates that he or she was deterred from accessing a place of public accommodation on a particular occasion only if both of the following apply:

(1) The plaintiff had actual knowledge of a violation or violations that prevented or reasonably dissuaded the plaintiff from accessing a place of public accommodation that the plaintiff intended to use on a particular occasion.

(2) The violation or violations would have actually denied the plaintiff full and equal access if the plaintiff had accessed the place of public accommodation on that particular occasion.

(e) Statutory damages may be assessed pursuant to subdivision (a) based on each particular occasion that the plaintiff was denied full and equal access, and not upon the number of violations of construction-related accessibility standards identified at the place of public accommodation where the denial of full and equal access occurred. If the place of public accommodation consists of distinct facilities that offer distinct services, statutory damages may be assessed based on each

denial of full and equal access to the distinct facility, and not upon the number of violations of construction-related accessibility standards identified at the place of public accommodation where the denial of full and equal access occurred.

(f) This section does not alter the applicable law for the awarding of injunctive or other equitable relief for a violation or violations of one or more construction-related accessibility standards, nor alter any legal obligation of a party to mitigate damages.

55.57. (a) This part shall apply only to claims filed on or after January 1, 2009. Nothing in this part is intended to affect litigation filed before that date, and no inference shall be drawn from provisions contained in this part concerning the state of the law as it existed prior to January 1, 2009.

(b) Nothing in this part is intended to affect existing law regarding class action requirements.

SEC. 5. Section 4450 of the Government Code is amended to read:

4450. (a) It is the purpose of this chapter to ensure that all buildings, structures, sidewalks, curbs, and related facilities, constructed in this state by the use of state, county, or municipal funds, or the funds of any political subdivision of the state shall be accessible to and usable by persons with disabilities.

(b) The State Architect shall develop and submit proposed building standards to the California Building Standards Commission for approval and adoption pursuant to Chapter 4 (commencing with Section 18935) of Part 2.5 of Division 13 of the Health and Safety Code and shall develop other regulations for making buildings, structures, sidewalks, curbs, and related facilities accessible to and usable by persons with disabilities. The regulations and building standards relating to access for persons with disabilities shall be consistent with the standards for buildings and structures that are contained in pertinent provisions of the latest edition of the selected model code, as adopted by the California Building Standards Commission, and these regulations and building standards shall contain additional requirements relating to buildings, structures, sidewalks, curbs, and other related facilities the State Architect determines are necessary to assure access and usability for persons with disabilities. In developing and revising these additional requirements, the State Architect shall consult with the Department of Rehabilitation, the League of California Cities, the California State Association of Counties, and at least one private organization representing and comprised of persons with disabilities.

(c) In no case shall the State Architect's regulations and building standards prescribe a lesser standard of accessibility or usability than provided by the Accessibility Guidelines prepared by the federal Access

Board as adopted by the United States Department of Justice to implement the Americans with Disabilities Act of 1990 (Public Law 101-336).

(d) On or before December 31, 2010, the Division of the State Architect shall prepare and submit to the United States Department of Justice for certification proposed amendments to Part 2 of Title 24 of the California Code of Regulations that would ensure California's building standards for disability access in commercial occupancies are consistent with the federal regulations cited in subdivision (c).

SEC. 6. Section 4459.5 of the Government Code is amended to read:

4459.5. (a) The State Architect shall establish and publicize a program for voluntary certification by the state of any person who meets specified criteria as a certified access specialist. No later than January 1, 2005, the State Architect shall determine minimum criteria a person is required to meet in order to be a certified access specialist, which may include knowledge sufficient to review, inspect, or advocate universal design requirements, completion of specified training, and testing on standards governing access to buildings for persons with disabilities.

(b) The State Architect may implement the program described in subdivision (a) with startup funds derived, as a loan, from the reserve of the Public School Planning, Design, and Construction Review Revolving Fund, upon appropriation by the Legislature. That loan shall be repaid when sufficient fees have been collected pursuant to Section 4459.8.

SEC. 7. Chapter 3.7 (commencing with Section 8299) is added to Division 1 of Title 2 of the Government Code, to read:

Chapter 3.7. The California Commission on Disability Access

8299. The Legislature finds and declares that, despite the fact that state law has provided persons with disabilities the right to full and equal access to public facilities since 1968, and that a violation of the right of any person under the Americans with Disabilities Act of 1990 (Public Law 101-336; 42 U.S.C. Sec. 12101 et seq.) has also constituted a violation of the Unruh Civil Rights Act (Section 51 of the Civil Code) since 1992, persons with disabilities are still being denied full and equal access to public facilities in many instances. The Legislature further finds and declares that businesses in California have the responsibility to provide full and equal access to public facilities as required in the laws and regulations, but that compliance may be thwarted in some cases by conflicting state and federal regulations, which in turn results in unnecessary litigation. With a view to developing recommendations that will enable persons with disabilities to exercise their right to full and

equal access to public facilities, and that will facilitate business compliance with the laws and regulations to avoid unnecessary litigation, the Legislature has created the California Commission on Disability Access.

8299.01. (a) There shall be established in the state government, on or before May 1, 2009, the California Commission on Disability Access. The commission shall consist of 11 public members, and six ex officio nonvoting members, appointed as follows:

(1) Two public members appointed by the Senate Committee on Rules, with one appointee from the business community and one appointee from the disability community. The Senate Committee on Rules shall request and consider nominations from the business community and the disability community for these appointments.

(2) Two public members appointed by the Speaker of the Assembly, with one appointee from the business community and one appointee from the disability community. The Speaker of the Assembly shall request and consider nominations from the business community and the disability community for these appointments.

(3) Seven public members appointed by the Governor, with the consent of the Senate. Four of the Governor's appointees shall be from the disability community. Three appointees shall be from the business community, including an appointee representative from the California Business Properties Association. The Governor shall request and consider nominations from the business community and the disability community for these appointments.

(4) The State Architect, or his or her representative, as a nonvoting ex officio member.

(5) The Attorney General, or his or her representative, as a nonvoting ex officio member.

(6) Two members of the Senate, appointed by the Senate Committee on Rules as nonvoting ex officio members. One member shall be from the majority party and one member shall be from the minority party.

(7) Two members of the Assembly, appointed by the Speaker of the Assembly, as nonvoting ex officio members. One member shall be from the majority party, and one member shall be from the minority party.

(b) It is the intent of this section that the commission shall be broadly representative of the ethnic, gender, and racial diversity of the population of California. It is further the intent of this section that both of the following apply:

(1) The appointees from the disability community shall be persons with a disability relating to, but not limited to, vision, hearing, mobility, breathing, speech, cognitive, cardiac, emotional, developmental, learning, psychological, or immunological disabilities.

(2) The commission recruitment and appointment process engage in identifying qualified disability community representatives who should possess elements of the following qualifications:

(A) Identify as people with disabilities, activity limitations, or both.

(B) Have personal experience with disability and disability advocacy and the ability to speak broadly on disability access issues.

(C) Are knowledgeable about cross-disability access issues, including, but not limited to, hearing, vision, mobility, speech, and cognitive limitations.

(D) Are knowledgeable about a variety of physical, communication, and program access issues.

(E) Are involved with segments of national, state, or local constituencies of the disability community, such as active involvement in broad-based disability organizations.

(F) Have in place and use communication networks to facilitate communication with the segments of the disability community they are representing, including, but not limited to, segments of diverse ethnic, cultural, sex, sexual orientation, age, and linguistic communities that are representative of the diverse population of Californians with disabilities.

(c) Public members shall be appointed for three-year terms, except that, with respect to the initial appointees, the Governor shall appoint three members for a one-year term, two members for a two-year term, and two members for a three-year term. The Senate Committee on Rules and the Speaker of the Assembly shall each initially appoint one member for a two-year term and one member for a three-year term. Public members may be reappointed for additional terms.

(d) Vacancies shall be filled by the appointing authority for the unexpired portion of the terms.

8299.02. (a) Public members of the commission shall receive one hundred dollars ($100) per diem while on official business of the commission, not to exceed 12 days per year. Each member of the commission shall also be entitled to receive his or her actual necessary traveling expenses while on official business of the commission.

(b) The commission shall select annually from its membership a chairperson who shall be a representative from the disability community, and a vice chairperson who shall be a representative from the business community.

8299.03. Meetings of the commission shall be subject to the Bagley-Keene Open Meeting Act (Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2).

8299.04. The commission shall have the powers and authority necessary to carry out the duties imposed upon it by this chapter, including, but not limited to, the following:

(a) To employ any administrative, technical, or other personnel that may be necessary for the performance of its powers and duties.

(b) To hold hearings, make and sign any agreement, and do or perform any act, including the collection of relevant information, that may be necessary, desirable, or proper to carry out the purposes of this chapter.

(c) To cooperate with, and secure the cooperation of, any department, division, board, bureau, commission, or other agency of the state to facilitate the proper execution of its powers and duties under this chapter.

(d) To appoint advisers or advisory committees from time to time when the commission determines that the experience or expertise of those advisers or advisory committees is needed for projects of the commission. Section 11009 shall apply to advisers or advisory committees.

(e) To accept any federal funds granted by an act of Congress or by executive order for any purpose of this chapter.

(f) To accept any gift, donation, grant, or bequest for any purpose of this chapter.

8299.05. (a) The commission shall study and make reports to the Legislature on the following:

(1) Issues regarding compliance with state laws and regulations that are raised by either persons with disabilities or businesses, and any recommendations that would promote compliance.

(2) Whether public and private inspection programs, including the Certified Access Specialist Program, are meeting the needs of both the business community and the disability community, including by the provision of timely, competent inspections that properly identify violations and recommend appropriate remedial measures.

(3) Whether existing training and continuing education requirements for personnel involved in designing, plan checking, building, or inspecting a structure are sufficient to provide the personnel with sufficient knowledge of the state and federal disability access laws and regulations.

(4) Whether training and continuing education requirements should be enacted for landscape architects, professional engineers, and contractors to provide these professionals with sufficient knowledge of the state and federal disability access laws and regulations. This study and report shall be completed and delivered to the Legislature no later than January 1, 2011.

(b) (1) The commission shall act as an information center on the status of compliance in California with state laws and regulations providing persons with disabilities full and equal access to public facilities. To this end, it shall publish a biennial report, which may be combined with the biennial report required in odd-numbered years

pursuant to subdivision (e), on the state of disability access compliance by both the public and private sector. The report shall be written in general terms and shall not identify any particular violators.

(2) The commission shall, to the extent feasible, coordinate with other state agencies and local building departments to ensure that information provided to the public on disability access requirements is uniform and complete.

(c) The commission may recommend, develop, prepare, or coordinate materials, projects, or other activities, as appropriate, relating to any subject within its jurisdiction.

(d) The commission shall provide, within its resources, technical information regarding any of the following:

(1) Preventing or minimizing problems of compliance by California businesses by engaging in educational outreach efforts and by preparing and hosting on its Internet Web site a Guide to Compliance with State Laws and Regulations Regarding Disability Access Requirements.

(2) Recommending programs to enable persons with disabilities to obtain full and equal access to public facilities.

(e) The commission shall make reports on its activities, findings, and recommendations to the Legislature from time to time, but not less often than once during every odd-numbered year, on or before May 1 of that year, commencing in 2011.

8299.06. The commission, as soon as practicable, but in no event later than July 1, 2010, shall develop, in consultation with the staff of the California Building Standards Commission, a master checklist for disability access compliance that may be used by building inspectors.

8299.07. The commission shall study the operation of Section 55.54 of the Civil Code to assess whether it is operating to achieve its desired goal of reducing unnecessary civil actions that seek attorney's fees and damages but that do not facilitate compliance with state laws and regulations governing disability access, and whether that section is unduly impacting claims brought to facilitate compliance. The commission shall report its findings and any recommendations to the Legislature no earlier than July 1, 2013, and no later than July 1, 2014.

8299.08. (a) The commission, within its purview, is expressly authorized to inform the Legislature of its position on any legislative proposal pending before the Legislature and to urge the introduction of legislative proposals.

(b) The commission is expressly authorized to state its position and viewpoint on issues developed in the performance of its duties and responsibilities as specified in this chapter.

8299.09. With respect to its duties, the commission shall be an advisory commission only, and there shall be no right or obligation on

the part of the state to implement the findings of the commission without further legislation that specifically authorizes that the evaluations, determinations, and findings of the commission be implemented.

8299.10. The commission shall hire staff or contract for those experts or technical and professional services that may be required for the completion of any task authorized or study required by this chapter. Staff hired pursuant to this section shall be hired in compliance with the State Civil Service Act (Part 2 (commencing with Section 18500) of Division 5 of Title 2). Contracts awarded pursuant to this section shall be in compliance with Section 19130. The commission is expressly encouraged and authorized to seek the technical and legal assistance of other state agencies and departments in fulfilling its statutory responsibilities.

8299.11. This chapter shall not be implemented, and shall not remain operative, unless funds are appropriated for that purpose by the Legislature in the annual Budget Act or another statute.

SEC. 8. Section 18949.29 of the Health and Safety Code is amended to read:

18949.29. (a) All construction inspectors, plans examiners, and building officials shall complete a minimum of 45 hours of continuing education for every three-year period, with at least eight hours regarding disability access requirements pursuant to subdivision (d). A local government may charge or increase inspection fees to the extent necessary to offset any added costs incurred in complying with this section.

(b) Providers of continuing education may include any organizations affiliated with the code enforcement profession, community colleges, or other providers of similar quality, as determined by the local agency.

(c) For purposes of this section, "continuing education" is defined as that education relating to the enforcement of Title 24 of the California Code of Regulations, and any other locally enforced building and construction standards, including, but not limited to, the model uniform codes adopted by the state. When a local agency selects a model code organization as a provider of continuing education or certification programs regarding the enforcement of a model code adopted by the state, the local agency shall give preference to the organization responsible for promulgating or drafting that model code.

(d) Continuing education regarding disability access requirements shall include information and practical guidance concerning requirements imposed by the Americans with Disabilities Act of 1990 (Public Law 101-336; 42 U.S.C. Sec. 12101 et seq.), state laws that govern access to public facilities, and federal and state regulations adopted pursuant to those laws. Continuing education provided pursuant to this subdivision

shall be presented by trainers or educators with knowledge and expertise in these requirements.

SEC. 9. The Legislature finds and declares all of the following:

(a) Section 55.55 of the Civil Code, as added by Section 4 of this act, is intended to reflect the longstanding principle that when a party prevails in a civil rights case the amount of attorney's fees to be awarded is based upon equitable considerations and a variety of factors, including, but not limited to, any written settlement offers made and rejected and whether the prevailing party failed to obtain a more favorable judgment or award than the settlements offered.

(b) Section 55.56 of the Civil Code, as added by Section 4 of this act, concerns eligibility to recover statutory damages under the Unruh Civil Rights Act or the Disabled Persons Act. It provides that those damages may be recovered in a construction-related accessibility claim only when the plaintiff either personally encounters a violation on a particular occasion or is deterred from accessing a place of public accommodation on a particular occasion. With respect to deterrence, a plaintiff must, among other requirements, have had actual knowledge of the violation or violations in order to be deterred, based on the circumstances of the individual's experience. This statement is intended to reflect current case law.

(c) The term "full and equal access," as used in Section 55.56 of the Civil Code, as added by Section 4 of this act, is intended to encompass without change the existing obligations of both Section 51 of the Civil Code, including full and equal accommodations, advantages, facilities, privileges, and services, and Section 54.3 of the Civil Code, including full and equal access to accommodations, advantages, facilities, and privileges. "Full and equal access" is also intended to mean "equal access" as that term is used in case law, and therefore, is not an expansion of existing law.

(d) Subdivision (e) of Section 55.56 of the Civil Code, as added by Section 4 of this act, provides that not every violation of a construction-related accessibility standard constitutes a separate offense entitling a plaintiff to a separate award of statutory damages, even if the plaintiff personally encountered more than one violation. A restaurant, convenience store, or theater normally serves only one function — a place to eat, shop, or watch a movie — and multiple violations of one or more construction-related accessibility standards at such a place do not constitute separate denials of full and equal access. By contrast, other places of public accommodation offer more than one type of service, facility, or other function. For example, a hotel or resort may offer sleeping rooms, a restaurant, a golf course, and a spa. Likewise, a shopping center may consist of one large common area and many separate

stores and restaurants. If the place of public accommodation consists of such distinct facilities offering distinct services, statutory damages may be assessed based on each denial of full and equal access to the distinct facility, but not upon the number of violations of construction-related accessibility standards identified at the place of public accommodation where the denial of full and equal access occurred.

(e) (1) Section 55.54 of the Civil Code, as added by Section 3 of this act, requires a qualified defendant to file a copy of the relevant certified access specialist report with the court, which is to be maintained under seal and kept confidential during the litigation, except upon a showing of good cause. Similarly, a protective order is granted to the certified access specialist report that the qualified defendant is required to provide to the plaintiff.

(2) This act uniquely requires the submittal to the court of a document at a very early stage of the proceedings, whereas that document might not otherwise become a court record until the trial of the claim. Although court records are normally presumed to be public and open, statutorily mandated confidentiality is necessary for these reports because of the unique and special circumstances involved here. Specifically, there is an overriding interest in promoting greater compliance with construction-related accessibility standards by encouraging businesses to voluntarily obtain CASp reports and protecting those qualified defendants from unnecessary litigation. Thus, there is an overriding interest supporting the sealing of the CASp report that overcomes the normally paramount right of public access to the record, and there is a substantial probability that this interest will be prejudiced if the record is not sealed. In addition, the proposed sealing is narrowly tailored to the duration of the litigation, and there are no less restrictive means to achieve the overriding interest.

(3) This act also uniquely requires the defendant to provide the CASp report to the plaintiff at a very early stage of the proceedings. Normally, the exchange of potential evidence is handled through the discovery process, in which case a CASp report might not be furnished except pursuant to a protective order issued by the court or pursuant to a stipulation of the parties. In order to enhance the utility of the early evaluation conference and to avoid unnecessary court proceedings for a protective order, this act requires a qualified defendant to provide the plaintiff with the CASp report at a very early stage of the proceedings, but subject to a protective order for the duration of the proceedings, unless good cause is shown by any party for the court to lift the protective order.

SEC. 10. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because a local

agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act, within the meaning of Section 17556 of the Government Code.

SEC. 11. There is hereby appropriated eighty thousand dollars ($80,000) from the General Fund to the California Commission on Disability Access, which shall be available May 1, 2009, to fund the startup of the commission pursuant to Section 8299.01 of the Government Code.

SEC. 12. (a) Sections 2, 3, and 4 of this act shall become operative only upon issuance of a notice by the Director of Finance declaring that the California Commission on Disability Access has been funded and has commenced operations.

(b) If the commission loses funding, or for any other reason ceases operations, both of the following shall apply:

(1) Sections 55.51 and 55.52, subdivision (c) of Section 55.53, and subdivision (a) of Section 55.54 of the Civil Code, as added by Section 3 of this act, shall become inoperative.

(2) The remaining provisions of Section 55.54 shall remain operative as follows:

(A) Subdivisions (j) and (k) shall have general application.

(B) The remaining subdivisions shall be available only to a defendant in a construction-related accessibility claim relating to a place of public accommodation for which a CASp inspection and report was obtained prior to the date of the commission ceasing operations.

(c) If the commission loses funding or ceases operations for any other reason on or before January 1, 2014, Sections 55.55 and 55.56 of the Civil Code, as added by Section 4 of this act shall become inoperative on the date the commission ceases operations, except as to a construction-related accessibility claim that was filed before the date the commission ceased operations.

(d) The commission shall issue a notice of its date of ceasing operation upon the occurrence of that event. The Director of Finance also shall issue a notice within 30 days of the commission losing its funding or ceasing operations.

(e) Any notice required under this section shall be sent to the chairs of the Committee on Judiciary of the Senate and the Assembly, the Judicial Council, and the State Bar of California, and posted on the respective Internet Web sites of the Department of Finance, the Division of the State Architect, and the Commission on Disability Access.

CHAPTER 550

An act to add Section 1257.5 to the Health and Safety Code, relating to health facilities.

[Approved by Governor September 28, 2008. Filed with Secretary of State September 28, 2008.]

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

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

(a) Registered nurses and physicians have continuing education requirements that include cultural diversity training and patient/provider relationships. However, sexual orientation and gender identity are not included in these education programs.

(b) Certified nurse assistants do not have sexual orientation and gender identity education requirements.

(c) The effects of lifelong experiences of being marginalized place lesbian, gay, bisexual, and transgender (hereafter LGBT) seniors at high risk for isolation, poverty, homelessness, and premature institutionalization.

(d) Many LGBT seniors avoid accessing elder programs and services, even when their health, safety, and security depend upon it.

(e) LGBT seniors often lack social and family support networks available to non-LGBT seniors.

(f) LGBT seniors are denied many vital financial benefits provided to heterosexual married couples, including Social Security benefits and equal long-term care insurance protections.

(g) The number of people 65 years of age and older in California is expected to double to 6.5 million by 2020, thereby increasing the number of LGBT seniors who are receiving inadequate services.

(h) The state needs to ensure that the needs of LGBT seniors, as well as other under-represented groups, can be adequately addressed by the staff at senior care facilities.

(i) California leads the nation in the protections it affords to LGBT persons. By including the needs of LGBT seniors and other under-represented groups in the training of health care professionals, California can act as a model for change in other states and at the federal level.

SEC. 2. Section 1257.5 is added to the Health and Safety Code, to read:

1257.5. (a) All registered nurses, certified nurse assistants, licensed vocational nurses, and physicians working in skilled nursing facilities,

as defined in subdivision (c) of Section 1250, or congregate living health facilities, as defined in subdivision (i) of Section 1250, shall participate in a training program, to be prescribed by the department, that focuses on preventing and eliminating discrimination based on sexual orientation and gender identity.

(b) The department may incorporate the training prescribed in subdivision (a) into any existing training program that is designed to prevent or eliminate discrimination in senior care facilities.

(c) The department may charge each licensee who is subject to subdivision (a) a fee associated with determining compliance. The fee shall not exceed the department's costs for the enforcement of this section.

(d) "Sexual orientation" and "gender identity" have the same meanings as those terms are used in Section 422.56 of the Penal Code.

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

CHAPTER 551

An act to amend Section 739 of the Public Utilities Code, relating to energy.

[Approved by Governor September 28, 2008. Filed with Secretary of State September 28, 2008.]

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

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

(a) The current tiered rate structure was designed to encourage customers to use less electricity. However, many customers lack an understanding of the tiered rates, and their personal consumption, necessary to make informed energy-saving decisions.

(b) In order to realize California's energy efficiency potential, reduce peak demand, and encourage energy conservation, customers need to be provided with detailed information regarding their current and historic energy usage, the breakdown of the different costs of their usage, and

specific recommendations of measures they can take to reduce their energy consumption.

SEC. 2. Section 739 of the Public Utilities Code is amended to read:

739. (a) As used in this section:

(1) "Baseline quantity" means a quantity of electricity or gas allocated by the commission for residential customers based on from 50 to 60 percent of average residential consumption of these commodities, except that, for residential gas customers and for all-electric residential customers, the baseline quantity shall be established at from 60 to 70 percent of average residential consumption during the winter heating season. In establishing the baseline quantities, the commission shall take into account climatic and seasonal variations in consumption and the availability of gas service. The commission shall review and revise baseline quantities as average consumption patterns change in order to maintain these ratios.

(2) "Residential customer" means those customers receiving electrical or gas service pursuant to a domestic rate schedule and excludes industrial, commercial, and every other category of customer.

(b) The commission shall designate a baseline quantity of gas and electricity which is necessary to supply a significant portion of the reasonable energy needs of the average residential customer. In estimating those quantities, the commission shall take into account differentials in energy needs between customers whose residential energy needs are currently supplied by electricity alone or by both electricity and gas. The commission shall develop a separate baseline quantity for all-electric residential customers. For these purposes, "all-electric residential customers" are residential customers having electrical service only or whose space heating is provided by electricity, or both. The commission shall also take into account differentials in energy use by climatic zone and season.

(c) (1) The commission shall establish a standard limited allowance which shall be in addition to the baseline quantity of gas and electricity for residential customers dependent on life-support equipment, including, but not limited to, emphysema and pulmonary patients. A residential customer dependent on life-support equipment shall be allocated a higher energy allocation than the average residential customer.

(2) "Life-support equipment" means that equipment which utilizes mechanical or artificial means to sustain, restore, or supplant a vital function, or mechanical equipment which is relied upon for mobility both within and outside of buildings. "Life-support equipment," as used in this subdivision, includes all of the following: all types of respirators, iron lungs, hemodialysis machines, suction machines, electric nerve stimulators, pressure pads and pumps, aerosol tents, electrostatic and

ultrasonic nebulizers, compressors, IPPB machines, and motorized wheelchairs.

(3) The limited allowance specified in this subdivision shall also be made available to paraplegic and quadriplegic persons in consideration of the increased heating and cooling needs of those persons.

(4) The limited allowance specified in this subdivision shall also be made available to multiple sclerosis patients in consideration of the increased heating and cooling needs of those persons.

(5) The limited allowance specified in this subdivision shall also be made available to scleroderma patients in consideration of the increased heating needs of those persons.

(6) The limited allowance specified in this subdivision shall also be made available to persons who are being treated for a life-threatening illness or have a compromised immune system, if a licensed physician and surgeon or a person licensed pursuant to the Osteopathic Initiative Act certifies in writing to the utility that the additional heating or cooling allowance, or both, is medically necessary to sustain the life of the person or prevent deterioration of the person's medical condition.

(d) (1) The commission shall require that every electrical and gas corporation file a schedule of rates and charges providing baseline rates. The baseline rates shall apply to the first or lowest block of an increasing block rate structure which shall be the baseline quantity. In establishing these rates, the commission shall avoid excessive rate increases for residential customers, and shall establish an appropriate gradual differential between the rates for the respective blocks of usage.

(2) In establishing residential electric and gas rates, including baseline rates, the commission shall assure that the rates are sufficient to enable the electrical corporation or gas corporation to recover a just and reasonable amount of revenue from residential customers as a class, while observing the principle that electricity and gas services are necessities, for which a low affordable rate is desirable and while observing the principle that conservation is desirable in order to maintain an affordable bill.

(3) At least until December 31, 2003, the commission shall require that all charges for residential electric customers are volumetric, and shall prohibit any electrical corporation from imposing any charges on residential consumption that are independent of consumption, unless those charges are in place prior to April 12, 2001.

(e) (1) Each electrical corporation and each gas corporation shall, in a timeframe consistent with each electrical and gas corporation's next general rate case, disclose on the billing statement of a residential customer all of the following:

(A) Cost per kilowatthour or gas therm per tier.

(B) Allocation of kilowatthour or gas therm per tier.

(C) Visual representation of usage and cost per tier.

(D) Usage comparison with prior periods.

(E) Itemized cost components in the bill to identify state and local taxes.

(F) Identification of delivery, generation, public purpose, and other charges.

(G) Contact information for the commission's Consumer Affairs Branch.

(2) An electrical corporation and a gas corporation shall make available online to residential customers both of the following:

(A) Examples of how conservation measures, including changing thermostat settings and turning off unused lights, could reduce energy usage and costs.

(B) Examples of how energy-saving devices and weatherization measures could reduce energy usage and costs.

(3) The commission may modify, adjust, or add to the requirements of this subdivision as the individual circumstances of each electrical corporation or gas corporation merits, or for master-meter customers, as individual circumstances merit.

(4) The commission shall, as part of the general rate case of an electrical corporation or gas corporation, assess opportunities to improve the quality of information contained in the utility's periodic billings.

(f) Wholesale electrical or gas purchases, and the rates charged therefor, are exempt from this section.

(g) Nothing contained in this section shall be construed to prohibit experimentation with alternative gas or electrical rate schedules for the purpose of achieving energy conservation.

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 552

An act to amend, repeal, and add Sections 688.020 and 688.030 of the Code of Civil Procedure, and to amend Sections 1013, 1701.2, 5135,

and 5374 of, and amend, repeal, and add Sections 2104, 5317, and 5417 of, the Public Utilities Code, relating to the Public Utilities Commission.

[Approved by Governor September 28, 2008. Filed with Secretary of State September 28, 2008.]

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

SECTION 1. Section 688.020 of the Code of Civil Procedure is amended to read:

688.020. (a) Except as otherwise provided by statute, if a warrant may properly be issued by the state, or by a department or agency of the state, pursuant to any provision of the Public Resources Code, Public Utilities Code, Revenue and Taxation Code, or Unemployment Insurance Code, and the warrant may be levied with the same effect as a levy pursuant to a writ of execution, the state or the department or agency of the state authorized to issue the warrant may use any of the remedies available to a judgment creditor, including, but not limited to, those provided in Chapter 6 (commencing with Section 708.010) of Division 2.

(b) The proper court for the enforcement of those remedies is a court of any of the following counties:

(1) The county where the debtor resides.

(2) The county where the property against which enforcement is sought is located.

(3) If the debtor does not reside in this state, any county of this state.

(c) This section shall remain in effect only until January 1, 2014, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2014, deletes or extends that date.

SEC. 2. Section 688.020 is added to the Code of Civil Procedure, to read:

688.020. (a) Except as otherwise provided by statute, if a warrant may properly be issued by the state, or by a department or agency of the state, pursuant to any provision of the Public Resources Code, Revenue and Taxation Code, or Unemployment Insurance Code, and the warrant may be levied with the same effect as a levy pursuant to a writ of execution, the state or the department or agency of the state authorized to issue the warrant may use any of the remedies available to a judgment creditor, including, but not limited to, those provided in Chapter 6 (commencing with Section 708.010) of Division 2.

(b) The proper court for the enforcement of those remedies is a court of any of the following counties:

(1) The county where the debtor resides.

(2) The county where the property against which enforcement is sought is located.

(3) If the debtor does not reside in this state, any county of this state.

(4) This section shall become operative on January 1, 2014.

SEC. 3. Section 688.030 of the Code of Civil Procedure is amended to read:

688.030. (a) If pursuant to any provision of the Public Resources Code, Public Utilities Code, Revenue and Taxation Code (excluding Sections 3201 to 3204, inclusive), or Unemployment Insurance Code, property is levied upon pursuant to a warrant or notice of levy issued by the state or by a department or agency of the state for the collection of a liability:

(1) If the debtor is a natural person, the debtor is entitled to the same exemptions to which a judgment debtor is entitled. Except as provided in subdivisions (b) and (c), the claim of exemption shall be made, heard, and determined as provided in Chapter 4 (commencing with Section 703.010) of Division 2 in the same manner as if the property were levied upon under a writ of execution.

(2) A third person may claim ownership or the right to possession of the property or a security interest in or lien on the property. Except as provided in subdivisions (b) and (c) or as otherwise provided by statute, the third-party claim shall be made, heard, and determined as provided in Division 4 (commencing with Section 720.010) in the same manner as if the property were levied upon under a writ of execution.

(b) In the case of a levy pursuant to a notice of levy:

(1) The claim of exemption or the third-party claim shall be filed with the state department or agency that issued the notice of levy.

(2) The state department or agency that issued the notice of levy shall perform the duties of the levying officer, except that the state department or agency need not give itself the notices that the levying officer is required to serve on a judgment creditor or creditor or the notices that a judgment creditor or creditor is required to give to the levying officer. The state department or agency in performing the duties of the levying officer under this paragraph has no obligation to search public records or otherwise seek to determine whether any lien or encumbrance exists on property sold or collected.

(c) A claim of exemption or a third-party claim pursuant to this section shall be heard and determined in the superior court in the county where the property levied upon is located.

(d) This section shall remain in effect only until January 1, 2014, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2014, deletes or extends that date.

SEC. 4. Section 688.030 is added to the Code of Civil Procedure, to read:

688.030. (a) If pursuant to any provision of the Public Resources Code, Revenue and Taxation Code (excluding Sections 3201 to 3204, inclusive), or Unemployment Insurance Code, property is levied upon pursuant to a warrant or notice of levy issued by the state or by a department or agency of the state for the collection of a liability:

(1) If the debtor is a natural person, the debtor is entitled to the same exemptions to which a judgment debtor is entitled. Except as provided in subdivisions (b) and (c), the claim of exemption shall be made, heard, and determined as provided in Chapter 4 (commencing with Section 703.010) of Division 2 in the same manner as if the property were levied upon under a writ of execution.

(2) A third person may claim ownership or the right to possession of the property or a security interest in or lien on the property. Except as provided in subdivisions (b) and (c) or as otherwise provided by statute, the third-party claim shall be made, heard, and determined as provided in Division 4 (commencing with Section 720.010) in the same manner as if the property were levied upon under a writ of execution.

(b) In the case of a levy pursuant to a notice of levy:

(1) The claim of exemption or the third-party claim shall be filed with the state department or agency that issued the notice of levy.

(2) The state department or agency that issued the notice of levy shall perform the duties of the levying officer, except that the state department or agency need not give itself the notices that the levying officer is required to serve on a judgment creditor or creditor or the notices that a judgment creditor or creditor is required to give to the levying officer. The state department or agency in performing the duties of the levying officer under this paragraph has no obligation to search public records or otherwise seek to determine whether any lien or encumbrance exists on property sold or collected.

(c) A claim of exemption or a third-party claim pursuant to this section shall be heard and determined in the superior court in the county where the property levied upon is located.

(d) This section shall become operative on January 1, 2014.

SEC. 5. Section 1013 of the Public Utilities Code is amended to read:

1013. (a) The commission may by rule or order, partially or completely exempt certain telecommunications services offered by telephone and telegraph corporations from the certification requirements of Section 1001 and instead subject them to registration as the commission may determine. Telephone corporations that the commission determines have monopoly power or market power in a relevant market or markets shall have a certificate of public convenience and necessity

and shall not be eligible for designation as registered telephone corporations. A telephone corporation that has been found not to have monopoly power or market power in a relevant market or markets by the commission shall be eligible for registration subject to the approval of the commission. A telephone corporation operating in this state shall either have a certificate of public convenience and necessity or be registered under this section or be a telephone corporation authorized to operate in California without a certificate of public convenience and necessity.

(b) Registered telephone corporations qualifying under this section shall maintain an active registration with the commission at all times and comply with commission rules and regulations established for registered telephone corporations qualifying under this section.

(c) The registration of registered telephone corporations qualifying under this section shall be on a form prescribed by the commission and shall contain any information the commission may by rule or order require, but shall include as a minimum the name and address of the telephone corporation's registered agent, if any, the name, address, and title of each officer or director, and a description of the telecommunications services it offers or intends to offer.

(d) Prior to designating any telephone corporation for registration status, the commission shall adopt rules to do both of the following:

(1) Verify the financial viability of the corporation.

(2) Verify that the officers of the corporation have no prior history of committing fraud on the public.

(e) The commission shall require as a precondition to registration the procurement of a performance bond sufficient to cover taxes or fees, or both, collected from customers and held for remittance and advances or deposits the telecommunications company may collect from its customers, or order that those advances or deposits be held in escrow or trust.

(f) The commission may require, as a precondition to registration, the procurement of a performance bond sufficient to facilitate the collection of fines, penalties, and restitution related to enforcement actions that can be taken against a telecommunications company.

(g) The commission may, with or without a hearing, grant a telephone corporation registration status and an exemption from the certification requirements of Section 1001. However, upon timely application, any person entitled to be heard may file a protest on whether a telephone corporation should be eligible for registration status and the granting of an exemption from the certification requirement of Section 1001. Upon a determination that the protest has presented a prima facie case that a

telephone corporation should not be granted registration status and an exemption from Section 1001, a hearing shall be held.

(h) The commission, after notice and a hearing if requested, may cancel, revoke, or suspend the registration of any telephone corporation upon any of the following grounds:

(1) The corporation does not provide the information required by this article.

(2) The corporation fails to provide or maintain a performance bond.

(3) The corporation conducts any illegal telephone operations.

(4) The corporation violates any of the applicable provisions of this code or of any regulations issued thereunder.

(5) The corporation violates any order, decision, rule, regulation, direction, demand, or requirement established by the commission under this code.

(6) The corporation fails to pay any fee or fine imposed upon the utility under this code.

(7) The corporation files a false statement to the commission.

(8) The corporation knowingly defrauds a customer.

(i) As an alternative to the cancellation, revocation, or suspension of a registration, the commission, after notice and a hearing, may impose upon the holder of the registration a fine in an amount not to exceed twenty thousand dollars ($20,000) for each offense, and order reparations and restitution to customers for each offense.

(j) Every violation of this section or any part of any order, decision, decree, rule, direction, demand, or requirement of the commission, by any telephone corporation or person is a separate and distinct offense, and in case of a continuing violation each day's continuance thereof shall be a separate and distinct offense.

(k) In construing and enforcing this section relating to penalties, the act, omission, or failure of any officer, agent, or employee of any registered telephone corporation qualifying under this section acting within the scope of his or her official duties or employment, shall in every case be the act, omission, or failure of the corporation. The commission may assess interest to commence upon the day the payment is delinquent. All fines, assessments, and interest collected shall be deposited at least once each month in the General Fund.

(*l*) Actions to enforce the decision of the commission ordering the payment of fines, reparations, or restitution under this section shall be brought in the name of the people of the State of California, in the superior court of the county, or city and county, in which the corporation complained of, if any, has its principal place of business, or in which the person, if any, complained of, resides or in which the commission has offices. The enforcement of a commission decision or order under

this section shall be commenced and prosecuted to final judgment by the attorney of the commission.

(m) The provisions of this section do not apply to commercial mobile radio service.

SEC. 6. Section 1701.2 of the Public Utilities Code is amended to read:

1701.2. (a) If the commission pursuant to Section 1701.1 has determined that an adjudication case requires a hearing, the procedures prescribed by this section shall be applicable. The assigned commissioner or the assigned administrative law judge shall hear the case in the manner described in the scoping memo. The scoping memo shall designate whether the assigned commissioner or the assigned administrative law judge shall preside in the case. The commission shall provide by regulation for peremptory challenges and challenges for cause of the administrative law judge. Challenges for cause shall include, but not be limited to, financial interests and prejudice. The regulation shall provide that all parties are entitled to one peremptory challenge of the assignment of the administrative law judge in all cases. All parties are entitled to unlimited peremptory challenges in any case in which the administrative law judge has within the previous 12 months served in any capacity in an advocacy position at the commission, been employed by a regulated public utility, or has represented a party or has been a party of interest in the case. The assigned commissioner or the administrative law judge shall prepare and file a decision setting forth recommendations, findings, and conclusions. The decision shall be filed with the commission and served upon all parties to the action or proceeding without undue delay, not later than 60 days after the matter has been submitted for decision. The decision of the assigned commissioner or the administrative law judge shall become the decision of the commission if no further action is taken within 30 days. Any interested party may appeal the decision to the commission, provided that the appeal is made within 30 days of the issuance of the decision. The commission may itself initiate a review of the proposed decision on any grounds. The commission decision shall be based on the record developed by the assigned commissioner or the administrative law judge. A decision different from that of the assigned commissioner or the administrative law judge shall be accompanied by a written explanation of each of the changes made to the decision.

(b) Ex parte communications shall be prohibited in adjudication cases.

(c) Notwithstanding any other provision of law, the commission may meet in a closed hearing to consider the decision that is being appealed. The vote on the appeal shall be in a public meeting and shall be accompanied with an explanation of the appeal decision.

(d) Adjudication cases shall be resolved within 12 months of initiation unless the commission makes findings why that deadline cannot be met and issues an order extending that deadline. In the event that a rehearing of an adjudication case is granted the parties shall have an opportunity for final oral argument.

(e) (1) The commission may determine that the respondent lacks, or may lack, the ability to pay potential penalties or fines or to pay restitution that may be ordered by the commission.

(2) If the commission determines that a respondent lacks, or may lack, the ability to pay, the commission may order the respondent to demonstrate, to the satisfaction of the commission, sufficient ability to pay potential penalties, fines, or restitution that may be ordered by the commission. The respondent shall demonstrate the ability to pay, or make other financial arrangements satisfactory to the commission, within seven days of the commission commencing an adjudication case. The commission may delegate to the attorney to the commission the determination of whether a sufficient showing has been made by the respondent of an ability to pay.

(3) Within seven days of the commission's determination of the respondent's ability to pay potential penalties, fines, or restitution, the respondent shall be entitled to an impartial review by an administrative law judge, of the sufficiency of the showing made by the respondent of the respondent's ability to pay. The review by an administrative law judge of the ability of the respondent to pay shall become part of the record of the adjudication and is subject to the commission's consideration in its order resolving the adjudication case. The administrative law judge may enter temporary orders modifying any financial requirement made of the respondent pending the review by the administrative law judge.

(4) A respondent that is a public utility regulated under a rate-of-return or rate-of-margin regulatory structure or that has gross annual revenues of more than one hundred million dollars ($100,000,000) generated within California is presumed to be able to pay potential penalties or fines or to pay restitution that may be ordered by the commission, and, therefore, paragraphs (1) to (3), inclusive, do not apply to that respondent.

SEC. 7. Section 2104 of the Public Utilities Code is amended to read:

2104. (a) Except as provided by Sections 2100 and 2107.5, and in addition to the remedies provided in Sections 688.020 and 688.030 of the Code of Civil Procedure, actions to recover penalties under this part may be brought in the name of the people of the State of California, in the superior court in and for the county, or city and county, in which the cause or some part thereof arose, or in which the corporation complained of has its principal place of business, or in which the person complained

of resides. The action, if brought pursuant to this section, shall be commenced and prosecuted to final judgment by the attorney or agent of the commission. All fines and penalties may be sued for and recovered. The commission may enjoin the sale of a public utility's or common carrier's assets to satisfy unpaid fines and penalties. The commission may use any of the remedies afforded to a creditor under the Uniform Fraudulent Transfer Act (Chapter 1 (commencing with Section 3439) of Title 2 of Part 2 of Division 4 of the Civil Code). Respondents who fraudulently transfer assets to avoid paying commission-imposed fines or penalties are subject to prosecution under Sections 154, 531, and 531a of the Penal Code. In all of these actions, the procedure and rules of evidence shall be the same as in ordinary civil actions, except for prosecutions under the Penal Code or as otherwise herein provided. All fines and penalties recovered by the state in any action, together with the costs thereof, shall be paid into the State Treasury to the credit of the General Fund. Any action may be compromised or discontinued on application of the commission upon the terms the court approves and orders.

(b) This section shall remain in effect only until January 1, 2014, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2014, deletes or extends that date.

SEC. 8. Section 2104 is added to the Public Utilities Code, to read:

2104. (a) Except as provided by Sections 2100 and 2107.5, actions to recover penalties under this part shall be brought in the name of the people of the State of California, in the superior court in and for the county, or city and county, in which the cause or some part thereof arose, or in which the corporation complained of has its principal place of business, or in which the person complained of resides. The action shall be commenced and prosecuted to final judgment by the attorney or agent of the commission. All fines and penalties may be sued for and recovered. The commission may enjoin the sale of a public utility's or common carrier's assets to satisfy unpaid fines and penalties. The commission may use any of the remedies afforded to a creditor under the Uniform Fraudulent Transfer Act (Chapter 1 (commencing with Section 3439) of Title 2 of Part 2 of Division 4 of the Civil Code). Respondents who fraudulently transfer assets to avoid paying commission-imposed fines or penalties are subject to prosecution under Sections 154, 531, and 531a of the Penal Code. In all of these actions, the procedure and rules of evidence shall be the same as in ordinary civil actions, except for prosecutions under the Penal Code or as otherwise herein provided. All fines and penalties recovered by the state in any action, together with the costs thereof, shall be paid into the State Treasury to the credit of the General Fund. Any action may be compromised or discontinued on

application of the commission upon the terms the court approves and orders.

(b) This section shall become operative on January 1, 2014.

SEC. 9. Section 5135 of the Public Utilities Code is amended to read:

5135. (a) Before a permit is hereafter issued the commission shall require the applicant to establish ability and reasonable financial responsibility to initiate the proposed operations. The commission shall require the applicant to establish his or her knowledge and ability to engage in business as a household goods carrier by examination. The examination may be written or oral, or in the form of a demonstration of skill or any combination of these, and any investigation of character, experience, and any tests of technical knowledge and manual skill that the commission determines to be appropriate may be employed. In any examination the qualification of the applicant shall be determined by an appraisal made by a member of the commission's staff. An applicant who has been determined to be unqualified may thereafter establish his or her qualifications through a subsequent examination, but no subsequent examination shall be taken prior to 30 days from the date when the applicant was found to be unqualified. If the staff member determines that the applicant is not qualified, then the matter shall be set for hearing and the qualification of the applicant shall be determined by the commission on the basis of evidence of qualifications presented at the hearing, which evidence may include consideration of any written examination of the applicant. If the staff member determines that the applicant is qualified, the commission may issue a permit without hearing, unless the commission determines that a hearing is desirable, in which event the commission may set the application for hearing.

(b) An applicant may qualify in one of the following ways:

(1) If an individual, he or she may qualify by personal examination or by examination of his or her responsible managing employee.

(2) If a copartnership or corporation, or any other type of business organization, it may qualify by examination of the responsible managing officer, employee who works at least 32 hours per week, or partner of the applicant firm.

(c) If the individual qualified by examination ceases to be connected with the permitholder, the permitholder shall notify the commission in writing within 30 days after the cessation. If notice is given the permit shall remain in force a reasonable length of time in order that another representative of applicant may be qualified before the commission. If the permitholder fails to notify the commission of the cessation within a 30-day period, at the end of that period the permit shall be automatically suspended.

(d) The commission shall require each applicant for a permit to submit fingerprints for each owner, partner, officer, and director as a prerequisite to the issuance of a permit to operate as a household goods carrier. The commission shall submit completed fingerprint cards to the Department of Justice. Those fingerprints shall be available for use by the Department of Justice and the Department of Justice may transmit the fingerprints to the Federal Bureau of Investigation for a national criminal history record check. The commission may use any information obtained from the national criminal history record check conducted pursuant to this section to determine the applicant's qualification for permit.

(e) The commission may require, as a precondition to the issuance of a permit, the procurement of a performance bond sufficient to facilitate the collection of fines, penalties, and restitution related to enforcement actions that can be taken against the applicant.

(f) The commission may refuse to issue a permit if it is shown that an applicant or an officer, director, partner, or associate thereof has committed any act constituting dishonesty or fraud; committed any act which, committed by a permitholder would be grounds for a suspension or revocation of the permit; misrepresented any material fact on the application; or, committed a felony, or crime involving moral turpitude.

(g) The commission shall issue a permit only to those applicants who it finds have demonstrated that they possess sufficient knowledge, ability, integrity, and financial resources and responsibility to perform the service within the scope of their application.

(h) A permit may not be issued unless it has been shown that applicant meets one of the following residence requirements: If an individual, applicant shall have resided in the State of California for not less than 90 days next preceding the filing of the application. If a partnership, the partner having the largest percentage interest in the partnership shall have resided in the State of California continuously for not less than 90 days next preceding the filing of the application. If a corporation, applicant shall be a domestic corporation or shall have qualified to transact business in the State of California as a foreign corporation at the time of filing the application.

(i) The commission shall prescribe, amend, and repeal rules in accordance with law for the administration of this section.

SEC. 10. Section 5317 of the Public Utilities Code is amended to read:

5317. (a) In addition to the remedies provided in Sections 688.020 and 688.030 of the Code of Civil Procedure, actions to recover penalties under this chapter may be brought in the name of the people of the State of California, in the superior court of the county, or city and county, in which the cause or some part thereof arose, or in which the corporation

complained of, if any, has its principal place of business, or in which the person, if any, complained of, resides. The action, if brought pursuant to this section, shall be commenced and prosecuted to final judgment by the attorney of the commission. The commission may enjoin the sale of the assets of a household goods carrier to satisfy unpaid fines and penalties. The commission may use any of the remedies afforded to a creditor under the Uniform Fraudulent Transfer Act (Chapter 1 (commencing with Section 3439) of Title 2 of Part 2 of Division 4 of the Civil Code). Respondents who fraudulently transfer assets to avoid paying commission-imposed fines or penalties are subject to prosecution pursuant to Sections 154, 531, and 531a of the Penal Code.

(b) This section shall remain in effect only until January 1, 2014, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2014, deletes or extends that date.

SEC. 11. Section 5317 is added to the Public Utilities Code, to read:

5317. (a) Actions to recover penalties under this chapter shall be brought in the name of the people of the State of California, in the superior court of the county, or city and county, in which the cause or some part thereof arose, or in which the corporation complained of, if any, has its principal place of business, or in which the person, if any, complained of, resides. The action shall be commenced and prosecuted to final judgment by the attorney of the commission.

(b) This section shall become operative on January 1, 2014.

SEC. 12. Section 5374 of the Public Utilities Code is amended to read:

5374. (a) (1) Before a permit or certificate is issued or renewed, the commission shall require the applicant to establish reasonable fitness and financial responsibility to initiate and conduct or continue to conduct the proposed or existing transportation services. The commission shall not issue or renew a permit or certificate pursuant to this chapter unless the applicant meets all of the following requirements:

(A) It is financially and organizationally capable of conducting an operation that complies with the rules and regulations of the Department of the California Highway Patrol governing highway safety.

(B) It is committed to observing the hours of service regulations of state and, where applicable, federal law, for all persons, whether employees or subcarriers, operating vehicles in transportation for compensation under the certificate.

(C) It has a preventive maintenance program in effect for its vehicles used in transportation for compensation that conforms to regulations of the Department of the California Highway Patrol in Title 13 of the California Code of Regulations.

(D) It participates in a program to regularly check the driving records of all persons, whether employees or subcarriers, operating vehicles used in transportation for compensation.

(E) It has a safety education and training program in effect for all employees or subcarriers operating vehicles used in transportation for compensation.

(F) It will maintain its vehicles used in transportation for compensation in a safe operating condition and in compliance with the Vehicle Code and with regulations contained in Title 13 of the California Code of Regulations relative to motor vehicle safety.

(G) It has filed with the commission the certificate of workers' compensation insurance coverage or statement required by Section 5378.1.

(H) It has provided the commission an address of an office or terminal where documents supporting the factual matters specified in the showing required by this subdivision may be inspected by the commission and the Department of the California Highway Patrol.

(I) It provides for a mandatory controlled substance and alcohol testing certification program as adopted by the commission pursuant to Section 1032.1.

(2) With respect to subparagraphs (B) and (F) of paragraph (1), the commission may base a finding on a certification by the commission that an applicant has filed, with the commission, a sworn declaration of ability to comply and intent to comply.

(3) The commission may require, as a precondition to the issuance of a permit or certificate, the procurement of a performance bond sufficient to facilitate the collection of fines, penalties, and restitution related to enforcement actions that can be taken against the applicant.

(b) In addition to the requirements in subdivision (a), charter-party carriers shall meet all other state and, where applicable, federal regulations as prescribed.

(c) The commission may delegate to its executive director or that executive director's designee the authority to issue, renew, or authorize the transfer of, charter-party carrier permits or certificates and to make the findings specified in subdivision (a) that are necessary to that delegated authority.

SEC. 13. Section 5417 of the Public Utilities Code is amended to read:

5417. (a) In addition to the remedies provided in Sections 688.020 and 688.030 of the Code of Civil Procedure, actions to recover penalties under this chapter may be brought in the name of the people of the State of California, in the superior court of the county, or city and county, in which the cause or some part thereof arose, or in which the corporation

complained of, if any, has its principal place of business, or in which the person, if any, complained of, resides. The action, if brought pursuant to this section, shall be commenced and prosecuted to final judgment by the attorney of the commission. The commission may enjoin the sale of the assets of a charter-party carrier of passengers to satisfy unpaid fines and penalties. The commission may use any of the remedies afforded to a creditor under the Uniform Fraudulent Transfer Act (Chapter 1 (commencing with Section 3439) of Title 2 of Part 2 of Division 4 of the Civil Code). Respondents who fraudulently transfer assets to avoid paying commission-imposed fines or penalties are subject to prosecution pursuant to Sections 154, 531, and 531a of the Penal Code.

(b) This section shall remain in effect only until January 1, 2014, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2014, deletes or extends that date.

SEC. 14. Section 5417 is added to the Public Utilities Code, to read:

5417. (a) Actions to recover penalties under this chapter shall be brought in the name of the people of the State of California, in the superior court of the county, or city and county, in which the cause or some part thereof arose, or in which the corporation complained of, if any, has its principal place of business, or in which the person, if any, complained of, resides. The action shall be commenced and prosecuted to final judgment by the attorney of the commission.

(b) This section shall become operative on January 1, 2014.

SEC. 15. On or before January 1, 2013, the Public Utilities Commission shall submit to the Senate Committee on Judiciary and the Assembly Committee on Judiciary a report on the changes made by this act to Sections 688.020 and 688.030 of the Code of Civil Procedure and to Section 2104 of the Public Utilities Code, as they pertain to the status of the commission as a judgment creditor. The report shall include both of the following:

(a) The number of judgment debtors the commission was able to collect from as a judgment creditor, the dollar amount of those judgments, and the total dollar amount collected.

(b) The effectiveness of the changes made by this act that grant the commission status as a judgment creditor.

SEC. 16. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes

the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

CHAPTER 553

An act to amend Section 11170 of the Penal Code, relating to child abuse.

[Approved by Governor September 28, 2008. Filed with Secretary of State September 28, 2008.]

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

SECTION 1. Section 11170 of the Penal Code is amended to read:

11170. (a) (1) The Department of Justice shall maintain an index of all reports of child abuse and severe neglect submitted pursuant to Section 11169. The index shall be continually updated by the department and shall not contain any reports that are determined to be unfounded. The department may adopt rules governing recordkeeping and reporting pursuant to this article.

(2) The department shall act only as a repository of reports of suspected child abuse and severe neglect to be maintained in the Child Abuse Central Index pursuant to paragraph (1). The submitting agencies are responsible for the accuracy, completeness, and retention of the reports described in this section. The department shall be responsible for ensuring that the Child Abuse Central Index accurately reflects the report it receives from the submitting agency.

(3) Information from an inconclusive or unsubstantiated report filed pursuant to subdivision (a) of Section 11169 shall be deleted from the Child Abuse Central Index after 10 years if no subsequent report concerning the same suspected child abuser is received within that time period. If a subsequent report is received within that 10-year period, information from any prior report, as well as any subsequently filed report, shall be maintained on the Child Abuse Central Index for a period of 10 years from the time the most recent report is received by the department.

(b) (1) The Department of Justice shall immediately notify an agency that submits a report pursuant to Section 11169, or a prosecutor who requests notification, of any information maintained pursuant to subdivision (a) that is relevant to the known or suspected instance of child abuse or severe neglect reported by the agency. The agency shall make that information available to the reporting medical practitioner,

child custodian, guardian ad litem appointed under Section 326, or counsel appointed under Section 317 or 318 of the Welfare and Institutions Code, or the appropriate licensing agency, if he or she is treating or investigating a case of known or suspected child abuse or severe neglect.

(2) When a report is made pursuant to subdivision (a) of Section 11166, or Section 11166.05, the investigating agency, upon completion of the investigation or after there has been a final disposition in the matter, shall inform the person required or authorized to report, of the results of the investigation and of any action the agency is taking with regard to the child or family.

(3) The Department of Justice shall make available to a law enforcement agency, county welfare department, or county probation department that is conducting a child abuse investigation, relevant information contained in the index.

(4) The department shall make available to the State Department of Social Services, or to any county licensing agency that has contracted with the state for the performance of licensing duties, or to a tribal court or tribal child welfare agency of a tribe or consortium of tribes that has entered into an agreement with the state pursuant to Section 10553.1 of the Welfare and Institutions Code, information regarding a known or suspected child abuser maintained pursuant to this section and subdivision (a) of Section 11169 concerning any person who is an applicant for licensure or any adult who resides or is employed in the home of an applicant for licensure or who is an applicant for employment in a position having supervisorial or disciplinary power over a child or children, or who will provide 24-hour care for a child or children in a residential home or facility, pursuant to Section 1522.1 or 1596.877 of the Health and Safety Code, or Section 8714, 8802, 8912, or 9000 of the Family Code.

(5) The Department of Justice shall make available to a Court Appointed Special Advocate program that is conducting a background investigation of an applicant seeking employment with the program or a volunteer position as a Court Appointed Special Advocate, as defined in Section 101 of the Welfare and Institutions Code, information contained in the index regarding known or suspected child abuse by the applicant.

(6) For purposes of child death review, the Department of Justice shall make available to the chairperson, or the chairperson's designee, for each county child death review team, or the State Child Death Review Council, information maintained in the Child Abuse Central Index pursuant to subdivision (a) of Section 11170 relating to the death of one or more children and any prior child abuse or neglect investigation reports

maintained involving the same victims, siblings, or suspects. Local child death review teams may share any relevant information regarding case reviews involving child death with other child death review teams.

(7) The department shall make available to investigative agencies or probation officers, or court investigators acting pursuant to Section 1513 of the Probate Code, responsible for placing children or assessing the possible placement of children pursuant to Article 6 (commencing with Section 300), Article 7 (commencing with Section 305), Article 10 (commencing with Section 360), or Article 14 (commencing with Section 601) of Chapter 2 of Part 1 of Division 2 of the Welfare and Institutions Code, Article 2 (commencing with Section 1510) or Article 3 (commencing with Section 1540) of Chapter 1 of Part 2 of Division 4 of the Probate Code, information regarding a known or suspected child abuser contained in the index concerning any adult residing in the home where the child may be placed, when this information is requested for purposes of ensuring that the placement is in the best interests of the child. Upon receipt of relevant information concerning child abuse or neglect investigation reports contained in the index from the Department of Justice pursuant to this subdivision, the agency or court investigator shall notify, in writing, the person listed in the Child Abuse Central Index that he or she is in the index. The notification shall include the name of the reporting agency and the date of the report.

(8) The Department of Justice shall make available to a government agency conducting a background investigation pursuant to Section 1031 of the Government Code of an applicant seeking employment as a peace officer, as defined in Section 830, information regarding a known or suspected child abuser maintained pursuant to this section concerning the applicant.

(9) The Department of Justice shall make available to a county child welfare agency or delegated county adoption agency, as defined in Section 8515 of the Family Code, conducting a background investigation, or a government agency conducting a background investigation on behalf of one of those agencies, information regarding a known or suspected child abuser maintained pursuant to this section and subdivision (a) of Section 11169 concerning any applicant seeking employment or volunteer status with the agency who, in the course of his or her employment or volunteer work will have direct contact with children who are alleged to have been, are at risk of, or have suffered, abuse or neglect.

(10) (A) Persons or agencies, as specified in subdivision (b), if investigating a case of known or suspected child abuse or neglect, or the State Department of Social Services or any county licensing agency pursuant to paragraph (4), or a Court Appointed Special Advocate program conducting a background investigation for employment or

volunteer candidates pursuant to paragraph (5), or an investigative agency, probation officer, or court investigator responsible for placing children or assessing the possible placement of children pursuant to paragraph (7), or a government agency conducting a background investigation of an applicant seeking employment as a peace officer pursuant to paragraph (8), or a county child welfare agency or delegated county adoption agency conducting a background investigation of an applicant seeking employment or volunteer status who, in the course of his or her employment or volunteer work will have direct contact with children who are alleged to have been, are at risk of, or have suffered, abuse or neglect, pursuant to paragraph (9), to whom disclosure of any information maintained pursuant to subdivision (a) is authorized, are responsible for obtaining the original investigative report from the reporting agency, and for drawing independent conclusions regarding the quality of the evidence disclosed, and its sufficiency for making decisions regarding investigation, prosecution, licensing, placement of a child, employment or volunteer positions with a CASA program, or employment as a peace officer.

(B) If Child Abuse Central Index information is requested by an agency for the temporary placement of a child in an emergency situation pursuant to Article 7 (commencing with Section 305) of Chapter 2 of Part 1 of Division 2 of the Welfare and Institutions Code, the department is exempt from the requirements of Section 1798.18 of the Civil Code if compliance would cause a delay in providing an expedited response to the agency's inquiry and if further delay in placement may be detrimental to the child.

(11) (A) Whenever information contained in the Department of Justice files is furnished as the result of an application for employment or licensing or volunteer status pursuant to paragraph (4), (5), (8), or (9), the Department of Justice may charge the person or entity making the request a fee. The fee shall not exceed the reasonable costs to the department of providing the information. The only increase shall be at a rate not to exceed the legislatively approved cost-of-living adjustment for the department. In no case shall the fee exceed fifteen dollars ($15).

(B) All moneys received by the department pursuant to this section to process trustline applications for purposes of Chapter 3.35 (commencing with Section 1596.60) of Division 2 of the Health and Safety Code shall be deposited in a special account in the General Fund that is hereby established and named the Department of Justice Child Abuse Fund. Moneys in the fund shall be available, upon appropriation by the Legislature, for expenditure by the department to offset the costs incurred to process trustline automated child abuse or neglect system checks pursuant to this section.

(C) All moneys, other than that described in subparagraph (B), received by the department pursuant to this paragraph shall be deposited in a special account in the General Fund which is hereby created and named the Department of Justice Sexual Habitual Offender Fund. The funds shall be available, upon appropriation by the Legislature, for expenditure by the department to offset the costs incurred pursuant to Chapter 9.5 (commencing with Section 13885) and Chapter 10 (commencing with Section 13890) of Title 6 of Part 4, and the DNA and Forensic Identification Data Base and Data Bank Act of 1998 (Chapter 6 (commencing with Section 295) of Title 9 of Part 1), and for maintenance and improvements to the statewide Sexual Habitual Offender Program and the California DNA offender identification file (CAL-DNA) authorized by Chapter 9.5 (commencing with Section 13885) of Title 6 of Part 4 and the DNA and Forensic Identification Data Base and Data Bank Act of 1998 (Chapter 6 (commencing with Section 295) of Title 9 of Part 1).

(c) The Department of Justice shall make available to any agency responsible for placing children pursuant to Article 7 (commencing with Section 305) of Chapter 2 of Part 1 of Division 2 of the Welfare and Institutions Code, upon request, relevant information concerning child abuse or neglect reports contained in the index, when making a placement with a responsible relative pursuant to Sections 281.5, 305, and 361.3 of the Welfare and Institutions Code. Upon receipt of relevant information concerning child abuse or neglect reports contained in the index from the Department of Justice pursuant to this subdivision, the agency shall also notify in writing the person listed in the Child Abuse Central Index that he or she is in the index. The notification shall include the location of the original investigative report and the submitting agency. The notification shall be submitted to the person listed at the same time that all other parties are notified of the information, and no later than the actual judicial proceeding that determines placement.

If Child Abuse Central Index information is requested by an agency for the placement of a child with a responsible relative in an emergency situation pursuant to Article 7 (commencing with Section 305) of Chapter 2 of Part 1 of Division 2 of the Welfare and Institutions Code, the department is exempt from the requirements of Section 1798.18 of the Civil Code if compliance would cause a delay in providing an expedited response to the child protective agency's inquiry and if further delay in placement may be detrimental to the child.

(d) The department shall make available any information maintained pursuant to subdivision (a) to out-of-state law enforcement agencies conducting investigations of known or suspected child abuse or neglect only when an agency makes the request for information in writing and

on official letterhead, or as designated by the department, identifying the suspected abuser or victim by name and date of birth or approximate age. The request shall be signed by the department supervisor of the requesting law enforcement agency. The written requests shall cite the out-of-state statute or interstate compact provision that requires that the information contained within these reports shall be disclosed only to law enforcement, prosecutorial entities, or multidisciplinary investigative teams, and shall cite the criminal penalties for unlawful disclosure of any confidential information provided by the requesting state or the applicable interstate compact provision. In the absence of a specified out-of-state statute or interstate compact provision that requires that the information contained within these reports shall be disclosed only to law enforcement, prosecutorial entities, or multidisciplinary investigative teams, and criminal penalties equivalent to the penalties in California for unlawful disclosure, access shall be denied.

(e) (1) The department shall make available to an out-of-state agency, for purposes of approving a prospective foster or adoptive parent or relative caregiver for placement of a child, information regarding a known or suspected child abuser maintained pursuant to subdivision (a) concerning the prospective foster or adoptive parent or relative caregiver, and any other adult living in the home of the prospective foster or adoptive parent or relative caregiver. The department shall make that information available only when the out-of-state agency makes the request for information in writing on official letterhead, transmitted either by mail, facsimile, or electronic transmission or as designated by the department. The request shall identify the prospective foster or adoptive parent or relative caregiver, and any other adult living in the home, by name and date of birth or approximate age. The request shall cite the out-of-state statute or interstate compact provision that requires that the information received in response to the inquiry shall be disclosed and used for no purpose other than conducting background checks in foster or adoptive cases. The request shall also cite the criminal penalties for unlawful disclosure of any information provided by the requesting state or the applicable interstate compact provision. In the absence of an out-of-state statute or interstate compact provision that requires that the information shall be used for no purpose other than conducting background checks in foster or adoptive cases and criminal penalties equivalent to the penalties in California for unlawful disclosure, access shall be denied.

(2) With respect to any information provided by the department in response to the out-of-state agency's request, the out-of-state agency is responsible for obtaining the original investigative report from the reporting agency, and for drawing independent conclusions regarding

the quality of the evidence disclosed and its sufficiency for making decisions regarding the approval of prospective foster or adoptive parents or relative caregivers.

(3) (A) Whenever information contained in the index is furnished pursuant to this subdivision, the department shall charge the out-of-state agency making the request a fee. The fee shall not exceed the reasonable costs to the department of providing the information. The only increase shall be at a rate not to exceed the legislatively approved cost-of-living adjustment for the department. In no case shall the fee exceed fifteen dollars ($15).

(B) All moneys received by the department pursuant to this subdivision shall be deposited in the Department of Justice Child Abuse Fund, established under subparagraph (B) of paragraph (11) of subdivision (b). Moneys in the fund shall be available, upon appropriation by the Legislature, for expenditure by the department to offset the costs incurred to process requests for information pursuant to this subdivision.

(f) (1) Any person may determine if he or she is listed in the Child Abuse Central Index by making a request in writing to the Department of Justice. The request shall be notarized and include the person's name, address, date of birth, and either a social security number or a California identification number. Upon receipt of a notarized request, the Department of Justice shall make available to the requesting person information identifying the date of the report and the submitting agency. The requesting person is responsible for obtaining the investigative report from the submitting agency pursuant to paragraph (11) of subdivision (b) of Section 11167.5.

(2) No person or agency shall require or request another person to furnish a copy of a record concerning himself or herself, or notification that a record concerning himself or herself exists or does not exist, pursuant to paragraph (1) of this subdivision.

(g) If a person is listed in the Child Abuse Central Index only as a victim of child abuse or neglect, and that person is 18 years of age or older, that person may have his or her name removed from the index by making a written request to the Department of Justice. The request shall be notarized and include the person's name, address, social security number, and date of birth.

SEC. 1.1. Section 11170 of the Penal Code is amended to read:

11170. (a) (1) The Department of Justice shall maintain an index of all reports of child abuse and severe neglect submitted pursuant to Section 11169. The index shall be continually updated by the department and shall not contain any reports that are determined to be unfounded. The department may adopt rules governing recordkeeping and reporting pursuant to this article.

(2) The department shall act only as a repository of reports of suspected child abuse and severe neglect to be maintained in the Child Abuse Central Index pursuant to paragraph (1). The submitting agencies are responsible for the accuracy, completeness, and retention of the reports described in this section. The department shall be responsible for ensuring that the Child Abuse Central Index accurately reflects the report it receives from the submitting agency.

(3) Information from an inconclusive or unsubstantiated report filed pursuant to subdivision (a) of Section 11169 shall be deleted from the Child Abuse Central Index after 10 years if no subsequent report concerning the same suspected child abuser is received within that time period. If the suspected child abuser was a minor at the time of the report, the information shall be deleted after five years if no subsequent report concerning the same suspected child abuser is received within that time period. If a subsequent report is received within the 10-year period for adult child abuse suspects or the five-year period for child abuse suspects who were themselves minors at the time of the report, information from any prior report, as well as any subsequently filed report, shall be maintained on the Child Abuse Central Index for a period of 10 years from the time the most recent report is received by the department.

(b) (1) The Department of Justice shall immediately notify an agency that submits a report pursuant to Section 11169, or a prosecutor who requests notification, of any information maintained pursuant to subdivision (a) that is relevant to the known or suspected instance of child abuse or severe neglect reported by the agency. The agency shall make that information available to the reporting medical practitioner, child custodian, guardian ad litem appointed under Section 326, or counsel appointed under Section 317 or 318 of the Welfare and Institutions Code, or the appropriate licensing agency, if he or she is treating or investigating a case of known or suspected child abuse or severe neglect.

(2) When a report is made pursuant to subdivision (a) of Section 11166, or Section 11166.05, the investigating agency, upon completion of the investigation or after there has been a final disposition in the matter, shall inform the person required or authorized to report of the results of the investigation and of any action the agency is taking with regard to the child or family.

(3) The Department of Justice shall make available to a law enforcement agency, county welfare department, or county probation department that is conducting a child abuse investigation relevant information contained in the index.

(4) The department shall make available to the State Department of Social Services, or to any county licensing agency that has contracted

with the state for the performance of licensing duties, or to a tribal court or tribal child welfare agency of a tribe or consortium of tribes that has entered into an agreement with the state pursuant to Section 10553.1 of the Welfare and Institutions Code, information regarding a known or suspected child abuser maintained pursuant to this section and subdivision (a) of Section 11169 concerning any person who is an applicant for licensure or any adult who resides or is employed in the home of an applicant for licensure or who is an applicant for employment in a position having supervisorial or disciplinary power over a child or children, or who will provide 24-hour care for a child or children in a residential home or facility, pursuant to Section 1522.1 or 1596.877 of the Health and Safety Code, or Section 8714, 8802, 8912, or 9000 of the Family Code.

(5) The Department of Justice shall make available to a Court-Appointed Special Advocate program that is conducting a background investigation of an applicant seeking employment with the program or a volunteer position as a Court-Appointed Special Advocate, as defined in Section 101 of the Welfare and Institutions Code, information contained in the index regarding known or suspected child abuse by the applicant.

(6) For purposes of child death review, the Department of Justice shall make available to the chairperson, or the chairperson's designee, for each county child death review team, or the State Child Death Review Council, information maintained in the Child Abuse Central Index pursuant to subdivision (a) of Section 11170 relating to the death of one or more children and any prior child abuse or neglect investigation reports maintained involving the same victims, siblings, or suspects. Local child death review teams may share any relevant information regarding case reviews involving child death with other child death review teams.

(7) The department shall make available to investigative agencies or probation officers, or court investigators acting pursuant to Section 1513 of the Probate Code, responsible for placing children or assessing the possible placement of children pursuant to Article 6 (commencing with Section 300), Article 7 (commencing with Section 305), Article 10 (commencing with Section 360), or Article 14 (commencing with Section 601) of Chapter 2 of Part 1 of Division 2 of the Welfare and Institutions Code, Article 2 (commencing with Section 1510) or Article 3 (commencing with Section 1540) of Chapter 1 of Part 2 of Division 4 of the Probate Code, information regarding a known or suspected child abuser contained in the index concerning any adult residing in the home where the child may be placed, when this information is requested for purposes of ensuring that the placement is in the best interests of the child. Upon receipt of relevant information concerning child abuse or

neglect investigation reports contained in the index from the Department of Justice pursuant to this subdivision, the agency or court investigator shall notify, in writing, the person listed in the Child Abuse Central Index that he or she is in the index. The notification shall include the name of the reporting agency and the date of the report.

(8) The Department of Justice shall make available to a government agency conducting a background investigation pursuant to Section 1031 of the Government Code of an applicant seeking employment as a peace officer, as defined in Section 830, information regarding a known or suspected child abuser maintained pursuant to this section concerning the applicant.

(9) The Department of Justice shall make available to a county child welfare agency or delegated county adoption agency, as defined in Section 8515 of the Family Code, conducting a background investigation, or a government agency conducting a background investigation on behalf of one of those agencies, information regarding a known or suspected child abuser maintained pursuant to this section and subdivision (a) of Section 11169 concerning any applicant seeking employment or volunteer status with the agency who, in the course of his or her employment or volunteer work, will have direct contact with children who are alleged to have been, are at risk of, or have suffered, abuse or neglect.

(10) (A) Persons or agencies, as specified in subdivision (b), if investigating a case of known or suspected child abuse or neglect, or the State Department of Social Services or any county licensing agency pursuant to paragraph (4), or a Court Appointed Special Advocate program conducting a background investigation for employment or volunteer candidates pursuant to paragraph (5), or an investigative agency, probation officer, or court investigator responsible for placing children or assessing the possible placement of children pursuant to paragraph (7), or a government agency conducting a background investigation of an applicant seeking employment as a peace officer pursuant to paragraph (8), or a county child welfare agency or delegated county adoption agency conducting a background investigation of an applicant seeking employment or volunteer status who, in the course of his or her employment or volunteer work, will have direct contact which children who are alleged to have been, are at risk of, or have suffered, abuse or neglect, pursuant to paragraph (9), to whom disclosure of any information maintained pursuant to subdivision (a) is authorized, are responsible for obtaining the original investigative report from the reporting agency, and for drawing independent conclusions regarding the quality of the evidence disclosed, and its sufficiency for making decisions regarding investigation, prosecution, licensing, placement of

a child, employment or volunteer positions with a CASA program, or employment as a peace officer.

(B) If Child Abuse Central Index information is requested by an agency for the temporary placement of a child in an emergency situation pursuant to Article 7 (commencing with Section 305) of Chapter 2 of Part 1 of Division 2 of the Welfare and Institutions Code, the department is exempt from the requirements of Section 1798.18 of the Civil Code if compliance would cause a delay in providing an expedited response to the agency's inquiry and if further delay in placement may be detrimental to the child.

(11) (A) Whenever information contained in the Department of Justice files is furnished as the result of an application for employment or licensing or volunteer status pursuant to paragraph (4), (5), (8), or (9), the Department of Justice may charge the person or entity making the request a fee. The fee shall not exceed the reasonable costs to the department of providing the information. The only increase shall be at a rate not to exceed the legislatively approved cost-of-living adjustment for the department. In no case shall the fee exceed fifteen dollars ($15).

(B) All moneys received by the department pursuant to this section to process trustline applications for purposes of Chapter 3.35 (commencing with Section 1596.60) of Division 2 of the Health and Safety Code shall be deposited in a special account in the General Fund that is hereby established and named the Department of Justice Child Abuse Fund. Moneys in the fund shall be available, upon appropriation by the Legislature, for expenditure by the department to offset the costs incurred to process trustline automated child abuse or neglect system checks pursuant to this section.

(C) All moneys, other than that described in subparagraph (B), received by the department pursuant to this paragraph shall be deposited in a special account in the General Fund which is hereby created and named the Department of Justice Sexual Habitual Offender Fund. The funds shall be available, upon appropriation by the Legislature, for expenditure by the department to offset the costs incurred pursuant to Chapter 9.5 (commencing with Section 13885) and Chapter 10 (commencing with Section 13890) of Title 6 of Part 4, and the DNA and Forensic Identification Data Base and Data Bank Act of 1998 (Chapter 6 (commencing with Section 295) of Title 9 of Part 1), and for maintenance and improvements to the statewide Sexual Habitual Offender Program and the California DNA offender identification file (CAL-DNA) authorized by Chapter 9.5 (commencing with Section 13885) of Title 6 of Part 4 and the DNA and Forensic Identification Data Base and Data Bank Act of 1998 (Chapter 6 (commencing with Section 295) of Title 9 of Part 1).

(c) The Department of Justice shall make available to any agency responsible for placing children pursuant to Article 7 (commencing with Section 305) of Chapter 2 of Part 1 of Division 2 of the Welfare and Institutions Code, upon request, relevant information concerning child abuse or neglect reports contained in the index, when making a placement with a responsible relative pursuant to Sections 281.5, 305, and 361.3 of the Welfare and Institutions Code. Upon receipt of relevant information concerning child abuse or neglect reports contained in the index from the Department of Justice pursuant to this subdivision, the agency shall also notify in writing the person listed in the Child Abuse Central Index that he or she is in the index. The notification shall include the location of the original investigative report and the submitting agency. The notification shall be submitted to the person listed at the same time that all other parties are notified of the information, and no later than the actual judicial proceeding that determines placement.

If Child Abuse Central Index information is requested by an agency for the placement of a child with a responsible relative in an emergency situation pursuant to Article 7 (commencing with Section 305) of Chapter 2 of Part 1 of Division 2 of the Welfare and Institutions Code, the department is exempt from the requirements of Section 1798.18 of the Civil Code if compliance would cause a delay in providing an expedited response to the child protective agency's inquiry and if further delay in placement may be detrimental to the child.

(d) The department shall make available any information maintained pursuant to subdivision (a) to out-of-state law enforcement agencies conducting investigations of known or suspected child abuse or neglect only when an agency makes the request for information in writing and on official letterhead, or as designated by the department, identifying the suspected abuser or victim by name and date of birth or approximate age. The request shall be signed by the department supervisor of the requesting law enforcement agency. The written requests shall cite the out-of-state statute or interstate compact provision that requires that the information contained within these reports shall be disclosed only to law enforcement, prosecutorial entities, or multidisciplinary investigative teams, and shall cite the criminal penalties for unlawful disclosure of any confidential information provided by the requesting state or the applicable interstate compact provision. In the absence of a specified out-of-state statute or interstate compact provision that requires that the information contained within these reports shall be disclosed only to law enforcement, prosecutorial entities, or multidisciplinary investigative teams, and criminal penalties equivalent to the penalties in California for unlawful disclosure, access shall be denied.

(e) (1) The department shall make available to an out-of-state agency, for purposes of approving a prospective foster or adoptive parent or relative caregiver for placement of a child, information regarding a known or suspected child abuser maintained pursuant to subdivision (a) concerning the prospective foster or adoptive parent or relative caregiver, and any other adult living in the home of the prospective foster or adoptive parent or relative caregiver. The department shall make that information available only when the out-of-state agency makes the request for information in writing on official letterhead, transmitted either by mail, facsimile, or electronic transmission or as designated by the department. The request shall identify the prospective foster or adoptive parent or relative caregiver, and any other adult living in the home, by name and date of birth or approximate age. The request shall cite the out-of-state statute or interstate compact provision that requires that the information received in response to the inquiry shall be disclosed and used for no purpose other than conducting background checks in foster or adoptive cases. The request shall also cite the criminal penalties for unlawful disclosure of any information provided by the requesting state or the applicable interstate compact provision. In the absence of an out-of-state statute or interstate compact provision that requires that the information shall be used for no purpose other than conducting background checks in foster or adoptive cases and criminal penalties equivalent to the penalties in California for unlawful disclosure, access shall be denied.

(2) With respect to any information provided by the department in response to the out-of-state agency's request, the out-of-state agency is responsible for obtaining the original investigative report from the reporting agency, and for drawing independent conclusions regarding the quality of the evidence disclosed and its sufficiency for making decisions regarding the approval of prospective foster or adoptive parents or relative caregivers.

(3) (A) Whenever information contained in the index is furnished pursuant to this subdivision, the department shall charge the out-of-state agency making the request a fee. The fee shall not exceed the reasonable costs to the department of providing the information. The only increase shall be at a rate not to exceed the legislatively approved cost-of-living adjustment for the department. In no case shall the fee exceed fifteen dollars ($15).

(B) All moneys received by the department pursuant to this subdivision shall be deposited in the Department of Justice Child Abuse Fund, established under subparagraph (B) of paragraph (11) of subdivision (b). Moneys in the fund shall be available, upon appropriation

by the Legislature, for expenditure by the department to offset the costs incurred to process requests for information pursuant to this subdivision.

(f) (1) Any person may determine if he or she is listed in the Child Abuse Central Index by making a request in writing to the Department of Justice. The request shall be notarized and include the person's name, address, date of birth, and either a social security number or a California identification number. Upon receipt of a notarized request, the Department of Justice shall make available to the requesting person information identifying the date of the report and the submitting agency. The requesting person is responsible for obtaining the investigative report from the submitting agency pursuant to paragraph (11) of subdivision (b) of Section 11167.5.

(2) No person or agency shall require or request another person to furnish a copy of a record concerning himself or herself, or notification that a record concerning himself or herself exists or does not exist, pursuant to paragraph (1) of this subdivision.

(g) If a person is listed in the Child Abuse Central Index only as a victim of child abuse or neglect, and that person is 18 years of age or older, that person may have his or her name removed from the index by making a written request to the Department of Justice. The request shall be notarized and include the person's name, address, social security number, and date of birth.

(h) (1) If a person is listed in the Child Abuse Central Index as a suspect in a child abuse or neglect investigation due to an incident that occurred when the person was under 18 years of age, and the incident did not result in a delinquency adjudication or criminal conviction, that person may make a written request to the Department of Justice to have his or her name removed from the index as a suspect with respect to that incident. The request shall be notarized and include the person's name, address, social security number, and date of birth. Upon receipt of the request, the department shall inquire of the submitting agency whether the incident resulted in a delinquency adjudication or criminal conviction. Unless the submitting agency responds to the department in the affirmative within 30 days, the department shall remove the person's name from the index as the person suspected in that incident.

(2) If a person is listed in the index as a suspect with respect to more than one reported incident, the process set forth in paragraph (1) shall be followed with respect to each incident for which the person wishes to have his or her name removed from the index.

SEC. 1.2. Section 11170 of the Penal Code is amended to read:

11170. (a) (1) The Department of Justice shall maintain an index of all reports of child abuse and severe neglect submitted pursuant to Section 11169. The index shall be continually updated by the department

and shall not contain any reports that are determined to be unfounded. The department may adopt rules governing recordkeeping and reporting pursuant to this article.

(2) The department shall act only as a repository of reports of suspected child abuse and severe neglect to be maintained in the Child Abuse Central Index pursuant to paragraph (1). The submitting agencies are responsible for the accuracy, completeness, and retention of the reports described in this section. The department shall be responsible for ensuring that the Child Abuse Central Index accurately reflects the report it receives from the submitting agency.

(3) Information from an inconclusive or unsubstantiated report filed pursuant to subdivision (a) of Section 11169 shall be deleted from the Child Abuse Central Index after 10 years if no subsequent report concerning the same suspected child abuser is received within that time period. If a subsequent report is received within that 10-year period, information from any prior report, as well as any subsequently filed report, shall be maintained on the Child Abuse Central Index for a period of 10 years from the time the most recent report is received by the department.

(b) (1) The Department of Justice shall immediately notify an agency that submits a report pursuant to Section 11169, or a prosecutor who requests notification, of any information maintained pursuant to subdivision (a) that is relevant to the known or suspected instance of child abuse or severe neglect reported by the agency. The agency shall make that information available to the reporting medical practitioner, child custodian, guardian ad litem appointed under Section 326, or counsel appointed under Section 317 or 318 of the Welfare and Institutions Code, or the appropriate licensing agency, if he or she is treating or investigating a case of known or suspected child abuse or severe neglect.

(2) When a report is made pursuant to subdivision (a) of Section 11166, or Section 11166.05, the investigating agency, upon completion of the investigation or after there has been a final disposition in the matter, shall inform the person required or authorized to report of the results of the investigation and of any action the agency is taking with regard to the child or family.

(3) The Department of Justice shall make available to a law enforcement agency, county welfare department, or county probation department that is conducting a child abuse investigation relevant information contained in the index.

(4) The department shall make available to the State Department of Social Services, or to any county licensing agency that has contracted with the state for the performance of licensing duties, or to a tribal court

or tribal child welfare agency of a tribe or consortium of tribes that has entered into an agreement with the state pursuant to Section 10553.1 of the Welfare and Institutions Code, information regarding a known or suspected child abuser maintained pursuant to this section and subdivision (a) of Section 11169 concerning any person who is an applicant for licensure or any adult who resides or is employed in the home of an applicant for licensure or who is an applicant for employment in a position having supervisorial or disciplinary power over a child or children, or who will provide 24-hour care for a child or children in a residential home or facility, pursuant to Section 1522.1 or 1596.877 of the Health and Safety Code, or Section 8714, 8802, 8912, or 9000 of the Family Code.

(5) The Department of Justice shall make available to a Court Appointed Special Advocate program that is conducting a background investigation of an applicant seeking employment with the program or a volunteer position as a Court Appointed Special Advocate, as defined in Section 101 of the Welfare and Institutions Code, information contained in the index regarding known or suspected child abuse by the applicant.

(6) For purposes of child death review, the Department of Justice shall make available to the chairperson, or the chairperson's designee, for each county child death review team, or the State Child Death Review Council, information maintained in the Child Abuse Central Index pursuant to subdivision (a) of Section 11170 relating to the death of one or more children and any prior child abuse or neglect investigation reports maintained involving the same victims, siblings, or suspects. Local child death review teams may share any relevant information regarding case reviews involving child death with other child death review teams.

(7) The department shall make available to investigative agencies or probation officers, or court investigators acting pursuant to Section 1513 of the Probate Code, responsible for placing children or assessing the possible placement of children pursuant to Article 6 (commencing with Section 300), Article 7 (commencing with Section 305), Article 10 (commencing with Section 360), or Article 14 (commencing with Section 601) of Chapter 2 of Part 1 of Division 2 of the Welfare and Institutions Code, Article 2 (commencing with Section 1510) or Article 3 (commencing with Section 1540) of Chapter 1 of Part 2 of Division 4 of the Probate Code, information regarding a known or suspected child abuser contained in the index concerning any adult residing in the home where the child may be placed, when this information is requested for purposes of ensuring that the placement is in the best interest of the child. Upon receipt of relevant information concerning child abuse or neglect investigation reports contained in the index from the Department of

Justice pursuant to this subdivision, the agency or court investigator shall notify, in writing, the person listed in the Child Abuse Central Index that he or she is in the index. The notification shall include the name of the reporting agency and the date of the report.

(8) The Department of Justice shall make available to a government agency conducting a background investigation pursuant to Section 1031 of the Government Code of an applicant seeking employment as a peace officer, as defined in Section 830, information regarding a known or suspected child abuser maintained pursuant to this section concerning the applicant.

(9) The Department of Justice shall make available to a county child welfare agency or delegated county adoption agency, as defined in Section 8515 of the Family Code, conducting a background investigation, or a government agency conducting a background investigation on behalf of one of those agencies, information regarding a known or suspected child abuser maintained pursuant to this section and subdivision (a) of Section 11169 concerning any applicant seeking employment or volunteer status with the agency who, in the course of his or her employment or volunteer work, will have direct contact with children who are alleged to have been, are at risk of, or have suffered, abuse or neglect.

(10) (A) Persons or agencies, as specified in subdivision (b), if investigating a case of known or suspected child abuse or neglect, or the State Department of Social Services or any county licensing agency pursuant to paragraph (4), or a Court Appointed Special Advocate program conducting a background investigation for employment or volunteer candidates pursuant to paragraph (5), or an investigative agency, probation officer, or court investigator responsible for placing children or assessing the possible placement of children pursuant to paragraph (7), or a government agency conducting a background investigation of an applicant seeking employment as a peace officer pursuant to paragraph (8), or a county child welfare agency or delegated county adoption agency conducting a background investigation of an applicant seeking employment or volunteer status who, in the course of his or her employment or volunteer work, will have direct contact which children who are alleged to have been, are at risk of, or have suffered, abuse or neglect, pursuant to paragraph (9), to whom disclosure of any information maintained pursuant to subdivision (a) is authorized, are responsible for obtaining the original investigative report from the reporting agency, and for drawing independent conclusions regarding the quality of the evidence disclosed, and its sufficiency for making decisions regarding investigation, prosecution, licensing, placement of a child, employment or volunteer positions with a CASA program, or employment as a peace officer.

(B) If Child Abuse Central Index information is requested by an agency for the temporary placement of a child in an emergency situation pursuant to Article 7 (commencing with Section 305) of Chapter 2 of Part 1 of Division 2 of the Welfare and Institutions Code, the department is exempt from the requirements of Section 1798.18 of the Civil Code if compliance would cause a delay in providing an expedited response to the agency's inquiry and if further delay in placement may be detrimental to the child.

(11) (A) Whenever information contained in the Department of Justice files is furnished as the result of an application for employment or licensing or volunteer status pursuant to paragraph (4), (5), (8), or (9), the Department of Justice may charge the person or entity making the request a fee. The fee shall not exceed the reasonable costs to the department of providing the information. The only increase shall be at a rate not to exceed the legislatively approved cost-of-living adjustment for the department. In no case shall the fee exceed fifteen dollars ($15).

(B) All moneys received by the department pursuant to this section to process trustline applications for purposes of Chapter 3.35 (commencing with Section 1596.60) of Division 2 of the Health and Safety Code shall be deposited in a special account in the General Fund that is hereby established and named the Department of Justice Child Abuse Fund. Moneys in the fund shall be available, upon appropriation by the Legislature, for expenditure by the department to offset the costs incurred to process trustline automated child abuse or neglect system checks pursuant to this section.

(C) All moneys, other than that described in subparagraph (B), received by the department pursuant to this paragraph shall be deposited in a special account in the General Fund which is hereby created and named the Department of Justice Sexual Habitual Offender Fund. The funds shall be available, upon appropriation by the Legislature, for expenditure by the department to offset the costs incurred pursuant to Chapter 9.5 (commencing with Section 13885) and Chapter 10 (commencing with Section 13890) of Title 6 of Part 4, and the DNA and Forensic Identification Data Base and Data Bank Act of 1998 (Chapter 6 (commencing with Section 295) of Title 9 of Part 1), and for maintenance and improvements to the statewide Sexual Habitual Offender Program and the California DNA offender identification file (CAL-DNA) authorized by Chapter 9.5 (commencing with Section 13885) of Title 6 of Part 4 and the DNA and Forensic Identification Data Base and Data Bank Act of 1998 (Chapter 6 (commencing with Section 295) of Title 9 of Part 1).

(c) The Department of Justice shall make available to any agency responsible for placing children pursuant to Article 7 (commencing with

Section 305) of Chapter 2 of Part 1 of Division 2 of the Welfare and Institutions Code, upon request, relevant information concerning child abuse or neglect reports contained in the index, when making a placement with a responsible relative pursuant to Sections 281.5, 305, and 361.3 of the Welfare and Institutions Code. Upon receipt of relevant information concerning child abuse or neglect reports contained in the index from the Department of Justice pursuant to this subdivision, the agency shall also notify in writing the person listed in the Child Abuse Central Index that he or she is in the index. The notification shall include the location of the original investigative report and the submitting agency. The notification shall be submitted to the person listed at the same time that all other parties are notified of the information, and no later than the actual judicial proceeding that determines placement.

If Child Abuse Central Index information is requested by an agency for the placement of a child with a responsible relative in an emergency situation pursuant to Article 7 (commencing with Section 305) of Chapter 2 of Part 1 of Division 2 of the Welfare and Institutions Code, the department is exempt from the requirements of Section 1798.18 of the Civil Code if compliance would cause a delay in providing an expedited response to the child protective agency's inquiry and if further delay in placement may be detrimental to the child.

(d) The department shall make available any information maintained pursuant to subdivision (a) to out-of-state law enforcement agencies conducting investigations of known or suspected child abuse or neglect only when an agency makes the request for information in writing and on official letterhead, or as designated by the department, identifying the suspected abuser or victim by name and date of birth or approximate age. The request shall be signed by the department supervisor of the requesting law enforcement agency. The written requests shall cite the out-of-state statute or interstate compact provision that requires that the information contained within these reports shall be disclosed only to law enforcement, prosecutorial entities, or multidisciplinary investigative teams, and shall cite the safeguards in place to prevent unlawful disclosure of any confidential information provided by the requesting state or the applicable interstate compact provision.

(e) (1) The department shall make available to an out-of-state agency, for purposes of approving a prospective foster or adoptive parent in compliance with the Adam Walsh Child Protection and Safety Act of 2006 (Public Law 109-248), information regarding a known or suspected child abuser maintained pursuant to subdivision (a) concerning the prospective foster or adoptive parent, and any other adult living in the home of the prospective foster or adoptive parent. The department shall make that information available only when the out-of-state agency makes

the request indicating that continual compliance will be maintained with the requirement in paragraph (20) of subdivision (a) of Section 671 of Title 42 of the United States Code that requires the state to have in place safeguards to prevent the unauthorized disclosure of information in any child abuse and neglect registry maintained by the state and prevent the information from being used for a purpose other than the conducting of background checks in foster or adoption placement cases.

(2) With respect to any information provided by the department in response to the out-of-state agency's request, the out-of-state agency is responsible for obtaining the original investigative report from the reporting agency, and for drawing independent conclusions regarding the quality of the evidence disclosed and its sufficiency for making decisions regarding the approval of prospective foster or adoptive parents.

(3) (A) Whenever information contained in the index is furnished pursuant to this subdivision, the department shall charge the out-of-state agency making the request a fee. The fee shall not exceed the reasonable costs to the department of providing the information. The only increase shall be at a rate not to exceed the legislatively approved cost-of-living adjustment for the department. In no case shall the fee exceed fifteen dollars ($15).

(B) All moneys received by the department pursuant to this subdivision shall be deposited in the Department of Justice Child Abuse Fund, established under subparagraph (B) of paragraph (11) of subdivision (b). Moneys in the fund shall be available, upon appropriation by the Legislature, for expenditure by the department to offset the costs incurred to process requests for information pursuant to this subdivision.

(f) (1) Any person may determine if he or she is listed in the Child Abuse Central Index by making a request in writing to the Department of Justice. The request shall be notarized and include the person's name, address, date of birth, and either a social security number or a California identification number. Upon receipt of a notarized request, the Department of Justice shall make available to the requesting person information identifying the date of the report and the submitting agency. The requesting person is responsible for obtaining the investigative report from the submitting agency pursuant to paragraph (11) of subdivision (b) of Section 11167.5.

(2) No person or agency shall require or request another person to furnish a copy of a record concerning himself or herself, or notification that a record concerning himself or herself exists or does not exist, pursuant to paragraph (1) of this subdivision.

(g) If a person is listed in the Child Abuse Central Index only as a victim of child abuse or neglect, and that person is 18 years of age or older, that person may have his or her name removed from the index by

making a written request to the Department of Justice. The request shall be notarized and include the person's name, address, social security number, and date of birth.

SEC. 1.3. Section 11170 of the Penal Code is amended to read:

11170. (a) (1) The Department of Justice shall maintain an index of all reports of child abuse and severe neglect submitted pursuant to Section 11169. The index shall be continually updated by the department and shall not contain any reports that are determined to be unfounded. The department may adopt rules governing recordkeeping and reporting pursuant to this article.

(2) The department shall act only as a repository of reports of suspected child abuse and severe neglect to be maintained in the Child Abuse Central Index pursuant to paragraph (1). The submitting agencies are responsible for the accuracy, completeness, and retention of the reports described in this section. The department shall be responsible for ensuring that the Child Abuse Central Index accurately reflects the report it receives from the submitting agency.

(3) Information from an inconclusive or unsubstantiated report filed pursuant to subdivision (a) of Section 11169 shall be deleted from the Child Abuse Central Index after 10 years if no subsequent report concerning the same suspected child abuser is received within that time period. If the suspected child abuser was a minor at the time of the report, the information shall be deleted after five years if no subsequent report concerning the same suspected child abuser is received within that time period. If a subsequent report is received within the 10-year period for adult child abuse suspects or the five-year period for child abuse suspects who were themselves minors at the time of the report, information from any prior report, as well as any subsequently filed report, shall be maintained on the Child Abuse Central Index for a period of 10 years from the time the most recent report is received by the department.

(b) (1) The Department of Justice shall immediately notify an agency that submits a report pursuant to Section 11169, or a prosecutor who requests notification, of any information maintained pursuant to subdivision (a) that is relevant to the known or suspected instance of child abuse or severe neglect reported by the agency. The agency shall make that information available to the reporting medical practitioner, child custodian, guardian ad litem appointed under Section 326, or counsel appointed under Section 317 or 318 of the Welfare and Institutions Code, or the appropriate licensing agency, if he or she is treating or investigating a case of known or suspected child abuse or severe neglect.

(2) When a report is made pursuant to subdivision (a) of Section 11166, or Section 11166.05, the investigating agency, upon completion

of the investigation or after there has been a final disposition in the matter, shall inform the person required or authorized to report of the results of the investigation and of any action the agency is taking with regard to the child or family.

(3) The Department of Justice shall make available to a law enforcement agency, county welfare department, or county probation department that is conducting a child abuse investigation relevant information contained in the index.

(4) The department shall make available to the State Department of Social Services, or to any county licensing agency that has contracted with the state for the performance of licensing duties, or to a tribal court or tribal child welfare agency of a tribe or consortium of tribes that has entered into an agreement with the state pursuant to Section 10553.1 of the Welfare and Institutions Code, information regarding a known or suspected child abuser maintained pursuant to this section and subdivision (a) of Section 11169 concerning any person who is an applicant for licensure or any adult who resides or is employed in the home of an applicant for licensure or who is an applicant for employment in a position having supervisorial or disciplinary power over a child or children, or who will provide 24-hour care for a child or children in a residential home or facility, pursuant to Section 1522.1 or 1596.877 of the Health and Safety Code, or Section 8714, 8802, 8912, or 9000 of the Family Code.

(5) The Department of Justice shall make available to a Court-Appointed Special Advocate program that is conducting a background investigation of an applicant seeking employment with the program or a volunteer position as a Court-Appointed Special Advocate, as defined in Section 101 of the Welfare and Institutions Code, information contained in the index regarding known or suspected child abuse by the applicant.

(6) For purposes of child death review, the Department of Justice shall make available to the chairperson, or the chairperson's designee, for each county child death review team, or the State Child Death Review Council, information maintained in the Child Abuse Central Index pursuant to subdivision (a) of Section 11170 relating to the death of one or more children and any prior child abuse or neglect investigation reports maintained involving the same victims, siblings, or suspects. Local child death review teams may share any relevant information regarding case reviews involving child death with other child death review teams.

(7) The department shall make available to investigative agencies or probation officers, or court investigators acting pursuant to Section 1513 of the Probate Code, responsible for placing children or assessing the possible placement of children pursuant to Article 6 (commencing with

Section 300), Article 7 (commencing with Section 305), Article 10 (commencing with Section 360), or Article 14 (commencing with Section 601) of Chapter 2 of Part 1 of Division 2 of the Welfare and Institutions Code, Article 2 (commencing with Section 1510) or Article 3 (commencing with Section 1540) of Chapter 1 of Part 2 of Division 4 of the Probate Code, information regarding a known or suspected child abuser contained in the index concerning any adult residing in the home where the child may be placed, when this information is requested for purposes of ensuring that the placement is in the best interest of the child. Upon receipt of relevant information concerning child abuse or neglect investigation reports contained in the index from the Department of Justice pursuant to this subdivision, the agency or court investigator shall notify, in writing, the person listed in the Child Abuse Central Index that he or she is in the index. The notification shall include the name of the reporting agency and the date of the report.

(8) The Department of Justice shall make available to a government agency conducting a background investigation pursuant to Section 1031 of the Government Code of an applicant seeking employment as a peace officer, as defined in Section 830, information regarding a known or suspected child abuser maintained pursuant to this section concerning the applicant.

(9) The Department of Justice shall make available to a county child welfare agency or delegated county adoption agency, as defined in Section 8515 of the Family Code, conducting a background investigation, or a government agency conducting a background investigation on behalf of one of those agencies, information regarding a known or suspected child abuser maintained pursuant to this section and subdivision (a) of Section 11169 concerning any applicant seeking employment or volunteer status with the agency who, in the course of his or her employment or volunteer work, will have direct contact with children who are alleged to have been, are at risk of, or have suffered, abuse or neglect.

(10) (A) Persons or agencies, as specified in subdivision (b), if investigating a case of known or suspected child abuse or neglect, or the State Department of Social Services or any county licensing agency pursuant to paragraph (4), or a Court Appointed Special Advocate program conducting a background investigation for employment or volunteer candidates pursuant to paragraph (5), or an investigative agency, probation officer, or court investigator responsible for placing children or assessing the possible placement of children pursuant to paragraph (7), or a government agency conducting a background investigation of an applicant seeking employment as a peace officer pursuant to paragraph (8), or a county child welfare agency or delegated county adoption agency conducting a background investigation of an

applicant seeking employment or volunteer status who, in the course of his or her employment or volunteer work, will have direct contact which children who are alleged to have been, are at risk of, or have suffered, abuse or neglect, pursuant to paragraph (9), to whom disclosure of any information maintained pursuant to subdivision (a) is authorized, are responsible for obtaining the original investigative report from the reporting agency, and for drawing independent conclusions regarding the quality of the evidence disclosed, and its sufficiency for making decisions regarding investigation, prosecution, licensing, placement of a child, employment or volunteer positions with a CASA program, or employment as a peace officer.

(B) If Child Abuse Central Index information is requested by an agency for the temporary placement of a child in an emergency situation pursuant to Article 7 (commencing with Section 305) of Chapter 2 of Part 1 of Division 2 of the Welfare and Institutions Code, the department is exempt from the requirements of Section 1798.18 of the Civil Code if compliance would cause a delay in providing an expedited response to the agency's inquiry and if further delay in placement may be detrimental to the child.

(11) (A) Whenever information contained in the Department of Justice files is furnished as the result of an application for employment or licensing or volunteer status pursuant to paragraph (4), (5), (8), or (9), the Department of Justice may charge the person or entity making the request a fee. The fee shall not exceed the reasonable costs to the department of providing the information. The only increase shall be at a rate not to exceed the legislatively approved cost-of-living adjustment for the department. In no case shall the fee exceed fifteen dollars ($15).

(B) All moneys received by the department pursuant to this section to process trustline applications for purposes of Chapter 3.35 (commencing with Section 1596.60) of Division 2 of the Health and Safety Code shall be deposited in a special account in the General Fund that is hereby established and named the Department of Justice Child Abuse Fund. Moneys in the fund shall be available, upon appropriation by the Legislature, for expenditure by the department to offset the costs incurred to process trustline automated child abuse or neglect system checks pursuant to this section.

(C) All moneys, other than that described in subparagraph (B), received by the department pursuant to this paragraph shall be deposited in a special account in the General Fund which is hereby created and named the Department of Justice Sexual Habitual Offender Fund. The funds shall be available, upon appropriation by the Legislature, for expenditure by the department to offset the costs incurred pursuant to Chapter 9.5 (commencing with Section 13885) and Chapter 10

(commencing with Section 13890) of Title 6 of Part 4, and the DNA and Forensic Identification Data Base and Data Bank Act of 1998 (Chapter 6 (commencing with Section 295) of Title 9 of Part 1), and for maintenance and improvements to the statewide Sexual Habitual Offender Program and the California DNA offender identification file (CAL-DNA) authorized by Chapter 9.5 (commencing with Section 13885) of Title 6 of Part 4 and the DNA and Forensic Identification Data Base and Data Bank Act of 1998 (Chapter 6 (commencing with Section 295) of Title 9 of Part 1).

(c) The Department of Justice shall make available to any agency responsible for placing children pursuant to Article 7 (commencing with Section 305) of Chapter 2 of Part 1 of Division 2 of the Welfare and Institutions Code, upon request, relevant information concerning child abuse or neglect reports contained in the index, when making a placement with a responsible relative pursuant to Sections 281.5, 305, and 361.3 of the Welfare and Institutions Code. Upon receipt of relevant information concerning child abuse or neglect reports contained in the index from the Department of Justice pursuant to this subdivision, the agency shall also notify in writing the person listed in the Child Abuse Central Index that he or she is in the index. The notification shall include the location of the original investigative report and the submitting agency. The notification shall be submitted to the person listed at the same time that all other parties are notified of the information, and no later than the actual judicial proceeding that determines placement.

If Child Abuse Central Index information is requested by an agency for the placement of a child with a responsible relative in an emergency situation pursuant to Article 7 (commencing with Section 305) of Chapter 2 of Part 1 of Division 2 of the Welfare and Institutions Code, the department is exempt from the requirements of Section 1798.18 of the Civil Code if compliance would cause a delay in providing an expedited response to the child protective agency's inquiry and if further delay in placement may be detrimental to the child.

(d) The department shall make available any information maintained pursuant to subdivision (a) to out-of-state law enforcement agencies conducting investigations of known or suspected child abuse or neglect only when an agency makes the request for information in writing and on official letterhead, or as designated by the department, identifying the suspected abuser or victim by name and date of birth or approximate age. The request shall be signed by the department supervisor of the requesting law enforcement agency. The written requests shall cite the out-of-state statute or interstate compact provision that requires that the information contained within these reports shall be disclosed only to law enforcement, prosecutorial entities, or multidisciplinary investigative

teams, and shall cite the safeguards in place to prevent the unlawful disclosure of any confidential information provided by the requesting state or the applicable interstate compact provision.

(e) (1) The department shall make available to an out-of-state agency, for purposes of approving a prospective foster or adoptive parent in compliance with the Adam Walsh Child Protection and Safety Act of 2006 (Public Law 109-248), information regarding a known or suspected child abuser maintained pursuant to subdivision (a) concerning the prospective foster or adoptive parent, and any other adult living in the home of the prospective foster or adoptive parent. The department shall make that information available only when the out-of-state agency makes the request indicating that continual compliance will be maintained with the requirement in paragraph (20) of subdivision (a) of Section 671 of Title 42 of the United States Code that requires the state to have in place safeguards to prevent the unauthorized disclosure of information in any child abuse and neglect registry maintained by the state and prevent the information from being used for a purpose other than the conducting of background checks in foster or adoption placement cases.

(2) With respect to any information provided by the department in response to the out-of-state agency's request, the out-of-state agency is responsible for obtaining the original investigative report from the reporting agency, and for drawing independent conclusions regarding the quality of the evidence disclosed and its sufficiency for making decisions regarding the approval of prospective foster or adoptive parents.

(3) (A) Whenever information contained in the index is furnished pursuant to this subdivision, the department shall charge the out-of-state agency making the request a fee. The fee shall not exceed the reasonable costs to the department of providing the information. The only increase shall be at a rate not to exceed the legislatively approved cost-of-living adjustment for the department. In no case shall the fee exceed fifteen dollars ($15).

(B) All moneys received by the department pursuant to this subdivision shall be deposited in the Department of Justice Child Abuse Fund, established under subparagraph (B) of paragraph (11) of subdivision (b). Moneys in the fund shall be available, upon appropriation by the Legislature, for expenditure by the department to offset the costs incurred to process requests for information pursuant to this subdivision.

(f) (1) Any person may determine if he or she is listed in the Child Abuse Central Index by making a request in writing to the Department of Justice. The request shall be notarized and include the person's name, address, date of birth, and either a social security number or a California identification number. Upon receipt of a notarized request, the Department of Justice shall make available to the requesting person

information identifying the date of the report and the submitting agency. The requesting person is responsible for obtaining the investigative report from the submitting agency pursuant to paragraph (11) of subdivision (b) of Section 11167.5.

(2) No person or agency shall require or request another person to furnish a copy of a record concerning himself or herself, or notification that a record concerning himself or herself exists or does not exist, pursuant to paragraph (1) of this subdivision.

(g) If a person is listed in the Child Abuse Central Index only as a victim of child abuse or neglect, and that person is 18 years of age or older, that person may have his or her name removed from the index by making a written request to the Department of Justice. The request shall be notarized and include the person's name, address, social security number, and date of birth.

(h) (1) If a person is listed in the Child Abuse Central Index as a suspect in a child abuse or neglect investigation due to an incident that occurred when the person was under 18 years of age, and the incident did not result in a delinquency adjudication or criminal conviction, that person may make a written request to the Department of Justice to have his or her name removed from the index as a suspect with respect to that incident. The request shall be notarized and include the person's name, address, social security number, and date of birth. Upon receipt of the request, the department shall inquire of the submitting agency whether the incident resulted in a delinquency adjudication or criminal conviction. Unless the submitting agency responds to the department in the affirmative within 30 days, the department shall remove the person's name from the index as the person suspected in that incident.

(2) If a person is listed in the index as a suspect with respect to more than one reported incident, the process set forth in paragraph (1) shall be followed with respect to each incident for which the person wishes to have his or her name removed from the index.

SEC. 2. (a) Section 1.1 of this bill incorporates amendments to Section 11170 of the Penal Code proposed by both this bill and SB 1022. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2009, (2) each bill amends Section 11170 of the Penal Code, and (3) AB 2651 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after SB 1022, in which case Sections 1, 1.2, and 1.3 of this bill shall not become operative.

(b) Section 1.2 of this bill incorporates amendments to Section 11170 of the Penal Code proposed by both this bill and AB 2651. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2009, (2) each bill amends Section 11170 of the

Penal Code, (3) SB 1022 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after AB 2651 in which case Sections 1, 1.1, and 1.3 of this bill shall not become operative.

(c) Section 1.3 of this bill incorporates amendments to Section 11170 of the Penal Code proposed by this bill, SB 1022, and AB 2651. It shall only become operative if (1) all three bills are enacted and become effective on or before January 1, 2009, (2) all three bills amend Section 11170 of the Penal Code, and (3) this bill is enacted after SB 1022 and AB 2651, in which case Sections 1, 1.1, and 1.2 of this bill shall not become operative.

CHAPTER 554

An act to amend Sections 121060 and 121065 of, and to add Section 121060.1 to, the Health and Safety Code, relating to communicable disease.

[Approved by Governor September 28, 2008. Filed with Secretary of State September 28, 2008.]

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

SECTION 1. Section 121060 of the Health and Safety Code is amended to read:

121060. (a) Any peace officer, firefighter, or emergency medical personnel who, while acting within the scope of his or her duties, is exposed to an arrestee's blood or bodily fluids, as defined in Section 121060.1, shall do the following:

(1) Prior to filing a petition with the court, a licensed health care provider shall notify the arrestee of the bloodborne pathogen exposure and make a good faith effort to obtain the voluntary informed consent of the arrestee or the arrestee's authorized legal representative to perform a test for Human Immunodeficiency Virus (HIV), hepatitis B, and hepatitis C. The voluntary informed consent shall be in writing. Once consent is given in writing, the arrestee shall provide three specimens of blood for testing as provided in this chapter.

(2) If voluntary informed consent is not given in writing, the affected individual may petition, ex parte, the court for an order requiring testing as provided in this chapter. The petition shall include a written certification by a health care professional that an exposure, including the nature and extent of the exposure, has occurred.

(b) The court shall promptly conduct a hearing upon a petition filed pursuant to paragraph (2) of subdivision (a). If the court finds that probable cause exists to believe that a possible bloodborne pathogen exposure, as defined in Section 121060.1, took place between the arrestee and the peace officer, firefighter, or emergency medical personnel, as specified in this section, the court shall order that the arrestee provide three specimens of blood for testing as provided in this chapter.

(c) (1) Except as provided in paragraph (2), copies of the test results shall be sent to the arrestee, each peace officer, firefighter, and emergency medical personnel named in the petition and his or her employing agency, officer, or entity, and if the arrestee is incarcerated or detained, to the officer in charge and the chief medical officer of the facility where the person is incarcerated or detained.

(2) The person whose sample was tested, shall be advised that he or she will be informed of the hepatitis B, hepatitis C, and HIV test results only if he or she wishes to be so informed. If the person consents to be informed of the hepatitis B, hepatitis C, and HIV test results, then he or she shall sign a form documenting that consent. The person's refusal to sign that form shall be construed to be a refusal to be informed of the hepatitis B, hepatitis C, and HIV test results.

(3) Except as otherwise provided under this section, all confidentiality requirements regarding medical records shall apply to the test results obtained.

SEC. 2. Section 121060.1 is added to the Health and Safety Code, to read:

121060.1. (a) For purposes of Section 121060, "bloodborne pathogen exposure" means a percutaneous injury, including, but not limited to, a needle stick or cut with a sharp object, or the contact of nonintact skin or mucous membranes with any of the bodily fluids identified in subdivision (b), in accordance with the most current bloodborne pathogen exposure definition established by the federal Centers for Disease Control and Prevention.

(b) "Bodily fluids" means any of the following:

(1) Blood.

(2) Tissue.

(3) Mucous containing visible blood.

(4) Semen.

(5) Vaginal secretions.

SEC. 3. Section 121065 of the Health and Safety Code is amended to read:

121065. (a) The withdrawal of blood shall be performed in a medically approved manner. Only a physician, registered nurse, licensed

vocational nurse, licensed medical technician, or licensed phlebotomist may withdraw blood specimens for the purposes of this chapter.

(b) The court shall order that the blood specimens be transmitted to a licensed medical laboratory and that tests be conducted thereon for medically accepted indications of exposure to or infection by HIV, hepatitis B, and hepatitis C.

(c) (1) The test results shall be sent to the designated recipients with the following disclaimer:

"The tests were conducted in a medically approved manner. Persons receiving this test result should continue to monitor their own health and should consult a physician as appropriate. Recipients of these test results are subject to existing confidentiality protections for any identifying information about HIV, hepatitis B, or hepatitis C test results. Medical information regarding the HIV, hepatitis B, or hepatitis C status of the source patient shall be kept confidential and may not be further disclosed, except as otherwise authorized by law."

(2) The exposed individual shall also be informed of the penalties for disclosure for which he or she would be personally liable pursuant to Section 120980.

If the person subject to the test is a minor, copies of the test result shall also be sent to the minor's parents or guardian.

(d) The court shall order all persons, other than the test subject, who receive test results pursuant to Sections 121055, 121056, or 121060, to maintain the confidentiality of personal identifying data relating to the test results except for disclosure that may be necessary to obtain medical or psychological care or advice.

(e) The specimens and the results of tests ordered pursuant to Sections 121055, 121056, and 121060 shall not be admissible evidence in any criminal or juvenile proceeding.

(f) Any person performing testing, transmitting test results, or disclosing information pursuant to the provisions of this chapter shall be immune from civil liability for any action undertaken in accordance with the provisions of this chapter.

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 555

An act to add Section 120846 to the Health and Safety Code, relating to public health.

[Approved by Governor September 28, 2008. Filed with Secretary of State September 28, 2008.]

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

SECTION 1. Section 120846 is added to the Health and Safety Code, to read:

120846. (a) It is the intent of the Legislature to increase the capacity of HIV test sites to screen more individuals by streamlining test site services.

(b) Publicly funded HIV test sites shall be permitted to do all of the following:

(1) Advise a person who has been tested before and is following appropriate public health risk reduction measures that the person does not need to receive further education services. This paragraph shall not apply to a person who engages in high-risk behaviors and is not following appropriate risk reduction measures.

(2) Determine whether a person should be allowed to self-administer any data collection form required by the department.

(3) As appropriate, provide prevention education through video, small group, individual interaction, or other methods and in small groups or couples.

CHAPTER 556

An act to amend Section 244.5 of, and to add Section 12655 to, the Penal Code, relating to stun guns.

[Approved by Governor September 28, 2008. Filed with Secretary of State September 28, 2008.]

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

SECTION 1. Section 244.5 of the Penal Code is amended to read:

244.5. (a) As used in this section, "stun gun" means any item, except a less lethal weapon, as defined in Section 12601, used or intended to be used as either an offensive or defensive weapon that is capable of

temporarily immobilizing a person by the infliction of an electrical charge.

(b) Every person who commits an assault upon the person of another with a stun gun or less lethal weapon, as defined in Section 12601, shall be punished by imprisonment in a county jail for a term not exceeding one year, or by imprisonment in the state prison for 16 months, two, or three years.

(c) Every person who commits an assault upon the person of a peace officer or firefighter with a stun gun or less lethal weapon, as defined in Section 12601, who knows or reasonably should know that the person is a peace officer or firefighter engaged in the performance of his or her duties, when the peace officer or firefighter is engaged in the performance of his or her duties, shall be punished by imprisonment in the county jail for a term not exceeding one year, or by imprisonment in the state prison for two, three, or four years.

(d) This section shall not be construed to preclude or in any way limit the applicability of Section 245 in any criminal prosecution.

SEC. 2. Section 12655 is added to the Penal Code, to read:

12655. Any person who sells a less lethal weapon, as defined in Section 12601, to a person under the age of 18 years is guilty of a misdemeanor, punishable by imprisonment in the county jail for up to six months or by a fine of not more than one thousand dollars ($1,000), or by both that imprisonment and fine.

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

CHAPTER 557

An act to amend Sections 1522.41 and 1529.2 of the Health and Safety Code, and to amend Sections 16001.9, 16003, and 16013 of the Welfare and Institutions Code, relating to human services.

[Approved by Governor September 28, 2008. Filed with Secretary of State September 28, 2008.]

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

SECTION 1. Section 1522.41 of the Health and Safety Code is amended to read:

1522.41. (a) The director, in consultation and collaboration with county placement officials, group home provider organizations, the Director of Mental Health, and the Director of Developmental Services, shall develop and establish a certification program to ensure that administrators of group home facilities have appropriate training to provide the care and services for which a license or certificate is issued.

(b) (1) In addition to any other requirements or qualifications required by the department, an administrator of a group home facility shall successfully complete a department-approved certification program, pursuant to subdivision (c), prior to employment. An administrator employed in a group home on the effective date of this section shall meet the requirements of paragraph (2) of subdivision (c).

(2) In those cases where the individual is both the licensee and the administrator of a facility, the individual shall comply with all of 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 10 days of any change in administrators.

(c) (1) The administrator certification programs shall require a minimum of 40 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 and educational needs of the facility residents.

(E) Community and support services.

(F) Physical needs for facility residents.

(G) Administration, storage, misuse, and interaction of medication used by facility residents.

(H) Resident admission, retention, and assessment procedures, including the right of a foster child 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.

(I) Nonviolent emergency intervention and reporting requirements.

(J) Basic instruction on the existing laws and procedures regarding the safety of foster youth at school and the ensuring of a harassment and violence free school environment contained in the California Student Safety and Violence Prevention Act of 2000 (Article 3.6 (commencing with Section 32228) of Chapter 2 of Part 19 of Division 1 of Title 1 of the Education Code).

(2) The department shall adopt separate program requirements for initial certification for persons who are employed as group home administrators on the effective date of this section. A person employed as an administrator of a group home facility on the effective date of this section, shall obtain a certificate by completing the training and testing requirements imposed by the department within 12 months of the effective date of the regulations implementing this section. After the effective date of this section, these administrators shall meet the requirements imposed by the department on all other group home administrators for certificate renewal.

(3) Individuals applying for certification under this section shall successfully complete an approved certification program, pass a written test administered by the department within 60 days of completing the program, and submit to the department the documentation required by subdivision (d) within 30 days after being notified of having passed the test. The department may extend these time deadlines for good cause. The department shall notify the applicant of his or her test results within 30 days of administering the test.

(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 pursuant to Section 1522. The department may waive the submission for those persons who have a current clearance on file.

(5) That person is at least 21 years of age.

(e) It shall be unlawful for any person not certified under this section to hold himself or herself out as a certified administrator of a group home facility. Any person willfully making any false representation as being a certified administrator or facility manager 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). No more than one-half of the required 40 hours of continuing education necessary to renew the certificate may be satisfied through online courses. All other continuing education hours shall be completed in a classroom setting. For purposes of this section, an individual who is a group home 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, may 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 administrator of a group home facility shall 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 July 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 shall be proof of compliance with this paragraph.

(5) A suspended or revoked certificate shall be 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 a period of 12 months 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 reassurance of a lost certificate.

(8) A certificate holder shall inform the department of his or her employment status and change of mailing address within 30 days of any change.

(g) Unless otherwise ordered by the department, the certificate shall be considered forfeited under either of the following conditions:

(1) The department has revoked any license held by the administrator after the department issued the certificate.

(2) The department has issued an exclusion order against the administrator pursuant to Section 1558, 1568.092, 1569.58, or 1596.8897, after the department issued the certificate, and the administrator did not appeal the exclusion order or, after the appeal, the department issued a decision and order that upheld the exclusion order.

(h) (1) The department, in consultation and collaboration with county placement officials, provider organizations, 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. The department may also grant continuing education hours for continuing courses offered by accredited educational institutions that are consistent with the requirements in this section. 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 (j).

(B) The applicant person or agency has a conflict of interest in that the person or agency places its clients in group home facilities.

(C) The applicant public or private agency has a conflict of interest in that the agency is mandated to place clients in group homes 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 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, including online courses, at no charge to the department, to determine if content and teaching methods comply with regulations. If the department determines that any vendor is not complying with the requirements 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 40-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.

(7) (A) A vendor of online programs for continuing education shall ensure that each online course contains all of the following:

(i) An interactive portion in which the participant receives 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 be available to

the department upon demand. Any person who certifies as true any material matter pursuant to this clause that he or she knows to be false is guilty of a misdemeanor.

(B) Nothing in this subdivision shall prohibit the department from approving 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 requirements of this section.

(i) The department shall establish a registry for holders of certificates that shall include, at a minimum, information on employment status and criminal record clearance.

(j) Subdivisions (b) to (i), inclusive, shall be implemented upon regulations being adopted by the department, by January 1, 2000.

(k) Notwithstanding any provision of law to the contrary, vendors approved by the department who exclusively provide either initial or continuing education courses for certification of administrators of a group home facility as defined by regulations of the department, an adult residential facility as defined by regulations of the department, or a residential care facility for the elderly as defined in subdivision (k) of Section 1569.2, shall be regulated solely by the department pursuant to this chapter. No other state or local governmental entity shall be responsible for regulating the activity of those vendors.

SEC. 2. Section 1529.2 of the Health and Safety Code is amended to read:

1529.2. (a) In addition to the foster parent training provided by community colleges, foster family agencies shall provide a program of training for their certified foster families.

(b) (1) Every licensed foster parent shall complete a minimum of 12 hours of foster parent training, as prescribed in paragraph (3), before the placement of any foster children with the foster parent. In addition, a foster parent shall complete a minimum of eight hours of foster parent training annually, as prescribed in paragraph (4). No child shall be placed in a foster family home unless these requirements are met by the persons in the home who are serving as the foster parents.

(2) (A) Upon the request of the foster parent for a hardship waiver from the postplacement training requirement or a request for an extension of the deadline, the county may, at its option, on a case-by-case basis, waive the postplacement training requirement or extend any established deadline for a period not to exceed one year, if the postplacement training requirement presents a severe and unavoidable obstacle to continuing as a foster parent. Obstacles for which a county may grant a hardship waiver or extension are:

(i) Lack of access to training due to the cost or travel required.

(ii) Family emergency.

(B) Before a waiver or extension may be granted, the foster parent should explore the opportunity of receiving training by video or written materials.

(3) The initial preplacement training shall include, but not be limited to, training courses that cover all of the following:

(A) An overview of the child protective system.

(B) The effects of child abuse and neglect on child development.

(C) Positive discipline and the importance of self-esteem.

(D) Health issues in foster care.

(E) Accessing education and health services available to foster children.

(F) The right of a foster child 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.

(G) Basic instruction on the existing laws and procedures regarding the safety of foster youth at school and the ensuring of a harassment and violence free school environment contained in the California Student Safety and Violence Prevention Act of 2000 (Article 3.6 (commencing with Section 32228) of Chapter 2 of Part 19 of Division 1 of Title 1 of the Education Code).

(4) The postplacement annual training shall include, but not be limited to, training courses that cover all of the following:

(A) Age-appropriate child development.

(B) Health issues in foster care.

(C) Positive discipline and the importance of self-esteem.

(D) Emancipation and independent living skills if a foster parent is caring for youth.

(E) The right of a foster child 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.

(5) Foster parent training may be attained through a variety of sources, including community colleges, counties, hospitals, foster parent associations, the California State Foster Parent Association's Conference, adult schools, and certified foster parent instructors.

(6) A candidate for placement of foster children shall submit a certificate of training to document completion of the training

requirements. The certificate shall be submitted with the initial consideration for placements and provided at the time of the annual visit by the licensing agency thereafter.

(c) Nothing in this section shall preclude a county from requiring county-provided preplacement or postplacement foster parent training in excess of the requirements in this section.

SEC. 3. 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 (CASAs), 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. 4. Section 16003 of the Welfare and Institutions Code is amended to read:

16003. (a) In order to promote the successful implementation of the statutory preference for foster care placement with a relative caretaker as set forth in Section 7950 of the Family Code, each community college district with a foster care education program shall make available orientation and training to the relative or nonrelative extended family member caregiver into whose care the county has placed a foster child pursuant to Section 1529.2 of the Health and Safety Code, including, but not limited to, courses that cover the following:

(1) The role, rights, and responsibilities of a relative or nonrelative extended family member caregiver caring for a child in foster care, including the right of a foster child 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.

(2) An overview of the child protective system.

(3) The effects of child abuse and neglect on child development.

(4) Positive discipline and the importance of self-esteem.

(5) Health issues in foster care.

(6) Accessing education and health services that are available to foster children.

(7) Relationship and safety issues regarding contact with one or both of the birth parents.

(8) Permanency options for relative or nonrelative extended family member caregivers, including legal guardianship, the Kinship Guardianship Assistance Payment Program, and kin adoption.

(9) Information on resources available for those who meet eligibility criteria, including out-of-home care payments, the Medi-Cal program, in-home supportive services, and other similar resources.

(10) Basic instruction on the existing laws and procedures regarding the safety of foster youth at school and the ensuring of a harassment and violence free school environment contained in the California Student Safety and Violence Prevention Act of 2000 (Article 3.6 (commencing with Section 32228) of Chapter 2 of Part 19 of Division 1 of Title 1 of the Education Code).

(b) In addition to training made available pursuant to subdivision (a), each community college district with a foster care education program shall make training available to a relative or nonrelative extended family member caregiver that includes, but need not be limited to, courses that cover all of the following:

(1) Age-appropriate child development.

(2) Health issues in foster care.

(3) Positive discipline and the importance of self-esteem.

(4) Emancipation and independent living.

(5) Accessing education and health services available to foster children.

(6) Relationship and safety issues regarding contact with one or both of the birth parents.

(7) Permanency options for relative or nonrelative extended family member caregivers, including legal guardianship, the Kinship Guardianship Assistance Payment Program, and kin adoption.

(8) Basic instruction on the existing laws and procedures regarding the safety of foster youth at school and the ensuring of a harassment and violence free school environment contained in the California Student Safety and Violence Prevention Act of 2000 (Article 3.6 (commencing with Section 32228) of Chapter 2 of Part 19 of Division 1 of Title 1 of the Education Code).

(c) In addition to the requirements of subdivisions (a) and (b), each community college district with a foster care education program, in providing the orientation program, shall develop appropriate program parameters in collaboration with the counties.

(d) Each community college district with a foster care education program shall make every attempt to make the training and orientation programs for relative or nonrelative extended family member caregivers highly accessible in the communities in which they reside.

(e) When a child is placed with a relative or nonrelative extended family member caregiver, the county shall inform the caregiver of the availability of training and orientation programs and it is the intent of the Legislature that the county shall forward the names and addresses of relative or nonrelative extended family member caregivers to the appropriate community colleges providing the training and orientation programs.

(f) This section shall not be construed to preclude counties from developing or expanding existing training and orientation programs for foster care providers to include relative or nonrelative extended family member caregivers.

SEC. 5. Section 16013 of the Welfare and Institutions Code is amended to read:

16013. (a) It is the policy of this state that all persons engaged in providing care and services to foster children, including, but not limited to, foster parents, adoptive parents, relative caregivers, and other caregivers contracting with a county welfare department, shall have fair and equal access to all available programs, services, benefits, and licensing processes, and shall not be subjected to discrimination or harassment on the basis of their clients' or their own actual or perceived race, ethnic group identification, ancestry, national origin, color, religion, sex, sexual orientation, gender identity, mental or physical disability, or HIV status.

(b) Nothing in this section shall be interpreted to create or modify existing preferences for foster placements or to limit the local placement

agency's ability to make placement decisions for a child based on the child's best interests.

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 558

An act to amend Section 3099.2 of the Labor Code, to amend Sections 25302.5, 25534, 25741, and 25742 of the Public Resources Code, to amend Sections 5, 20, 216, 353.11, 366.2, 380, 387, 387.5, 394.5, 395.5, 399.12, 399.12.5, 701.8, 761.3, 747, 848, 2774.5, 2827, 2852, 3302, 7000, 8340, and 9604 of, to amend and renumber Sections 228.5 and 399.25 of, to add Section 224.3 to, to repeal Section 399.1 of, to repeal the heading of Article 15 (commencing with Section 399) of Chapter 2.3 of, and to repeal the heading of Article 5 (commencing with Section 445) of Chapter 2.5 of, Part 1 of Division 1 of, the Public Utilities Code, relating to public utilities.

[Approved by Governor September 28, 2008. Filed with Secretary of State September 28, 2008.]

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

SECTION 1. Section 3099.2 of the Labor Code is amended to read:

3099.2. (a) (1) Persons who perform work as electricians shall become certified pursuant to Section 3099 by the deadline specified in this subdivision. After the applicable deadline, uncertified persons shall not perform electrical work for which certification is required.

(2) The deadline for certification as a general electrician or fire/life safety technician is January 1, 2006, except that persons who applied for certification prior to January 1, 2006, have until January 1, 2007, to pass the certification examination. The deadline for certification as a residential electrician is January 1, 2007, and the deadline for certification as a voice data video technician or a nonresidential lighting technician is January 1, 2008. The California Apprenticeship Council may extend the certification date for any of these three categories of electricians up

to January 1, 2009, if the council concludes that the existing deadline will not provide persons sufficient time to obtain certification, enroll in an apprenticeship or training program, or register pursuant to Section 3099.4.

(3) For purposes of any continuing education or recertification requirement, individuals who become certified prior to the deadline for certification shall be treated as having become certified on the first anniversary of their certification date that falls after the certification deadline.

(b) (1) Certification is required only for those persons who perform work as electricians for contractors licensed as class C-10 electrical contractors under the Contractors' State License Board Rules and Regulations.

(2) Certification is not required for persons performing work for contractors licensed as class C-7 low voltage systems or class C-45 electric sign contractors as long as the work performed is within the scope of the class C-7 or class C-45 license, including incidental and supplemental work as defined in Section 7059 of the Business and Professions Code, and regardless of whether the same contractor is also licensed as a class C-10 contractor.

(3) Certification is not required for work performed by a worker on a high-voltage electrical transmission or distribution system owned by a local publicly owned electric utility, as defined in Section 224.3 of the Public Utilities Code; an electrical corporation, as defined in Section 218 of the Public Utilities Code; a person, as defined in Section 205 of the Public Utilities Code; or a corporation, as defined in Section 204 of the Public Utilities Code; when the worker is employed by the utility or a licensed contractor principally engaged in installing or maintaining transmission or distribution systems.

(c) The division shall establish separate certifications for general electrician, fire/life safety technician, residential electrician, voice data video technician, and nonresidential lighting technician.

(d) Notwithstanding subdivision (a), certification is not required for registered apprentices performing electrical work as part of an apprenticeship program approved under this chapter, a federal Office of Apprenticeship program, or a state apprenticeship program authorized by the federal Office of Apprenticeship. An apprentice who is within one year of completion of his or her term of apprenticeship shall be permitted to take the certification examination and, upon passing the examination, shall be certified immediately upon completion of the term of apprenticeship.

(e) Notwithstanding subdivision (a), certification is not required for any person employed pursuant to Section 3099.4.

(f) Notwithstanding subdivision (a), certification is not required for a nonresidential lighting trainee (1) who is enrolled in an on-the-job instructional training program approved by the Chief of the Division of Apprenticeship Standards pursuant to Section 3090, and (2) who is under the onsite supervision of a nonresidential lighting technician certified pursuant to Section 3099.

(g) Notwithstanding subdivision (a), the qualifying person for a class C-10 electrical contractor license issued by the Contractors' State License Board need not also be certified pursuant to Section 3099 to perform electrical work for that licensed contractor or to supervise an uncertified person employed by that licensed contractor pursuant to Section 3099.4.

(h) For the purposes of this section, "electricians" has the same meaning as the definition set forth in Section 3099.

SEC. 1.5. Section 3099.2 of the Labor Code is amended to read:

3099.2. (a) (1) Persons who perform work as electricians shall become certified pursuant to Section 3099 by the deadline specified in this subdivision. After the applicable deadline, uncertified persons shall not perform electrical work for which certification is required.

(2) The deadline for certification as a general electrician or fire/life safety technician is January 1, 2006, except that persons who applied for certification prior to January 1, 2006, have until January 1, 2007, to pass the certification examination. The deadline for certification as a residential electrician is January 1, 2007, and the deadline for certification as a voice data video technician or a nonresidential lighting technician is January 1, 2008. The California Apprenticeship Council may extend the certification date for any of these three categories of electricians up to January 1, 2009, if the council concludes that the existing deadline will not provide persons sufficient time to obtain certification, enroll in an apprenticeship or training program, or register pursuant to Section 3099.4.

(3) For purposes of any continuing education or recertification requirement, individuals who become certified prior to the deadline for certification shall be treated as having become certified on the first anniversary of their certification date that falls after the certification deadline.

(b) (1) Certification is required only for those persons who perform work as electricians for contractors licensed as class C-10 electrical contractors under the Contractors' State License Board Rules and Regulations.

(2) Certification is not required for persons performing work for contractors licensed as class C-7 low voltage systems or class C-45 electric sign contractors as long as the work performed is within the scope of the class C-7 or class C-45 license, including incidental and

supplemental work as defined in Section 7059 of the Business and Professions Code, and regardless of whether the same contractor is also licensed as a class C-10 contractor.

(3) Certification is not required for work performed by a worker on a high-voltage electrical transmission or distribution system owned by a local publicly owned electric utility, as defined in Section 224.3 of the Public Utilities Code; an electrical corporation, as defined in Section 218 of the Public Utilities Code; a person, as defined in Section 205 of the Public Utilities Code; or a corporation, as defined in Section 204 of the Public Utilities Code; when the worker is employed by the utility or a licensed contractor principally engaged in installing or maintaining transmission or distribution systems.

(c) The division shall establish separate certifications for general electrician, fire/life safety technician, residential electrician, voice data video technician, and nonresidential lighting technician.

(d) Notwithstanding subdivision (a), certification is not required for registered apprentices performing electrical work as part of an apprenticeship program approved under this chapter, a federal Office of Apprenticeship program, or a state apprenticeship program authorized by the federal Office of Apprenticeship. An apprentice who is within one year of completion of his or her term of apprenticeship shall be permitted to take the certification examination and, upon passing the examination, shall be certified immediately upon completion of the term of apprenticeship.

(e) Notwithstanding subdivision (a), certification is not required for any person employed pursuant to Section 3099.4.

(f) Notwithstanding subdivision (a), certification is not required for a nonresidential lighting trainee (1) who is enrolled in an on-the-job instructional training program approved by the Chief of the Division of Apprenticeship Standards pursuant to Section 3090, and (2) who is under the onsite supervision of a nonresidential lighting technician certified pursuant to Section 3099.

(g) Notwithstanding subdivision (a), the qualifying person for a class C-10 electrical contractor license issued by the Contractors' State License Board need not also be certified pursuant to Section 3099 to perform electrical work for that licensed contractor or to supervise an uncertified person employed by that licensed contractor pursuant to Section 3099.4.

(h) Commencing July 1, 2009, the following shall constitute additional grounds for disciplinary proceedings, including suspension or revocation of the license of a class C-10 electrical contractor pursuant to Article 7 (commencing with Section 7090) of Chapter 9 of Division 3 of the Business and Professions Code:

(1) The contractor willfully employs one or more uncertified persons to perform work as electricians in violation of this section.

(2) The contractor willfully fails to provide the adequate supervision of uncertified workers required by paragraph (3) of subdivision (a) of Section 3099.4.

(3) The contractor willfully fails to provide adequate supervision of apprentices performing work pursuant to subdivision (d).

(i) The Chief of the Division of Apprenticeship Standards shall develop a process for referring cases to the Contractors' State License Board when it has been determined that a violation of this section has likely occurred. On or before July 1, 2009, the chief shall prepare and execute a memorandum of understanding with the Registrar of Contractors in furtherance of this section.

(j) Upon receipt of a referral by the Chief of the Division of Apprenticeship Standards alleging a violation under this section, the Registrar of Contractors shall open an investigation. Any disciplinary action against the licensee shall be initiated within 60 days of the receipt of the referral. The Registrar of Contractors may initiate disciplinary action against any licensee upon his or her own investigation, the filing of any complaint, or any finding that results from a referral from the Chief of the Division of Apprenticeship Standards alleging a violation under this section. Failure of the employer or employee to provide evidence of certification or trainee status shall create a rebuttable presumption of violation of this provision.

(k) For the purposes of this section, "electricians" has the same meaning as the definition set forth in Section 3099.

SEC. 2. Section 25302.5 of the Public Resources Code is amended to read:

25302.5. (a) As part of each integrated energy policy report required pursuant to Section 25302, each entity that serves or plans to serve electricity to retail customers, including, but not limited to, electrical corporations, nonutility electric service providers, community choice aggregators, and local publicly owned electric utilities, shall provide the commission with its forecast of both of the following:

(1) The amount of its forecasted load that may be lost or added by any of the following:

(A) A community choice aggregator.

(B) An existing local publicly owned electric utility.

(C) A newly formed local publicly owned electric utility.

(2) Load that will be served by an electric service provider.

(b) The commission shall perform an assessment in the service territory of each electrical corporation of the loss or addition of load

described in this section and submit the results of the assessment to the Public Utilities Commission.

(c) Notwithstanding subdivision (a), the commission may exempt from the forecasting requirements in that subdivision, a local publicly owned electric utility that is not planning to acquire additional load beyond its existing exclusive service territory within the forecast period provided by the commission pursuant to Section 25303.

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

(1) "Community choice aggregator" means any "community choice aggregator" as defined in Section 331.1 of the Public Utilities Code.

(2) "Electrical corporation" means any "electrical corporation" as defined in Section 218 of the Public Utilities Code.

(3) "Electric service provider" means any "electric service provider" as defined in Section 218.3 of the Public Utilities Code.

(4) "Local publicly owned electric utility" means any "local publicly owned electric utility" as defined in Section 224.3 of the Public Utilities Code.

SEC. 3. Section 25534 of the Public Resources Code is amended to read:

25534. (a) The commission may, after one or more hearings, amend the conditions of, or revoke the certification for, any facility for any of the following reasons:

(1) Any material false statement set forth in the application, presented in proceedings of the commission, or included in supplemental documentation provided by the applicant.

(2) Any significant failure to comply with the terms or conditions of approval of the application, as specified by the commission in its written decision.

(3) A violation of this division or any regulation or order issued by the commission under this division.

(4) The owner of a project does not start construction of the project within 12 months after the date all permits necessary for the project become final and all administrative and judicial appeals have been resolved provided the California Consumer Power and Conservation Financing Authority notifies the commission that it is willing and able to construct the project pursuant to subdivision (g). The project owner may extend the 12-month period by 24 additional months pursuant to subdivision (f). This paragraph applies only to projects with a project permit application deemed complete by the commission after January 1, 2003.

(b) The commission may also administratively impose a civil penalty for a violation of paragraph (1) or (2) of subdivision (a). Any civil penalty

shall be imposed in accordance with Section 25534.1 and may not exceed seventy-five thousand dollars ($75,000) per violation, except that the civil penalty may be increased by an amount not to exceed one thousand five hundred dollars ($1,500) per day for each day in which the violation occurs or persists, but the total of the per day penalties may not exceed fifty thousand dollars ($50,000).

(c) A project owner shall commence construction of a project subject to the start-of-construction deadline provided by paragraph (4) of subdivision (a) within 12 months after the project has been certified by the commission and after all accompanying project permits are final and administrative and judicial appeals have been completed. The project owner shall submit construction and commercial operation milestones to the commission within 30 days after project certification. Construction milestones shall require the start of construction within the 12-month period established by this subdivision. The commission shall approve milestones within 60 days after project certification. If the 30-day deadline to submit construction milestones to the commission is not met, the commission shall establish milestones for the project.

(d) The failure of the owner of a project subject to the start-of-construction deadline provided by paragraph (4) of subdivision (a) to meet construction or commercial operation milestones, without a finding by the commission of good cause, shall be cause for revocation of certification or the imposition of other penalties by the commission.

(e) A finding by the commission that there is good cause for failure to meet the start-of-construction deadline required by paragraph (4) of subdivision (a) or any subsequent milestones of subdivision (c) shall be made if the commission determines that any of the following criteria are met:

(1) The change in any deadline or milestone does not change the established deadline or milestone for the start of commercial operation.

(2) The deadline or milestone is changed due to circumstances beyond the project owner's control, including, but not limited to, administrative and legal appeals.

(3) The deadline or milestone will be missed but the project owner demonstrates a good faith effort to meet the project deadline or milestone.

(4) The deadline or milestone will be missed due to unforeseen natural disasters or acts of God that prevent timely completion of the project deadline or milestone.

(5) The deadline or milestone will be missed for any other reason determined reasonable by the commission.

(f) The commission shall extend the start-of-construction deadline required by paragraph (4) of subdivision (a) by an additional 24 months, if the owner reimburses the commission's actual cost of licensing the

project, less the amount paid pursuant to subdivision (a) of Section 25806. For the purposes of this section, the commission's actual cost of licensing the project shall be based on a certified audit report filed by the commission staff within 180 days of the commission's certification of the project. The certified audit shall be filed and served on all parties to the proceeding, is subject to public review and comment, and is subject to at least one public hearing if requested by the project owner. Any reimbursement received by the commission pursuant to this subdivision shall be deposited in the General Fund.

(g) If the owner of a project subject to the start-of-construction deadline provided by paragraph (4) of subdivision (a) fails to commence construction, without good cause, within 12 months after the project has been certified by the commission and has not received an extension pursuant to subdivision (f), the commission shall provide immediate notice to the California Consumer Power and Conservation Financing Authority. The authority shall evaluate whether to pursue the project independently or in conjunction with any other public or private entity, including the original certificate holder. If the authority demonstrates to the commission that it is willing and able to construct the project either independently or in conjunction with any other public or private entity, including the original certificate holder, the commission may revoke the original certification and issue a new certification for the project to the authority, unless the authority's statutory authorization to finance or approve new programs, enterprises, or projects has expired. If the authority declines to pursue the project, the permit shall remain with the current project owner until it expires pursuant to the regulations adopted by the commission.

(h) If the commission issues a new certification for a project subject to the start-of-construction deadline provided by paragraph (4) of subdivision (a) to the authority, the commission shall adopt new milestones for the project that allow the authority up to 24 months to start construction of the project or to start to meet the applicable deadlines or milestones. If the authority fails to begin construction in conformity with the deadlines or milestones adopted by the commission, without good cause, the certification may be revoked.

(i) (1) If the commission issues a new certification for a project subject to the start-of-construction deadline provided by paragraph (4) of subdivision (a) to the authority and the authority pursues the project without participation of the original certificate holder, the authority shall offer to reimburse the original certificate holder for the actual costs the original certificate holder incurred in permitting the project and in procuring assets associated with the license, including, but not limited to, major equipment and the emission offsets. In order to receive

reimbursement, the original certificate holder shall provide to the commission documentation of the actual costs incurred in permitting the project. The commission shall validate those costs. The certificate holder may refuse to accept the offer of reimbursement for any asset associated with the license and retain the asset. To the extent the certificate holder chooses to accept the offer for an asset, it shall provide the authority with the asset.

(2) If the authority reimburses the original certificate holder for the costs described in paragraph (1), the original certificate holder shall provide the authority with all of the assets for which the original certificate holder received reimbursement.

(j) This section does not prevent a certificate holder from selling its license to construct and operate a project prior to its revocation by the commission. In the event of a sale to an entity that is not an affiliate of the certificate holder, the commission shall adopt new deadlines or milestones for the project that allow the new certificate holder up to 12 months to start construction of the project or to start to meet the applicable deadlines or milestones.

(k) Paragraph (4) of subdivision (a) and subdivisions (c) to (j), inclusive, do not apply to licenses issued for the modernization, repowering, replacement, or refurbishment of existing facilities or to a qualifying small power production facility or a qualifying cogeneration facility within the meaning of Sections 201 and 210 of Title II of the federal Public Utility Regulatory Policies Act of 1978 (16 U.S.C. Secs. 796(17), 796(18), and 824a-3), and the regulations adopted pursuant to those sections by the Federal Energy Regulatory Commission (18 C.F.R. Parts 292.101 to 292.602, inclusive), nor shall those provisions apply to any other generation units installed, operated, and maintained at a customer site exclusively to serve that facility's load. For the purposes of this subdivision, "replacement" of an existing facility includes, but is not limited to, a comparable project at a location different than the facility being replaced, provided that the commission certifies that the new project will result in the decommissioning of the existing facility.

(*l*) Paragraph (4) of subdivision (a) and subdivisions (c) to (j), inclusive, do not apply to licenses issued to "local publicly owned electric utilities," as defined in Section 224.3 of the Public Utilities Code, whose governing bodies certify to the commission that the project is needed to meet the projected native load of the local publicly owned utility.

(m) To implement this section, the commission and the California Consumer Power and Conservation Financing Authority may, in consultation with each other, adopt emergency regulations in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. For purposes of that chapter,

including, without limitation, Section 11349.6 of the Government Code, the adoption of the regulations shall be considered by the Office of Administrative Law to be necessary for the immediate preservation of the public peace, health and safety, or general welfare.

SEC. 4. Section 25741 of the Public Resources Code is amended to read:

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

(a) "Delivered" and "delivery" mean the electricity output of an in-state renewable electricity generation facility that is used to serve end-use retail customers located within the state. Subject to verification by the accounting system established by the commission pursuant to subdivision (b) of Section 399.13 of the Public Utilities Code, electricity shall be deemed delivered if it is either generated at a location within the state, or is scheduled for consumption by California end-use retail customers. Subject to criteria adopted by the commission, electricity generated by an eligible renewable energy resource may be considered "delivered" regardless of whether the electricity is generated at a different time from consumption by a California end-use customer.

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

(1) The facility uses biomass, solar thermal, photovoltaic, wind, geothermal, fuel cells using renewable fuels, small hydroelectric generation of 30 megawatts or less, digester gas, municipal solid waste conversion, landfill gas, ocean wave, ocean thermal, or tidal current, and any additions or enhancements to the facility using that technology.

(2) The facility satisfies one of the following requirements:

(A) The facility is located in the state or near the border of the state with the first point of connection to the transmission network within this state and electricity produced by the facility is delivered to an in-state location.

(B) The facility has its first point of interconnection to the transmission network outside the state and satisfies all of the following requirements:

(i) It is connected to the transmission network within the Western Electricity Coordinating Council (WECC) service territory.

(ii) It commences initial commercial operation after January 1, 2005.

(iii) Electricity produced by the facility is delivered to an in-state location.

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

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

(vi) It participates in the accounting system to verify compliance with the renewables portfolio standard by retail sellers, once established by the Energy Commission pursuant to subdivision (b) of Section 399.13 of the Public Utilities Code.

(C) The facility meets the requirements of clauses (i), (iii), (iv), (v), and (vi) in subparagraph (B), but does not meet the requirements of clause (ii) because it commences initial operation prior to January 1, 2005, if the facility satisfies either of the following requirements:

(i) The electricity is from incremental generation resulting from expansion or repowering of the facility.

(ii) The facility has been part of the existing baseline of eligible renewable energy resources of a retail seller established pursuant to paragraph (2) of subdivision (b) of Section 399.15 of the Public Utilities Code or has been part of the existing baseline of eligible renewable energy resources of a local publicly owned electric utility established pursuant to Section 387 of the Public Utilities Code.

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

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

(B) The technology produces no discharges of air contaminants or emissions, including greenhouse gases as defined in Section 38505 of the Health and Safety Code.

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

(D) The technology produces no hazardous wastes.

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

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

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

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

(c) "Procurement entity" means any person or corporation that enters into an agreement with a retail seller to procure eligible renewable energy resources pursuant to subdivision (f) of Section 399.14 of the Public Utilities Code.

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

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

(f) "Retail seller" means a "retail seller" as defined in Section 399.12 of the Public Utilities Code.

SEC. 5. Section 25742 of the Public Resources Code is amended to read:

25742. (a) Twenty percent of the funds collected pursuant to the renewable energy public goods charge shall be used for programs that are designed to achieve fully competitive and self-sustaining existing in-state renewable electricity generation facilities, and to secure for the state the environmental, economic, and reliability benefits that continued operation of those facilities will provide during the 2007–2011 investment cycle. Eligibility for production incentives under this section shall be limited to those technologies found eligible for funds by the commission pursuant to paragraphs (3), (4), and (6) of subdivision (e) of Section 25740.5.

(b) Any funds used to support in-state renewable electricity generation facilities pursuant to this section shall be expended in accordance with the provisions of this chapter.

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

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

(2) Is used onsite.

(d) (1) Existing facilities generating electricity from biomass energy shall be eligible for funding and otherwise considered an in-state renewable electricity generation facility only if they report to the commission the types and quantities of biomass fuels used.

(2) The commission shall report the types and quantities of biomass fuels used by each facility to the Legislature in the reports prepared pursuant to Section 25748.

(e) Each existing facility seeking an award pursuant to this section shall be evaluated by the commission to determine the amount of the funds being sought, the cumulative amount of funds the facility has received previously from the commission and other state sources, the value of any past and current federal or state tax credits, the facility's contract price for energy and capacity, the prices received by similar facilities, the market value of the facility, and the likelihood that the award will make the facility competitive and self-sustaining within the 2007–2011 investment cycle. The commission shall use this evaluation to determine the value of an award to the public relative to other renewable energy investment alternatives. The commission shall compile its findings and report them to the Legislature in the reports prepared pursuant to Section 25748.

SEC. 6. Section 5 of the Public Utilities Code is amended to read:

5. Unless the provision or the context otherwise requires, the definitions, rules of construction, and other general provisions contained in Sections 1 to 22, inclusive, and the definitions in the Public Utilities Act (Chapter 1 (commencing with Section 201) of Part 1 of Division 1), shall govern the construction of this code.

SEC. 7. Section 20 of the Public Utilities Code is amended to read:

20. (a) "Commission" means the Public Utilities Commission created by Section 1 of Article XII of the California Constitution, and "commissioner" means a member of the commission.

(b) "Energy Commission" means the State Energy Resources Conservation and Development Commission.

SEC. 8. Section 216 of the Public Utilities Code is amended to read:

216. (a) "Public utility" includes every common carrier, toll bridge corporation, pipeline corporation, gas corporation, electrical corporation, telephone corporation, telegraph corporation, water corporation, sewer system corporation, and heat corporation, where the service is performed for, or the commodity is delivered to, the public or any portion thereof.

(b) Whenever any common carrier, toll bridge corporation, pipeline corporation, gas corporation, electrical corporation, telephone corporation, telegraph corporation, water corporation, sewer system corporation, or heat corporation performs a service for, or delivers a commodity to, the public or any portion thereof for which any compensation or payment whatsoever is received, that common carrier, toll bridge corporation, pipeline corporation, gas corporation, electrical corporation, telephone corporation, telegraph corporation, water corporation, sewer system corporation, or heat corporation, is a public

utility subject to the jurisdiction, control, and regulation of the commission and the provisions of this part.

(c) When any person or corporation performs any service for, or delivers any commodity to, any person, private corporation, municipality, or other political subdivision of the state, that in turn either directly or indirectly, mediately or immediately, performs that service for, or delivers that commodity to, the public or any portion thereof, that person or corporation is a public utility subject to the jurisdiction, control, and regulation of the commission and the provisions of this part.

(d) Ownership or operation of a facility that employs cogeneration technology or produces power from other than a conventional power source or the ownership or operation of a facility which employs landfill gas technology does not make a corporation or person a public utility within the meaning of this section solely because of the ownership or operation of that facility.

(e) Any corporation or person engaged directly or indirectly in developing, producing, transmitting, distributing, delivering, or selling any form of heat derived from geothermal or solar resources or from cogeneration technology to any privately owned or publicly owned public utility, or to the public or any portion thereof, is not a public utility within the meaning of this section solely by reason of engaging in any of those activities.

(f) The ownership or operation of a facility that sells compressed natural gas at retail to the public for use only as a motor vehicle fuel, and the selling of compressed natural gas at retail from that facility to the public for use only as a motor vehicle fuel, does not make the corporation or person a public utility within the meaning of this section solely because of that ownership, operation, or sale.

(g) Ownership or operation of a facility that is an exempt wholesale generator, as defined in the Public Utility Holding Company Act of 2005 (42 U.S.C. Sec. 16451(6)), does not make a corporation or person a public utility within the meaning of this section, solely due to the ownership or operation of that facility.

(h) The ownership, control, operation, or management of an electric plant used for direct transactions or participation directly or indirectly in direct transactions, as permitted by subdivision (b) of Section 365, sales into a market established and operated by the Independent System Operator or any other wholesale electricity market, or the use or sale as permitted under subdivisions (b) to (d), inclusive, of Section 218, shall not make a corporation or person a public utility within the meaning of this section solely because of that ownership, participation, or sale.

SEC. 9. Section 224.3 is added to the Public Utilities Code, to read:

224.3. "Local publicly owned electric utility" means a municipality or municipal corporation operating as a "public utility" furnishing electric service as provided in Section 10001, a municipal utility district furnishing electric service formed pursuant to Division 6 (commencing with Section 11501), a public utility district furnishing electric services formed pursuant to the Public Utility District Act set forth in Division 7 (commencing with Section 15501), an irrigation district furnishing electric services formed pursuant to the Irrigation District Law set forth in Division 11 (commencing with Section 20500) of the Water Code, or a joint powers authority that includes one or more of these agencies and that owns generation or transmission facilities, or furnishes electric services over its own or its member's electric distribution system.

SEC. 10. Section 228.5 of the Public Utilities Code is amended and renumbered to read:

218.5. (a) The following terms have the following meanings:

(1) "Exempt wholesale generator" has the same meaning as defined in the Public Utility Holding Company Act of 2005 (42 U.S.C. Sec. 16451(6)).

(2) "Qualifying small power producer," "small power production facility," and "qualifying small power production facility" have the same meanings as found in Section 796 of Title 16 of the United States Code and the regulations enacted pursuant thereto.

(b) Notwithstanding any other provision of law, a qualifying small power producer owning or operating a small power production facility is not a public utility subject to the general jurisdiction of the commission solely because of the ownership or operation of the facility.

(c) Notwithstanding any other provision of law, an exempt wholesale generator is not a public utility subject to the general jurisdiction of the commission solely due to the ownership or operation of the facility.

SEC. 11. Section 353.11 of the Public Utilities Code is amended to read:

353.11. A local publicly owned electric utility or a local publicly owned utility otherwise providing electrical service, shall review at the earliest practicable date its rates, tariffs, and rules to identify barriers to and determine the appropriate balance of costs and benefits of distributed energy resources in order to facilitate the installation of these resources in the interests of their customer-owners and the state, and shall hold at least one noticed public meeting to solicit public comment on the review and any recommended changes. However, notwithstanding any other provision of this article, such an entity has the sole authority to undertake such a review and to make modifications to its rates, tariffs, and rules as the governing body of that utility determines to be necessary.

SEC. 12. Section 366.2 of the Public Utilities Code is amended to read:

366.2. (a) (1) Customers shall be entitled to aggregate their electric loads as members of their local community with community choice aggregators.

(2) Customers may aggregate their loads through a public process with community choice aggregators, if each customer is given an opportunity to opt out of their community's aggregation program.

(3) If a customer opts out of a community choice aggregator's program, or has no community choice program available, that customer shall have the right to continue to be served by the existing electrical corporation or its successor in interest.

(b) If a public agency seeks to serve as a community choice aggregator, it shall offer the opportunity to purchase electricity to all residential customers within its jurisdiction.

(c) (1) Notwithstanding Section 366, a community choice aggregator is hereby authorized to aggregate the electrical load of interested electricity consumers within its boundaries to reduce transaction costs to consumers, provide consumer protections, and leverage the negotiation of contracts. However, the community choice aggregator may not aggregate electrical load if that load is served by a local publicly owned electric utility. A community choice aggregator may group retail electricity customers to solicit bids, broker, and contract for electricity and energy services for those customers. The community choice aggregator may enter into agreements for services to facilitate the sale and purchase of electricity and other related services. Those service agreements may be entered into by a single city or county, a city and county, or by a group of cities, cities and counties, or counties.

(2) Under community choice aggregation, customer participation may not require a positive written declaration, but all customers shall be informed of their right to opt out of the community choice aggregation program. If no negative declaration is made by a customer, that customer shall be served through the community choice aggregation program.

(3) A community choice aggregator establishing electrical load aggregation pursuant to this section shall develop an implementation plan detailing the process and consequences of aggregation. The implementation plan, and any subsequent changes to it, shall be considered and adopted at a duly noticed public hearing. The implementation plan shall contain all of the following:

(A) An organizational structure of the program, its operations, and its funding.

(B) Ratesetting and other costs to participants.

(C) Provisions for disclosure and due process in setting rates and allocating costs among participants.

(D) The methods for entering and terminating agreements with other entities.

(E) The rights and responsibilities of program participants, including, but not limited to, consumer protection procedures, credit issues, and shutoff procedures.

(F) Termination of the program.

(G) A description of the third parties that will be supplying electricity under the program, including, but not limited to, information about financial, technical, and operational capabilities.

(4) A community choice aggregator establishing electrical load aggregation shall prepare a statement of intent with the implementation plan. Any community choice load aggregation established pursuant to this section shall provide for the following:

(A) Universal access.

(B) Reliability.

(C) Equitable treatment of all classes of customers.

(D) Any requirements established by state law or by the commission concerning aggregated service.

(5) In order to determine the cost-recovery mechanism to be imposed on the community choice aggregator pursuant to subdivisions (d), (e), and (f) that shall be paid by the customers of the community choice aggregator to prevent shifting of costs, the community choice aggregator shall file the implementation plan with the commission, and any other information requested by the commission that the commission determines is necessary to develop the cost-recovery mechanism in subdivisions (d), (e), and (f).

(6) The commission shall notify any electrical corporation serving the customers proposed for aggregation that an implementation plan initiating community choice aggregation has been filed, within 10 days of the filing.

(7) Within 90 days after the community choice aggregator establishing load aggregation files its implementation plan, the commission shall certify that it has received the implementation plan, including any additional information necessary to determine a cost-recovery mechanism. After certification of receipt of the implementation plan and any additional information requested, the commission shall then provide the community choice aggregator with its findings regarding any cost recovery that must be paid by customers of the community choice aggregator to prevent a shifting of costs as provided for in subdivisions (d), (e), and (f).

(8) No entity proposing community choice aggregation shall act to furnish electricity to electricity consumers within its boundaries until the commission determines the cost-recovery that must be paid by the customers of that proposed community choice aggregation program, as provided for in subdivisions (d), (e), and (f). The commission shall designate the earliest possible effective date for implementation of a community choice aggregation program, taking into consideration the impact on any annual procurement plan of the electrical corporation that has been approved by the commission.

(9) All electrical corporations shall cooperate fully with any community choice aggregators that investigate, pursue, or implement community choice aggregation programs. Cooperation shall include providing the entities with appropriate billing and electrical load data, including, but not limited to, data detailing electricity needs and patterns of usage, as determined by the commission, and in accordance with procedures established by the commission. Electrical corporations shall continue to provide all metering, billing, collection, and customer service to retail customers that participate in community choice aggregation programs. Bills sent by the electrical corporation to retail customers shall identify the community choice aggregator as providing the electrical energy component of the bill. The commission shall determine the terms and conditions under which the electrical corporation provides services to community choice aggregators and retail customers.

(10) (A) A city, county, or city and county that elects to implement a community choice aggregation program within its jurisdiction pursuant to this chapter shall do so by ordinance.

(B) Two or more cities, counties, or cities and counties may participate as a group in a community choice aggregation pursuant to this chapter, through a joint powers agency established pursuant to Chapter 5 (commencing with Section 6500) of Division 7 of Title 1 of the Government Code, if each entity adopts an ordinance pursuant to subparagraph (A).

(11) Following adoption of aggregation through the ordinance described in paragraph (10), the program shall allow any retail customer to opt out and to continue to be served as a bundled service customer by the existing electrical corporation, or its successor in interest. Delivery services shall be provided at the same rates, terms, and conditions, as approved by the commission, for community choice aggregation customers and customers that have entered into a direct transaction where applicable, as determined by the commission. Once enrolled in the aggregated entity, any ratepayer that chooses to opt out within 60 days or two billing cycles of the date of enrollment may do so without penalty and shall be entitled to receive default service pursuant to paragraph (3)

of subdivision (a). Customers that return to the electrical corporation for procurement services shall be subject to the same terms and conditions as are applicable to other returning direct access customers from the same class, as determined by the commission, as authorized by the commission pursuant to this code or any other provision of law. Any reentry fees to be imposed after the opt-out period specified in this paragraph, shall be approved by the commission and shall reflect the cost of reentry. The commission shall exclude any amounts previously determined and paid pursuant to subdivisions (d), (e), and (f) from the cost of reentry.

(12) Nothing in this section shall be construed as authorizing any city or any community choice retail load aggregator to restrict the ability of retail electricity customers to obtain or receive service from any authorized electric service provider in a manner consistent with law.

(13) (A) The community choice aggregator shall fully inform participating customers at least twice within two calendar months, or 60 days, in advance of the date of commencing automatic enrollment. Notifications may occur concurrently with billing cycles. Following enrollment, the aggregated entity shall fully inform participating customers for not less than two consecutive billing cycles. Notification may include, but is not limited to, direct mailings to customers, or inserts in water, sewer, or other utility bills. Any notification shall inform customers of both of the following:

(i) That they are to be automatically enrolled and that the customer has the right to opt out of the community choice aggregator without penalty.

(ii) The terms and conditions of the services offered.

(B) The community choice aggregator may request the commission to approve and order the electrical corporation to provide the notification required in subparagraph (A). If the commission orders the electrical corporation to send one or more of the notifications required pursuant to subparagraph (A) in the electrical corporation's normally scheduled monthly billing process, the electrical corporation shall be entitled to recover from the community choice aggregator all reasonable incremental costs it incurs related to the notification or notifications. The electrical corporation shall fully cooperate with the community choice aggregator in determining the feasibility and costs associated with using the electrical corporation's normally scheduled monthly billing process to provide one or more of the notifications required pursuant to subparagraph (A).

(C) Each notification shall also include a mechanism by which a ratepayer may opt out of community choice aggregated service. The opt out may take the form of a self-addressed return postcard indicating the customer's election to remain with, or return to, electrical energy service

provided by the electrical corporation, or another straightforward means by which the customer may elect to derive electrical energy service through the electrical corporation providing service in the area.

(14) The community choice aggregator shall register with the commission, which may require additional information to ensure compliance with basic consumer protection rules and other procedural matters.

(15) Once the community choice aggregator's contract is signed, the community choice aggregator shall notify the applicable electrical corporation that community choice service will commence within 30 days.

(16) Once notified of a community choice aggregator program, the electrical corporation shall transfer all applicable accounts to the new supplier within a 30-day period from the date of the close of their normally scheduled monthly metering and billing process.

(17) An electrical corporation shall recover from the community choice aggregator any costs reasonably attributable to the community choice aggregator, as determined by the commission, of implementing this section, including, but not limited to, all business and information system changes, except for transaction-based costs as described in this paragraph. Any costs not reasonably attributable to a community choice aggregator shall be recovered from ratepayers, as determined by the commission. All reasonable transaction-based costs of notices, billing, metering, collections, and customer communications or other services provided to an aggregator or its customers shall be recovered from the aggregator or its customers on terms and at rates to be approved by the commission.

(18) At the request and expense of any community choice aggregator, electrical corporations shall install, maintain and calibrate metering devices at mutually agreeable locations within or adjacent to the community aggregator's political boundaries. The electrical corporation shall read the metering devices and provide the data collected to the community aggregator at the aggregator's expense. To the extent that the community aggregator requests a metering location that would require alteration or modification of a circuit, the electrical corporation shall only be required to alter or modify a circuit if such alteration or modification does not compromise the safety, reliability or operational flexibility of the electrical corporation's facilities. All costs incurred to modify circuits pursuant to this paragraph, shall be borne by the community aggregator.

(d) (1) It is the intent of the Legislature that each retail end-use customer that has purchased power from an electrical corporation on or after February 1, 2001, should bear a fair share of the Department of

Water Resources' electricity purchase costs, as well as electricity purchase contract obligations incurred as of the effective date of the act adding this section, that are recoverable from electrical corporation customers in commission-approved rates. It is further the intent of the Legislature to prevent any shifting of recoverable costs between customers.

(2) The Legislature finds and declares that this subdivision is consistent with the requirements of Division 27 (commencing with Section 80000) of the Water Code and Section 360.5, and is therefore declaratory of existing law.

(e) A retail end-use customer that purchases electricity from a community choice aggregator pursuant to this section shall pay both of the following:

(1) A charge equivalent to the charges that would otherwise be imposed on the customer by the commission to recover bond related costs pursuant to any agreement between the commission and the Department of Water Resources pursuant to Section 80110 of the Water Code, which charge shall be payable until any obligations of the Department of Water Resources pursuant to Division 27 (commencing with Section 80000) of the Water Code are fully paid or otherwise discharged.

(2) Any additional costs of the Department of Water Resources, equal to the customer's proportionate share of the Department of Water Resources' estimated net unavoidable electricity purchase contract costs as determined by the commission, for the period commencing with the customer's purchases of electricity from the community choice aggregator, through the expiration of all then existing electricity purchase contracts entered into by the Department of Water Resources.

(f) A retail end-use customer purchasing electricity from a community choice aggregator pursuant to this section shall reimburse the electrical corporation that previously served the customer for all of the following:

(1) The electrical corporation's unrecovered past undercollections for electricity purchases, including any financing costs, attributable to that customer, that the commission lawfully determines may be recovered in rates.

(2) Any additional costs of the electrical corporation recoverable in commission-approved rates, equal to the share of the electrical corporation's estimated net unavoidable electricity purchase contract costs attributable to the customer, as determined by the commission, for the period commencing with the customer's purchases of electricity from the community choice aggregator, through the expiration of all then existing electricity purchase contracts entered into by the electrical corporation.

(g) (1) Any charges imposed pursuant to subdivision (e) shall be the property of the Department of Water Resources. Any charges imposed pursuant to subdivision (f) shall be the property of the electrical corporation. The commission shall establish mechanisms, including agreements with, or orders with respect to, electrical corporations necessary to ensure that charges payable pursuant to this section shall be promptly remitted to the party entitled to payment.

(2) Charges imposed pursuant to subdivisions (d), (e), and (f) shall be nonbypassable.

(h) Notwithstanding Section 80110 of the Water Code, the commission shall authorize community choice aggregation only if the commission imposes a cost-recovery mechanism pursuant to subdivisions (d), (e), (f), and (g). Except as provided by this subdivision, this section shall not alter the suspension by the commission of direct purchases of electricity from alternate providers other than by community choice aggregators, pursuant to Section 80110 of the Water Code.

(i) (1) The commission shall not authorize community choice aggregation until it implements a cost-recovery mechanism, consistent with subdivisions (d), (e), and (f), that is applicable to customers that elected to purchase electricity from an alternate provider between February 1, 2001, and January 1, 2003.

(2) The commission shall not authorize community choice aggregation until it submits a report certifying compliance with paragraph (1) to the Senate Energy, Utilities and Communications Committee, or its successor, and the Assembly Committee on Utilities and Commerce, or its successor.

(3) The commission shall not authorize community choice aggregation until it has adopted rules for implementing community choice aggregation.

(j) The commission shall prepare and submit to the Legislature, on or before January 1, 2006, a report regarding the number of community choices aggregations, the number of customers served by community choice aggregations, third party suppliers to community choice aggregations, compliance with this section, and the overall effectiveness of community choice aggregation programs.

SEC. 13. Section 380 of the Public Utilities Code is amended to read:

380. (a) The commission, in consultation with the Independent System Operator, shall establish resource adequacy requirements for all load-serving entities.

(b) In establishing resource adequacy requirements, the commission shall achieve all of the following objectives:

(1) Facilitate development of new generating capacity and retention of existing generating capacity that is economic and needed.

(2) Equitably allocate the cost of generating capacity and prevent shifting of costs between customer classes.

(3) Minimize enforcement requirements and costs.

(c) Each load-serving entity shall maintain physical generating capacity adequate to meet its load requirements, including, but not limited to, peak demand and planning and operating reserves. The generating capacity shall be deliverable to locations and at times as may be necessary to provide reliable electric service.

(d) Each load-serving entity shall, at a minimum, meet the most recent minimum planning reserve and reliability criteria approved by the Board of Trustees of the Western Systems Coordinating Council or the Western Electricity Coordinating Council.

(e) The commission shall implement and enforce the resource adequacy requirements established in accordance with this section in a nondiscriminatory manner. Each load-serving entity shall be subject to the same requirements for resource adequacy and the renewables portfolio standard program that are applicable to electrical corporations pursuant to this section, or otherwise required by law, or by order or decision of the commission. The commission shall exercise its enforcement powers to ensure compliance by all load-serving entities.

(f) The commission shall require sufficient information, including, but not limited to, anticipated load, actual load, and measures undertaken by a load-serving entity to ensure resource adequacy, to be reported to enable the commission to determine compliance with the resource adequacy requirements established by the commission.

(g) An electrical corporation's costs of meeting resource adequacy requirements, including, but not limited to, the costs associated with system reliability and local area reliability, that are determined to be reasonable by the commission, or are otherwise recoverable under a procurement plan approved by the commission pursuant to Section 454.5, shall be fully recoverable from those customers on whose behalf the costs are incurred, as determined by the commission, at the time the commitment to incur the cost is made or thereafter, on a fully nonbypassable basis, as determined by the commission. The commission shall exclude any amounts authorized to be recovered pursuant to Section 366.2 when authorizing the amount of costs to be recovered from customers of a community choice aggregator or from customers that purchase electricity through a direct transaction pursuant to this subdivision.

(h) The commission shall determine and authorize the most efficient and equitable means for achieving all of the following:

(1) Meeting the objectives of this section.

(2) Ensuring that investment is made in new generating capacity.

(3) Ensuring that existing generating capacity that is economic is retained.

(4) Ensuring that the cost of generating capacity is allocated equitably.

(i) In making the determination pursuant to subdivision (h), the commission may consider a centralized resource adequacy mechanism among other options.

(j) For purposes of this section, "load-serving entity" means an electrical corporation, electric service provider, or community choice aggregator. "Load-serving entity" does not include any of the following:

(1) A local publicly owned electric utility.

(2) The State Water Resources Development System commonly known as the State Water Project.

(3) Customer generation located on the customer's site or providing electric service through arrangements authorized by Section 218, if the customer generation, or the load it serves, meets one of the following criteria:

(A) It takes standby service from the electrical corporation on a commission-approved rate schedule that provides for adequate backup planning and operating reserves for the standby customer class.

(B) It is not physically interconnected to the electric transmission or distribution grid, so that, if the customer generation fails, backup electricity is not supplied from the electricity grid.

(C) There is physical assurance that the load served by the customer generation will be curtailed concurrently and commensurately with an outage of the customer generation.

SEC. 14. Section 387 of the Public Utilities Code is amended to read:

387. (a) Each governing body of a local publicly owned electric utility shall be responsible for implementing and enforcing a renewables portfolio standard that recognizes the intent of the Legislature to encourage renewable resources, while taking into consideration the effect of the standard on rates, reliability, and financial resources and the goal of environmental improvement.

(b) Each local publicly owned electric utility shall report, on an annual basis, to its customers and to the State Energy Resources Conservation and Development Commission, the following:

(1) Expenditures of public goods funds collected pursuant to Section 385 for eligible renewable energy resource development. Reports shall contain a description of programs, expenditures, and expected or actual results.

(2) The resource mix used to serve its customers by fuel type. Reports shall contain the contribution of each type of renewable energy resource with separate categories for those fuels that are eligible renewable energy resources as defined in Section 399.12, except that the electricity is

delivered to the local publicly owned electric utility and not a retail seller. Electricity shall be reported as having been delivered to the local publicly owned electric utility from an eligible renewable energy resource when the electricity would qualify for compliance with the renewables portfolio standard if it were delivered to a retail seller.

(3) The utility's status in implementing a renewables portfolio standard pursuant to subdivision (a) and the utility's progress toward attaining the standard following implementation.

SEC. 15. Section 387.5 of the Public Utilities Code is amended to read:

387.5. (a) In order to further the state goal of encouraging the installation of 3,000 megawatts of photovoltaic solar energy in California within 10 years, the governing body of a local publicly owned electric utility that sells electricity at retail, shall adopt, implement, and finance a solar initiative program, funded in accordance with subdivision (b), for the purpose of investing in, and encouraging the increased installation of, residential and commercial solar energy systems.

(b) On or before January 1, 2008, a local publicly owned electric utility shall offer monetary incentives for the installation of solar energy systems of at least two dollars and eighty cents ($2.80) per installed watt, or for the electricity produced by the solar energy system, measured in kilowatthours, as determined by the governing board of a local publicly owned electric utility, for photovoltaic solar energy systems. The incentive level shall decline each year thereafter at a rate of no less than an average of 7 percent per year.

(c) A local publicly owned electric utility shall initiate a public proceeding to fund a solar energy program to adequately support the goal of installing 3,000 megawatts of photovoltaic solar energy in California. The proceeding shall determine what additional funding, if any, is necessary to provide the incentives pursuant to subdivision (b). The public proceeding shall be completed and the comprehensive solar energy program established by January 1, 2008.

(d) The solar energy program of a local publicly owned electric utility shall be consistent with all of the following:

(1) That a solar energy system receiving monetary incentives comply with the eligibility criteria, design, installation, and electrical output standards or incentives established by the State Energy Resources Conservation and Development Commission pursuant to Section 25782 of the Public Resources Code.

(2) That solar energy systems receiving monetary incentives are intended primarily to offset part or all of the consumer's own electricity demand.

(3) That all components in the solar energy system are new and unused, and have not previously been placed in service in any other location or for any other application.

(4) That the solar energy system has a warranty of not less than 10 years to protect against defects and undue degradation of electrical generation output.

(5) That the solar energy system be located on the same premises of the end-use consumer where the consumer's own electricity demand is located.

(6) That the solar energy system be connected to the electric utility's electrical distribution system within the state.

(7) That the solar energy system has meters or other devices in place to monitor and measure the system's performance and the quantity of electricity generated by the system.

(8) That the solar energy system be installed in conformance with the manufacturer's specifications and in compliance with all applicable electrical and building code standards.

(e) A local publicly owned electric utility shall, on an annual basis beginning June 1, 2008, make available to its customers, to the Legislature, and to the State Energy Resources Conservation and Development Commission, information relating to the utility's solar initiative program established pursuant to this section, including, but not limited to, the number of photovoltaic solar watts installed, the total number of photovoltaic systems installed, the total number of applicants, the amount of incentives awarded, and the contribution toward the program goals.

(f) In establishing the program required by this section, no moneys shall be diverted from any existing programs for low-income ratepayers, or from cost-effective energy efficiency or demand response programs.

(g) The statewide expenditures for solar programs adopted, implemented, and financed by local publicly owned electric utilities shall be seven hundred eighty-four million dollars ($784,000,000). The expenditure level for each local publicly owned electric utility shall be based on that utility's percentage of the total statewide load served by all local publicly owned electric utilities. Expenditures by a local publicly owned electric utility may be less than the utility's cap amount, provided that funding is adequate to provide the incentives required by subdivisions (a) and (b).

SEC. 16. Section 394.5 of the Public Utilities Code is amended to read:

394.5. (a) Except for an electrical corporation as defined in Section 218, or a local publicly owned electric utility offering electrical service to residential and small commercial customers within its service territory,

each electric service provider offering electrical service to residential and small commercial customers shall, prior to the commencement of service, provide the potential customer with a written notice of the service describing the price, terms, and conditions of the service. The notices shall include all of the following:

(1) A clear description of the price, terms, and conditions of service, including:

(A) The price of electricity expressed in a format which makes it possible for residential and small commercial customers to compare and select among similar products and services on a standard basis. The commission shall adopt rules to implement this subdivision. The commission shall require disclosure of the total price of electricity on a cents-per-kilowatthour basis, including the costs of all electric services and charges regulated by the commission. The commission shall also require estimates of the total monthly bill for the electric service at varying consumption levels, including the costs of all electric services and charges regulated by the commission. In determining these rules, the commission may consider alternatives to the cents-per-kilowatthour disclosure if other information would provide the customer with sufficient information to compare among alternatives on a standard basis.

(B) Separate disclosure of all recurring and nonrecurring charges associated with the sale of electricity.

(C) If services other than electricity are offered, an itemization of the services and the charge or charges associated with each.

(2) An explanation of the applicability and amount of the competition transition charge, as determined pursuant to Sections 367 to 376, inclusive.

(3) A description of the potential customer's right to rescind the contract without fee or penalty as described in Section 395.

(4) An explanation of the customer's financial obligations, as well as the procedures regarding past due payments, discontinuance of service, billing disputes, and service complaints.

(5) The electric service provider's registration number, if applicable.

(6) The right to change service providers upon written notice, including disclosure of any fees or penalties assessed by the supplier for early termination of a contract.

(7) A description of the availability of low-income assistance programs for qualified customers and how customers can apply for these programs.

(b) The commission may assist electric service providers in developing the notice. The commission may suggest inclusion of additional information it deems necessary for the consumer protection purposes of this section. On at least a semiannual basis, electric service providers shall provide the commission with a copy of the form of notice included

in standard service plans made available to residential and small commercial customers as described in subdivision (a) of Section 392.1.

(c) Any electric service provider offering electric services who declines to provide those services to a consumer shall, upon request of the consumer, disclose to that consumer the reason for the denial in writing within 30 days. At the time service is denied, the electric service provider shall disclose to the consumer his or her right to make this request. Consumers shall have at least 30 days from the date service is denied to make the request.

SEC. 17. Section 395.5 of the Public Utilities Code is amended to read:

395.5. (a) For purposes of this section, the following terms have the following meanings:

(1) "Nonprofit charitable organization" means any charitable organization described in Section 501(c)(3) of the federal Internal Revenue Code that has as its primary purpose serving the needs of the poor or elderly.

(2) "Electric commodity" means electricity used by the customer or a supply of electricity available for use by the customer, and does not include services associated with the transmission and distribution of electricity.

(b) Notwithstanding Section 80110 of the Water Code, a nonprofit charitable organization may acquire electric commodity service through a direct transaction with an electric service provider if electric commodity service is donated free of charge without compensation.

(c) A nonprofit charitable organization that acquires donated electric commodity service through a direct transaction pursuant to this section shall be responsible for paying all of the following:

(1) Those charges and surcharges that would be imposed upon a retail end-use customer of a community aggregator pursuant to subdivisions (d), (e), (f), and (g) of Section 366.2.

(2) The transmission and distribution charges of an electrical corporation or a local publicly owned electric utility.

(3) A nonbypassable charge imposed pursuant to Article 7 (commencing with Section 381), Article 8 (commencing with Section 385), or Article 15 (commencing with Section 399).

(4) Costs imposed upon a load-serving entity pursuant to Section 380.

(d) Existing direct access rules and all service obligations otherwise applicable to electric service providers shall govern transactions under this section.

(e) 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. 18. The heading of Article 15 (commencing with Section 399) of Chapter 2.3 of Part 1 of Division 1 of the Public Utilities Code, as added by Section 4 of Chapter 1051 of the Statutes of 2000, is repealed.

SEC. 19. Section 399.1 of the Public Utilities Code is repealed.

SEC. 20. Section 399.12 of the Public Utilities Code is amended to read:

399.12. For purposes of this article, the following terms have the following meanings:

(a) "Conduit hydroelectric facility" means a facility for the generation of electricity that uses only the hydroelectric potential of an existing pipe, ditch, flume, siphon, tunnel, canal, or other manmade conduit that is operated to distribute water for a beneficial use.

(b) "Delivered" and "delivery" have the same meaning as provided in subdivision (a) of Section 25741 of the Public Resources Code.

(c) "Eligible renewable energy resource" means an electric generating facility that meets the definition of "in-state renewable electricity generation facility" in Section 25741 of the Public Resources Code, subject to the following limitations:

(1) (A) An existing small hydroelectric generation facility of 30 megawatts or less shall be eligible only if a retail seller or local publicly owned electric utility owned or procured the electricity from the facility as of December 31, 2005. A new hydroelectric facility is not an eligible renewable energy resource if it will cause an adverse impact on instream beneficial uses or cause a change in the volume or timing of streamflow.

(B) Notwithstanding subparagraph (A), a conduit hydroelectric facility of 30 megawatts or less that commenced operation before January 1, 2006, is an eligible renewable energy resource. A conduit hydroelectric facility of 30 megawatts or less that commences operation after December 31, 2005, is an eligible renewable energy resource so long as it does not cause an adverse impact on instream beneficial uses or cause a change in the volume or timing of streamflow.

(2) A facility engaged in the combustion of municipal solid waste shall not be considered an eligible renewable resource unless it is located in Stanislaus County and was operational prior to September 26, 1996.

(d) "Procure" means that a retail seller or local publicly owned electric utility receives delivered electricity generated by an eligible renewable energy resource that it owns or for which it has entered into an electricity purchase agreement. Nothing in this article is intended to imply that the purchase of electricity from third parties in a wholesale transaction is the preferred method of fulfilling a retail seller's obligation to comply with this article or the obligation of a local publicly owned electric utility to meet its renewables portfolio standard implemented pursuant to Section 387.

(e) "Renewables portfolio standard" means the specified percentage of electricity generated by eligible renewable energy resources that a retail seller is required to procure pursuant to this article or the obligation of a local publicly owned electric utility to meet its renewables portfolio standard implemented pursuant to Section 387.

(f) (1) "Renewable energy credit" means a certificate of proof, issued through the accounting system established by the Energy Commission pursuant to Section 399.13, that one unit of electricity was generated and delivered by an eligible renewable energy resource.

(2) "Renewable energy credit" includes all renewable and environmental attributes associated with the production of electricity from the eligible renewable energy resource, except for an emissions reduction credit issued pursuant to Section 40709 of the Health and Safety Code and any credits or payments associated with the reduction of solid waste and treatment benefits created by the utilization of biomass or biogas fuels.

(3) No electricity generated by an eligible renewable energy resource attributable to the use of nonrenewable fuels, beyond a de minimis quantity, as determined by the Energy Commission, shall result in the creation of a renewable energy credit.

(g) "Retail seller" means an entity engaged in the retail sale of electricity to end-use customers located within the state, including any of the following:

(1) An electrical corporation, as defined in Section 218.

(2) A community choice aggregator. The commission shall institute a rulemaking to determine the manner in which a community choice aggregator will participate in the renewables portfolio standard program subject to the same terms and conditions applicable to an electrical corporation.

(3) An electric service provider, as defined in Section 218.3, for all sales of electricity to customers beginning January 1, 2006. The commission shall institute a rulemaking to determine the manner in which electric service providers will participate in the renewables portfolio standard program. The electric service provider shall be subject to the same terms and conditions applicable to an electrical corporation pursuant to this article. Nothing in this paragraph shall impair a contract entered into between an electric service provider and a retail customer prior to the suspension of direct access by the commission pursuant to Section 80110 of the Water Code.

(4) "Retail seller" does not include any of the following:

(A) A corporation or person employing cogeneration technology or producing electricity consistent with subdivision (b) of Section 218.

(B) The Department of Water Resources acting in its capacity pursuant to Division 27 (commencing with Section 80000) of the Water Code.

(C) A local publicly owned electric utility.

SEC. 21. Section 399.12.5 of the Public Utilities Code is amended to read:

399.12.5. (a) Notwithstanding subdivision (c) of Section 399.12, a small hydroelectric generation facility that satisfies the criteria for an eligible renewable energy resource pursuant to Section 399.12 shall not lose its eligibility if efficiency improvements undertaken after January 1, 2008, cause the generating capacity of the facility to exceed 30 megawatts, and the efficiency improvements do not result in an adverse impact on instream beneficial uses or cause a change in the volume or timing of streamflow. The entire generating capacity of the facility shall be eligible.

(b) Notwithstanding subdivision (c) of Section 399.12, the incremental increase in the amount of electricity generated from a hydroelectric generation facility as a result of efficiency improvements at the facility, is electricity from an eligible renewable energy resource, without regard to the electrical output of the facility, if all of the following conditions are met:

(1) The incremental increase is the result of efficiency improvements from a retrofit that do not result in an adverse impact on instream beneficial uses or cause a change in the volume or timing of streamflow.

(2) The hydroelectric generation facility has, within the immediately preceding 15 years, received certification from the State Water Resources Control Board pursuant to Section 401 of the Clean Water Act (33 U.S.C. Sec. 1341), or has received certification from a regional board to which the state board has delegated authority to issue certification, unless the facility is exempt from certification because there is no potential for discharge into waters of the United States.

(3) The hydroelectric generation facility was operational prior to January 1, 2007, the efficiency improvements are initiated on or after January 1, 2008, the efficiency improvements are not the result of routine maintenance activities, as determined by the Energy Commission, and the efficiency improvements were not included in any resource plan sponsored by the facility owner prior to January 1, 2008.

(4) All of the incremental increase in electricity resulting from the efficiency improvements are demonstrated to result from a long-term financial commitment by the retail seller or local publicly owned electric utility. For purposes of this paragraph, "long-term financial commitment" means either new ownership investment in the facility by the retail seller or local publicly owned electric utility or a new or renewed contract with

a term of 10 or more years, which includes procurement of the incremental generation.

(c) The incremental increase in the amount of electricity generated from a hydroelectric generation facility as a result of efficiency improvements at the facility are not eligible for supplemental energy payments pursuant to the Renewable Energy Resources Program (Chapter 8.6 (commencing with Section 25740) of Division 15 of the Public Resources Code), or a successor program.

SEC. 22. Section 399.25 of the Public Utilities Code is amended and renumbered to read:

399.2.5. (a) Notwithstanding any other provision in Sections 1001 to 1013, inclusive, an application of an electrical corporation for a certificate authorizing the construction of new transmission facilities shall be deemed to be necessary to the provision of electric service for purposes of any determination made under Section 1003 if the commission finds that the new facility is necessary to facilitate achievement of the renewable power goals established in Article 16 (commencing with Section 399.11).

(b) With respect to a transmission facility described in subdivision (a), the commission shall take all feasible actions to ensure that the transmission rates established by the Federal Energy Regulatory Commission are fully reflected in any retail rates established by the commission. These actions shall include, but are not limited to:

(1) Making findings, where supported by an evidentiary record, that those transmission facilities provide benefit to the transmission network and are necessary to facilitate the achievement of the renewables portfolio standard established in Article 16 (commencing with Section 399.11).

(2) Directing the utility to which the generator will be interconnected, where the direction is not preempted by federal law, to seek the recovery through general transmission rates of the costs associated with the transmission facilities.

(3) Asserting the positions described in paragraphs (1) and (2) to the Federal Energy Regulatory Commission in appropriate proceedings.

(4) Allowing recovery in retail rates of any increase in transmission costs incurred by an electrical corporation resulting from the construction of the transmission facilities that are not approved for recovery in transmission rates by the Federal Energy Regulatory Commission after the commission determines that the costs were prudently incurred in accordance with subdivision (a) of Section 454.

SEC. 23. The heading of Article 5 (commencing with Section 445) of Chapter 2.5 of Part 1 of Division 1 of the Public Utilities Code is repealed.

SEC. 24. Section 701.8 of the Public Utilities Code is amended to read:

701.8. (a) To ensure that electrical corporations do not operate their transmission and distribution monopolies in a manner that impedes the ability of the San Francisco Bay Area Rapid Transit District (BART District) to reduce its electricity cost through the purchase and delivery of preference power, electrical corporations shall meet the requirements of this section.

(b) Any electrical corporation that owns and operates transmission and distribution facilities that deliver electricity at one or more locations to the BART District's system shall, upon request by the BART District, and without discrimination or delay, use the same facilities to deliver preference power purchased from a federal power marketing agency or its successor, or electricity purchased from a local publicly owned electric utility.

(c) Where the BART District purchases electricity at more than one location, at any voltage, from an electric utility under tariffs regulated by the commission, the utility shall bill the BART District for usage as though all the electricity purchased at transmission level voltages were metered by a single meter at one location and all the electricity purchased at subtransmission voltages were metered by a single meter at one location, provided that any billing for demand charges would be based on the coincident demand of transmission and distribution metering.

(d) If, on or after January 1, 1996, the BART District leases or has agreed to lease, as special facilities, utility plants for the purpose of receiving power at transmission level voltages, an electrical corporation may not terminate the lease without concurrence from the BART District.

(e) When the BART District elects to have electricity delivered pursuant to subdivision (b), neither Sections 365 and 366, and any commission regulations, orders, or tariffs, that implement direct transactions, are applicable, nor is the BART District an electricity supplier. Neither the commission, nor any electrical corporation that delivers the federal power or electricity purchased from a local publicly owned electric utility to the BART District, shall require that an electricity supplier be designated as a condition of the delivery of that power.

(f) The BART District may elect to obtain electricity from the following multiple sources at the same time:

(1) Electricity delivered pursuant to subdivision (b).

(2) Electricity supplied by one or more direct transactions.

(3) Electricity from any electrical corporation that owns and operates transmission and distribution facilities that deliver electricity at one or more locations to the BART District's system.

SEC. 25. Section 747 of the Public Utilities Code is amended 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 commission shall prepare a written 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 be completed on an annual basis before February 1 of each year, and 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.

(d) The report required by subdivision (b) shall be submitted to the Governor and the Legislature no later than February 1 of each year.

(e) The commission shall post the report required by subdivision (b) in a conspicuous area of its Internet Web site.

SEC. 26. Section 761.3 of the Public Utilities Code is amended to read:

761.3. (a) Notwithstanding subdivision (g) of Section 216 and subdivision (c) of Section 218.5, the commission shall implement and enforce standards for the maintenance and operation of facilities for the generation of electricity owned by an electrical corporation or located in the state to ensure their reliable operation. The commission shall enforce the protocols for the scheduling of powerplant outages of the Independent System Operator.

(b) Nothing in this section authorizes the commission to establish rates for wholesale sales in interstate commerce from those facilities, or to approve the sale or transfer of control of facilities if an exempt wholesale generator, as defined in the Public Utility Holding Company Act of 2005 (42 U.S.C. Sec. 16451(6)).

(c) (1) (A) Except as otherwise provided in this subdivision, this section shall not apply to nuclear powered generating facilities that are federally regulated and subject to standards developed by the Nuclear

Regulatory Commission, and that participate as members of the Institute of Nuclear Power Operations.

(B) The owner or operator of a nuclear powered generating facility shall file with the Oversight Board and the commission an annual schedule of maintenance, including repairs and upgrades, updated quarterly, for each generating facility. The owner or operator of a nuclear powered generating facility shall make good faith efforts to conduct its maintenance in compliance with its filed plan and shall report to the Oversight Board and the Independent System Operator any significant variations from its filed plan.

(C) The owner or operator of a nuclear powered generating facility shall report on a monthly basis to the Oversight Board and the commission all actual planned and unplanned outages of each facility during the preceding month. The owner or operator of a nuclear powered generating facility shall report on a daily basis to the Oversight Board and the Independent System Operator the daily operational status and availability of each facility.

(2) (A) Except as otherwise provided in this subdivision, this section shall not apply to a qualifying small power production facility or a qualifying cogeneration facility within the meaning of Sections 201 and 210 of Title 11 of the federal Public Utility Regulatory Policies Act of 1978 (16 U.S.C. Secs. 796(17), 796(18), and 824a-3), and the regulations adopted pursuant to those sections by the Federal Energy Regulatory Commission (18 C.F.R. Secs. 292.101 to 292.602, inclusive), nor shall this section apply to other generation units installed, operated, and maintained at a customer site, exclusively to serve that customer's load.

(B) An electrical corporation that has a contract with a qualifying small power production facility, or a qualifying cogeneration facility, with a name plate rating of 10 megawatts or greater, shall report to the Oversight Board and the commission maintenance schedules for each facility, including all actual planned and unplanned outages of the facility and the daily operational status and availability of the facility. Each facility with a name plate rating of 10 megawatts or greater shall be responsible for directly reporting to the Oversight Board and the Independent System Operator maintenance schedules for each facility, including all actual planned and unplanned outages of the facility and the daily operational status and availability of the facility, if that information is not provided to the electrical corporation pursuant to a contract.

(d) Nothing in this section shall result in the modification, delay, or abrogation of any deadline, standard, rule, or regulation adopted by a federal, state, or local agency for the purposes of protecting public health or the environment, including, but not limited to, any requirements

imposed by the State Air Resources Board or by an air pollution control district or an air quality management district pursuant to Division 26 (commencing with Section 39000) of the Health and Safety Code. The Independent System Operator shall consult with the State Air Resources Board and the appropriate local air pollution control districts and air quality management districts to coordinate scheduled outages to provide for compliance with those retrofits.

(e) The Independent System Operator shall maintain records of generation facility outages and shall provide those records to the Oversight Board and the commission on a daily basis. Each entity that owns or operates an electric generating unit in California with a rated maximum capacity of 10 megawatts or greater, shall provide a monthly report to the Independent System Operator that identifies any periods during the preceding month when the unit was unavailable to produce electricity or was available only at reduced capacity. The report shall identify the reasons for any such unscheduled unavailability or reduced capacity. The Independent System Operator shall immediately transmit the information to the Oversight Board and the commission.

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

(1) Facilities owned by a local publicly owned electric utility.

(2) Any public agency that may generate electricity incidental to the provision of water or wastewater treatment.

(3) Facilities owned by a city and county operating as a public utility, furnishing electric service as provided in Section 10001.

SEC. 27. Section 848 of the Public Utilities Code is amended to read:

848. For the purposes of this article, the following terms shall have the following meanings:

(a) "Consumer" means any individual, governmental body, trust, business entity or nonprofit organization which consumes electricity that has been transmitted or distributed by means of electric transmission or distribution facilities, whether those electric transmission or distribution facilities are owned by the consumer, the recovery corporation, or any other party.

(b) "Financing entity" means the recovery corporation or any subsidiary or affiliate of the recovery corporation that is authorized by the commission to issue recovery bonds or acquire recovery property, or both.

(c) "Financing order" means an order of the commission adopted in accordance with this article, which shall include, without limitation, a procedure to require the expeditious approval by the commission of periodic adjustments to fixed recovery amounts and to any associated fixed recovery tax amounts included in that financing order to ensure recovery of all recovery costs and the costs associated with the proposed

recovery, financing, or refinancing thereof, including the costs of servicing and retiring the recovery bonds contemplated by the financing order.

(d) "Fixed recovery amounts" means those nonbypassable rates and other charges, including, but not limited to, distribution, connection, disconnection, and termination rates and charges, that are authorized by the commission in a financing order to recover (1) recovery costs specified in the financing order, and (2) the costs of recovering, financing, or refinancing those recovery costs through a plan approved by the commission in the financing order, including the costs of servicing and retiring recovery bonds.

(e) "Fixed recovery tax amounts" means those nonbypassable rates and other charges, including, but not limited to, distribution, connection, disconnection, and termination rates and charges, that are needed to recover federal and State of California income and franchise taxes associated with fixed recovery amounts authorized by the commission in the financing order and that are not financed from proceeds of recovery bonds.

(f) "Recovery bonds" means bonds, notes, certificates of participation or beneficial interest, or other evidences of indebtedness or ownership, issued pursuant to an executed indenture or other agreement of a financing entity, the proceeds of which are used, directly or indirectly, to recover, finance, or refinance recovery costs, and that are directly or indirectly secured by, or payable from, recovery property.

(g) "Recovery corporation" means Pacific Gas and Electric Company, the electrical corporation described in the commission's Decision No. 03-12-035.

(h) "Recovery costs" means (1) the unamortized balance of the regulatory asset arising and existing pursuant to the commission's Decision No. 03-12-035, (2) federal and State of California income and franchise taxes associated with recovery of the unamortized balance of that regulatory asset, (3) costs of issuing recovery bonds, and (4) professional fees, consultant fees, redemption premiums, tender premiums and other costs incurred by the recovery corporation in using proceeds of recovery bonds to acquire outstanding securities of the recovery corporation.

(i) (1) "Recovery property" means the property right created pursuant to this article, including, without limitation, the right, title, and interest of the recovery corporation or its transferee:

(A) In and to the tariff established pursuant to a financing order, as adjusted from time to time in accordance with Section 848.1 and the financing order.

(B) To be paid the amount that is determined in a financing order to be the amount that the recovery corporation or its transferee is lawfully entitled to receive pursuant to the provisions of this article and the proceeds thereof, and in and to all revenues, collections, claims, payments, money, or proceeds of or arising from the tariff or constituting fixed recovery amounts that are the subject of a financing order including those nonbypassable rates and other charges referred to in subdivision (d).

(C) In and to all rights to obtain adjustments to the tariff relating to fixed recovery amounts pursuant to the terms of Section 848.1 and the financing order.

(2) "Recovery property" shall not include the right to be paid fixed recovery tax amounts.

(3) "Recovery property" shall constitute a current property right notwithstanding the fact that the value of the property right will depend on consumers using electricity or, in those instances where consumers are customers of the recovery corporation, the recovery corporation performing certain services.

(j) "Service territory" means the geographical area that the recovery corporation provided with electric distribution service as of December 19, 2003.

SEC. 28. Section 2774.5 of the Public Utilities Code is amended to read:

2774.5. An electrical corporation or local publicly owned electric utility shall immediately notify the Commissioner of the California Highway Patrol, the Office of Emergency Services, and the sheriff and any affected chief of police of the specific area within their respective law enforcement jurisdictions that will sustain a planned loss of power as soon as the planned loss becomes known as to when and where that power loss will occur. The notification shall include common geographical boundaries, grid or block numbers of the affected area, and the next anticipated power loss area designated by the electrical corporation or public entity during rotating blackouts.

SEC. 29. Section 2827 of the Public Utilities Code is amended to read:

2827. (a) The Legislature finds and declares that a program to provide net energy metering, co-energy metering, and wind energy co-metering for eligible customer-generators is one way to encourage substantial private investment in renewable energy resources, stimulate in-state economic growth, reduce demand for electricity during peak consumption periods, help stabilize California's energy supply infrastructure, enhance the continued diversification of California's

energy resource mix, and reduce interconnection and administrative costs for electricity suppliers.

(b) As used in this section, the following terms have the following meanings:

(1) "Co-energy metering" means a program that is the same in all other respects as a net energy metering program, except that the local publicly owned electric utility has elected to apply a generation-to-generation energy and time-of-use credit formula as provided in subdivision (i).

(2) "Electrical cooperative" means an electrical cooperative as defined in Section 2776.

(3) "Electric distribution utility or cooperative" means an electrical corporation, a local publicly owned electric utility, or an electrical cooperative, or any other entity, except an electric service provider, that offers electrical service. This section shall not apply to a local publicly owned electric utility that serves more than 750,000 customers and that also conveys water to its customers.

(4) "Eligible customer-generator" means a residential, small commercial customer as defined in subdivision (h) of Section 331, commercial, industrial, or agricultural customer of an electricity distribution utility or cooperative, who uses a solar or a wind turbine electrical generating facility, or a hybrid system of both, with a capacity of not more than one megawatt that is located on the customer's owned, leased, or rented premises, is interconnected and operates in parallel with the electric grid, and is intended primarily to offset part or all of the customer's own electrical requirements.

(5) "Net energy metering" means measuring the difference between the electricity supplied through the electric grid and the electricity generated by an eligible customer-generator and fed back to the electric grid over a 12-month period as described in subdivision (h). An eligible customer-generator who already owns an existing solar or wind turbine electrical generating facility, or a hybrid system of both, is eligible to receive net energy metering service in accordance with this section.

(6) "Ratemaking authority" means, for an electrical corporation, electrical cooperative, or electric service provider, the commission, and for a local publicly owned electric utility, the local elected body responsible for setting the rates of the local publicly owned utility.

(7) "Wind energy co-metering" means any wind energy project greater than 50 kilowatts, but not exceeding one megawatt, where the difference between the electricity supplied through the electric grid and the electricity generated by an eligible customer-generator and fed back to the electric grid over a 12-month period is as described in subdivision

(h). Wind energy co-metering shall be accomplished pursuant to Section 2827.8.

(c) (1) Every electricity distribution utility or cooperative shall develop a standard contract or tariff providing for net energy metering, and shall make this standard contract or tariff available to eligible customer-generators, upon request, on a first-come-first-served basis until the time that the total rated generating capacity used by eligible customer-generators exceeds 2.5 percent of the electricity distribution utility or cooperative's aggregate customer peak demand. Net energy metering shall be accomplished using a single meter capable of registering the flow of electricity in two directions. An additional meter or meters to monitor the flow of electricity in each direction may be installed with the consent of the customer-generator, at the expense of the electricity distribution utility or cooperative, and the additional metering shall be used only to provide the information necessary to accurately bill or credit the customer-generator pursuant to subdivision (h), or to collect solar or wind electric generating system performance information for research purposes. If the existing electrical meter of an eligible customer-generator is not capable of measuring the flow of electricity in two directions, the customer-generator shall be responsible for all expenses involved in purchasing and installing a meter that is able to measure electricity flow in two directions. If an additional meter or meters are installed, the net energy metering calculation shall yield a result identical to that of a single meter.

(2) (A) On an annual basis, beginning in 2003, every electricity distribution utility or cooperative shall make available to the ratemaking authority information on the total rated generating capacity used by eligible customer-generators that are customers of that provider in the provider's service area.

(B) An electric service provider operating pursuant to Section 394 shall make available to the ratemaking authority the information required by this paragraph for each eligible customer-generator that is their customer for each service area of an electric corporation, local publicly owned electric utility, or electrical cooperative, in which the customer has net energy metering.

(C) The ratemaking authority shall develop a process for making the information required by this paragraph available to electricity distribution utilities and cooperatives, and for using that information to determine when, pursuant to paragraphs (1) and (3), an electricity distribution utility or cooperative is not obligated to provide net energy metering to additional customer-generators in its service area.

(3) An electricity distribution utility or cooperative is not obligated to provide net energy metering to additional customer-generators in its

service area when the combined total peak demand of all customer-generators served by all the electricity distribution utilities or cooperatives in that service area furnishing net energy metering to eligible customer-generators exceeds 2.5 percent of the aggregate customer peak demand of those electricity distribution utilities or cooperatives.

(4) By January 1, 2010, the commission, in consultation with the Energy Commission, shall submit a report to the Governor and the Legislature on the costs and benefits of net energy metering, wind energy co-metering, and co-energy metering to participating customers and nonparticipating customers and with options to replace the economic costs and benefits of net energy metering, wind energy co-metering, and co-energy metering with a mechanism that more equitably balances the interests of participating and nonparticipating customers, and that incorporates the findings of the report on economic and environmental costs and benefits of net metering required by subdivision (n).

(d) Every electricity distribution utility or cooperative shall make all necessary forms and contracts for net energy metering service available for download from the Internet.

(e) (1) Every electricity distribution utility or cooperative shall ensure that requests for establishment of net energy metering are processed in a time period not exceeding that for similarly situated customers requesting new electric service, but not to exceed 30 working days from the date it receives a completed application form for net energy metering service, including a signed interconnection agreement from an eligible customer-generator and the electric inspection clearance from the governmental authority having jurisdiction.

(2) Every electricity distribution utility or cooperative shall ensure that requests for an interconnection agreement from an eligible customer-generator are processed in a time period not to exceed 30 working days from the date it receives a completed application form from the eligible customer-generator for an interconnection agreement.

(3) If an electricity distribution utility or cooperative is unable to process a request within the allowable timeframe pursuant to paragraph (1) or (2), it shall notify the eligible customer-generator and the ratemaking authority of the reason for its inability to process the request and the expected completion date.

(f) (1) If a customer participates in direct transactions pursuant to paragraph (1) of subdivision (b) of Section 365 with an electric service provider that does not provide distribution service for the direct transactions, the electricity distribution utility or cooperative that provides distribution service for an eligible customer-generator is not obligated to provide net energy metering to the customer.

(2) If a customer participates in direct transactions pursuant to paragraph (1) of subdivision (b) of Section 365 with an electric service provider, and the customer is an eligible customer-generator, the electricity distribution utility or cooperative that provides distribution service for the direct transactions may recover from the customer's electric service provider the incremental costs of metering and billing service related to net energy metering in an amount set by the ratemaking authority.

(g) Except for the time-variant kilowatthour pricing portion of any tariff adopted by the commission pursuant to paragraph (4) of subdivision (a) of Section 2851, 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 same customer would be assigned if the customer did not use an eligible solar or wind electrical generating facility, except that eligible customer-generators shall not be assessed standby charges on the electrical generating capacity or the kilowatthour production of an eligible solar or wind electrical generating facility. The charges for all retail rate components for eligible customer-generators shall be based exclusively on the customer-generator's net kilowatthour consumption over a 12-month period, without regard to the customer-generator's choice as to whom it purchases electricity that is not self-generated. Any new or additional demand charge, standby charge, customer charge, minimum monthly charge, interconnection charge, or any other charge that would increase an eligible customer-generator's costs beyond those of other customers who are not eligible customer-generators in the rate class to which the eligible customer-generator would otherwise be assigned if the customer did not own, lease, rent, or otherwise operate an eligible solar or wind electrical generating facility are contrary to the intent of this section, and shall not form a part of net energy metering contracts or tariffs.

(h) For eligible residential and small commercial customer-generators, the net energy metering calculation shall be made by measuring the difference between the electricity supplied to the eligible customer-generator and the electricity generated by the eligible customer-generator and fed back to the electric grid over a 12-month period. The following rules shall apply to the annualized net metering calculation:

(1) The eligible residential or small commercial customer-generator shall, at the end of each 12-month period following the date of final interconnection of the eligible customer-generator's system with an electricity distribution utility or cooperative, and at each anniversary date thereafter, be billed for electricity used during that 12-month period. The electricity distribution utility or cooperative shall determine if the

eligible residential or small commercial customer-generator was a net consumer or a net producer of electricity during that period.

(2) At the end of each 12-month period, where the electricity supplied during the period by the electricity distribution utility or cooperative exceeds the electricity generated by the eligible residential or small commercial customer-generator during that same period, the eligible residential or small commercial customer-generator is a net electricity consumer and the electricity distribution utility or cooperative shall be owed compensation for the eligible customer-generator's net kilowatthour consumption over that 12-month period. The compensation owed for the eligible residential or small commercial customer-generator's consumption shall be calculated as follows:

(A) For all eligible customer-generators taking service under contracts or tariffs employing "baseline" and "over baseline" rates or charges, any net monthly consumption of electricity shall be calculated according to the terms of the contract or tariff to which the same customer would be assigned to, or be eligible for, if the customer was not an eligible customer-generator. If those same customer-generators are net generators over a billing period, the net kilowatthours generated shall be valued at the same price per kilowatthour as the electricity distribution utility or cooperative would charge for the baseline quantity of electricity during that billing period, and if the number of kilowatthours generated exceeds the baseline quantity, the excess shall be valued at the same price per kilowatthour as the electricity distribution utility or cooperative would charge for electricity over the baseline quantity during that billing period.

(B) For all eligible customer-generators taking service under contracts or tariffs employing "time-of-use" rates or charges, any net monthly consumption of electricity shall be calculated according to the terms of the contract or tariff to which the same customer would be assigned to, or be eligible for, if the customer was not an eligible customer-generator. When those same customer-generators are net generators during any discrete time-of-use period, the net kilowatthours produced shall be valued at the same price per kilowatthour as the electricity distribution utility or cooperative would charge for retail kilowatthour sales during that same "time-of-use" period. If the eligible customer-generator's "time-of-use" electrical meter is unable to measure the flow of electricity in two directions, subparagraph (A) of paragraph (1) of subdivision (c) shall apply.

(C) For all eligible residential and small commercial customer-generators and for each billing period, the net balance of moneys owed to the electricity distribution utility or cooperative for net consumption of electricity or credits owed to the eligible customer-generator for net generation of electricity shall be carried

forward as a monetary value until the end of each 12-month period. For all eligible commercial, industrial, and agricultural customer-generators, the net balance of moneys owed shall be paid in accordance with the electricity distribution utility or cooperative's normal billing cycle, except that if the eligible commercial, industrial, or agricultural customer-generator is a net electricity producer over a normal billing cycle, any excess kilowatthours generated during the billing cycle shall be carried over to the following billing period as a monetary value, calculated according to the procedures set forth in this section, and appear as a credit on the eligible customer-generator's account, until the end of the annual period when paragraph (3) shall apply.

(3) At the end of each 12-month period, where the electricity generated by the eligible customer-generator during the 12-month period exceeds the electricity supplied by the electricity distribution utility or cooperative during that same period, the eligible customer-generator is a net electricity producer and the electricity distribution utility or cooperative shall retain any excess kilowatthours generated during the prior 12-month period. The eligible customer-generator shall not be owed any compensation for those excess kilowatthours unless the electricity distribution utility or cooperative enters into a purchase agreement with the eligible customer-generator for those excess kilowatthours.

(4) The electricity distribution utility or cooperative shall provide every eligible residential or small commercial customer-generator with net electricity consumption information with each regular bill. That information shall include the current monetary balance owed the electricity distribution utility or cooperative for net electricity consumed, or the current amount of excess electricity produced, since the last 12-month period ended. Notwithstanding this subdivision, an electricity distribution utility or cooperative shall permit that customer to pay monthly for net energy consumed.

(5) If an eligible residential or small commercial customer-generator terminates the customer relationship with the electricity distribution utility or cooperative, the electricity distribution utility or cooperative shall reconcile the eligible customer-generator's consumption and production of electricity during any part of a 12-month period following the last reconciliation, according to the requirements set forth in this subdivision, except that those requirements shall apply only to the months since the most recent 12-month bill.

(6) If an electric service provider or electricity distribution utility or cooperative providing net energy metering to a residential or small commercial customer-generator ceases providing that electric service to that customer during any 12-month period, and the customer-generator enters into a new net energy metering contract or tariff with a new electric

service provider or electricity distribution utility or cooperative, the 12-month period, with respect to that new electric service provider or electricity distribution utility or cooperative, shall commence on the date on which the new electric service provider or electricity distribution utility or cooperative first supplies electric service to the customer-generator.

(i) Notwithstanding any other provisions of this section, the following provisions shall apply to an eligible customer-generator with a capacity of more than 10 kilowatts, but not exceeding one megawatt, that receives electric service from a local publicly owned electric utility that has elected to utilize a co-energy metering program unless the local publicly owned electric utility chooses to provide service for eligible customer-generators with a capacity of more than 10 kilowatts in accordance with subdivisions (g) and (h):

(1) The eligible customer-generator shall be required to utilize a meter, or multiple meters, capable of separately measuring electricity flow in both directions. All meters shall provide "time-of-use" measurements of electricity flow, and the customer shall take service on a time-of-use rate schedule. If the existing meter of the eligible customer-generator is not a time-of-use meter or is not capable of measuring total flow of energy in both directions, the eligible customer-generator shall be responsible for all expenses involved in purchasing and installing a meter that is both time-of-use and able to measure total electricity flow in both directions. This subdivision shall not restrict the ability of an eligible customer-generator to utilize any economic incentives provided by a government agency or an electricity distribution utility or cooperative to reduce its costs for purchasing and installing a time-of-use meter.

(2) The consumption of electricity from the local publicly owned electric utility shall result in a cost to the eligible customer-generator to be priced in accordance with the standard rate charged to the eligible customer-generator in accordance with the rate structure to which the customer would be assigned if the customer did not use an eligible solar or wind electrical generating facility. The generation of electricity provided to the local publicly owned electric utility shall result in a credit to the eligible customer-generator and shall be priced in accordance with the generation component, established under the applicable structure to which the customer would be assigned if the customer did not use an eligible solar or wind electrical generating facility.

(3) All costs and credits shall be shown on the eligible customer-generator's bill for each billing period. In any months in which the eligible customer-generator has been a net consumer of electricity calculated on the basis of value determined pursuant to paragraph (2), the customer-generator shall owe to the local publicly owned electric

utility the balance of electricity costs and credits during that billing period. In any billing period in which the eligible customer-generator has been a net producer of electricity calculated on the basis of value determined pursuant to paragraph (2), the local publicly owned electric utility shall owe to the eligible customer-generator the balance of electricity costs and credits during that billing period. Any net credit to the eligible customer-generator of electricity costs may be carried forward to subsequent billing periods, provided that a local publicly owned electric utility may choose to carry the credit over as a kilowatthour credit consistent with the provisions of any applicable contract or tariff, including any differences attributable to the time of generation of the electricity. At the end of each 12-month period, the local publicly owned electric utility may reduce any net credit due to the eligible customer-generator to zero.

(j) A solar or wind turbine electrical generating system, or a hybrid system of both, used by an eligible customer-generator shall meet all applicable safety and performance standards established by the National Electrical Code, the Institute of Electrical and Electronics Engineers, and accredited testing laboratories, including Underwriters Laboratories and, where applicable, rules of the commission regarding safety and reliability. A customer-generator whose solar or wind turbine electrical generating system, or a hybrid system of both, meets those standards and rules shall not be required to install additional controls, perform or pay for additional tests, or purchase additional liability insurance.

(k) If the commission determines that there are cost or revenue obligations for an electric corporation, as defined in Section 218, that may not be recovered from customer-generators acting pursuant to this section, those obligations shall remain within the customer class from which any shortfall occurred and may not be shifted to any other customer class. Net energy metering and co-energy metering customers shall not be exempt from the public goods charges imposed pursuant to Article 7 (commencing with Section 381), Article 8 (commencing with Section 385), or Article 15 (commencing with Section 399) of Chapter 2.3 of Part 1. In its report to the Legislature, the commission shall examine different methods to ensure that the public goods charges remain nonbypassable.

(*l*) A net energy metering, co-energy metering, or wind energy co-metering customer shall reimburse the Department of Water Resources for all charges that would otherwise be imposed on the customer by the commission to recover bond-related costs pursuant to an agreement between the commission and the Department of Water Resources pursuant to Section 80110 of the Water Code, as well as the costs of the department equal to the share of the department's estimated net

unavoidable power purchase contract costs attributable to the customer. The commission shall incorporate the determination into an existing proceeding before the commission, and shall ensure that the charges are nonbypassable. Until the commission has made a determination regarding the nonbypassable charges, net energy metering, co-energy metering, and wind energy co-metering shall continue under the same rules, procedures, terms, and conditions as were applicable on December 31, 2002.

(m) In implementing the requirements of subdivisions (k) and (*l*), a customer-generator shall not be required to replace its existing meter except as set forth in subparagraph (A) of paragraph (1) of subdivision (c), nor shall the electricity distribution utility or cooperative require additional measurement of usage beyond that which is necessary for customers in the same rate class as the eligible customer-generator.

(n) It is the intent of the Legislature that the Treasurer incorporate net energy metering, co-energy metering, and wind energy co-metering projects undertaken pursuant to this section as sustainable building methods or distributive energy technologies for purposes of evaluating low-income housing projects.

SEC. 30. Section 2852 of the Public Utilities Code is amended to read:

2852. (a) As used in this section, the following terms have the following meanings:

(1) "California Solar Initiative" means the program providing ratepayer funded incentives for eligible solar energy systems adopted by the Public Utilities Commission in Decision 05-12-044 and Decision 06-01-024.

(2) "Low-income residential housing" means either of the following:

(A) Residential housing financed with low-income housing tax credits, tax-exempt mortgage revenue bonds, general obligation bonds, or local, state, or federal loans or grants, and for which the rents of the occupants who are lower income households, as defined in Section 50079.5 of the Health and Safety Code, do not exceed those prescribed by deed restrictions or regulatory agreements pursuant to the terms of the financing or financial assistance.

(B) A residential complex in which at least 20 percent of the total units are sold or rented to lower income households, as defined in Section 50079.5 of the Health and Safety Code, and the housing units targeted for lower income households are subject to a deed restriction or affordability covenant with a public entity that ensures that the units will be available at an affordable housing cost, as defined in Section 50052.5 of the Health and Safety Code, or at an affordable rent, as defined in

Section 50053 of the Health and Safety Code for a period of at least 30 years.

(3) "Solar energy system" means a solar energy device that has the primary purpose of providing for the collection and distribution of solar energy for the generation of electricity, that produces at least one kilowatt, and produces not more than five megawatts, alternating current rated peak electricity, and that meets or exceeds the eligibility criteria established by the commission or the State Energy Resources Conservation and Development Commission.

(b) In establishing the California Solar Initiative, no moneys shall be diverted from any existing programs for low-income ratepayers, or from cost-effective energy efficiency or demand response programs.

(c) (1) The commission shall ensure that not less than 10 percent of the funds for the California Solar Initiative are utilized for the installation of solar energy systems on low-income residential housing. Notwithstanding any other law, the commission may modify the monetary incentives made available pursuant to the California Solar Initiative to accommodate the limited financial resources of low-income residential housing.

(2) The commission may incorporate a revolving loan or loan guarantee program into the California Solar Initiative for low-income residential housing. All loans outstanding as of January 1, 2016, shall continue to be repaid consistent with the terms and conditions of the program adopted and implemented by the commission pursuant to this subdivision, until repaid in full.

(3) All moneys set aside for the purpose of funding the installation of solar energy systems on low-income residential housing that are unexpended and unencumbered on January 1, 2016, and all moneys thereafter repaid pursuant to paragraph (2), except to the extent those moneys are encumbered pursuant to this section, shall be utilized to augment existing cost-effective energy efficiency measures in low-income residential housing that benefit ratepayers.

SEC. 31. Section 3302 of the Public Utilities Code is amended to read:

3302. As used in this division, unless the context otherwise requires, the following terms have the following meanings:

(a) "Act" means the California Consumer Power and Conservation Financing Authority Act.

(b) "Authority" means the California Consumer Power and Conservation Financing Authority established pursuant to Section 3320 and any board, commission, department, or officer succeeding to the functions thereof, or to whom the powers conferred upon the authority by this division shall be given by law.

(c) "Board" means the Board of Directors of the California Consumer Power and Conservation Financing Authority.

(d) "Bond purchase agreement" means a contractual agreement executed between the authority and an underwriter or underwriters and, where appropriate, a participating party, whereby the authority agrees to sell bonds issued pursuant to this division.

(e) "Bonds" means bonds, including structured, senior, and subordinated bonds or other securities; loans; notes, including bond revenue or grant anticipation notes; certificates of indebtedness; commercial paper; floating rate and variable maturity securities; and any other evidences of indebtedness or ownership, including certificates of participation or beneficial interest, asset backed certificates, or lease-purchase or installment purchase agreements, whether taxable or excludable from gross income for state and federal income taxation purposes.

(f) "Cost," as applied to a program, project, or portion thereof financed under this division, means all or any part of the cost of construction, improvement, repair, reconstruction, renovation, and acquisition of all lands, structures, improved or unimproved real or personal property, rights, rights-of-way, franchises, licenses, easements, and interests acquired or used for a project; the cost of demolishing or removing or relocating any buildings or structures on land so acquired, including the cost of acquiring any lands to which the buildings or structures may be moved; the cost of all machinery and equipment; financing charges; the costs of any environmental mitigation; the costs of issuance of bonds or other indebtedness; interest prior to, during, and for a period after, completion of the project, as determined by the authority; provisions for working capital; reserves for principal and interest; reserves for reduction of costs for loans or other financial assistance; reserves for maintenance, extension, enlargements, additions, replacements, renovations, and improvements; and the cost of architectural, engineering, financial, appraisal, and legal services, plans, specifications, estimates, administrative expenses, and other expenses necessary or incidental to determining the feasibility of any project, enterprise, or program or incidental to the completion or financing of any project or program.

(g) "Enterprise" means a revenue-producing improvement, building, system, plant, works, facilities, or undertaking used for or useful for the generation or production of electric energy for lighting, heating, and power for public or private uses. Enterprise includes, but is not limited to, all parts of the enterprise, all appurtenances to it, lands, easements, rights in land, water rights, contract rights, franchises, buildings, structures, improvements, equipment, and facilities appurtenant or relating to the enterprise.

(h) "Financial assistance" in connection with a project, enterprise or program, includes, but is not limited to, any combination of grants, loans, the proceeds of bonds issued by the authority, insurance, guarantees or other credit enhancements or liquidity facilities, and contributions of money, property, labor, or other things of value, as may be approved by resolution of the board; the purchase or retention of authority bonds, the bonds of a participating party for their retention or for sale by the authority, or the issuance of authority bonds or the bonds of a special purpose trust used to fund the cost of a project or program for which a participating party is directly or indirectly liable, including, but not limited to, bonds, the security for which is provided in whole or in part pursuant to the powers granted by this division; bonds for which the authority has provided a guarantee or enhancement; or any other type of assistance determined to be appropriate by the authority.

(i) "Fund" means the California Consumer Power and Conservation Financing Authority Fund.

(j) "Loan agreement" means a contractual agreement executed between the authority and a participating party that provides that the authority will loan funds to the participating party and that the participating party will repay the principal and pay the interest and redemption premium, if any, on the loan.

(k) "Participating party" means either of the following:

(1) Any person, company, corporation, partnership, firm, federally recognized California Indian tribe, or other entity or group of entities, whether organized for profit or not for profit, engaged in business or operations within the state and that applies for financial assistance from the authority for the purpose of implementing a project or program in a manner prescribed by the authority.

(2) Any subdivision of the state or local government, including, but not limited to, departments, agencies, commissions, cities, counties, nonprofit corporations, special districts, assessment districts, and joint powers authorities within the state or any combination of these subdivisions, that has, or proposes to acquire, an interest in a project, or that operates or proposes to operate a program under Section 3365, and that makes application to the authority for financial assistance in a manner prescribed by the authority.

(*l*) "Program" means a program that provides financial assistance, as provided in Article 6 (commencing with Section 3365).

(m) "Project" means plants, facilities, equipment, appliances, structures, expansions, and improvements within the state that serve the purposes of this division as approved by the authority, and all activities and expenses necessary to initiate and complete those projects described

in Article 5 (commencing with Section 3350) and Article 7 (commencing with Section 3368), of Chapter 3.

(n) "Revenues" means all receipts, purchase payments, loan repayments, lease payments, rents, fees and charges, and all other income or receipts derived by the authority from an enterprise, or by the authority or a participating party from any other financing arrangement undertaken by the authority or a participating party, including, but not limited to, all receipts from a bond purchase agreement, and any income or revenue derived from the investment of any money in any fund or account of the authority or a participating party.

(o) "State" means the State of California.

SEC. 32. Section 7000 of the Public Utilities Code is amended to read:

7000. (a) For purposes of this chapter, a utility shall mean all of the following:

(1) An electric corporation.

(2) A water corporation.

(3) A telephone corporation.

(4) A telecommunications carrier, as defined in Section 153 of Title 47 of the United States Code.

(5) A gas corporation.

(6) A local publicly owned electric utility and a publicly owned gas utility.

(7) A special district that owns or operates utilities.

(b) This chapter shall also apply to the following entities:

(1) A cable television corporation.

(2) A cable operator, as defined in Section 522 of Title 47 of the United States Code.

SEC. 33. Section 8340 of the Public Utilities Code is amended to read:

8340. For purposes of this chapter, the following terms have the following meanings:

(a) "Baseload generation" means electricity generation from a powerplant that is designed and intended to provide electricity at an annualized plant capacity factor of at least 60 percent.

(b) "Combined-cycle natural gas" with respect to a powerplant means the powerplant employs a combination of one or more gas turbines and steam turbines in which electricity is produced in the steam turbine from otherwise lost waste heat exiting from one or more of the gas turbines.

(c) "Electric service provider" means an "electric service provider" as defined in Section 218.3, but does not include corporations or persons employing cogeneration technology or producing electricity from other

than a conventional power source consistent with subdivision (b) of Section 218.

(d) "Greenhouse gases" means those gases listed in Section 38505 of the Health and Safety Code.

(e) "Load-serving entity" means every electrical corporation, electric service provider, or community choice aggregator serving end-use customers in the state.

(f) "Long-term financial commitment" means either a new ownership investment in baseload generation or a new or renewed contract with a term of five or more years, which includes procurement of baseload generation.

(g) "Output-based methodology" means a greenhouse gases emission performance standard that is expressed in pounds of greenhouse gases emitted per megawatthour and factoring in the useful thermal energy employed for purposes other than the generation of electricity.

(h) "Plant capacity factor" means the ratio of the electricity produced during a given time period, measured in kilowatthours, to the electricity the unit could have produced if it had been operated at its rated capacity during that period, expressed in kilowatthours.

(i) "Powerplant" means a facility for the generation of electricity, and includes one or more generating units at the same location.

(j) "Zero- or low-carbon generating resource" means an electrical generating resource that will generate electricity while producing emissions of greenhouse gases at a rate substantially below the greenhouse gases emission performance standard, as determined by the commission.

SEC. 34. Section 9604 of the Public Utilities Code is amended to read:

9604. For purposes of this division, the following definitions apply:

(a) "Direct transaction" means a contract between one or more electric generators, marketers, or brokers, public or private, of electric power and one or more retail customers providing for the purchase and sale of electric power and ancillary services.

(b) "Service area" means an area in which, as of December 20, 1995, an investor-owned electric utility or a local publicly owned electric utility was obligated to provide service.

(c) "Severance fee" or "transition charge" for a local publicly owned electric utility shall mean that charge or periodic charge assessed to customers to recover the reasonable uneconomic portion of costs associated with generation-related assets and obligations, nuclear decommissioning, and capitalized energy efficiency investment programs approved prior to August 15, 1996.

SEC. 35. Section 1.5 of this bill incorporates amendments to Section 3099.2 of the Labor Code proposed by both this bill and SB 1362. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2009, (2) each bill amends Section 3099.2 of the Labor Code, and (3) this bill is enacted after SB 1362, in which case Section 1 of this bill shall not become operative.

CHAPTER 559

An act to add Sections 25252, 25252.5, 25253, 25254, 25255, and 25257 to the Health and Safety Code, relating to hazardous materials.

[Approved by Governor September 29, 2008. Filed with Secretary of State September 29, 2008.]

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

SECTION 1. Section 25252 is added to the Health and Safety Code, to read:

25252. (a) On or before January 1, 2011, the department shall adopt regulations to establish a process to identify and prioritize those chemicals or chemical ingredients in consumer products that may be considered as being a chemical of concern, in accordance with the review process specified in Section 25252.5. The department shall adopt these regulations in consultation with the office and all appropriate state agencies and after conducting one or more public workshops for which the department provides public notice and provides an opportunity for all interested parties to comment. The regulations adopted pursuant to this section shall establish an identification and prioritization process that includes, but is not limited to, all of the following considerations:

(1) The volume of the chemical in commerce in this state.

(2) The potential for exposure to the chemical in a consumer product.

(3) Potential effects on sensitive subpopulations, including infants and children.

(b) (1) In adopting regulations pursuant to this section, the department shall develop criteria by which chemicals and their alternatives may be evaluated. These criteria shall include, but not be limited to, the traits, characteristics and endpoints that are included in the clearinghouse data pursuant to Section 25256.1.

(2) In adopting regulations pursuant to this section, the department shall reference and use, to the maximum extent feasible, available information from other nations, governments, and authoritative bodies

that have undertaken similar chemical prioritization processes, so as to leverage the work and costs already incurred by those entities and to minimize costs and maximize benefits for the state's economy.

(3) Paragraph (2) does not require the department, when adopting regulations pursuant to this section, to reference and use only the available information specified in paragraph (2).

SEC. 2. Section 25252.5 is added to the Health and Safety Code, to read:

25252.5. (a) Except as provided in subdivision (f), the department, in adopting the regulations pursuant to Sections 25252 and 25253, shall prepare a multimedia life cycle evaluation conducted by affected agencies and coordinated by the department, and shall submit the regulations and the multimedia life cycle evaluation to the council for review.

(b) The multimedia evaluation shall be based on the best available scientific data, written comments submitted by interested persons, and information collected by the department in preparation for adopting the regulations, and shall address, but is not limited to, the impacts associated with all the following:

(1) Emissions of air pollutants, including ozone forming compounds, particulate matter, toxic air contaminants, and greenhouse gases.

(2) Contamination of surface water, groundwater, and soil.

(3) Disposal or use of the byproducts and waste materials.

(4) Worker safety and impacts to public health.

(5) Other anticipated impacts to the environment.

(c) The council shall complete its review of the multimedia evaluation within 90 calendar days following notice from the department that it intends to adopt regulations. If the council determines that the proposed regulations will cause a significant adverse impact on the public health or the environment, or that alternatives exist that would be less adverse, the council shall recommend alternative measures that the department or other state agencies may take to reduce the adverse impact on public health or the environment. The council shall make all information relating to its review available to the public.

(d) Within 60 days of receiving notification from the council of a determination of significant adverse impact, the department shall adopt revisions to the proposed regulation to avoid or reduce the adverse impact, or the affected agencies shall take appropriate action that will, to the extent feasible, mitigate the adverse impact so that, on balance, there is no significant adverse impact on public health or the environment.

(e) In coordinating a multimedia evaluation pursuant to subdivision (a), the department shall consult with other boards and departments within the California Environmental Protection Agency, the State Department of Public Health, the State and Consumer Services Agency,

the Department of Homeland Security, the Department of Industrial Relations, and other state agencies with responsibility for, or expertise regarding, impacts that could result from the production, use, or disposal of consumer products and the ingredients they may contain.

(f) Notwithstanding subdivision (a), the department may adopt regulations pursuant to Sections 25252 and 25253 without subjecting the proposed regulation to a multimedia evaluation if the council, following an initial evaluation of the proposed regulation, conclusively determines that the regulation will not have any significant adverse impact on public health or the environment.

(g) For the purposes of this section, "multimedia life cycle evaluation" means the identification and evaluation of a significant adverse impact on public health or the environment, including air, water, or soil, that may result from the production, use, or disposal of a consumer product or consumer product ingredient.

SEC. 3. Section 25253 is added to the Health and Safety Code, to read:

25253. (a) (1) On or before January 1, 2011, the department shall adopt regulations pursuant to this section that establish a process for evaluating chemicals of concern in consumer products, and their potential alternatives, to determine how best to limit exposure or to reduce the level of hazard posed by a chemical of concern, in accordance with the review process specified in Section 25252.5. The department shall adopt these regulations in consultation with all appropriate state agencies and after conducting one or more public workshops for which the department provides public notice and provides an opportunity for all interested parties to comment.

(2) The regulations adopted pursuant to this section shall establish a process that includes an evaluation of the availability of potential alternatives and potential hazards posed by those alternatives, as well as an evaluation of critical exposure pathways. This process shall include life cycle assessment tools that take into consideration, but shall not be limited to, all of the following:

(A) Product function or performance.
(B) Useful life.
(C) Materials and resource consumption.
(D) Water conservation.
(E) Water quality impacts.
(F) Air emissions.
(G) Production, in-use, and transportation energy inputs.
(H) Energy efficiency.
(I) Greenhouse gas emissions.
(J) Waste and end-of-life disposal.

(K) Public health impacts, including potential impacts to sensitive subpopulations, including infants and children.

(L) Environmental impacts.

(M) Economic impacts.

(b) The regulations adopted pursuant to this section shall specify the range of regulatory responses that the department may take following the completion of the alternatives analysis, including, but not limited to, any of the following actions:

(1) Not requiring any action.

(2) Imposing requirements to provide additional information needed to assess a chemical of concern and its potential alternatives.

(3) Imposing requirements on the labeling or other type of consumer product information.

(4) Imposing a restriction on the use of the chemical of concern in the consumer product.

(5) Prohibiting the use of the chemical of concern in the consumer product.

(6) Imposing requirements that control access to or limit exposure to the chemical of concern in the consumer product.

(7) Imposing requirements for the manufacturer to manage the product at the end of its useful life, including recycling or responsible disposal of the consumer product.

(8) Imposing a requirement to fund green chemistry challenge grants where no feasible safer alternative exists.

(9) Any other outcome the department determines accomplishes the requirements of this article.

(c) The department, in developing the processes and regulations pursuant to this section, shall ensure that the tools available are in a form that allows for ease of use and transparency of application. The department shall also make every feasible effort to devise simplified and accessible tools that consumer product manufacturers, consumer product distributors, product retailers and consumers can use to make consumer product manufacturing, sales, and purchase decisions.

SEC. 4. Section 25254 is added to the Health and Safety Code, to read:

25254. (a) In implementing this article, the department shall establish a Green Ribbon Science Panel. The panel shall be composed of members whose expertise shall encompass all of the following disciplines:

(1) Chemistry.

(2) Chemical engineering.

(3) Environmental law.

(4) Toxicology.

(5) Public policy.

(6) Pollution prevention.
(7) Cleaner production methods.
(8) Environmental health.
(9) Public health.
(10) Risk analysis.
(11) Materials science.
(12) Nanotechnology.
(13) Chemical synthesis.
(14) Research.
(15) Maternal and child health.

(b) The department shall appoint all members to the panel on or before July 1, 2009. The department shall appoint the members for staggered three-year terms, and may reappoint a member for additional terms, without limitation.

(c) The panel shall meet as often as the department deems necessary, with consideration of available resources, but not less than twice each year. The department shall provide for staff and administrative support to the panel.

(d) The panel meetings shall be open to the public and are subject to the Bagley-Keene Open Meeting Act (Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2 of the Government Code).

SEC. 5. Section 25255 is added to the Health and Safety Code, to read:

25255. The panel may take any of the following actions:

(a) Advise the department and the council on scientific and technical matters in support of the goals of this article of significantly reducing adverse health and environmental impacts of chemicals used in commerce, as well as the overall costs of those impacts to the state's society, by encouraging the redesign of consumer products, manufacturing processes, and approaches.

(b) Assist the department in developing green chemistry and chemicals policy recommendations and implementation strategies and details, and ensure these recommendations are based on a strong scientific foundation.

(c) Advise the department and make recommendations for chemicals the panel views as priorities for which hazard traits and toxicological end-point data should be collected.

(d) Advise the department in the adoption of regulations required by this article.

(e) Advise the department on any other pertinent matter in implementing this article, as determined by the department.

SEC. 6. Section 25257 is added to the Health and Safety Code, to read:

25257. (a) A person providing information pursuant to this article may, at the time of submission, identify a portion of the information submitted to the department as a trade secret and, upon the written request of the department, shall provide support for the claim that the information is a trade secret. Except as provided in subdivision (d), a state agency shall not release to the public, subject information supplied pursuant to this article that is a trade secret, and that is so identified at the time of submission, in accordance with Section 6254.7 of the Government Code and Section 1060 of the Evidence Code.

(b) This section does not prohibit the exchange of a properly designated trade secret between public agencies, if the trade secret is relevant and necessary to the exercise of the agency's jurisdiction and the public agency exchanging the trade secrets complies with this section. An employee of the department that has access to a properly designated trade secret shall maintain the confidentiality of that trade secret by complying with this section.

(c) Information not identified as a trade secret pursuant to subdivision (a) shall be available to the public unless exempted from disclosure by other provisions of law. The fact that information is claimed to be a trade secret is public information.

(d) (1) Upon receipt of a request for the release of information that has been claimed to be a trade secret, the department shall immediately notify the person who submitted the information. Based on the request, the department shall determine whether or not the information claimed to be a trade secret is to be released to the public.

(2) The department shall make the determination specified in paragraph (1), no later than 60 days after the date the department receives the request for disclosure, but not before 30 days following the notification of the person who submitted the information.

(3) If the department decides that the information requested pursuant to this subdivision should be made public, the department shall provide the person who submitted the information 30 days' notice prior to public disclosure of the information, unless, prior to the expiration of the 30-day period, the person who submitted the information obtains an action in an appropriate court for a declaratory judgment that the information is subject to protection under this section or for a preliminary injunction prohibiting disclosure of the information to the public and promptly notifies the department of that action.

(e) This section does not authorize a person to refuse to disclose to the department information required to be submitted to the department pursuant to this article.

(f) This section does not apply to hazardous trait submissions for chemicals and chemical ingredients pursuant to this article.

SEC. 7. This act shall become effective only if Senate Bill 509 of the 2007–08 Regular Session is enacted on or before January 1, 2009.

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 560

An act to add Article 14 (commencing with Section 25251) to Chapter 6.5 of Division 20 of, and to repeal and add Section 25251 of, the Health and Safety Code, relating to hazardous materials.

[Approved by Governor September 29, 2008. Filed with Secretary of State September 29, 2008.]

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

SECTION 1. Article 14 (commencing with Section 25251) is added to Chapter 6.5 of Division 20 of the Health and Safety Code, to read:

Article 14. Green Chemistry

25251. For purposes of this article, the following definitions shall apply:

(a) "Clearinghouse" means the Toxics Information Clearinghouse established pursuant to Section 25256.

(b) "Council" means the California Environmental Policy Council established pursuant to subdivision (b) of Section 71017 of the Public Resources Code.

(c) "Office" means Office of Environmental Health Hazard Assessment.

(d) "Panel" means the Green Ribbon Science Panel established pursuant to Section 25254.

(e) "Consumer product" means a product or part of the product that is used, brought, or leased for use by a person for any purposes. "Consumer product" does not include any of the following:

(1) A dangerous drug or dangerous device as defined in Section 4022 of the Business of Professions Code.

(2) Dental restorative materials as defined in subdivision (b) of Section 1648.20 of the Business and Professions Code.

(3) A device as defined in Section 4023 of the Business of Professions Code.

(4) A food as defined in subdivision (a) of Section 109935.

(5) The packaging associated with any of the items specified in paragraph (1), (2), or (3).

(6) A pesticide as defined in Section 12753 of the Food and Agricultural Code or the Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. Sec. 136 and following).

(7) Mercury-containing lights defined as mercury-containing lamps, bulbs, tubes, or other electric devices that provide functional illumination.

(f) This section shall remain in effect only until December 31, 2011, and as of that date is repealed, unless a later enacted statute, that is enacted before December 31, 2011, deletes or extends that date.

25251. For purposes of this article, the following definitions shall apply:

(a) "Clearinghouse" means the Toxics Information Clearinghouse established pursuant to Section 25256.

(b) "Council" means the California Environmental Policy Council established pursuant to subdivision (b) of Section 71017 of the Public Resources Code.

(c) "Office" means Office of Environmental Health Hazard Assessment.

(d) "Panel" means the Green Ribbon Science Panel established pursuant to Section 25254.

(e) "Consumer product" means a product or part of the product that is used, brought, or leased for use by a person for any purposes. "Consumer product" does not include any of the following:

(1) A dangerous drug or dangerous device as defined in Section 4022 of the Business of Professions Code.

(2) Dental restorative materials as defined in subdivision (b) of Section 1648.20 of the Business and Professions Code.

(3) A device as defined in Section 4023 of the Business of Professions Code.

(4) A food as defined in subdivision (a) of Section 109935.

(5) The packaging associated with any of the items specified in paragraph (1), (2), or (3).

(6) A pesticide as defined in Section 12753 of the Food and Agricultural Code or the Federal Insecticide, Fungicide and Rodenticide (7 United States Code Sections 136 and following).

(f) This section shall become effective on January 1, 2012.

25256. The department shall establish the Toxics Information Clearinghouse, which shall provide a decentralized, Web-based system for the collection, maintenance, and distribution of specific chemical hazard trait and environmental and toxicological end-point data. The department shall make the clearinghouse accessible to the public through a single Internet Web portal, and, shall, to the maximum extent possible, operate the clearinghouse at the least possible cost to the state.

25256.1. On or before January 1, 2011, the office shall evaluate and specify the hazard traits and environmental and toxicological end-points and any other relevant data that are to be included in the clearinghouse. The office shall conduct this evaluation in consultation with the department and all appropriate state agencies, after one or more public workshops, and an opportunity for all interested parties to comment. The office may seek information from other states, the federal government, and other nations in implementing this section.

25256.2. (a) The department shall develop requirements and standards related to the design of the clearinghouse and data quality and test methods that govern the data that is eligible to be available through the clearinghouse.

(b) The department may phase in the access to eligible information and data in the clearinghouse as that information and data become available.

(c) The department shall ensure the clearinghouse is capable of displaying updated information as new data becomes available.

25256.3. The department shall consult with other states, the federal government, and other nations to identify available data related to hazard traits and environmental and toxicological end-points, and to facilitate the development of regional, national, and international data sharing arrangements to be included in the clearinghouse.

25257.1. (a) This article does not limit and shall not be construed to limit the department's or any other department's or agency's existing authority over hazardous materials.

(b) This article does not authorize the department to supersede the regulatory authority of any other department or agency.

(c) The department shall not duplicate or adopt conflicting regulations for product categories already regulated or subject to pending regulation consistent with the purposes of this article.

SEC. 2. This act shall become effective only if Assembly Bill 1879 of the 2007–2008 Regular Session is enacted on or before January 1, 2009.

CHAPTER 561

An act to add Chapter 8 (commencing with Section 10800) to Part 7 of Division 1 of Title 1 of the Education Code, relating to education.

[Approved by Governor September 29, 2008. Filed with Secretary of State September 29, 2008.]

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

SECTION 1. Chapter 8 (commencing with Section 10800) is added to Part 7 of Division 1 of Title 1 of the Education Code, to read:

CHAPTER 8. EDUCATION DATA AND INFORMATION ACT OF 2008

10800. This chapter shall be known and may be cited as the Education Data and Information Act of 2008.

10801. It is the intent of the Legislature that the design and implementation of a high-quality, comprehensive, and longitudinal education data system for California will do the following:

(a) Support a system of continuous learning by delivering timely, reliable, user-friendly, and relevant information to schoolsite and district leaders, county offices of education, higher education leaders, teachers and faculty, education program providers, policymakers, researchers, parents, pupils, and the public at large.

(b) Provide educators and parents with the tools, reports, and assistance needed to inform instruction and learning.

(c) Integrate data from disparate sources.

(d) Anticipate and provide the technological capacity for the sharing of appropriate noneducation data from other state sources such as health, welfare, juvenile justice, corrections, and employment agencies, the analysis of which is necessary to fully understand critical education policy and education finance questions.

10802. (a) The department shall establish a process by which local educational agencies issue, maintain, and report information using the unique statewide pupil identifiers specified in paragraph (3) of subdivision (e) of Section 60900 for state and federally funded center-based child care and development programs under their purview. The department shall not require these center-based child care and development programs to implement or maintain unique pupil identifiers specified in paragraph (3) of subdivision (e) of Section 60900 until an appropriation for this purpose is provided in the annual Budget Act or another statute.

10803. (a) The Chancellor's Office of the California Community Colleges, the University of California, and the California State University shall each establish a process by which colleges and universities within those systems issue, maintain, and report information using the unique statewide pupil identifiers specified in paragraph (3) of subdivision (e) of Section 60900.

(b) Annually, on or before April 1, the Chancellor's Office of the California Community Colleges, the University of California, and the California State University shall provide a progress report to the Governor and the appropriate policy and fiscal committees of the Legislature. The report shall include a detailed timeline for the implementation, maintenance, and use of the unique statewide pupil identifiers pursuant to subdivision (a).

10804. (a) The State Chief Information Officer appointed pursuant to Section 11545 of the Government Code shall convene a working group representing, at a minimum, the state board, the Superintendent, the Chancellor of the California Community Colleges, the University of California, the California State University, and any other governmental entities that collect, report, or use individual pupil education data that would become part of the comprehensive education data system. The State Chief Information Officer shall form an advisory committee to the working group that includes school and district administrators, teachers and faculty, education program providers, policymakers, researchers, parents, and pupils.

(b) The working group convened pursuant to this section shall create a strategic plan to link education data systems from all segments and to accomplish all of the following:

(1) Provide an overall structural design for the linked education data systems.

(2) Examine current state education data systems.

(3) Examine the protocols and procedures to be used by state agencies in data processing, including, but not limited to, collecting, storing, manipulating, sharing, retrieving, and releasing data so as to enable each state agency to accurately and efficiently collect and share data with the other state agencies while complying with all applicable state and federal privacy laws.

(4) Identify specific procedures and policies that would be necessary to ensure the privacy of pupil record information so as to meet both federal requirements and the higher expectations of privacy held by the state.

(c) The strategic plan shall be delivered by the State Chief Information Officer to the Legislature and the Governor on or before September 1, 2009.

10805. (a) Notwithstanding any other law, the Commission on Teacher Credentialing, the state board, and the department shall provide to the State Chief Information Officer the individual nonpersonally identifiable or aggregate data related to teacher distribution, educator credential status, pupil assessment and accountability, or other pupil academic and achievement data, including, but not limited to, data generated from, or related to, the Standardized Testing and Reporting (STAR) Program, the high school exit examination, the English language development test, the Academic Performance Index (API), and adequate yearly progress data and calculations, graduation rates, pupils who dropout of school, and demographics of pupils and teachers.

(b) The data provided pursuant to the section shall be provided as follows:

(1) In a format that is agreeable to all relevant parties.

(2) In a timely manner, according to a schedule agreed upon by all relevant parties.

(3) At no cost to the State Chief Information Officer.

(c) The State Chief Information Officer may release the information provided pursuant to subdivision (a) in any of the following manners:

(1) On paper at a single location that is accessible to the public.

(2) Electronically at a single location that is accessible to the public.

(3) Electronically via the Internet

(d) The State Chief Information Officer shall ensure that the use of this data is in compliance with applicable state and federal privacy laws.

10806. In meeting the requirements of this chapter, state agencies, local educational agencies, and the officers and appointees of those agencies shall consider and comply with state and federal privacy law and ensure the highest, appropriate security protections are in place in order to provide the maximum protection of privacy.

SEC. 2. (a) It is the intent of the Legislature to convene a staff working group that includes bipartisan representation from the Assembly and Senate, and representation from the Governor's office, the Legislative Analyst's Office, the Superintendent, the Chancellor's Office of the California Community Colleges, the University of California, and the California State University, to make recommendations relating to the governance of education data that includes, but is not limited to, the following:

(1) The organizational structure of the governing entity.

(2) The governing entity's relationship to other agencies.

(3) The scope of the governing entity's authority and responsibilities.

(4) Methods for holding the governing entity accountable.

(5) Methods for ensuring that the work of the governing entity primarily serves the purposes of continuous educational improvement as well as ensuring the privacy of data under its control.

(b) It is the intent of the Legislature that the staff working group consult with other governmental entities and education representatives, including, but not limited to, school and district administrators, teachers, faculty, education program providers, policymakers, researchers, parents, and pupils.

SEC. 3. This act shall apply to the University of California only if the Regents of the University of California, by resolution, make it applicable.

CHAPTER 562

An act to amend Section 8670.64 of the Government Code, to amend Section 25515 of the Health and Safety Code, and to amend Sections 3009, 3200, 3201, 3202, 3236.5, 3401, and 3419 of, to add Section 3010 to, and to add Article 4.4 (commencing with Section 3270) to Chapter 1 of Division 3 of, the Public Resources Code, relating to public resources.

[Approved by Governor September 29, 2008. Filed with Secretary of State September 29, 2008.]

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

SECTION 1. Section 8670.64 of the Government Code is amended to read:

8670.64. (a) A person who commits any of the following acts, shall, upon conviction, be punished by imprisonment in a county jail for not more than one year or by imprisonment in the state prison:

(1) Except as provided in Section 8670.27, knowingly fails to follow the direction or orders of the administrator in connection with an oil spill.

(2) Knowingly fails to notify the Coast Guard that a vessel is disabled within one hour of the disability and the vessel, while disabled, causes a discharge of oil which enters marine waters. For the purposes of this paragraph, "vessel" means a vessel, as defined in Section 21 of the Harbors and Navigation Code, of 300 gross registered tons or more.

(3) Knowingly engages in or causes the discharge or spill of oil into marine waters, or a person who reasonably should have known that he or she was engaging in or causing the discharge or spill of oil into marine

waters, unless the discharge is authorized by the United States, the state, or another agency with appropriate jurisdiction.

(4) Knowingly fails to begin cleanup, abatement, or removal of spilled oil as required in Section 8670.25.

(b) The court shall also impose upon a person convicted of violating subdivision (a), a fine of not less than five thousand dollars ($5,000) or more than five hundred thousand dollars ($500,000) for each violation. For purposes of this subdivision, each day or partial day that a violation occurs is a separate violation.

(c) (1) A person who knowingly does any of the acts specified in paragraph (2) shall, upon conviction, be punished by a fine of not less than two thousand five hundred dollars ($2,500) or more than two hundred fifty thousand dollars ($250,000), or by imprisonment in a county jail for not more than one year, or by both the fine and imprisonment. Each day or partial day that a violation occurs is a separate violation. If the conviction is for a second or subsequent violation of this subdivision, the person shall be punished by imprisonment in the state prison or in a county jail for not more than one year, or by a fine of not less than five thousand dollars ($5,000) or more than five hundred thousand dollars ($500,000), or by both the fine and imprisonment:

(2) The acts subject to this subdivision are all of the following:

(A) Failing to notify the Office of Emergency Services in violation of Section 8670.25.5.

(B) Knowingly making a false or misleading marine oil spill report to the Office of Emergency Services.

(C) Continuing operations for which an oil spill contingency plan is required without an oil spill contingency plan approved pursuant to Article 5 (commencing with Section 8670.28).

(D) Except as provided in Section 8670.27, knowingly failing to follow the material provisions of an applicable oil spill contingency plan.

SEC. 2. Section 25515 of the Health and Safety Code is amended to read:

25515. (a) A person or business who violates Section 25507 shall, upon conviction, be punished by a fine of not more than twenty-five thousand dollars ($25,000) for each day of violation, or by imprisonment in the county jail for not more than one year, or by both the fine and imprisonment. If the conviction is for a violation committed after a first conviction under this section, the person shall be punished by a fine of not less than two thousand dollars ($2,000) or more than fifty thousand dollars ($50,000) per day of violation, or by imprisonment in the state prison for 16, 20, or 24 months or in the county jail for not more than one year, or by both the fine and imprisonment. Furthermore, if the violation results in, or significantly contributes to, an emergency,

including a fire, to which the county or city is required to respond, the person shall also be assessed the full cost of the county or city emergency response, as well as the cost of cleaning up and disposing of the hazardous materials.

(b) Notwithstanding subdivision (a), a person who fails to report, pursuant to Section 25507, an oil spill occurring in waters of the state other than marine waters shall, upon conviction, be punished by a fine of not more than fifty thousand dollars ($50,000).

(c) Notwithstanding subdivision (a), a person who knowingly makes a false or misleading report on an oil spill occurring in waters of the state other than marine waters shall, upon conviction, be punished by a fine of not more than fifty thousand dollars ($50,000).

SEC. 3. Section 3009 of the Public Resources Code is amended to read:

3009. "Operator" means a person who, by virtue of ownership, or under the authority of a lease or any other agreement, has the right to drill, operate, maintain, or control a well or production facility.

SEC. 4. Section 3010 is added to the Public Resources Code, to read:

3010. "Production facility" means any equipment attendant to oil and gas production or injection operations including, but not limited to, tanks, flowlines, headers, gathering lines, wellheads, heater treaters, pumps, valves, compressors, injection equipment, and pipelines that are not under the jurisdiction of the State Fire Marshal pursuant to Section 51010 of the Government Code.

SEC. 5. Section 3200 of the Public Resources Code is amended to read:

3200. An owner or operator of a well or production facility shall designate an agent, giving his or her address, who resides in this state, to receive and accept service of all orders, notices, and processes of the supervisor or a court of law. Every person so appointing an agent shall, within five days after the termination of the agency, notify the supervisor, in writing, of the termination, and unless operations are discontinued, shall appoint a new agent.

SEC. 6. Section 3201 of the Public Resources Code is amended to read:

3201. The operator of a well or production facility shall notify the supervisor or the district deputy, in writing, in such form as the supervisor or the district deputy may direct, of the sale, assignment, transfer, conveyance, exchange, or other disposition of the well or production facility by the operator of the well or production facility as soon as is reasonably possible, but in no event later than the date that the sale, assignment, transfer, conveyance, exchange, or other disposition becomes final. The operator shall not be relieved of responsibility for the well or

production facility until the supervisor or the district deputy acknowledges the sale, assignment, transfer, conveyance, exchange, or other disposition, in writing, and the person acquiring the well or production facility is in compliance with Section 3202. The operator's notice shall contain all of the following:

(a) The name and address of the person to whom the well or production facility was or will be sold, assigned, transferred, conveyed, exchanged, or otherwise disposed.

(b) The name and location of the well or production facility, and a description of the land upon which the well or production facility is situated.

(c) The date that the sale, assignment, transfer, conveyance, exchange, or other disposition becomes final.

(d) The date when possession was or will be relinquished by the operator as a result of that disposition.

SEC. 7. Section 3202 of the Public Resources Code is amended to read:

3202. A person who acquires the right to operate a well or production facility, whether by purchase, transfer, assignment, conveyance, exchange, or other disposition, shall, as soon as it is reasonably possible, but not later than the date when the acquisition of the well or production facility becomes final, notify the supervisor or the district deputy, in writing, of the person's operation. The acquisition of a well or production facility shall not be recognized as complete by the supervisor or the district deputy until the new operator provides all of the following material:

(a) The name and address of the person from whom the well or production facility was acquired.

(b) The name and location of the well or production facility, and a description of the land upon which the well or production facility is situated.

(c) The date when the acquisition becomes final.

(d) The date when possession was or will be acquired.

(e) An indemnity bond for each idle well. The bond shall be in an amount as provided in Section 3204 or 3205. The conditions of the bond shall be the same as the conditions stated in Section 3204. An operator that has provided an individual bond required by this subdivision in an amount as provided in Section 3204 shall not be required additionally to comply with the requirements of Section 3206. An operator who has provided a blanket indemnity bond in the minimum amount required in subdivision (a) or (b) of Section 3205 shall additionally comply with Section 3206 for any idle wells not covered by a bond provided under Section 3204.

SEC. 8. Section 3236.5 of the Public Resources Code is amended to read:

3236.5. (a) A person who violates this chapter or a regulation implementing this chapter is subject to a civil penalty not to exceed twenty-five thousand dollars ($25,000) for each violation. Acts of God and acts of vandalism beyond the reasonable control of the operator shall not be considered a violation. The civil penalty shall be imposed by an order of the supervisor upon a determination that a violation has been committed by the person charged, following notice to the person and an opportunity to be heard. The notice shall be served by personal service or certified mail, and shall inform the alleged violator of the date, time, and place of the hearing, the activity that is alleged to be a violation, the statute or regulation violated, and the hearing and judicial review procedures. The notice shall be provided at least 30 days before the hearing. The hearing shall be held before the supervisor or the supervisor's designee in Sacramento or in the district in which the violation occurred. The hearing is not required to be conducted pursuant to Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code. The imposition of a civil penalty under this section shall be in addition to any other penalty provided by law for the violation. When establishing the amount of the civil penalty pursuant to this section, the supervisor shall consider, in addition to other relevant circumstances, (1) the extent of harm caused by the violation, (2) the persistence of the violation, (3) the pervasiveness of the violation, and (4) the number of prior violations by the same violator.

(b) Notwithstanding this chapter, an order of the supervisor imposing a civil penalty shall not be reviewable pursuant to Article 6 (commencing with Section 3350). A person upon whom a civil penalty is imposed by a final order of the supervisor may obtain judicial review of that final order by seeking a writ of mandate pursuant to Section 1094.5 of the Code of Civil Procedure within 30 days of the date of that final order. When the order of the supervisor has become final, and the penalty has not been paid, the supervisor may apply to the appropriate superior court for an order directing payment of the civil penalty. The supervisor may also seek from the court an order directing that production from the well or use of the production facility that is the subject of the civil penalty order be discontinued until the violation has been remedied to the satisfaction of the supervisor and the civil penalty has been paid.

(c) Any amount collected under this section shall be deposited in the Oil, Gas, and Geothermal Administrative Fund.

SEC. 9. Article 4.4 (commencing with Section 3270) is added to Chapter 1 of Division 3 of the Public Resources Code, to read:

Article 4.4. Regulation of Production Facilities

3270. (a) The division shall, by regulation, prescribe minimum facility maintenance standards for all production facilities in the state. The regulations shall include, but are not limited to, standards for all of the following:

(1) Leak detection.

(2) Corrosion prevention and testing.

(3) Tank inspection and cleaning.

(4) Valve and gauge maintenance, and secondary containment maintenance.

(5) Other facility or equipment maintenance that the supervisor deems important for the proper operation of production facilities and that the supervisor determines are necessary to prevent damage to life, health, property, and natural resources; damage to underground oil and gas deposits from infiltrating water and other causes; loss of oil, gas, or reservoir energy; and damage to underground and surface waters suitable for irrigation or domestic purposes by the infiltration of, or the addition of, detrimental substances.

(b) An operator who constructs, acquires, maintains, or alters an oil well or a production facility shall comply with the standards prescribed pursuant to subdivision (a).

(c) In a form and at a time prescribed by the division in regulation, an operator shall notify the supervisor of the construction, alteration, or decommissioning of a production facility.

(d) An operator shall maintain at the production facility's local office records of maintenance and repair operations, tests, and inspections, and shall provide the supervisor with access to these records at all times during normal business hours and with copies of the records immediately, upon request.

3270.1. Within three months of its acquisition of a production facility or at the time of the initial production at its production facility, the facility operator shall file with the division a spill contingency plan.

3270.2. The division shall inspect production facilities to ensure compliance with the standards prescribed in the regulations promulgated pursuant to subdivision (a) of Section 3270.

3270.3. In addition to any other remedy provided by law, the supervisor, upon his or her determination or that of the district deputy that a production facility is being operated in violation of the standards prescribed in subdivision (a) of Section 3270, may issue a cease and desist order to a production facility operator requiring the operator to cease operation until the operator demonstrates, to the satisfaction of the supervisor, that the violation has been corrected.

3270.4. (a) In addition to the bonding requirements under Article 4 (commencing with Section 3200), for an operator with a history of violating this chapter or that has outstanding liabilities to the state associated with a well or production facility, the supervisor may require a life-of-well or life-of-production facility bond in an amount adequate to ensure all of the following:

(1) The proper plugging and abandonment of each well.

(2) The safe decommissioning of each production facility.

(3) The financing of spill response and incident cleanup.

(b) Upon the failure of an operator to properly plug and abandon a well, decommission a production facility, or perform the appropriate spill response and incident cleanup, the supervisor may levy on the bond to obtain money to pay the cost of the work.

(c) The supervisor may release a life-of-production facility bond upon the satisfactory decommissioning of a production facility, or when an operator has provided another valid life-of-production facility bond.

(d) The supervisor may release a life-of-well bond upon the satisfactory plugging and abandonment of all wells covered by the bond or when an operator has provided another valid life-of-well bond.

(e) Whenever an operator sells, assigns, transfers, conveys, exchanges, or otherwise disposes to another operator a well or production facility that is covered by a life-of-well bond or a life-of-production facility bond, the new operator shall replace the life-of-well or life-of-production bond, as applicable, and maintain the new bond for five years before it may be released by the supervisor.

(f) In lieu of the indemnity bond required by this section, the supervisor may accept a deposit given pursuant to Article 7 (commencing with Section 995.710) of Chapter 2 of Title 14 of Part 2 of the Code of Civil Procedure, excluding a deposit of money, bearer bonds, or bearer notes.

(g) The supervisor shall adopt regulations specifying the content, including the conditions, of the bond or other security instrument required by this section.

SEC. 10. Section 3401 of the Public Resources Code is amended to read:

3401. The proceeds of charges levied, assessed, and collected pursuant to this article upon the properties of every person operating or owning an interest in the production of any well shall be used exclusively for the support and maintenance of the division of the department charged with the supervision of oil and gas operations.

SEC. 11. Section 3419 of the Public Resources Code is amended to read:

3419. On or before the first of July the department shall deliver to the State Controller the record of assessments and charges, certified to by the director, which certificate shall be substantially as follows: "I, ____, Director of Conservation, do hereby certify that between the first of March and the first of July, 20__, I made diligent inquiry and examination to ascertain all property and persons, firms, corporations and associations subject to assessment as required by the provisions of this chapter, providing for the assessment and collection of charges; that I have faithfully complied with all the duties imposed upon me by law; that I have not imposed any unjust or double assessment through malice or ill will or otherwise; nor allowed any person, firm, corporation, or association, or property to escape a just assessment or charge through favor or regard or otherwise." Failure to subscribe the certificate to the record of assessments and charges, or any certificate, shall not affect the validity of any assessment or charge.

SEC. 12. 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 amend Sections 8670.8 and 8670.25.5 of, and to add Section 8670.8.3 to, the Government Code, relating to oil spills.

[Approved by Governor September 29, 2008. Filed with Secretary of State September 29, 2008.]

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

SECTION 1. Section 8670.8 of the Government Code is amended to read:

8670.8. (a) The administrator shall carry out programs to provide training for individuals in response, containment, and cleanup operations and equipment, equipment deployment, and the planning and management of these programs. These programs may include training for members of the California Conservation Corps, other response personnel employed by the state, personnel employed by other public

entities, personnel from marine facilities, commercial fishermen and other mariners, and interested members of the public. Training may be offered for volunteers.

(b) The administrator may offer training to anyone who is required to take part in response and cleanup efforts under the California oil spill contingency plan or under local government contingency plans prepared and approved under this chapter.

(c) Upon request by a local government, the administrator shall provide a program for training and certification of a local emergency responder designated as a local spill response manager by a local government with jurisdiction over or directly adjacent to marine waters.

(d) Trained and certified local spill response managers shall participate in all drills upon request of the administrator.

(e) As part of the training and certification program, the administrator shall authorize a local spill response manager to train and certify volunteers.

(f) In the event of an oil spill, local spill response managers trained and certified pursuant to subdivision (c) shall provide the state onscene coordinator with timely information on activities and resources deployed by local government in response to the oil spill. The local spill response manager shall cooperate with the administrator and respond in a manner consistent with the area contingency plan to the extent possible.

(g) Funding for activities undertaken pursuant to subdivisions (a) to (c), inclusive, shall be from the Oil Spill Prevention and Administration Fund created pursuant to Section 8670.38.

(h) All training provided by the administrator shall follow the requirements of applicable federal and state occupational safety and health standards adopted by the Occupational Safety and Health Administration of the Department of Labor and the California Occupational, Safety, and Health Standards Board.

SEC. 2. Section 8670.8.3 is added to the Government Code, to read:

8670.8.3. The administrator shall offer grants to a local government with jurisdiction over or directly adjacent to marine waters to provide oil spill response equipment to be deployed by a local spill response manager certified pursuant to Section 8670.8. The administrator shall request the Legislature to appropriate funds from the Oil Spill Prevention and Administration Fund created pursuant to Section 8670.38 for the purposes of this section.

SEC. 3. Section 8670.25.5 of the Government Code is amended to read:

8670.25.5. (a) (1) Without regard to intent or negligence, any party responsible for the discharge or threatened discharge of oil in marine

waters shall report the discharge immediately to the Office of Emergency Services pursuant to Section 25507 of the Health and Safety Code.

(2) If the information initially reported pursuant to paragraph (1) was inaccurate or incomplete, or if the quantity of oil discharged has changed, any party responsible for the discharge or threatened discharge of oil in marine waters shall report the updated information immediately to the Office of Emergency Services pursuant to paragraph (1). The report shall contain the accurate or complete information, or the revised quantity of oil discharged.

(b) Immediately upon receiving notification pursuant to subdivision (a), the Office of Emergency Services shall notify the administrator, the State Lands Commission, the California Coastal Commission, the California regional water quality control board having jurisdiction over the location of the discharged oil, and the appropriate local governmental agencies in the area surrounding the discharged oil, and take the actions required by subdivision (d) of Section 8589.7. If the spill has occurred within the jurisdiction of the San Francisco Bay Conservation and Development Commission, the Office of Emergency Services shall notify that commission. Each public agency specified in this subdivision shall adopt an internal protocol over communications regarding the discharge of oil and file the internal protocol with the Office of Emergency Services.

(c) The 24-hour emergency telephone number of the Office of Emergency Services shall be posted at every terminal, at the area of control of every marine facility, and on the bridge of every tankship in marine waters.

(d) This section does not apply to discharges, or potential discharges, of less than one barrel (42 gallons) of oil unless a more restrictive reporting standard is adopted in the California oil spill contingency plan prepared pursuant to Section 8574.1.

(e) Except as otherwise provided in this section and Section 8589.7, a notification made pursuant to this section shall satisfy any immediate notification requirement contained in any permit issued by a permitting agency.

SEC. 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 564

An act to add Section 5654 to the Fish and Game Code, and to amend Section 8574.7 of the Government Code, relating to toxic spills.

[Approved by Governor September 29, 2008. Filed with Secretary of State September 29, 2008.]

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

SECTION 1. Section 5654 is added to the Fish and Game Code, to read:

5654. (a) (1) Notwithstanding Section 7715 and except as provided in paragraph (2), the director, within 24 hours of notification of a spill or discharge, as those terms are defined in subdivision (aa) of Section 8670.3 of the Government Code, where any fishing, including all commercial, recreational, and nonlicensed subsistence fishing, may take place, or where aquaculture operations are taking place, shall close to the take of all fish and shellfish all waters in the vicinity of the spill or discharge or where the spilled or discharged material has spread, or is likely to spread. In determining where a spill or discharge is likely to spread, the director shall consult with the Administrator of the Office of Spill Prevention and Response. At the time of closure, the department shall make all reasonable efforts to notify the public of the closure, including notification to commercial and recreational fishing organizations, and posting of warnings on public piers and other locations where subsistence fishing is known to occur. The department shall coordinate, when possible, with local and regional agencies and organizations to expedite public notification.

(2) Closure pursuant to paragraph (1) is not required if, within 24 hours of notification of a spill or discharge, the Office of Environmental Health Hazard Assessment finds that a public health threat does not or is unlikely to exist.

(b) Within 48 hours of notification of a spill or discharge subject to subdivision (a), the director, in consultation with the Office of Environmental Health Hazard Assessment, shall make an assessment and determine all of the following:

(1) The danger posed to the public from fishing in the area where the spill or discharge occurred or spread, and the danger of consuming fish taken in the area where the spill or discharge occurred or spread.

(2) Whether the areas closed for the take of fish or shellfish should be expanded to prevent any potential take or consumption of any fish or shellfish that may have been contaminated by the spill or discharge.

(3) The likely period for maintaining a closure on the take of fish and shellfish in order to prevent any possible contaminated fish or shellfish from being taken or consumed or other threats to human health.

(c) Within 48 hours after receiving notification of a spill or discharge subject to subdivision (a), or as soon as is feasible, the director, in consultation with the Office of Environmental Health Hazard Assessment, shall assess and determine the potential danger from consuming fish that have been contained in a recirculating seawater tank onboard a vessel that may become contaminated by the vessel's movement through an area where the spill or discharge occurred or spread.

(d) If the director finds in his or her assessment pursuant to subdivision (b) that there is no significant risk to the public or to the fisheries, the director may immediately reopen the closed area and waive the testing requirements of subdivisions (e) and (f).

(e) Except under the conditions specified in subdivision (d), after complying with subdivisions (a) and (b), the director, in consultation with the Office of Environmental Health Hazard Assessment, but in no event more than seven days from the notification of the spill or discharge, shall order expedited tests of fish and shellfish that would have been open for take for commercial, recreational, or subsistence purposes in the closed area if not for the closure, to determine the levels of contamination, if any, and whether the fish or shellfish is safe for human consumption.

(f) (1) Within 24 hours of receiving a notification from the Office of Environmental Health Hazard Assessment that no threat to human health exists from the spill or discharge or that no contaminant from the spill or discharge is present that could contaminate fish or shellfish, the director shall reopen the areas closed pursuant to this section. The director may maintain a closure in any remaining portion of the closed area where the Office of Environmental Health Hazard Assessment finds contamination from the spill or discharge persists that may

adversely affect human health.

(2) The director, in consultation with the commission, may also maintain a closure in any remaining portion of the closed area where commercial fishing or aquaculture occurs and where the department determines, pursuant to this paragraph, that contamination from the spill or discharge persists that may cause the waste of commercial fish or shellfish as regulated by Section 7701.

(g) To the extent feasible, the director shall consult with representatives of commercial and recreational fishing associations and subsistence fishing communities regarding the extent and duration of a closure, testing protocols, and findings. If a spill or discharge occurs within the lands governed by a Native American tribe or affects waters

flowing through tribal lands, or tribal fisheries, the director shall consult with the affected tribal governments.

(h) The director shall seek full reimbursement from the responsible party or parties for the spill or discharge for all reasonable costs incurred by the department in carrying out this section, including, but not limited to, all testing.

SEC. 2. Section 8574.7 of the Government Code is amended to read:

8574.7. The Governor shall require the administrator, in consultation with the State Interagency Oil Spill Committee and not in conflict with the National Contingency Plan, to amend the California oil spill contingency plan by adding a marine oil spill contingency planning section that provides for the best achievable protection of the coast and marine waters. "Administrator" for purposes of this section means the administrator appointed by the Governor pursuant to Section 8670.4. The marine oil spill contingency planning section shall consist of all of the following elements:

(a) A state marine response element that specifies the hierarchy for state and local agency response to an oil spill. The element shall define the necessary tasks for oversight and control of cleanup and removal activities associated with a marine oil spill and shall specify each agency's particular responsibility in carrying out these tasks. The element shall also include an organizational chart of the state marine oil spill response organization and a definition of the resources, capabilities, and response assignments of each agency involved in cleanup and removal actions in a marine oil spill.

(b) A regional and local planning element that shall provide the framework for the involvement of regional and local agencies in the state effort to respond to a marine oil spill, and shall ensure the effective and efficient use of regional and local resources in all of the following:

(1) Traffic and crowd control.

(2) Firefighting.

(3) Boating traffic control.

(4) Radio and communications control and provision of access to equipment.

(5) Identification and use of available local and regional equipment or other resources suitable for use in cleanup and removal actions.

(6) Identification of private and volunteer resources or personnel with special or unique capabilities relating to marine oil spill cleanup and removal actions.

(7) Provision of medical emergency services.

(8) Consideration of the identification and use of private working craft and mariners, including commercial fishing vessels and licensed

commercial fishing men and women, in containment, cleanup, and removal actions.

(c) A coastal protection element that establishes the state standards for coastline protection. The administrator, in consultation with the State Interagency Oil Spill Committee, the Coast Guard and Navy, and the shipping industry, shall develop criteria for coastline protection. If appropriate, the administrator shall consult with representatives from the States of Alaska, Washington, and Oregon, the Province of British Columbia in Canada, and the Republic of Mexico. The criteria shall designate at least all of the following:

(1) Appropriate shipping lanes and navigational aids for tankers, barges, and other commercial vessels to reduce the likelihood of collisions between tankers, barges, and other commercial vessels. Designated shipping lanes shall be located off the coastline at a distance sufficient to significantly reduce the likelihood that disabled vessels will run aground along the coast of the state.

(2) Ship position reporting and communications requirements.

(3) Required predeployment of protective equipment for sensitive environmental areas along the coastline.

(4) Required emergency response vessels that are capable of preventing disabled tankers from running aground.

(5) Required emergency response vessels that are capable of commencing oil cleanup operations before spilled oil can reach the shoreline.

(6) An expedited decisionmaking process for dispersant use in coastal waters. Prior to adoption of the process, the administrator shall ensure that a comprehensive testing program is carried out for any dispersant proposed for use in California marine waters. The testing program shall evaluate toxicity and effectiveness of the dispersants.

(7) Required rehabilitation facilities for wildlife injured by spilled oil.

(8) An assessment of how activities that usually require a permit from a state or local agency may be expedited or issued by the administrator in the event of an oil spill.

(d) An environmentally and ecologically sensitive areas element that shall provide the framework for prioritizing and ensuring the protection of environmentally and ecologically sensitive areas. The environmentally and ecologically sensitive areas element shall be developed by the administrator, in conjunction with appropriate local agencies, and shall include all of the following:

(1) Identification and prioritization of environmentally and ecologically sensitive areas in marine waters and along the coast. Identification and prioritization of environmentally and ecologically

sensitive areas shall not prevent or excuse the use of all reasonably available containment and cleanup resources from being used to protect every environmentally and ecologically sensitive area possible. Environmentally and ecologically sensitive areas shall be prioritized through the evaluation of criteria, including, but not limited to, all of the following:

(A) Risk of contamination by oil after a spill.

(B) Environmental, ecological, recreational, and economic importance.

(C) Risk of public exposure should the area be contaminated.

(2) Regional maps depicting environmentally and ecologically sensitive areas in marine waters or along the coast that shall be distributed to facilities and local and state agencies. The maps shall designate those areas that have particularly high priority for protection against oil spills.

(3) A plan for protection actions required to be taken in the event of an oil spill for each of the environmentally and ecologically sensitive areas and protection priorities for the first 24 to 48 hours after an oil spill shall be specified.

(4) The location of available response equipment and the availability of trained personnel to deploy the equipment to protect the priority environmentally and ecologically sensitive areas.

(5) A program for systemically testing and revising, if necessary, protection strategies for each of the priority environmentally and ecologically sensitive areas.

(6) Any recommendations for action that cannot be financed or implemented pursuant to existing authority of the administrator, which shall also be reported to the Legislature along with recommendations for financing those actions.

CHAPTER 565

An act to amend Section 5655 of the Fish and Game Code, to amend Sections 8574.8, 8670.3, 8670.25, 8670.37.5, 8670.40, 8670.48, 8670.56.5, 8670.61.5, 8670.63, 8670.66, 8670.67, and 8670.67.5 of, and to add Section 8670.69.7 to, the Government Code, relating to oil spills, and making an appropriation therefor.

[Approved by Governor September 29, 2008. Filed with Secretary of State September 29, 2008.]

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

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

(a) The existing network of rescue and rehabilitation stations established by the state to care for oiled wildlife in the event of oil spills, and the professional staff and volunteers who have spent many hours caring for oiled birds, are to be commended and recognized for their work and for their success in releasing treated birds back into the wild.

(b) The state's capacity to conduct search and collection for rescue of oiled wildlife should be strengthened and improved to ensure that, to the extent feasible, the maximum number of oiled wildlife are collected and receive timely and effective treatment, thus ensuring the best achievable standard for oiled wildlife.

(c) The state should enhance its capacity for oiled wildlife response, including the provision of pretrained personnel and emergency equipment readily available for deployment, to do all of the following:

(1) Prevent wildlife from being contaminated by spilled oil.

(2) Collect live oiled wildlife for treatment through proactive search and collection efforts.

(3) Ensure that appropriate pretraining and equipment are provided to staff, volunteers, and representatives from local agencies that may be enlisted to assist the state in collecting oiled wildlife in future spills.

(d) The state's capacity to prevent wildlife from being contaminated by spilled oil, and to rescue and provide rehabilitative care to oiled wildlife, can be significantly enhanced through an expanded program for advanced recruitment and pretraining of volunteers in hazardous materials handling and wildlife collection, and the provision of emergency field collection equipment in strategic locations where it can be readily deployed in the case of a spill. The capacity of the Oiled Wildlife Care Network to provide wildlife care and rehabilitation may be significantly enhanced by a ready pool of pretrained volunteers, with more highly trained volunteers performing more complex tasks and convergent volunteers playing vital support roles.

(e) It is the intent of the Legislature that the Office of Spill Prevention and Response increase the number of pretrained individuals available for immediate deployment in the event of an oil spill to assist in proactive wildlife search and rescue efforts, and ensure that all wildlife recovery teams are supervised by qualified personnel with appropriate training and experience in wildlife handling and search and rescue techniques.

SEC. 2. Section 5655 of the Fish and Game Code is amended to read:

5655. (a) In addition to the responsibilities imposed pursuant to Section 5651, the department may clean up or abate, or cause to be cleaned up or abated, the effects of any petroleum or petroleum product deposited or discharged in the waters of this state or deposited or discharged in any location onshore or offshore where the petroleum or petroleum product is likely to enter the waters of this state, order any

person responsible for the deposit or discharge to clean up the petroleum or petroleum product or abate the effects of the deposit or discharge, and recover any costs incurred as a result of the cleanup or abatement from the responsible party.

(b) An order shall not be issued pursuant to this section for the cleanup or abatement of petroleum products in any sump, pond, pit, or lagoon used in conjunction with crude oil production that is in compliance with all applicable state and federal laws and regulations.

(c) The department may issue an order pursuant to this section only if there is an imminent and substantial endangerment to human health or the environment and the order shall remain in effect only until any cleanup and abatement order is issued pursuant to Section 13304 of the Water Code. A regional water quality control board shall incorporate the department's order into the cleanup and abatement order issued pursuant to Section 13304 of the Water Code, unless the department's order is inconsistent with any more stringent requirement established in the cleanup and abatement order. Any action taken in compliance with the department's order is not a violation of any subsequent regional water quality control board cleanup and abatement order issued pursuant to Section 13304 of the Water Code.

(d) The Administrator of the Office of Spill Prevention and Response has the primary authority to serve as a state incident commander and direct removal, abatement, response, containment, and cleanup efforts with regard to all aspects of any placement of petroleum or a petroleum product in the waters of the state, except as otherwise provided by law. This authority may be delegated.

(e) For purposes of this section, the following definitions apply:

(1) "Petroleum product" means oil in any kind or form, including, but not limited to, fuel oil, sludge, oil refuse, and oil mixed with waste other than dredged spoil. "Petroleum product" does not include any pesticide that has been applied for agricultural, commercial, or industrial purposes or has been applied in accordance with a cooperative agreement authorized by Section 116180 of the Health and Safety Code, that has not been discharged accidentally or for purposes of disposal, and whose application was in compliance with all applicable state and federal laws and regulations.

(2) "State incident commander" means a person with the overall authority for managing and conducting incident operations during an oil spill response, who shall manage an incident consistent with the standardized emergency management system required by Section 8607 of the Government Code. Incident management generally includes the development of objectives, strategies and tactics, ordering and release of resources, and coordination with other appropriate response agencies

to ensure that all appropriate resources are properly utilized and that this coordinating function is performed in a manner designated to minimize risk to other persons and to the environment.

SEC. 3. Section 8574.8 of the Government Code is amended to read:

8574.8. (a) The administrator shall submit to the Governor and the Legislature an amended California oil spill contingency plan required, pursuant to Section 8574.7, by January 1, 1993. The administrator shall thereafter submit revised plans every three years, until the amended plan required pursuant to subdivision (b) is submitted.

(b) The administrator shall submit to the Governor and the Legislature an amended California oil spill contingency plan required pursuant to Section 8574.7, by January 1, 2010, that consists of both a marine oil spill contingency planning section and an inland oil spill contingency planning section. The administrator shall thereafter submit revised plans every three years.

SEC. 4. Section 8670.3 of the Government Code is amended to read:

8670.3. Unless the context requires otherwise, the following definitions shall govern the construction of this chapter:

(a) "Administrator" means the administrator for oil spill response appointed by the Governor pursuant to Section 8670.4.

(b) (1) "Best achievable protection" means the highest level of protection that can be achieved through both the use of the best achievable technology and those manpower levels, training procedures, and operational methods that provide the greatest degree of protection achievable. The administrator's determination of which measures provide the best achievable protection shall be guided by the critical need to protect valuable coastal resources and marine waters, while also considering all of the following:

(A) The protection provided by the measure.

(B) The technological achievability of the measure.

(C) The cost of the measure.

(2) The administrator shall not use a cost-benefit or cost-effectiveness analysis or any particular method of analysis in determining which measures provide the best achievable protection. The administrator shall instead, when determining which measures provide best achievable protection, give reasonable consideration to the protection provided by the measures, the technological achievability of the measures, and the cost of the measures when establishing the requirements to provide the best achievable protection for coastal and marine resources.

(c) (1) "Best achievable technology" means that technology that provides the greatest degree of protection, taking into consideration both of the following:

(A) Processes that are being developed, or could feasibly be developed anywhere in the world, given overall reasonable expenditures on research and development.

(B) Processes that are currently in use anywhere in the world.

(2) In determining what is the best achievable technology pursuant to this chapter, the administrator shall consider the effectiveness and engineering feasibility of the technology.

(d) "Dedicated response resources" means equipment and personnel committed solely to oil spill response, containment, and cleanup that are not used for any other activity that would adversely affect the ability of that equipment and personnel to provide oil spill response services in the timeframes for which the equipment and personnel are rated.

(e) "Director" means the Director of Fish and Game.

(f) "Environmentally sensitive area" means an area defined pursuant to the applicable area contingency plans, as created and revised by the Coast Guard and the administrator.

(g) "Inland spill" means a release of at least one barrel (42 gallons) of oil into inland waters that is not authorized by any federal, state, or local governmental entity.

(h) "Inland waters" means waters of the state other than marine waters, but not including groundwater.

(i) "Local government" means a chartered or general law city, a chartered or general law county, or a city and county.

(j) (1) "Marine facility" means any facility of any kind, other than a tank ship or tank barge, that is or was used for the purposes of exploring for, drilling for, producing, storing, handling, transferring, processing, refining, or transporting oil and is located in marine waters, or is located where a discharge could impact marine waters unless the facility is either of the following:

(A) Subject to Chapter 6.67 (commencing with Section 25270) or Chapter 6.75 (commencing with Section 25299.10) of Division 20 of the Health and Safety Code.

(B) Placed on a farm, nursery, logging site, or construction site and does not exceed 20,000 gallons in a single storage tank.

(2) For the purposes of this chapter, "marine facility" includes a drill ship, semisubmersible drilling platform, jack-up type drilling rig, or any other floating or temporary drilling platform.

(3) For the purposes of this chapter, "marine facility" does not include a small craft refueling dock.

(k) (1) "Marine terminal" means any marine facility used for transferring oil to or from a tank ship or tank barge.

(2) "Marine terminal" includes, for purposes of this chapter, all piping not integrally connected to a tank facility, as defined in subdivision (m) of Section 25270.2 of the Health and Safety Code.

(*l*) "Marine waters" means those waters subject to tidal influence, and includes the waterways used for waterborne commercial vessel traffic to the Port of Sacramento and the Port of Stockton.

(m) "Mobile transfer unit" means a small marine fueling facility that is a vehicle, truck, or trailer, including all connecting hoses and piping, used for the transferring of oil at a location where a discharge could impact marine waters.

(n) "Nondedicated response resources" means those response resources identified by an Oil Spill Response Organization for oil spill response activities that are not dedicated response resources.

(o) "Nonpersistent oil" means a petroleum-based oil, such as gasoline, diesel, or jet fuel, that evaporates relatively quickly and is an oil with hydrocarbon fractions, at least 50 percent of which, by volume, distills at a temperature of 645° Fahrenheit, and at least 95 percent of which, by volume, distills at a temperature of 700° Fahrenheit.

(p) "Nontank vessel" means a vessel of 300 gross tons or greater that carries oil, but does not carry that oil as cargo.

(q) "Oil" means any kind of petroleum, liquid hydrocarbons, or petroleum products or any fraction or residues therefrom, including, but not limited to, crude oil, bunker fuel, gasoline, diesel fuel, aviation fuel, oil sludge, oil refuse, oil mixed with waste, and liquid distillates from unprocessed natural gas.

(r) "Oil spill cleanup agent" means a chemical, or any other substance, used for removing, dispersing, or otherwise cleaning up oil or any residual products of petroleum in, or on, any of the waters of the state.

(s) "Oil spill contingency plan" or "contingency plan" means the oil spill contingency plan required pursuant to Article 5 (commencing with Section 8670.28).

(t) (1) "Oil Spill Response Organization" or "OSRO" means an individual, organization, association, cooperative, or other entity that provides, or intends to provide, equipment, personnel, supplies, or other services directly related to oil spill containment, cleanup, or removal activities.

(2) A "rated OSRO" means an OSRO that has received a satisfactory rating from the administrator for a particular rating level established pursuant to Section 8670.30.

(3) "OSRO" does not include an owner or operator with an oil spill contingency plan approved by the administrator or an entity that only provides spill management services, or who provides services or

equipment that are only ancillary to containment, cleanup, or removal activities.

(u) "Onshore facility" means a facility of any kind that is located entirely on lands not covered by marine waters.

(v) (1) "Owner" or "operator" means any of the following:

(A) In the case of a vessel, a person who owns, has an ownership interest in, operates, charters by demise, or leases, the vessel.

(B) In the case of a marine facility, a person who owns, has an ownership interest in, or operates the marine facility.

(C) Except as provided in subparagraph (D), in the case of a vessel or marine facility, where title or control was conveyed due to bankruptcy, foreclosure, tax delinquency, abandonment, or similar means to an entity of state or local government, a person who owned, held an ownership interest in, operated, or otherwise controlled activities concerning the vessel or marine facility immediately beforehand.

(D) An entity of the state or local government that acquired ownership or control of a vessel or marine facility, when the entity of the state or local government has caused or contributed to a spill or discharge of oil into marine waters.

(2) "Owner" or "operator" does not include a person who, without participating in the management of a vessel or marine facility, holds indicia of ownership primarily to protect the person's security interest in the vessel or marine facility.

(3) "Operator" does not include a person who owns the land underlying a marine facility or the facility itself if the person is not involved in the operations of the facility.

(w) "Person" means an individual, trust, firm, joint stock company, or corporation, including, but not limited to, a government corporation, partnership, and association. "Person" also includes a city, county, city and county, district, and the state or any department or agency thereof, and the federal government, or any department or agency thereof, to the extent permitted by law.

(x) "Pipeline" means a pipeline used at any time to transport oil.

(y) "Reasonable worst case spill" means, for the purposes of preparing contingency plans for a nontank vessel, the total volume of the largest fuel tank on the nontank vessel.

(z) "Responsible party" or "party responsible" means any of the following:

(1) The owner or transporter of oil or a person or entity accepting responsibility for the oil.

(2) The owner, operator, or lessee of, or a person that charters by demise, a vessel or marine facility, or a person or entity accepting responsibility for the vessel or marine facility.

(aa) "Small craft" means a vessel, other than a tank ship or tank barge, that is less than 20 meters in length.

(ab) "Small craft refueling dock" means a waterside operation that dispenses only nonpersistent oil in bulk and small amounts of persistent lubrication oil in containers primarily to small craft and meets both of the following criteria:

(1) Has tank storage capacity not exceeding 20,000 gallons in any single storage tank or tank compartment.

(2) Has total usable tank storage capacity not exceeding 75,000 gallons.

(ac) "Small marine fueling facility" means either of the following:

(1) A mobile transfer unit.

(2) A fixed facility that is not a marine terminal, that dispenses primarily nonpersistent oil, that may dispense small amounts of persistent oil, primarily to small craft, and that meets all of the following criteria:

(A) Has tank storage capacity greater than 20,000 gallons but not more than 40,000 gallons in any single storage tank or storage tank compartment.

(B) Has total usable tank storage capacity not exceeding 75,000 gallons.

(C) Had an annual throughput volume of over-the-water transfers of oil that did not exceed 3,000,000 gallons during the most recent preceding 12-month period.

(ad) "Spill" or "discharge" means a release of at least one barrel (42 gallons) of oil into marine waters that is not authorized by a federal, state, or local government entity.

(ae) "State Interagency Oil Spill Committee" means the committee established pursuant to Article 3.5 (commencing with Section 8574.1) of Chapter 7.

(af) "California oil spill contingency plan" means the California oil spill contingency plan prepared pursuant to Article 3.5 (commencing with Section 8574.1) of Chapter 7.

(ag) "Tank barge" means a vessel that carries oil in commercial quantities as cargo but is not equipped with a means of self-propulsion.

(ah) "Tank ship" means a self-propelled vessel that is constructed or adapted for the carriage of oil in bulk or in commercial quantities as cargo.

(ai) "Tank vessel" means a tank ship or tank barge.

(aj) "Vessel" means a watercraft or ship of any kind, including every structure adapted to be navigated from place to place for the transportation of merchandise or persons.

(ak) "Vessel carrying oil as secondary cargo" means a vessel that does not carry oil as a primary cargo, but does carry oil in bulk as cargo or cargo residue.

SEC. 4.5. Section 8670.3 of the Government Code is amended to read:

8670.3. Unless the context requires otherwise, the following definitions shall govern the construction of this chapter:

(a) "Administrator" means the administrator for oil spill response appointed by the Governor pursuant to Section 8670.4.

(b) (1) "Best achievable protection" means the highest level of protection that can be achieved through both the use of the best achievable technology and those manpower levels, training procedures, and operational methods that provide the greatest degree of protection achievable. The administrator's determination of which measures provide the best achievable protection shall be guided by the critical need to protect valuable coastal resources and marine waters, while also considering all of the following:

(A) The protection provided by the measure.

(B) The technological achievability of the measure.

(C) The cost of the measure.

(2) The administrator shall not use a cost-benefit or cost-effectiveness analysis or any particular method of analysis in determining which measures provide the best achievable protection. The administrator shall instead, when determining which measures provide best achievable protection, give reasonable consideration to the protection provided by the measures, the technological achievability of the measures, and the cost of the measures when establishing the requirements to provide the best achievable protection for coastal and marine resources.

(c) (1) "Best achievable technology" means that technology that provides the greatest degree of protection, taking into consideration both of the following:

(A) Processes that are being developed, or could feasibly be developed anywhere in the world, given overall reasonable expenditures on research and development.

(B) Processes that are currently in use or contained in any oil spill contingency or response plan anywhere in the world.

(C) This subdivision does not require that a particular technology shall first be used elsewhere in the world prior to being required for use or deployment by the administrator.

(2) In determining what is the best achievable technology pursuant to this chapter, the administrator shall consider the effectiveness and engineering feasibility of the technology.

(d) (1) "Dedicated response resources" means equipment and personnel committed solely to oil spill response, containment, and cleanup that are not used for any other activity that would adversely affect the ability of that equipment and personnel to provide oil spill response services in the timeframes for which the equipment and personnel are rated.

(2) For the port areas, as defined in area contingency plans of San Francisco, Los Angeles/Long Beach, and San Diego, "dedicated response resources" shall, in addition to the other criteria in this subdivision, mean equipment and personnel permanently located in each of those areas. Personnel may be characterized as a dedicated resource only when on duty or on call. On-call personnel may be characterized as a dedicated resource if an on-call employee is all of the following:

(A) Required to wear a functioning pager or other means of immediate communication at all times.

(B) Required to remain in close geographic proximity to the OSRO's facility or nonpersonnel dedicated response resource so as to ensure that regulatory response times are met.

(C) Required to carry approved work clothing and necessary identification to access the OSRO's facility or the site of a spill.

(D) Required to maintain the United States Coast Guard fitness for duty requirements referenced in Part 95 of Title 33 of the Code of Federal Regulations.

(e) "Director" means the Director of Fish and Game.

(f) "Environmentally sensitive area" means an area defined pursuant to the applicable area contingency plans, as created and revised by the Coast Guard and the administrator.

(g) "Inland spill" means a release of at least one barrel (42 gallons) of oil into inland waters that is not authorized by any federal, state, or local governmental entity.

(h) "Inland waters" means waters of the state other than marine waters, but not including groundwater.

(i) "Local government" means a chartered or general law city, a chartered or general law county, or a city and county.

(j) (1) "Marine facility" means any facility of any kind, other than a tank ship or tank barge, that is or was used for the purposes of exploring for, drilling for, producing, storing, handling, transferring, processing, refining, or transporting oil and is located in marine waters, or is located where a discharge could impact marine waters unless the facility is either of the following:

(A) Subject to Chapter 6.67 (commencing with Section 25270) or Chapter 6.75 (commencing with Section 25299.10) of Division 20 of the Health and Safety Code.

(B) Placed on a farm, nursery, logging site, or construction site and does not exceed 20,000 gallons in a single storage tank.

(2) For the purposes of this chapter, "marine facility" includes a drill ship, semisubmersible drilling platform, jack-up type drilling rig, or any other floating or temporary drilling platform.

(3) For the purposes of this chapter, "marine facility" does not include a small craft refueling dock.

(k) (1) "Marine terminal" means a marine facility used for transferring oil to or from a tank ship or tank barge.

(2) "Marine terminal" includes, for purposes of this chapter, all piping not integrally connected to a tank facility, as defined in subdivision (m) of Section 25270.2 of the Health and Safety Code.

(*l*) "Marine waters" means those waters subject to tidal influence, and includes the waterways used for waterborne commercial vessel traffic to the Port of Sacramento and the Port of Stockton.

(m) "Mobile transfer unit" means a small marine fueling facility that is a vehicle, truck, or trailer, including all connecting hoses and piping, used for the transferring of oil at a location where a discharge could impact marine waters.

(n) "Nondedicated response resources" means those response resources identified by an Oil Spill Response Organization for oil spill response activities that are not dedicated response resources. Identified response resources located outside of California are nondedicated response resources.

(o) "Nonpersistent oil" means a petroleum-based oil, such as gasoline, diesel, or jet fuel, that evaporates relatively quickly and is an oil with hydrocarbon fractions, at least 50 percent of which, by volume, distills at a temperature of 645° Fahrenheit, and at least 95 percent of which, by volume, distills at a temperature of 700° Fahrenheit.

(p) "Nontank vessel" means a vessel of 300 gross tons or greater that carries oil, but does not carry that oil as cargo.

(q) "Oil" means any kind of petroleum, liquid hydrocarbons, or petroleum products or any fraction or residues therefrom, including, but not limited to, crude oil, bunker fuel, gasoline, diesel fuel, aviation fuel, oil sludge, oil refuse, oil mixed with waste, and liquid distillates from unprocessed natural gas.

(r) "Oil spill cleanup agent" means a chemical, or any other substance, used for removing, dispersing, or otherwise cleaning up oil or any residual products of petroleum in, or on, any of the waters of the state.

(s) "Oil spill contingency plan" or "contingency plan" means the oil spill contingency plan required pursuant to Article 5 (commencing with Section 8670.28).

(t) (1) "Oil Spill Response Organization" or "OSRO" means an individual, organization, association, cooperative, or other entity that provides, or intends to provide, equipment, personnel, supplies, or other services directly related to oil spill containment, cleanup, or removal activities.

(2) A "rated OSRO" means an OSRO that has received a satisfactory rating from the administrator for a particular rating level established pursuant to Section 8670.30.

(3) "OSRO" does not include an owner or operator with an oil spill contingency plan approved by the administrator or an entity that only provides spill management services, or who provides services or equipment that are only ancillary to containment, cleanup, or removal activities.

(u) "Onshore facility" means a facility of any kind that is located entirely on lands not covered by marine waters.

(v) (1) "Owner" or "operator" means any of the following:

(A) In the case of a vessel, a person who owns, has an ownership interest in, operates, charters by demise, or leases, the vessel.

(B) In the case of a marine facility, a person who owns, has an ownership interest in, or operates the marine facility.

(C) Except as provided in subparagraph (D), in the case of a vessel or marine facility, where title or control was conveyed due to bankruptcy, foreclosure, tax delinquency, abandonment, or similar means to an entity of state or local government, a person who owned, held an ownership interest in, operated, or otherwise controlled activities concerning the vessel or marine facility immediately beforehand.

(D) An entity of the state or local government that acquired ownership or control of a vessel or marine facility, when the entity of the state or local government has caused or contributed to a spill or discharge of oil into marine waters.

(2) "Owner" or "operator" does not include a person who, without participating in the management of a vessel or marine facility, holds indicia of ownership primarily to protect the person's security interest in the vessel or marine facility.

(3) "Operator" does not include a person who owns the land underlying a marine facility or the facility itself if the person is not involved in the operations of the facility.

(w) "Person" means an individual, trust, firm, joint stock company, or corporation, including, but not limited to, a government corporation, partnership, and association. "Person" also includes a city, county, city and county, district, and the state or any department or agency thereof, and the federal government, or any department or agency thereof, to the extent permitted by law.

(x) "Pipeline" means a pipeline used at any time to transport oil.

(y) "Reasonable worst case spill" means, for the purposes of preparing contingency plans for a nontank vessel, the total volume of the largest fuel tank on the nontank vessel.

(z) "Responsible party" or "party responsible" means any of the following:

(1) The owner or transporter of oil or a person or entity accepting responsibility for the oil.

(2) The owner, operator, or lessee of, or a person that charters by demise, a vessel or marine facility, or a person or entity accepting responsibility for the vessel or marine facility.

(aa) "Small craft" means a vessel, other than a tank ship or tank barge, that is less than 20 meters in length.

(ab) "Small craft refueling dock" means a waterside operation that dispenses only nonpersistent oil in bulk and small amounts of persistent lubrication oil in containers primarily to small craft and meets both of the following criteria:

(1) Has tank storage capacity not exceeding 20,000 gallons in any single storage tank or tank compartment.

(2) Has total usable tank storage capacity not exceeding 75,000 gallons.

(ac) "Small marine fueling facility" means either of the following:

(1) A mobile transfer unit.

(2) A fixed facility that is not a marine terminal, that dispenses primarily nonpersistent oil, that may dispense small amounts of persistent oil, primarily to small craft, and that meets all of the following criteria:

(A) Has tank storage capacity greater than 20,000 gallons but not more than 40,000 gallons in any single storage tank or storage tank compartment.

(B) Has total usable tank storage capacity not exceeding 75,000 gallons.

(C) Had an annual throughput volume of over-the-water transfers of oil that did not exceed 3,000,000 gallons during the most recent preceding 12-month period.

(ad) "Spill" or "discharge" means a release of at least one barrel (42 gallons) of oil into marine waters that is not authorized by a federal, state, or local government entity.

(ae) "State Interagency Oil Spill Committee" means the committee established pursuant to Article 3.5 (commencing with Section 8574.1) of Chapter 7.

(af) "California oil spill contingency plan" means the California oil spill contingency plan prepared pursuant to Article 3.5 (commencing with Section 8574.1) of Chapter 7.

(ag) "Tank barge" means a vessel that carries oil in commercial quantities as cargo but is not equipped with a means of self-propulsion.

(ah) "Tank ship" means a self-propelled vessel that is constructed or adapted for the carriage of oil in bulk or in commercial quantities as cargo.

(ai) "Tank vessel" means a tank ship or tank barge.

(aj) "Vessel" means a watercraft or ship of any kind, including a structure adapted to be navigated from place to place for the transportation of merchandise or persons.

(ak) "Vessel carrying oil as secondary cargo" means a vessel that does not carry oil as a primary cargo, but does carry oil in bulk as cargo or cargo residue.

SEC. 5. Section 8670.25 of the Government Code is amended to read:

8670.25. (a) A person who, without regard to intent or negligence, causes or permits any oil to be discharged in or on the marine waters or inland waters of the state shall immediately contain, clean up, and remove the oil in the most effective manner that minimizes environmental damage and in accordance with the applicable contingency plans, unless ordered otherwise by the Coast Guard or the administrator.

(b) If there is a spill, an owner or operator shall comply with the applicable oil spill contingency plan approved by the administrator.

SEC. 6. Section 8670.37.5 of the Government Code is amended to read:

8670.37.5. (a) The administrator shall establish a network of rescue and rehabilitation stations for sea birds, sea otters, and other marine mammals. In addition to rehabilitative care, the primary focus of the Oiled Wildlife Care Network shall include proactive oiled wildlife search and collection rescue efforts. These facilities shall be established and maintained in a state of preparedness to provide the best achievable treatment for marine mammals and birds affected by an oil spill in marine waters. The administrator shall consider all feasible management alternatives for operation of the network.

(b) The first rescue and rehabilitation station established pursuant to this section shall be located within the sea otter range on the central coast. The administrator shall establish regional oiled wildlife rescue and rehabilitation facilities in the Los Angeles Harbor area, the San Francisco Bay area, the San Diego area, the Monterey Bay area, the Humboldt County area, and the Santa Barbara area, and may establish those facilities in other coastal areas of the state as the administrator determines to be necessary. One or more of the oiled wildlife rescue and rehabilitation stations shall be open to the public for educational purposes and shall be available for marine wildlife health research. Wherever

possible in the establishment of these facilities, the administrator shall improve existing authorized marine mammal rehabilitation facilities and may expand or take advantage of existing educational or scientific programs and institutions for oiled wildlife rehabilitation purposes. Expenditures shall be reviewed by the agencies and organizations specified in subdivision (c).

(c) The administrator shall consult with the United States Fish and Wildlife Service, the National Marine Fisheries Service, the California Coastal Commission, the Executive Director of the San Francisco Bay Conservation and Development Commission, the Marine Mammal Center, and the International Bird Rescue Center in the design, planning, construction, and operation of the rescue and rehabilitation stations. All proposals for the rescue and rehabilitation stations shall be presented before a public hearing prior to the construction and operation of any rehabilitation station, and, upon completion of the coastal protection element of the California oil spill contingency plan, shall be consistent with the coastal protection element.

(d) The administrator may enter into agreements with nonprofit organizations to establish and equip wildlife rescue and rehabilitation stations and to ensure that they are operated in a professional manner in keeping with the pertinent guidance documents issued by the Office of Spill Prevention and Response in the Department of Fish and Game. The implementation of the agreement shall not constitute a California public works project. The agreement shall be deemed a contract for wildlife rehabilitation as authorized by Section 8670.61.5.

(e) In the event of a spill, the responsible party may request that the administrator perform the rescue and rehabilitation of oiled wildlife required of the responsible party pursuant to this chapter if the responsible party and the administrator enter into an agreement for the reimbursement of the administrator's costs incurred in taking the requested action. If the administrator performs the rescue and rehabilitation of oiled wildlife, the administrator shall primarily utilize the network of rescue and rehabilitation stations established pursuant to subdivision (a), unless more immediate care is required. Any of those activities conducted pursuant to this section or Section 8670.56.5 or 8670.61.5 shall be performed under the direction of the administrator. This subdivision does not remove the responsible party from liability for the costs of, nor the responsibility for, the rescue and rehabilitation of oiled wildlife, as established by this chapter. This subdivision does not prohibit an owner or operator from retaining, in a contingency plan prepared pursuant to this article, wildlife rescue and rehabilitation services different from the rescue and rehabilitation stations established pursuant to this section.

(f) (1) The administrator shall appoint a rescue and rehabilitation advisory board to advise the administrator regarding operation of the network of rescue and rehabilitation stations established pursuant to subdivision (a), including the economic operation and maintenance of the network. For the purpose of assisting the administrator in determining what constitutes the best achievable treatment for oiled wildlife, the advisory board shall provide recommendations to the administrator on the care achieved by current standard treatment methods, new or alternative treatment methods, the costs of treatment methods, and any other information that the advisory board believes that the administrator might find useful in making that determination. The administrator shall consult with the advisory board in preparing the administrator's submission to the Legislature pursuant to subparagraph (A) of paragraph (2) of subdivision (*l*) of Section 8670.48. The administrator shall present the recommendations of the advisory board to the Oil Spill Technical Advisory Committee created pursuant to Article 8 (commencing with Section 8670.54), upon the request of the committee.

(2) The advisory board shall consist of a balance between representatives of the oil industry, wildlife rehabilitation organizations, and academia. One academic representative shall be from a veterinary school within this state. The United States Fish and Wildlife Service and the National Marine Fisheries Service shall be requested to participate as ex officio members.

(3) (A) The Legislature hereby finds and declares that since the administrator may rely on the expertise provided by the volunteer members of the advisory board and may be guided by their recommendations in making decisions that relate to the operation of the network of rescue and rehabilitation stations, those members should be entitled to the same immunity from liability that is provided other public employees.

(B) Members of the advisory board, while performing functions within the scope of advisory board duties, shall be entitled to the same rights and immunities granted public employees by Article 3 (commencing with Section 820) of Chapter 1 of Part 2 of Division 3.6 of Title 1. Those rights and immunities are deemed to have attached, and shall attach, as of the date of appointment of the member to the advisory board.

(g) The administrator shall ensure the state's ability to prevent the contamination of wildlife and to identify, collect, rescue, and treat oiled wildlife through all of the following:

(1) Providing for the recruitment and training of an adequate network of wildlife specialists and volunteers from Oiled Wildlife Care Network participant organizations who can be called into immediate action in the event of an oil spill to assist in the field with collection of live oiled

wildlife. The training shall include a process for certification of trained volunteers and renewal of certifications. The initial wildlife rescue training shall include field experience in species identification and appropriate field collection techniques for species at risk in different spills. In addition to training in wildlife rescue, the administrator shall provide for appropriate hazardous materials training for new volunteers and contract personnel, with refresher courses offered as necessary to allow for continual readiness of search and collection teams. The Office of Spill Prevention and Response in the Department of Fish and Game is not required to reimburse volunteers for time or travel associated with required wildlife rescue or hazardous materials training.

(2) Developing and implementing a plan for the provision of emergency equipment for wildlife rescue in strategic locations to facilitate ready deployment in the case of an oil spill. The administrator shall ensure that the equipment identified as necessary in his or her wildlife response plan is available and deployed in a timely manner to assist in providing the best achievable protection and collection efforts.

(3) Developing the capacity of the Oiled Wildlife Care Network to recruit and train an adequate field team for collection of live oiled wildlife, as specified in paragraph (1), by providing staffing for field operations, coordination, and volunteer outreach for the Oiled Wildlife Care Network. The duties of the field operations and volunteer outreach staff shall include recruitment and coordination of additional participation in the Oiled Wildlife Care Network by other existing organizations with experience and expertise in wildlife rescue and handling, including scientific organizations, educational institutions, public agencies, and nonprofit organizations dedicated to wildlife conservation, and recruitment, training, and supervision of volunteers from Oiled Wildlife Care Network participating organizations.

(4) Ensuring that qualified persons with experience and expertise in wildlife rescue are assigned to oversee and supervise wildlife recovery search and collection efforts, as specified in the administrator's wildlife response plan. The administrator shall provide for and ensure that all persons involved in field collection of oiled wildlife receive training in search and capture techniques and hazardous materials certification, as appropriate.

SEC. 7. Section 8670.40 of the Government Code is amended to read:

8670.40. (a) The State Board of Equalization shall collect a fee in an amount determined by the administrator to be sufficient to carry out the purposes set forth in subdivision (e), and a reasonable reserve for contingencies. The annual assessment may not exceed five cents ($0.05) per barrel of crude oil or petroleum products.

(b) (1) The oil spill prevention and administration fee shall be imposed upon a person owning crude oil at the time that crude oil is received at a marine terminal from within or outside the state, and upon a person who owns petroleum products at the time that those petroleum products are received at a marine terminal from outside this state. The fee shall be collected by the marine terminal operator from the owner of the crude oil or petroleum products based on each barrel of crude oil or petroleum products so received by means of a vessel operating in, through, or across the marine waters of the state. In addition, an operator of a pipeline shall pay the oil spill prevention and administration fee for each barrel of crude oil originating from a production facility in marine waters and transported in the state by means of a pipeline operating across, under, or through the marine waters of the state. The fees shall be remitted to the board by the terminal or pipeline operator on the 25th day of the month based upon the number of barrels of crude oil or petroleum products received at a marine terminal or transported by pipeline during the preceding month. A fee shall not be imposed pursuant to this section with respect to crude oil or petroleum products if the person who would be liable for that fee, or responsible for its collection, establishes that the fee has been collected by a terminal operator registered under this chapter or paid to the board with respect to the crude oil or petroleum product.

(2) An owner of crude oil or petroleum products is liable for the fee until it has been paid to the board, except that payment to a marine terminal operator registered under this chapter is sufficient to relieve the owner from further liability for the fee.

(3) On or before January 20, the administrator shall annually prepare a plan that projects revenues and expenses over three fiscal years, including the current year. Based on the plan, the administrator shall set the fee so that projected revenues, including any interest, are equivalent to expenses as reflected in the current Budget Act and in the proposed budget submitted by the Governor. In setting the fee, the administrator may allow for a surplus if the administrator finds that revenues will be exhausted during the period covered by the plan or that the surplus is necessary to cover possible contingencies.

(c) The moneys collected pursuant to subdivision (a) shall be deposited into the fund.

(d) The board shall collect the fee and adopt regulations for implementing the fee collection program.

(e) The fee described in this section shall be collected solely for all of the following purposes:

(1) To implement oil spill prevention programs through rules, regulations, leasing policies, guidelines, and inspections and to implement research into prevention and control technology.

(2) To carry out studies that may lead to improved oil spill prevention and response.

(3) To finance environmental and economic studies relating to the effects of oil spills.

(4) To reimburse the member agencies of the State Interagency Oil Spill Committee for costs arising from implementation of this chapter, Article 3.5 (commencing with Section 8574.1) of Chapter 7 of this code, and Division 7.8 (commencing with Section 8750) of the Public Resources Code.

(5) To implement, install, and maintain emergency programs, equipment, and facilities to respond to, contain, and clean up oil spills and to ensure that those operations will be carried out as intended.

(6) To respond to an imminent threat of a spill in accordance with the provisions of Section 8670.62 pertaining to threatened discharges. The cumulative amount of an expenditure for this purpose shall not exceed the amount of one hundred thousand dollars ($100,000) in a fiscal year unless the administrator receives the approval of the Director of Finance and notification is given to the Joint Legislative Budget Committee. Commencing with the 1993–94 fiscal year, and each fiscal year thereafter, it is the intent of the Legislature that the annual Budget Act contain an appropriation of one hundred thousand dollars ($100,000) from the fund for the purpose of allowing the administrator to respond to threatened oil spills.

(7) To reimburse the board for costs incurred to implement this chapter and to carry out Part 24 (commencing with Section 46001) of Division 2 of the Revenue and Taxation Code.

(8) To reimburse the costs incurred by the State Lands Commission in implementing the Oil Transfer and Transportation Emission and Risk Reduction Act of 2002 (Division 7.9 (commencing with Section 8780) of the Public Resources Code).

(9) To cover costs incurred by the Oiled Wildlife Care Network established by Section 8670.37.5 for training and field collection, and search and rescue activities, pursuant to subdivision (g) of Section 8670.37.5.

(f) The moneys deposited in the fund shall not be used for responding to an oil spill.

SEC. 7.5. Section 8670.40 of the Government Code is amended to read:

8670.40. (a) The State Board of Equalization shall collect a fee in an amount determined by the administrator to be sufficient to carry out

the purposes set forth in subdivision (e), and a reasonable reserve for contingencies. The annual assessment may not exceed eight cents ($0.08) per barrel of crude oil or petroleum products.

(b) (1) The oil spill prevention and administration fee shall be imposed upon a person owning crude oil at the time that crude oil is received at a marine terminal from within or outside the state, and upon a person who owns petroleum products at the time that those petroleum products are received at a marine terminal from outside this state. The fee shall be collected by the marine terminal operator from the owner of the crude oil or petroleum products based on each barrel of crude oil or petroleum products so received by means of a vessel operating in, through, or across the marine waters of the state. In addition, an operator of a pipeline shall pay the oil spill prevention and administration fee for each barrel of crude oil originating from a production facility in marine waters and transported in the state by means of a pipeline operating across, under, or through the marine waters of the state. The fees shall be remitted to the board by the terminal or pipeline operator on the 25th day of the month based upon the number of barrels of crude oil or petroleum products received at a marine terminal or transported by pipeline during the preceding month. A fee shall not be imposed pursuant to this section with respect to crude oil or petroleum products if the person who would be liable for that fee, or responsible for its collection, establishes that the fee has been collected by a terminal operator registered under this chapter or paid to the board with respect to the crude oil or petroleum product.

(2) An owner of crude oil or petroleum products is liable for the fee until it has been paid to the board, except that payment to a marine terminal operator registered under this chapter is sufficient to relieve the owner from further liability for the fee.

(3) On or before January 20, the administrator shall annually prepare a plan that projects revenues and expenses over three fiscal years, including the current year. Based on the plan, the administrator shall set the fee so that projected revenues, including interest, are equivalent to expenses as reflected in the current Budget Act and in the proposed budget submitted by the Governor. In setting the fee, the administrator may allow for a surplus if the administrator finds that revenues will be exhausted during the period covered by the plan or that the surplus is necessary to cover possible contingencies.

(c) The moneys collected pursuant to subdivision (a) shall be deposited into the fund.

(d) The board shall collect the fee and adopt regulations for implementing the fee collection program.

(e) The fee described in this section shall be collected solely for all of the following purposes:

(1) To implement oil spill prevention programs through rules, regulations, leasing policies, guidelines, and inspections and to implement research into prevention and control technology.

(2) To carry out studies that may lead to improved oil spill prevention and response.

(3) To finance environmental and economic studies relating to the effects of oil spills.

(4) To reimburse the member agencies of the State Interagency Oil Spill Committee for costs arising from implementation of this chapter, Article 3.5 (commencing with Section 8574.1) of Chapter 7 of this code, and Division 7.8 (commencing with Section 8750) of the Public Resources Code.

(5) To implement, install, and maintain emergency programs, equipment, and facilities to respond to, contain, and clean up oil spills and to ensure that those operations will be carried out as intended.

(6) To respond to an imminent threat of a spill in accordance with the provisions of Section 8670.62 pertaining to threatened discharges. The cumulative amount of an expenditure for this purpose shall not exceed the amount of one hundred thousand dollars ($100,000) in a fiscal year unless the administrator receives the approval of the Director of Finance and notification is given to the Joint Legislative Budget Committee. Commencing with the 1993–94 fiscal year, and each fiscal year thereafter, it is the intent of the Legislature that the annual Budget Act contain an appropriation of one hundred thousand dollars ($100,000) from the fund for the purpose of allowing the administrator to respond to threatened oil spills.

(7) To reimburse the board for costs incurred to implement this chapter and to carry out Part 24 (commencing with Section 46001) of Division 2 of the Revenue and Taxation Code.

(8) To reimburse the costs incurred by the State Lands Commission in implementing the Oil Transfer and Transportation Emission and Risk Reduction Act of 2002 (Division 7.9 (commencing with Section 8780) of the Public Resources Code).

(9) To cover costs incurred by the Oil Wildlife Care Network established by Section 8670.37.5 for training and field collection, and search and rescue activities, pursuant to subdivision (g) of Section 8670.37.5.

(f) The moneys deposited in the fund shall not be used for responding to an oil spill.

SEC. 8. Section 8670.48 of the Government Code is amended to read:

8670.48. (a) (1) A uniform oil spill response fee in an amount not exceeding twenty-five cents ($0.25) for each barrel of petroleum products, as set by the administrator pursuant to subdivision (f), shall be imposed upon a person who owns petroleum products at the time the petroleum products are received at a marine terminal within this state by means of a vessel from a point of origin outside this state. The fee shall be remitted to the State Board of Equalization by the terminal operator on the 25th day of each month based upon the number of barrels of petroleum products received during the preceding month.

(2) An owner of petroleum products is liable for the fee until it has been paid to the state, except that payment to a marine terminal operator registered under this chapter is sufficient to relieve the owner from further liability for the fee.

(b) An operator of a pipeline shall also pay a uniform oil spill response fee in an amount not exceeding twenty-five cents ($0.25) for each barrel of petroleum products, as set by the administrator pursuant to subdivision (f), transported into the state by means of a pipeline operating across, under, or through the marine waters of the state. The fee shall be paid on the 25th day of each month based upon the number of barrels of petroleum products so transported into the state during the preceding month.

(c) (1) An operator of a refinery shall pay a uniform oil spill response fee in an amount not exceeding twenty-five cents ($0.25) for each barrel of crude oil, as set by the administrator pursuant to subdivision (f), received at a refinery within the state. The fee shall be paid on the 25th day of each month based upon the number of barrels of crude oil so received during the preceding month.

(2) The fee shall not be imposed by a refiner, or a person or entity acting as an agent for a refiner, on crude oil produced by an independent crude oil producer as defined in paragraph (3). The board shall not identify a company as exempt from the fee requirements of this section if that company was reorganized, sold, or otherwise modified with the intent of circumventing the requirements of this section.

(3) For purposes of this chapter, "independent crude oil producer" means a person or entity producing crude oil within this state who does not refine crude oil into a product, and who does not possess or own a retail gasoline marketing facility.

(d) A marine terminal operator shall pay a uniform oil spill response fee in an amount not exceeding twenty-five cents ($0.25), in accordance with subdivision (g), for each barrel of crude oil, as set by the administrator pursuant to subdivision (f), that is transported from within this state by means of a marine vessel to a destination outside this state.

(e) An operator of a pipeline shall pay a uniform oil spill response fee in an amount not exceeding twenty-five cents ($0.25), in accordance with subdivision (g), for each barrel of crude oil, as set by the administrator pursuant to subdivision (f), transported out of the state by pipeline.

(f) (1) The fees required pursuant to this section shall be collected during any period for which the administrator determines that collection is necessary for any of the following reasons:

(A) The amount in the fund is less than or equal to 95 percent of the designated amount specified in subdivision (a) of Section 46012 of the Revenue and Taxation Code.

(B) Additional money is required to pay for the purposes specified in subdivision (k).

(C) The revenue is necessary to repay a draw on a financial security obtained by the Treasurer pursuant to subdivision (o) or borrowing by the Treasurer pursuant to Article 7.5 (commencing with Section 8670.53.1) including any principal, interest, premium, fees, charges, or costs of any kind incurred in connection with those borrowings or financial security.

(2) The administrator, in consultation with the State Board of Equalization, and with the approval of the Treasurer, may direct the State Board of Equalization to cease collecting the fee when the administrator determines that further collection of the fee is not necessary for the purposes specified in paragraph (1).

(3) The administrator, in consultation with the State Board of Equalization, shall set the amount of the oil spill response fees. The oil spill response fees shall be imposed on all feepayers in the same amount. The administrator shall not set the amount of the fee at less than twenty-five cents ($0.25) for each barrel of petroleum products or crude oil, unless the administrator finds that the assessment of a lesser fee will cause the fund to reach the designated amount specified in subdivision (a) of Section 46012 of the Revenue and Taxation Code within four months. The fee shall not be less than twenty-five cents ($0.25) for each barrel of petroleum products or crude oil if the administrator has drawn upon the financial security obtained by the Treasurer pursuant to subdivision (o) or if the Treasurer has borrowed money pursuant to Article 7.5 (commencing with Section 8670.53.1) and principal, interest, premium, fees, charges, or costs of any kind incurred in connection with those borrowings remain outstanding or unpaid, unless the Treasurer has certified to the administrator that the money in the fund is not necessary for the purposes specified in paragraph (1).

(g) The fees imposed by subdivisions (d) and (e) shall be imposed in any calendar year beginning the month following the month when the

total cumulative year-to-date barrels of crude oil transported outside the state by all feepayers by means of vessel or pipeline exceed 6 percent by volume of the total barrels of crude oil and petroleum products subject to oil spill response fees under subdivisions (a), (b), and (c) for the prior calendar year.

(h) For purposes of this chapter, "designated amount" means the amounts specified in Section 46012 of the Revenue and Taxation Code.

(i) The administrator, in consultation with the State Board of Equalization and with the approval of the Treasurer, shall authorize refunds of any money collected that is not necessary for the purposes specified in paragraph (1) of subdivision (f). The State Board of Equalization, as directed by the administrator, and in accordance with Section 46653 of the Revenue and Taxation Code, shall refund the excess amount of fees collected to each feepayer who paid the fee to the state, in proportion to the amount that each feepayer paid into the fund during the preceding 12 monthly reporting periods in which there was a fee due, including the month in which the fund exceeded the specified amount. If the total amount of money in the fund exceeds the amount specified in this subdivision by 10 percent or less, refunds need not be ordered by the administrator. This section does not require the refund of excess fees as provided in this subdivision more frequently than once each year.

(j) The State Board of Equalization shall collect the fee and adopt regulations implementing the fee collection program. All fees collected pursuant to this section shall be deposited in the Oil Spill Response Trust Fund.

(k) The fee described in this section shall be collected solely for any of the following purposes:

(1) To provide funds to cover promptly the costs of response, containment, and cleanup of oil spills into marine waters, including damage assessment costs, and wildlife rehabilitation as provided in Section 8670.61.5.

(2) To cover response and cleanup costs and other damages suffered by the state or other persons or entities from oil spills into marine waters, which cannot otherwise be compensated by responsible parties or the federal government.

(3) To pay claims for damages pursuant to Section 8670.51.

(4) To pay claims for damages, except for damages described in paragraph (7) of subdivision (h) of Section 8670.56.5, pursuant to Section 8670.51.1.

(5) To pay for the cost of obtaining financial security in the amount specified in subdivision (b) of Section 46012 of the Revenue and Taxation Code, as authorized by subdivision (o).

(6) To pay indemnity and related costs and expenses as authorized by Section 8670.56.6.

(7) To pay principal, interest, premium, if any, and fees, charges, and costs of any kind incurred in connection with moneys drawn by the administrator on the financial security obtained by the Treasurer pursuant to subdivision (o) or borrowed by the Treasurer pursuant to Article 7.5 (commencing with Section 8670.53.1).

(8) To pay for the costs of rescue, medical treatment, rehabilitation, and disposition of oiled wildlife, as incurred by the network of oiled wildlife rescue and rehabilitation stations created pursuant to Section 8670.37.5.

(*l*) (1) The interest that the state earns on the funds deposited into the Oil Spill Response Trust Fund shall be deposited in the fund and shall be used to maintain the fund at the designated amount specified in subdivision (a) of Section 46012 of the Revenue and Taxation Code. Interest earned until July 1, 1998, on funds deposited pursuant to subdivision (a) of Section 46012 of the Revenue and Taxation Code, as determined jointly by the Controller and the Director of Finance, shall be available upon appropriation by the Legislature in the Budget Act to establish, equip, operate, and maintain the network of rescue and rehabilitation stations for oiled wildlife as described in Section 8670.37.5 and to support technology development and research related to oiled wildlife care. Interest earned on the financial security portion of the fund, required to be accessible pursuant to subdivision (b) of Section 46012 of the Revenue and Taxation Code shall not be available for that purpose. If the amount in the fund exceeds that designated amount, the interest not needed to equip, operate, and maintain the network of rescue and rehabilitation stations, or for appropriate technology development and research regarding oiled wildlife care, shall be deposited into the Oil Spill Prevention and Administration Fund, and shall be available for the purposes authorized by Article 6 (commencing with Section 8670.38).

(2) (A) For each fiscal year, consistent with this article, the administrator shall submit, as a proposed appropriation in the Governor's Budget, an amount up to two million dollars ($2,000,000) of the interest earned on the funds deposited into the Oil Spill Response Trust Fund for the purpose of equipping, operating, and maintaining the network of oiled wildlife rescue and rehabilitation stations and proactive oiled wildlife search and collection rescue efforts established pursuant to Section 8670.37.5 and for support of technology development and research related to oiled wildlife care. The remaining interest, if any, shall be deposited into the Oil Spill Prevention and Administration Fund pursuant to paragraph (1).

(B) The administrator shall report to the Legislature not later than June 30, 2002, on the progress and effectiveness of the network of oiled wildlife rescue and rehabilitation stations established pursuant to Section 8670.37.5, and the adequacy of the Oil Spill Response Trust Fund to meet the purposes for which it was established.

(C) At the administrator's request, the funds made available pursuant to this paragraph may be directly appropriated to a suitable program for wildlife health and rehabilitation within a school of veterinary medicine within this state, provided that an agreement exists, consistent with this chapter, between the administrator and an appropriate representative of the program for carrying out that purpose. The administrator shall attempt to have an agreement in place at all times. The agreement shall ensure that the training of, and the care provided by, the program staff are at levels that are consistent with those standards generally accepted within the veterinary profession.

(D) The funds made available pursuant to this paragraph shall not be considered an offset to any other state funds appropriated to the program, the program's associated school of veterinary medicine, or the program's associated college or university, and the funds shall not be used for any other purpose. If an offset does occur or the funds are used for an unintended purpose, expenditure of any appropriation of funds pursuant to this paragraph may be terminated by the administrator and the administrator may request a reappropriation to accomplish the intended purpose. The administrator shall annually review and approve the proposed uses of any funds made available pursuant to this paragraph.

(m) The Legislature finds and declares that effective response to oil spills requires that the state have available sufficient funds in a response fund. The Legislature further finds and declares that maintenance of that fund is of utmost importance to the state and that the money in the fund shall be used solely for the purposes specified in subdivision (k).

(n) It is the intent of the Legislature, in enacting this section, that the fee shall not be imposed by a refiner, or a person or entity acting as an agent for a refiner, on crude oil produced by an independent crude oil producer.

(o) The Treasurer shall obtain financial security, in the designated amount specified in subdivision (b) of Section 46012 of the Revenue and Taxation Code, in a form which, in the event of an oil spill, may be drawn upon immediately by the administrator upon making the determinations required by paragraph (2) of subdivision (a) of Section 8670.49. The financial security may be obtained in any of the forms described in subdivision (b) of Section 8670.53.3, as determined by the Treasurer.

(p) This section does not limit the authority of the administrator to raise oil spill response fees pursuant to Section 8670.48.5.

SEC. 8.5. Section 8670.48 of the Government Code is amended to read:

8670.48. (a) (1) A uniform oil spill response fee in an amount not exceeding twenty-five cents ($0.25) for each barrel of petroleum products, as set by the administrator pursuant to subdivision (f), shall be imposed upon a person who owns petroleum products at the time the petroleum products are received at a marine terminal within this state by means of a vessel from a point of origin outside this state. The fee shall be remitted to the State Board of Equalization by the terminal operator on the 25th day of each month based upon the number of barrels of petroleum products received during the preceding month.

(2) An owner of petroleum products is liable for the fee until it has been paid to the state, except that payment to a marine terminal operator registered under this chapter is sufficient to relieve the owner from further liability for the fee.

(b) An operator of a pipeline shall also pay a uniform oil spill response fee in an amount not exceeding twenty-five cents ($0.25) for each barrel of petroleum products, as set by the administrator pursuant to subdivision (f), transported into the state by means of a pipeline operating across, under, or through the marine waters of the state. The fee shall be paid on the 25th day of each month based upon the number of barrels of petroleum products so transported into the state during the preceding month.

(c) (1) An operator of a refinery shall pay a uniform oil spill response fee in an amount not exceeding twenty-five cents ($0.25) for each barrel of crude oil, as set by the administrator pursuant to subdivision (f), received at a refinery within the state. The fee shall be paid on the 25th day of each month based upon the number of barrels of crude oil so received during the preceding month.

(2) The fee shall not be imposed by a refiner, or a person or entity acting as an agent for a refiner, on crude oil produced by an independent crude oil producer as defined in paragraph (3). The board shall not identify a company as exempt from the fee requirements of this section if that company was reorganized, sold, or otherwise modified with the intent of circumventing the requirements of this section.

(3) For purposes of this chapter, "independent crude oil producer" means a person or entity producing crude oil within this state who does not refine crude oil into a product, and who does not possess or own a retail gasoline marketing facility.

(d) A marine terminal operator shall pay a uniform oil spill response fee in an amount not exceeding twenty-five cents ($0.25), in accordance

with subdivision (g), for each barrel of crude oil, as set by the administrator pursuant to subdivision (f), that is transported from within this state by means of marine vessel to a destination outside this state.

(e) An operator of a pipeline shall pay a uniform oil spill response fee in an amount not exceeding twenty-five cents ($0.25), in accordance with subdivision (g), for each barrel of crude oil, as set by the administrator pursuant to subdivision (f), transported out of the state by pipeline.

(f) (1) The fees required pursuant to this section shall be collected during a period for which the administrator determines that collection is necessary for any of the following reasons:

(A) The amount in the fund is less than or equal to 95 percent of the designated amount specified in subdivision (a) of Section 46012 of the Revenue and Taxation Code.

(B) Additional money is required to pay for the purposes specified in subdivision (k).

(C) The revenue is necessary to repay a draw on a financial security obtained by the Treasurer pursuant to subdivision (o) or borrowing by the Treasurer pursuant to Article 7.5 (commencing with Section 8670.53.1) including any principal, interest, premium, fees, charges, or costs of any kind incurred in connection with those borrowings or financial security.

(2) The administrator, in consultation with the State Board of Equalization, and with the approval of the Treasurer, may direct the State Board of Equalization to cease collecting the fee when the administrator determines that further collection of the fee is not necessary for the purposes specified in paragraph (1).

(3) The administrator, in consultation with the State Board of Equalization, shall set the amount of the oil spill response fees. The oil spill response fees shall be imposed on all feepayers in the same amount. The administrator shall not set the amount of the fee at less than twenty-five cents ($0.25) for each barrel of petroleum products or crude oil, unless the administrator finds that the assessment of a lesser fee will cause the fund to reach the designated amount specified in subdivision (a) of Section 46012 of the Revenue and Taxation Code within four months. The fee shall not be less than twenty-five cents ($0.25) for each barrel of petroleum products or crude oil if the administrator has drawn upon the financial security obtained by the Treasurer pursuant to subdivision (o) or if the Treasurer has borrowed money pursuant to Article 7.5 (commencing with Section 8670.53.1) and principal, interest, premium, fees, charges, or costs of any kind incurred in connection with those borrowings remain outstanding or unpaid, unless the Treasurer

has certified to the administrator that the money in the fund is not necessary for the purposes specified in paragraph (1).

(g) The fees imposed by subdivisions (d) and (e) shall be imposed in any calendar year beginning the month following the month when the total cumulative year-to-date barrels of crude oil transported outside the state by all feepayers by means of vessel or pipeline exceed 6 percent by volume of the total barrels of crude oil and petroleum products subject to oil spill response fees under subdivisions (a), (b), and (c) for the prior calendar year.

(h) For purposes of this chapter, "designated amount" means the amounts specified in Section 46012 of the Revenue and Taxation Code.

(i) The administrator, in consultation with the State Board of Equalization and with the approval of the Treasurer, shall authorize refunds of any money collected that is not necessary for the purposes specified in paragraph (1) of subdivision (f). The State Board of Equalization, as directed by the administrator, and in accordance with Section 46653 of the Revenue and Taxation Code, shall refund the excess amount of fees collected to each feepayer who paid the fee to the state, in proportion to the amount that each feepayer paid into the fund during the preceding 12 monthly reporting periods in which there was a fee due, including the month in which the fund exceeded the specified amount. If the total amount of money in the fund exceeds the amount specified in this subdivision by 10 percent or less, refunds need not be ordered by the administrator. This section does not require the refund of excess fees as provided in this subdivision more frequently than once each year.

(j) The State Board of Equalization shall collect the fee and adopt regulations implementing the fee collection program. All fees collected pursuant to this section shall be deposited in the Oil Spill Response Trust Fund.

(k) The fee described in this section shall be collected solely for any of the following purposes:

(1) To provide funds to cover promptly the costs of response, containment, and cleanup of oil spills into marine waters, including damage assessment costs, and wildlife rehabilitation as provided in Section 8670.61.5.

(2) To cover response and cleanup costs and other damages suffered by the state or other persons or entities from oil spills into marine waters, which cannot otherwise be compensated by responsible parties or the federal government, including, but not limited to, an owner or operator, or rated OSRO, that is contracted, directed, or called upon by the administrator to provide response resources pursuant to Section 8670.11.

(3) To pay claims for damages pursuant to Section 8670.51.

(4) To pay claims for damages, except for damages described in paragraph (7) of subdivision (h) of Section 8670.56.5, pursuant to Section 8670.51.1.

(5) To pay for the cost of obtaining financial security in the amount specified in subdivision (b) of Section 46012 of the Revenue and Taxation Code, as authorized by subdivision (o).

(6) To pay indemnity and related costs and expenses as authorized by Section 8670.56.6.

(7) To pay principal, interest, premium, if any, and fees, charges, and costs of any kind incurred in connection with moneys drawn by the administrator on the financial security obtained by the Treasurer pursuant to subdivision (o) or borrowed by the Treasurer pursuant to Article 7.5 (commencing with Section 8670.53.1).

(8) To pay for the costs of rescue, medical treatment, rehabilitation, and disposition of oiled wildlife, as incurred by the network of oiled wildlife rescue and rehabilitation stations created pursuant to Section 8670.37.5.

(9) To pay for the costs to administer and award California Oil Spill Prevention and Cleanup Technology Grants pursuant to Section 8670.74.

(*l*) (1) The interest that the state earns on the funds deposited into the Oil Spill Response Trust Fund shall be deposited in the fund and shall be used to maintain the fund at the designated amount specified in subdivision (a) of Section 46012 of the Revenue and Taxation Code. Interest earned until July 1, 1998, on funds deposited pursuant to subdivision (a) of Section 46012 of the Revenue and Taxation Code, as determined jointly by the Controller and the Director of Finance, shall be available upon appropriation by the Legislature in the Budget Act to establish, equip, operate, and maintain the network of rescue and rehabilitation stations for oiled wildlife as described in Section 8670.37.5 and to support technology development and research related to oiled wildlife care. Interest earned on the financial security portion of the fund, required to be accessible pursuant to subdivision (b) of Section 46012 of the Revenue and Taxation Code shall not be available for that purpose. If the amount in the fund exceeds that designated amount, the interest not needed to equip, operate, and maintain the network of rescue and rehabilitation stations, or for appropriate technology development and research regarding oiled wildlife care, shall be deposited into the Oil Spill Prevention and Administration Fund, and shall be available for the purposes authorized by Article 6 (commencing with Section 8670.38).

(2) (A) For each fiscal year, consistent with this article, the administrator shall submit, as a proposed appropriation in the Governor's Budget, an amount up to two million dollars ($2,000,000) of the interest earned on the funds deposited into the Oil Spill Response Trust Fund

for the purpose of equipping, operating, and maintaining the network of oiled wildlife rescue and rehabilitation stations and proactive oiled wildlife search and collection rescue efforts established pursuant to Section 8670.37.5 and for support of technology development and research related to oiled wildlife care. The remaining interest, if any, shall be deposited into the Oil Spill Prevention and Administration Fund pursuant to paragraph (1).

(B) The administrator shall report to the Legislature not later than June 30, 2002, on the progress and effectiveness of the network of oiled wildlife rescue and rehabilitation stations established pursuant to Section 8670.37.5, and the adequacy of the Oil Spill Response Trust Fund to meet the purposes for which it was established.

(C) At the administrator's request, the funds made available pursuant to this paragraph may be directly appropriated to a suitable program for wildlife health and rehabilitation within a school of veterinary medicine within this state, provided that an agreement exists, consistent with this chapter, between the administrator and an appropriate representative of the program for carrying out that purpose. The administrator shall attempt to have an agreement in place at all times. The agreement shall ensure that the training of, and the care provided by, the program staff are at levels that are consistent with those standards generally accepted within the veterinary profession.

(D) The funds made available pursuant to this paragraph shall not be considered an offset to any other state funds appropriated to the program, the program's associated school of veterinary medicine, or the program's associated college or university, and the funds shall not be used for any other purpose. If an offset does occur or the funds are used for an unintended purpose, expenditure of any appropriation of funds pursuant to this paragraph may be terminated by the administrator and the administrator may request a reappropriation to accomplish the intended purpose. The administrator shall annually review and approve the proposed uses of any funds made available pursuant to this paragraph.

(m) The Legislature finds and declares that effective response to oil spills requires that the state have available sufficient funds in a response fund. The Legislature further finds and declares that maintenance of that fund is of utmost importance to the state and that the money in the fund shall be used solely for the purposes specified in subdivision (k).

(n) It is the intent of the Legislature, in enacting this section, that the fee shall not be imposed by a refiner, or a person or entity acting as an agent for a refiner, on crude oil produced by an independent crude oil producer.

(o) The Treasurer shall obtain financial security, in the designated amount specified in subdivision (b) of Section 46012 of the Revenue

and Taxation Code, in a form which, in the event of an oil spill, may be drawn upon immediately by the administrator upon making the determinations required by paragraph (2) of subdivision (a) of Section 8670.49. The financial security may be obtained in any of the forms described in subdivision (b) of Section 8670.53.3, as determined by the Treasurer.

(p) This section does not limit the authority of the administrator to raise oil spill response fees pursuant to Section 8670.48.5.

SEC. 9. Section 8670.56.5 of the Government Code is amended to read:

8670.56.5. (a) A responsible party, as defined in Section 8670.3, shall be absolutely liable without regard to fault for any damages incurred by any injured party that arise out of, or are caused by a spill or inland spill.

(b) A responsible person is not liable to an injured party under this section for any of the following:

(1) Damages, other than costs of removal incurred by the state or a local government, caused solely by any act of war, hostilities, civil war, or insurrection or by an unanticipated grave natural disaster or other act of God of an exceptional, inevitable, and irresistible character, which could not have been prevented or avoided by the exercise of due care or foresight.

(2) Damages caused solely by the negligence or intentional malfeasance of that injured party.

(3) Damages caused solely by the criminal act of a third party other than the defendant or an agent or employee of the defendant.

(4) Natural seepage not caused by a responsible party.

(5) Discharge or leaking of oil or natural gas from a private pleasure boat or vessel.

(6) Damages that arise out of, or are caused by, a discharge that is authorized by a state or federal permit.

(c) The defenses provided in subdivision (b) shall not be available to a responsible person who fails to comply with Sections 8670.25, 8670.25.5, 8670.27, and 8670.62.

(d) Upon motion and sufficient showing by a party deemed to be responsible under this section, the court shall join to the action any other party who may be responsible under this section.

(e) In determining whether a party is a responsible party under this section, the court shall consider the results of chemical or other scientific tests conducted to determine whether oil or other substances produced, discharged, or controlled by the defendant matches the oil or other substance that caused the damage to the injured party. The defendant shall have the burden of producing the results of tests of samples of the

substance that caused the injury and of substances for which the defendant is responsible, unless it is not possible to conduct the tests because of unavailability of samples to test or because the substance is not one for which reliable tests have been developed. At the request of a party, any other party shall provide samples of oil or other substances within its possession or control for testing.

(f) The court may award reasonable costs of the suit, attorneys' fees, and the costs of necessary expert witnesses to a prevailing plaintiff. The court may award reasonable costs of the suit and attorneys' fees to a prevailing defendant if the court finds that the plaintiff commenced or prosecuted the suit under this section in bad faith or solely for purposes of harassing the defendant.

(g) This section does not prohibit a person from bringing an action for damages caused by oil or by exploration, under any other provision or principle of law, including, but not limited to, common law. However, damages shall not be awarded pursuant to this section to an injured party for loss or injury for which the party is or has been awarded damages under any other provision or principle of law. Subdivision (b) does not create a defense not otherwise available regarding an action brought under any other provision or principle of law, including, but not limited to, common law.

(h) Damages for which responsible parties are liable under this section include the following:

(1) All costs of response, containment, cleanup, removal, and treatment, including, but not limited to, monitoring and administration costs incurred pursuant to the California oil spill contingency plan or actions taken pursuant to directions by the administrator.

(2) Injury to, or economic losses resulting from destruction of or injury to, real or personal property, which shall be recoverable by any claimant who has an ownership or leasehold interest in property.

(3) Injury to, destruction of or loss of, natural resources, including, but not limited to, the reasonable costs of rehabilitating wildlife, habitat, and other resources and the reasonable costs of assessing that injury, destruction, or loss, in an action brought by the state, a county, city, or district. Damages for the loss of natural resources may be determined by any reasonable method, including, but not limited to, determination according to the costs of restoring the lost resource.

(4) Loss of subsistence use of natural resources, which shall be recoverable by a claimant who so uses natural resources that have been injured, destroyed, or lost.

(5) Loss of taxes, royalties, rents, or net profit shares caused by the injury, destruction, loss, or impairment of use of real property, personal property, or natural resources.

(6) Loss of profits or impairment of earning capacity due to the injury, destruction, or loss of real property, personal property, or natural resources, which shall be recoverable by any claimant who derives at least 25 percent of his or her earnings from the activities that utilize the property or natural resources, or, if those activities are seasonal in nature, 25 percent of his or her earnings during the applicable season.

(7) Loss of use and enjoyment of natural resources, public beaches, and other public resources or facilities, in an action brought by the state, a county, city, or district.

(i) Except as provided in Section 1431.2 of the Civil Code, liability under this section shall be joint and several. However, this section does not bar a cause of action that a responsible party has or would have, by reason of subrogation or otherwise, against a person.

(j) This section does not apply to claims for damages for personal injury or wrongful death, and does not limit the right of a person to bring an action for personal injury or wrongful death under any provision or principle of law.

(k) Payments made by a responsible party to cover liabilities arising from a discharge of oil, whether under this division or any other provision of federal, state, or local law, shall not be charged against royalties, rents, or net profits owed to the United States, the state, or any other public entity.

(*l*) An action that a private or public individual or entity may have against a responsible party under this section may be brought directly by the individual or entity or by the state on behalf of the individual or entity. However, the state shall not pursue an action on behalf of a private individual or entity that requests the state not to pursue that action.

(m) For the purposes of this section, "vessels" means vessels as defined in Section 21 of the Harbors and Navigation Code.

SEC. 10. Section 8670.61.5 of the Government Code is amended to read:

8670.61.5. (a) For purposes of this chapter, "wildlife rehabilitation" means those actions that are necessary to fully mitigate for the damage caused to wildlife, fisheries, wildlife habitat, and fisheries habitat, including beaches, from a spill or inland spill.

(b) Responsible parties shall fully mitigate adverse impacts to wildlife, fisheries, wildlife habitat, and fisheries habitat. Full mitigation shall be provided by successfully carrying out environmental projects or funding restoration activities required by the administrator in carrying out projects complying with the requirements of this section. Responsible parties are also liable for the costs incurred by the administrator or other government agencies in carrying out this section.

(c) If any significant wildlife rehabilitation is necessary, the administrator may require the responsible party to prepare and submit a wildlife rehabilitation plan to the administrator. The plan shall describe the actions that will be implemented to fully meet the requirements of subdivision (b), describe contingency measures that will be carried out in the event that any of the plan actions are not fully successful, provide a reasonable implementation schedule, describe the monitoring and compliance program, and provide a financing plan. The administrator shall review and determine whether to approve the plan within 60 days of submittal. Before approving a plan, the administrator shall first find that the implementation of the plan will fully mitigate the adverse impacts to wildlife, fisheries, wildlife habitat, and fisheries habitat. If the habitat contains beaches that are or were used for recreational purposes, the Department of Parks and Recreation shall review the plan and provide comments to the administrator.

(d) The plan shall place first priority on avoiding and minimizing any adverse impacts. For impacts that do occur, the plan shall provide for full onsite restoration of the damaged resource to the extent feasible. To the extent that full onsite restoration is not feasible, the plan shall provide for offsite in-kind mitigation to the extent feasible. To the extent that adverse impacts still have not been fully mitigated, the plan shall provide for the enhancement of other similar resources to the extent necessary to meet the requirements of subdivision (b). In evaluating whether a wildlife rehabilitation plan is adequate, the administrator may use the habitat evaluation procedures established by the United States Fish and Wildlife Service or any other reasonable methods as determined by the Director of Fish and Game.

(e) The administrator shall prepare regulations to implement this section. The regulations shall include deadlines for the submittal of plans. In establishing the deadlines, the administrator shall consider circumstances such as the size of the spill and the time needed to assess damage and mitigation.

SEC. 11. Section 8670.63 of the Government Code is amended to read:

8670.63. (a) No provision of this chapter, or of Division 7.8 (commencing with Section 8750) of the Public Resources Code, or any ruling of the administrator, shall be construed to limit, abridge, or supersede the power of the Attorney General, at the request of the administrator, or upon his or her own motion, to bring an action in the name of the people of the State of California to enjoin any violation of this act, seek necessary remedial action by any person who violates any of the provisions of this act, or seek civil and criminal penalties against any person who violates any of the provisions of this act.

(b) The Attorney General, at the request of the administrator, shall undertake actions to enforce this chapter and to recover from an owner, operator, or responsible party for a release of oil into state waters all expenditures made from a particular fund. The resolution of any recovery actions pursuant to this subdivision shall be approved by the administrator.

SEC. 12. Section 8670.66 of the Government Code is amended to read:

8670.66. (a) Any person who intentionally or negligently does any of the following acts shall be subject to a civil penalty for a spill of not less than fifty thousand dollars ($50,000) or more than one million dollars ($1,000,000), or for an inland spill not to exceed fifty thousand dollars ($50,000), for each violation, and each day or partial day that a violation occurs is a separate violation:

(1) Except as provided in Section 8670.27, fails to follow the direction or orders of the administrator in connection with a spill or inland spill.

(2) Fails to notify the Coast Guard that a vessel is disabled within one hour of the disability and the vessel, while disabled, causes a spill that enters marine waters. For the purposes of this paragraph, "vessel" means a vessel, as defined in Section 21 of the Harbors and Navigation Code, of 300 gross registered tons or more.

(3) Is responsible for a spill or inland spill, unless the discharge is authorized by the United States, the state, or other agency with appropriate jurisdiction.

(4) Fails to begin cleanup, abatement, or removal of oil as required in Section 8670.25.

(b) Except as provided in subdivision (a), any person who intentionally or negligently violates any provision of this chapter, or Division 7.8 (commencing with Section 8750) of the Public Resources Code, or any permit, rule, regulation, standard, or requirement issued or adopted pursuant to those provisions, shall be liable for a civil penalty not to exceed two hundred fifty thousand dollars ($250,000) for each violation of a separate provision, or, for continuing violations, for each day that violation continues.

(c) No person shall be liable for a civil penalty imposed under this section and for a civil penalty imposed pursuant to Section 8670.67 for the same act or failure to act.

SEC. 13. Section 8670.67 of the Government Code is amended to read:

8670.67. (a) Any person who intentionally or negligently does any of the following acts shall be subject to an administrative civil penalty for a spill not to exceed two hundred thousand dollars ($200,000), or for an inland spill not to exceed fifty thousand dollars ($50,000), for each

violation as imposed by the administrator pursuant to Section 8670.68, and each day or partial day that a violation occurs is a separate violation:

(1) Except as provided in Section 8670.27, fails to follow the applicable contingency plans or the direction or orders of the administrator in connection with an oil spill.

(2) Fails to notify the Coast Guard that a vessel is disabled within one hour of the disability and the vessel, while disabled, causes a discharge that enters marine waters or inland waters. For the purposes of this paragraph, "vessel" means a vessel, as defined in Section 21 of the Harbors and Navigation Code, of 300 gross registered tons or more.

(3) Is responsible for a spill or inland spill, unless the discharge is authorized by the United States, the state, or other agency with appropriate jurisdiction.

(4) Fails to begin cleanup, abatement, or removal of spilled oil as required by Section 8670.25.

(b) Except as provided in subdivision (a), any person who intentionally or negligently violates any provision of this chapter, or Division 7.8 (commencing with Section 8750) of the Public Resources Code, or any permit, rule, regulation, standard, cease and desist order, or requirement issued or adopted pursuant to those provisions, shall be liable for an administrative civil penalty as imposed by the administrator pursuant to Section 8670.68, not to exceed one hundred thousand dollars ($100,000) for each violation of a separate provision, or, for continuing violations, for each day that violation continues.

(c) No person shall be liable for a civil penalty imposed under this section and for a civil penalty imposed pursuant to Section 8670.66 for the same act or failure to act.

SEC. 14. Section 8670.67.5 of the Government Code is amended to read:

8670.67.5. (a) Any person who without regard to intent or negligence causes or permits a spill or inland spill shall be strictly liable civilly in accordance with subdivision (b) or (c).

(b) A penalty may be administratively imposed by the administrator in accordance with Section 8670.68 in an amount not to exceed ten dollars ($10) per gallon of oil released for an inland spill, and in an amount not to exceed twenty dollars ($20) per gallon for a spill. The amount of the penalty shall be reduced for every gallon of released oil that is recovered and properly disposed of in accordance with applicable law.

(c) Whenever the release of oil resulted from gross negligence or reckless conduct, the administrator shall, in accordance with Section 8670.68, impose a penalty in the amount of thirty dollars ($30) per gallon of oil released for an inland spill, and in an amount not to exceed sixty

dollars ($60) for a spill. The amount of the penalty shall be reduced for every gallon of released oil that is recovered and properly disposed of in accordance with applicable law.

(d) The administrator shall adopt regulations governing the method for determining the amount of oil that is cleaned up.

SEC. 15. Section 8670.69.7 is added to the Government Code, to read:

8670.69.7. All penalties collected under this article for inland spills shall be deposited into the Fish and Wildlife Pollution Account in the Fish and Game Preservation Fund and be available for expenditure in accordance with Section 12017 of the Fish and Game Code.

SEC. 16. Section 4.5 of this bill incorporates amendments to Section 8670.3 of the Government Code proposed by both this bill and AB 2547. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2009, (2) each bill amends Section 8670.3 of the Government Code, and (3) this bill is enacted after AB 2547, in which case Section 4 of this bill shall not become operative.

SEC. 17. Section 7.5 of this bill incorporates amendments to Section 8670.40 of the Government Code proposed by both this bill and AB 2032. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2009, (2) each bill amends Section 8670.40 of the Government Code, and (3) this bill is enacted after AB 2032, in which case Section 7 of this bill shall not become operative.

SEC. 18. Section 8.5 of this bill incorporates amendments to Section 8670.48 of the Government Code proposed by both this bill and AB 2547. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2009, (2) each bill amends Section 8670.48 of the Government Code, and (3) this bill is enacted after AB 2547, in which case Section 8 of this bill shall not become operative.

CHAPTER 566

An act to amend Sections 8670.10, 8670.29, and 8670.30 of the Government Code, relating to oil spills.

[Approved by Governor September 29, 2008. Filed with Secretary of State September 29, 2008.]

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

SECTION 1. Section 8670.10 of the Government Code is amended to read:

8670.10. (a) (1) Except as provided in subdivision (b), in coordination with all appropriate federal, state, and local government entities, the administrator shall periodically carry out announced and unannounced drills to test response and cleanup operations, equipment, contingency plans, and procedures implemented under this chapter. If practical, the administrator shall coordinate drills with drills carried out by the State Lands Commission and the California Coastal Commission to test prevention operations, equipment, and procedures. In carrying out announced drills, the administrator shall coordinate with the private entities involved in the drill. Each state and local entity, each rated OSRO, and each operator shall cooperate with the administrator in carrying out these drills.

(2) The administrator shall establish performance standards that each operator and rated OSRO shall meet during the drills carried out pursuant to this subdivision. The standards shall include, but are not limited to, a standard for the time allowable for adequate response, and shall also specify conditions for canceling a drill because of hazardous or other operational circumstances that may exist. The standards shall specify the protections that the administrator determines are necessary for any environmentally sensitive area, as defined by the administrator.

(3) The costs incurred by an operator to comply with this section and regulations adopted pursuant to this section are the responsibility of the operator. All costs incurred by a local, state, or federal agency in conjunction with participation in a drill pursuant to this chapter shall be borne by each respective agency.

(4) After every drill attended by the administrator or his or her representative, that person shall issue a report that evaluates the performance of the participants.

(b) (1) If the administrator, the United States Coast Guard, or any other qualified public agency, as determined by the administrator, is unable to attend a drill of an oil spill contingency plan held outside the state, the administrator may require the owner or operator to provide for an independent drill monitor to evaluate the drill consistent with the requirements of this chapter. The administrator shall adopt regulations to implement this section on or before January 1, 2010.

(2) Within 14 days after the date that the drill specified in paragraph (1) is conducted, the independent drill monitor shall submit the evaluation specified in paragraph (1) to the administrator and owner or operator.

(3) Based on the evaluation submitted pursuant to paragraph (2) and any other applicable requirements of this chapter, the administrator shall determine whether the drill conducted pursuant to this subdivision satisfies the requirements of this chapter.

SEC. 2. Section 8670.29 of the Government Code is amended to read:

8670.29. (a) In accordance with the rules, regulations, and policies established by the administrator pursuant to Section 8670.28, an owner or operator of a marine facility, small marine fueling facility, or mobile transfer unit, prior to operating in the marine waters of the state or where an oil spill could impact marine waters; and an owner or operator of a tank vessel, nontank vessel, or vessel carrying oil as secondary cargo, before operating in the marine waters of the state, shall prepare and implement an oil spill contingency plan that has been submitted to, and approved by, the administrator pursuant to Section 8670.31. An oil spill contingency plan shall ensure the undertaking of prompt and adequate response and removal action in case of an oil spill, shall be consistent with the California oil spill contingency plan, and shall not conflict with the National Oil and Hazardous Substances Pollution Contingency Plan (NCP).

(b) An oil spill contingency plan shall, at a minimum, meet all of the following requirements:

(1) Be a written document, reviewed for feasibility and executability, and signed by the owner or operator, or their designee.

(2) Provide for the use of an incident command system to be used during a spill.

(3) Provide procedures for reporting oil spills to local, state, and federal agencies, and include a list of contacts to call in the event of a drill, threatened spill, or spill.

(4) Describe the communication plans to be used during a spill.

(5) Describe the strategies for the protection of environmentally sensitive areas.

(6) Identify at least one rated OSRO for each rating level established pursuant to Section 8670.30. Each identified rated OSRO shall be directly responsible by contract, agreement, or other approved means to provide oil spill response activities pursuant to the oil spill contingency plan. A rated OSRO may provide oil spill response activities individually, or in combination with another rated OSRO, for a particular owner or operator.

(7) Identify a qualified individual.

(8) Provide the name, address, and telephone and facsimile numbers for an agent for service of process, located within the state and designated to receive legal documents on behalf of the owner or operator.

(9) Provide for training and drills on elements of the plan at least annually, with all elements of the plan subject to a drill at least once every three years.

(c) An oil spill contingency plan for a vessel shall also include, but is not limited to, all of the following requirements:

(1) The plan shall be submitted to the administrator at least seven days prior to the vessel entering waters of the state.

(2) The plan shall provide evidence of compliance with the International Safety Management Code, established by the International Maritime Organization, as applicable.

(3) If the oil spill contingency plan is for a tank vessel, the plan shall include both of the following:

(A) The plan shall specify oil and petroleum cargo capacity.

(B) The plan shall specify the types of oil and petroleum cargo carried.

(4) If the oil spill contingency plan is for a nontank vessel, the plan shall include both of the following:

(A) The plan shall specify the type and total amount of fuel carried.

(B) The plan shall specify the capacity of the largest fuel tank.

(d) An oil spill contingency plan for a marine facility shall also include, but is not limited to, all of the following provisions:

(1) Provisions for site security and control.

(2) Provisions for emergency medical treatment and first aid.

(3) Provisions for safety training, as required by state and federal safety laws for all personnel likely to be engaged in oil spill response.

(4) Provisions detailing site layout and locations of environmentally sensitive areas requiring special protection.

(5) Provisions for vessels that are in the operational control of the facility for loading and unloading.

(e) The oil spill contingency plan shall be available to response personnel and to relevant state and federal agencies for inspection and review.

(f) The oil spill contingency plan shall be reviewed periodically and updated as necessary. All updates shall be submitted to the administrator pursuant to this article.

(g) In addition to the regulations adopted pursuant to Section 8670.28, the administrator shall adopt regulations and guidelines to implement this section. The regulations and guidelines shall provide for the best achievable protection of coastal and marine resources. The administrator may establish additional oil spill contingency plan requirements, including, but not limited to, requirements based on the different geographic regions of the state. All regulations and guidelines shall be developed in consultation with the State Interagency Oil Spill Committee and the Oil Spill Technical Advisory Committee.

SEC. 3. Section 8670.30 of the Government Code is amended to read:

8670.30. (a) An oil spill response organization may apply to the administrator for a rating of that OSRO's response capabilities. The administrator shall establish rating levels for classifying OSROs pursuant to subdivision (b).

(b) Upon receiving a completed application for rating, the administrator shall review the application and rate the OSRO based on the OSRO's satisfactory compliance with criteria established by the administrator, which shall include, but is not limited to, all of the following elements:

(1) The geographic region or regions of the state where the OSRO intends to operate.

(2) Timeframes for having response resources on-scene and deployed.

(3) The type of equipment that the OSRO will use and the location of the stored equipment.

(4) The volume of oil that the OSRO is capable of recovering and containing.

(c) The administrator shall not issue a rating until the applicant OSRO completes an unannounced drill. The administrator may call a drill for every distinct geographic area in which the OSRO requests a rating. The drill shall test the resources and response capabilities of the OSRO, including, but not limited to, on water containment and recovery, environmentally sensitive habitat protection, and storage. If an OSRO fails to successfully complete a drill, the administrator shall not issue the requested rating, but the administrator may rate the OSRO at a rating lesser than the rating sought with the application. If an OSRO is denied a requested rating, the OSRO may reapply for rating.

(d) A rating issued pursuant to this section shall be valid for three years unless modified, suspended, or revoked. The administrator shall review the rating of each rated OSRO at least once every three years. The administrator shall not renew a rating unless the OSRO meets criteria established by the administrator, including, at a minimum, that the rated OSRO periodically tests and drills itself, including testing protection of environmentally sensitive sites, during the three-year period.

(e) The administrator shall require a rated OSRO to demonstrate that the rated OSRO can deploy the response resources required to meet the applicable provisions of an oil spill contingency plan in which the OSRO is listed. These demonstrations may be achieved through inspections, announced and unannounced drills, or by any other means.

(f) (1) Except as provided in paragraph (6), each rated OSRO shall satisfactorily complete at least one unannounced drill every three years after receiving its rating.

(2) The administrator may modify, suspend, or revoke an OSRO's rating if a rated OSRO fails to satisfactorily complete a drill.

(3) The administrator may require the satisfactory completion of one unannounced drill of each rated OSRO prior to being granted a modified rating, and shall require satisfactory completion of one unannounced drill for each rated OSRO prior to being granted a renewal or prior to reinstatement of a revoked or suspended rating.

(4) A drill for the protection of environmentally sensitive areas shall conform as close as possible to the response that would occur during a spill but sensitive sites shall not be damaged during the drill.

(5) The response resources to be deployed by a rated OSRO within the first six hours of a spill or drill shall be dedicated response resources or be owned and controlled by a rated OSRO that are sufficient to meet the spill response planning requirements of the OSRO's client owner or operator. This requirement does not preclude a rated OSRO from bringing in additional response resources. The administrator may, by regulation, permit a lesser requirement for dedicated or OSRO owned and controlled response resources for shoreline protection.

(6) The administrator may determine that actual satisfactory spill response performance during the previous three years may be substituted in lieu of a drill.

(7) The administrator shall issue a written report evaluating the performance of the OSRO after every unannounced drill called by the administrator.

(8) The administrator shall determine whether an unannounced drill called upon an OSRO by a federal agency during the previous three years qualifies as an unannounced drill for the purposes of this subdivision.

(g) Each rated OSRO shall provide reasonable notice to the administrator about each future drill, and the administrator, or his or her designee, may attend the drill.

(h) The costs incurred by an OSRO to comply with this section and the regulations adopted pursuant to this section, including drills called by the administrator, shall be the responsibility of the OSRO. All local, state, and federal agency costs incurred in conjunction with participation in a drill shall be borne by each respective agency.

(i) (1) A rating awarded pursuant to this section is personal and applies only to the OSRO that receives that rating and the rating is not transferable, assignable, or assumable. A rating does not constitute a possessory interest in real or personal property.

(2) If there is a change in ownership or control of the OSRO, the rating of that OSRO is null and void and the OSRO shall file a new application for a rating pursuant to this section.

(3) For purposes of this subdivision, a "change in ownership or control" includes, but is not limited to, a change in corporate status, or a transfer of ownership that changes the majority control of voting within the entity.

(j) The administrator may charge a reasonable fee to process an application for, or renewal of, a rating.

(k) The administrator shall adopt regulations to implement this section as appropriate. At a minimum, the regulations shall appropriately address all of the following:

(1) Criteria for successful completion of a drill.

(2) The amount and type of response resources that are required to be available to respond to a particular volume of spilled oil during specific timeframes within a particular region.

(3) Regional requirements.

(4) Training.

(5) The process for applying for a rating, and for suspension, revocation, appeal, or other modification of a rating.

(6) Ownership and employment of response resources.

(7) Conditions for canceling a drill due to hazardous or other operational circumstances.

(*l*) Any letter of approval issued from the administrator before January 1, 2002, that rates an OSRO shall be deemed to meet the requirements of this section for three years from the date of the letter's issuance or until January 1, 2003, whichever date occurs later.

SEC. 3.5. Section 8670.30 of the Government Code is amended to read:

8670.30. (a) An oil spill response organization may apply to the administrator for a rating of that OSRO's response capabilities. The administrator shall establish rating levels for classifying OSROs pursuant to subdivision (b).

(b) Upon receiving a completed application for rating, the administrator shall review the application and rate the OSRO based on the OSRO's satisfactory compliance with criteria established by the administrator, which shall include, but is not limited to, all of the following elements:

(1) The geographic region or regions of the state where the OSRO intends to operate.

(2) Timeframes for having response resources on-scene and deployed.

(3) The type of equipment that the OSRO will use and the location of the stored equipment.

(4) The volume of oil that the OSRO is capable of recovering and containing.

(5) The dedicated response resources the OSRO controls in the area it intends to operate. For the purposes of this paragraph, "controls" means equipment owned by the OSRO and located in the area and personnel employed by the OSRO and located in the area.

(6) The capability of the OSRO to provide best achievable protection.

(c) The administrator shall not issue a rating until the applicant OSRO completes an unannounced drill. The administrator may call a drill for every distinct geographic area in which the OSRO requests a rating. The drill shall test the resources and response capabilities of the OSRO, including, but not limited to, on water containment and recovery, environmentally sensitive habitat protection, and storage. If an OSRO fails to successfully complete a drill, the administrator shall not issue the requested rating, but the administrator may rate the OSRO at a rating lesser than the rating sought with the application. If an OSRO is denied a requested rating, the OSRO may reapply for rating.

(d) A rating issued pursuant to this section shall be valid for three years unless modified, suspended, or revoked. The administrator shall review the rating of each rated OSRO at least once every three years. The administrator shall not renew a rating unless the OSRO meets criteria established by the administrator, including, at a minimum, that the rated OSRO periodically tests and drills itself, including testing protection of environmentally sensitive sites, during the three-year period.

(e) The administrator shall require a rated OSRO to demonstrate that the rated OSRO can deploy the response resources required to meet the applicable provisions of an oil spill contingency plan in which the OSRO is listed. These demonstrations may be achieved through inspections, announced and unannounced drills, or by any other means.

(f) (1) Except as provided in paragraph (6), each rated OSRO shall satisfactorily complete at least one unannounced drill every three years after receiving its rating.

(2) The administrator may modify, suspend, or revoke an OSRO's rating if a rated OSRO fails to satisfactorily complete a drill.

(3) The administrator shall require the satisfactory completion of one unannounced drill of each rated OSRO prior to being granted a modified rating, and shall require satisfactory completion of one unannounced drill for each rated OSRO prior to being granted a renewal or prior to the reinstatement of a revoked or suspended rating.

(4) A drill for the protection of environmentally sensitive areas shall conform as close as possible to the response that would occur during a spill but sensitive sites shall not be damaged during the drill.

(5) The response resources to be deployed by a rated OSRO within the first six hours of a spill or drill shall be dedicated response resources. This requirement does not preclude a rated OSRO from bringing in

additional response resources. The administrator may, by regulation, permit a lesser requirement for dedicated or OSRO owned and controlled response resources for shoreline protection.

(6) The administrator may determine that actual satisfactory spill response performance during the previous three years may be substituted in lieu of a drill.

(7) The administrator shall issue a written report evaluating the performance of the OSRO after every unannounced drill called by the administrator.

(8) The administrator shall determine whether an unannounced drill called upon an OSRO by a federal agency during the previous three years qualifies as an unannounced drill for the purposes of this subdivision.

(g) Each rated OSRO shall provide reasonable notice to the administrator about each future drill, and the administrator, or his or her designee, may attend the drill.

(h) The costs incurred by an OSRO to comply with this section and the regulations adopted pursuant to this section, including drills called by the administrator, shall be the responsibility of the OSRO. All local, state, and federal agency costs incurred in conjunction with participation in a drill shall be borne by each respective agency.

(i) (1) A rating awarded pursuant to this section is personal and applies only to the OSRO that receives that rating and the rating is not transferable, assignable, or assumable. A rating does not constitute a possessory interest in real or personal property.

(2) If there is a change in ownership or control of the OSRO, the rating of that OSRO is null and void and the OSRO shall file a new application for a rating pursuant to this section.

(3) For purposes of this subdivision, a "change in ownership or control" includes, but is not limited to, a change in corporate status, or a transfer of ownership that changes the majority control of voting within the entity.

(j) The administrator may charge a reasonable fee to process an application for, or renewal of, a rating.

(k) The administrator shall adopt regulations to implement this section as appropriate. At a minimum, the regulations shall appropriately address all of the following:

(1) The level of resources that constitute best achievable protection.

(2) Criteria for successful completion of a drill.

(3) The amount and type of response resources that are required to be available to respond to a particular volume of spilled oil during specific timeframes within a particular region.

(4) Regional requirements.

(5) Training.

(6) The process for applying for a rating, and for suspension, revocation, appeal, or other modification of a rating.

(7) Ownership and employment of response resources.

(8) Conditions for canceling a drill due to hazardous or other operational circumstances.

(*l*) A letter of approval issued from the administrator before January 1, 2002, that rates an OSRO shall be deemed to meet the requirements of this section for three years from the date of the letter's issuance or until January 1, 2003, whichever date occurs later.

SEC. 4. Section 3.5 of this bill incorporates amendments to Section 8670.30 of the Government Code proposed by both this bill and AB 2547. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2009, (2) each bill amends Section 8670.30 of the Government Code, and (3) this bill is enacted after AB 2547, in which case Section 3 of this bill shall not become operative.

CHAPTER 567

An act to amend Section 13975 of the Government Code, to amend Sections 1130, 1137, 1150, 1152, 1153, 1154, 1155, 1156, 1156.5, 1156.6, 1157, 1158, 1159, 1159.1, 1171.5, 1180.6, 1181, and 1182 of, and to add Sections 1117, 1157.1, 1157.2, 1157.3, 1157.4, 1159.5, 1195.1, 1195.3, 1196.1, and 1196.3 to, and to add and repeal Section 1159.4 of, the Harbors and Navigation Code, relating to pilot commissioners, and making an appropriation therefor.

[Approved by Governor September 29, 2008. Filed with Secretary of State September 29, 2008.]

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

SECTION 1. The Legislature finds and declares that providing transparency and accountability to the Board of Pilot Commissioners is in the public interest and it is the intent of the Legislature to enhance, preserve, and continue the state's commitment to state licensure of pilotage on the Bays of San Francisco, San Pablo, and Suisun in order to ensure safe navigation, promote commerce, and protect the environment.

SEC. 2. Section 13975 of the Government Code is amended to read:

13975. The Business and Transportation Agency in state government is hereby renamed the Business, Transportation and Housing Agency. The agency consists of the State Department of Alcoholic Beverage Control, the Department of the California Highway Patrol, the Department of Corporations, the Department of Housing and Community Development, the Department of Motor Vehicles, the Department of Real Estate, the Department of Transportation, the Department of Financial Institutions, the Department of Managed Health Care, and the Board of Pilot Commissioners for the Bays of San Francisco, San Pablo, and Suisun; and the California Housing Finance Agency is also located within the Business, Transportation and Housing Agency, as specified in Division 31 (commencing with Section 50000) of the Health and Safety Code.

SEC. 3. Section 1117 is added to the Harbors and Navigation Code, to read:

1117. "Commission investigator" means a person employed by or under contract with the board and assigned to investigate and report on a navigational incident involving a vessel piloted by a pilot or inland pilot licensed by the board, or other matter, incident, misconduct, suspected safety violation, or other activity reported to, or identified by, the board.

SEC. 4. Section 1130 of the Harbors and Navigation Code is amended to read:

1130. (a) A majority of all of the pilots licensed by the board shall appoint one pilot to act as port agent to carry out the orders of the board and other applicable laws, and to otherwise administer the affairs of the pilots. The appointment is subject to the confirmation of the board.

(b) The port agent shall be responsible for the general supervision and management of all matters related to the business and official duties of pilots licensed by the board.

(c) The port agent shall immediately notify the executive officer of the board of a suspected violation, navigational incident, misconduct, or other rules violation that is reported to him or her or to which he or she is a witness. The board shall adopt regulations for the manner and content of a notice provided pursuant to this section.

SEC. 5. Section 1137 of the Harbors and Navigation Code is amended to read:

1137. (a) The account required pursuant to Section 1136 shall show all of the following:

(1) The name of each vessel piloted.

(2) The name of the vessel's master.

(3) The name of each vessel for which pilotage has been charged or collected.

(4) The amount charged to or collected for each vessel.
(5) Any rebates made and allowed and for what amounts.
(6) Where the vessel is registered.
(7) The depth of each vessel's draft and its highest gross tonnage.
(8) Whether the vessel was inward or outward bound.

(b) The board shall record the accounts in full detail in a book prepared for that purpose. The account book is a public record.

SEC. 6. Section 1150 of the Harbors and Navigation Code is amended to read:

1150. (a) There is in the Business, Transportation and Housing Agency a Board of Pilot Commissioners for the Bays of San Francisco, San Pablo, and Suisun, consisting of seven members appointed by the Governor, with the consent of the Senate, as follows:

(1) Two members shall be pilots licensed pursuant to this division.

(2) Two members shall represent the industry and shall be persons currently engaged as owners, officers, directors, employees, or representatives of a firm or association of firms that is a substantial user of pilotage service in the Bay of San Francisco, San Pablo, Suisun, or Monterey, one of whom shall be engaged in the field of tanker company operations, and one of whom shall be engaged in dry cargo operations. The board of directors of a regional maritime trade association controlled by West Coast vessel operators that specifically represents the owners and operators of vessels or barges engaged in transportation by water of cargo or passengers from or to the Pacific area of the United States shall nominate, rank, and submit to the Governor the names of three persons for each category of industry member to be appointed.

(3) Three members shall be public members. Any person may serve as a public member unless otherwise prohibited by law, except that during his or her term of office or within the two years preceding his or her appointment, no public member appointed may have (A) any financial or proprietary interest in the ownership, operation, or management of tugs, cargo, or passenger vessels, (B) sailed under the authority of a federal or state pilot license in waters under the jurisdiction of the board, (C) been employed by a company that is a substantial user of pilot services, or (D) been a consultant or other person providing professional services who had received more than 20 percent in the aggregate of his or her income from a company that is a substantial user of pilot services or an association of companies that are substantial users of pilot services. Ownership of less than one-tenth of 1 percent of the stock of a publicly traded corporation is not a financial or proprietary interest in the ownership of tugs, cargo, or passenger vessels.

(4) Notwithstanding any other provision of law, this chapter does not prohibit the Governor from notifying the nominating authority identified

in paragraph (2) that persons nominated are unacceptable for appointment. Following that notification, the nominating authority shall submit a new list of nominees to the Governor, naming three persons, none of whom were previously nominated, from which the Governor may make the appointment. This process shall be continued until a person nominated by the nominating authority and satisfactory to the Governor has been appointed.

(b) Each of the members appointed pursuant to paragraphs (1) and (2) of subdivision (a) shall be appointed for a four-year term, and may not be appointed for more than two terms. Members appointed pursuant to paragraph (3) of subdivision (a) shall be appointed with staggered four-year terms with the initial four-year terms expiring on December 31 of the years 1988, 1990, and 1991, respectively, and a person may not be appointed for more than two terms. Vacancies on the board for both expired and unexpired terms shall be filled by the appointing power in the manner prescribed by subdivision (a).

(c) A quorum of the board members consists of four members. All actions of the board shall require the vote of four members, a quorum being present.

(d) The Secretary of the Business, Transportation and Housing Agency shall serve as an ex officio member of the board who, without vote, may exercise all other privileges of a member of the board.

SEC. 7. Section 1152 of the Harbors and Navigation Code is amended to read:

1152. (a) The public members of the board shall receive, as compensation for their services, the amount that the board may, from time to time, determine, which shall not exceed six hundred dollars ($600) each per month.

(b) The appointed members and employees of the board shall also be allowed necessary traveling and other verified expenses incurred by them in the performance of their duties.

SEC. 8. Section 1153 of the Harbors and Navigation Code is amended to read:

1153. (a) The board shall organize itself by electing a president, and shall provide offices in San Francisco or Alameda County, in which it shall meet once a month, and it may adjourn its regular meetings from time to time.

(b) Meetings of the board are subject to the Bagley-Keene Open Meeting Act (Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2 of the Government Code).

SEC. 9. Section 1154 of the Harbors and Navigation Code is amended to read:

1154. (a) The board is vested with all functions and duties relating to the administration of this division, except those functions and duties vested in the Secretary of Business, Transportation and Housing.

(b) The board's vested powers include the power to make and enforce rules and regulations that are reasonably necessary to carry out its provisions and to govern its actions. These rules and regulations shall be adopted in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

SEC. 10. Section 1155 of the Harbors and Navigation Code is amended to read:

1155. The president of the board may administer oaths in regard to any matter properly before it and he or she may issue subpoenas for witnesses in like cases. A witness disobeying the subpoena served on him or her shall incur a penalty of five hundred dollars ($500), for which judgment may be recovered by the board in a civil action. This section shall not apply to proceedings conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

SEC. 11. Section 1156 of the Harbors and Navigation Code is amended to read:

1156. (a) The board may appoint, fix the compensation of, and from time to time adjust the compensation of, an executive director who is exempt from the civil service laws, and other employees as may be necessary. The executive director shall be well qualified for the position, with experience in government. The executive director may perform all duties, exercise all powers, discharge all responsibilities, and administer and enforce all laws, rules, and regulations under the jurisdiction of the board, with the approval of the board, including, but not limited to, all of the following:

(1) The administration of personnel employed by the board in accordance with the civil service laws.

(2) To serve as treasurer of the board and keep, maintain, and provide the board with all statements of accounts, records of receipts, and disbursements of the board in accordance with the law.

(3) The issuance and countersigning of licenses that shall also be signed by the president of the board.

(4) The administration of matters and the maintenance of files pertaining to action taken against licenses issued by the board.

(5) The administration of investigations of, and reporting on, a navigational incident or other matter for which a license issued by the board may be revoked or suspended.

(6) To work with board members, staff, and other interested stakeholders to recommend improvements in the pilot training program.

(7) Under the direction of the board, to coordinate with other state and federal agencies charged with protecting the environment and with the oil and hazardous chemical shipping industry.

(8) Any other function, task, or duty as may reasonably be assigned by the president of the board, including, but not limited to, performing research and obtaining documents and other evidence for board activities, including rate hearings.

(b) The Governor shall appoint one assistant director to serve at the pleasure of the Governor. The assistant director shall have the duties as assigned by the executive director, and shall be responsible to the executive director for the performance of his or her duties.

(c) The board may employ personnel necessary to carry out the purposes of this chapter. All personnel shall be appointed pursuant to the State Civil Service Act (Part 1 (commencing with Section 18000) of Division 5 of Title 2 of the Government Code), except for the executive director and the assistant director, who shall be exempt from state civil service. The board may fix the compensation of, and from time to time adjust the compensation of, any employees as may be necessary.

(d) All personnel of the board shall be appointed, directed, and controlled by the board, the executive director, or the board's authorized deputies or agents to whom it may delegate its powers.

(e) The board may contract and employ commission investigators. The board shall adopt regulations for the minimum standards for a commission investigator that shall include, but are not limited to, a basic knowledge of investigative techniques and maritime issues.

SEC. 11.5 Section 1156.5 of the Harbors and Navigation Code is amended to read:

1156.5. (a) The executive director shall serve at the pleasure of the board and shall be under the direct supervision of the board. The term of office to which the executive director is appointed is five years.

(b) The Secretary of Business, Transportation and Housing, or his or her designee, shall act as the executive director during the absence from the state or other temporary absence, disability, or unavailability of the executive director, or during a vacancy in that position.

SEC. 12. Section 1156.6 of the Harbors and Navigation Code is amended to read:

1156.6. (a) Whenever suspected safety standard violations concerning pilot hoists, pilot ladders, or the proper rigging of pilot hoists or pilot ladders are reported to the board, the executive director shall assign a commission investigator to personally inspect the equipment for its compliance with the relevant safety standards promulgated by the United States Coast Guard and the International Maritime Organization. The

commission investigator shall report preliminary conclusions, including an assessment of the equipment's compliance with the relevant safety standards, to the executive director as soon as possible. If, in the preliminary report, the equipment is found to be in violation, or in likely violation in the opinion of the commission investigator, of the relevant safety standards, the executive director shall immediately alert the Coast Guard Marine Safety Office. The commission investigator shall submit a written report to the incident review committee as established by subdivision (a) of Section 1180.3 that shall remain confidential until reported to the board. The incident review committee, in turn, shall report its findings and recommendations, if any, to the board. The board shall receive the incident review committee's findings, which may include other reports, information, or statements from interested parties. The board shall specify, by regulation, the information that shall be contained in the report.

(b) This section applies to the pilotage grounds, as defined in Section 1114.5. Whenever a vessel passes outside of the pilotage grounds, the commission investigator's report shall include that fact along with a description of the incident.

(c) The record of the investigation and the board's findings and recommendations, if any, shall be a public record maintained by the board.

SEC. 13. Section 1157 of the Harbors and Navigation Code is amended to read:

1157. The board shall keep a written record of all the board's proceedings and acts.

(a) The board shall also keep a complete record of each pilot appointed and licensed by the board that includes at a minimum, his or her current mailing address, residence, the date of the initial issuance and renewal of the license, the date of completion for initial and any subsequent training, and a record of any reports of meritorious activities, commendation, misconduct, safety violations, or other incidents or information related or relevant to the issuance and use of his or her pilot license.

(b) All pilots or inland pilots licensed by the board shall provide the board with written notice of any change of name, mailing address, or residence within 30 days of that change in a manner prescribed by the board.

SEC. 14. Section 1157.1 is added to the Harbors and Navigation Code, to read:

1157.1. (a) Except as provided in Section 1157.4, all records of the board relating to the personal information of a pilot, collected pursuant

to subdivision (b) of Section 1157, are confidential and shall not be open to public inspection.

(b) For purposes of this section, "personal information" means information, other than the name and mailing address, that identifies an individual, including an individual's photograph, social security number, address, telephone number, and medical or disability information, but does not include other information related to licensing such as incidents, rules or safety violations, misconduct, training records, commendations, and license status.

SEC. 15. Section 1157.2 is added to the Harbors and Navigation Code, to read:

1157.2. The board shall establish procedures for access to confidential or restricted information from its records to protect the confidentiality of its employees and licensees. If confidential or restricted information is released to an agent of a person authorized to obtain information, the person shall require the agent to take all steps necessary to ensure confidentiality and prevent the release of information to a third party. An agent shall not obtain or use confidential or restricted records for any purpose other than the reason the information was requested.

SEC. 16. Section 1157.3 is added to the Harbors and Navigation Code, to read:

1157.3. A member of the board, the executive director, the assistant director, or an employee of the board who willfully discloses confidential information from the board record to a person not authorized to receive it shall be liable for a civil penalty not to exceed two thousand five hundred dollars ($2,500) for each violation, which may be assessed and recovered in a civil action.

SEC. 17. Section 1157.4 is added to the Harbors and Navigation Code, to read:

1157.4. Upon a request to the board by a federal, state, or local law enforcement agency, the executive director shall make available to the requesting agency any information contained in the board's records.

SEC. 18. Section 1158 of the Harbors and Navigation Code is amended to read:

1158. The public members, the executive director, the assistant director, and employees of the board shall not engage in an employment, activity, or enterprise that is clearly inconsistent, incompatible, in conflict with, or inimical to his or her duties as a state officer or employee or make, participate in making, or attempt to use his or her official position to in any way influence a governmental decision in which he or she knows or has reason to know that he or she, or any member of his or her immediate family, has a financial interest.

SEC. 19. Section 1159 of the Harbors and Navigation Code is amended to read:

1159. (a) All moneys received by the board pursuant to the provisions of any law shall be accounted for at the close of each month to the Controller in the form that the Controller may prescribe and, at the same time on the order of the Controller, all these moneys shall be paid into the State Treasury to the credit of the Board of Pilot Commissioners' Special Fund.

(b) Notwithstanding Section 13340 of the Government Code, the moneys deposited in the State Treasury to the credit of the Board of Pilot Commissioners' Special Fund are appropriated without regard to fiscal years for the payment of the compensation and expenses of the board and its officers and employees.

SEC. 20. Section 1159.1 of the Harbors and Navigation Code, as added by Section 9 of Chapter 1423 of the Statutes of 1990, is amended to read:

1159.1. (a) The vessel shall pay a board operations surcharge, the purpose of which is to fully compensate the board and the Business, Transportation and Housing Agency for the official services, staff services, and incidental expenses of the board and agency. The amount of the surcharge shall be 7.5 percent of all pilotage fees charged by pilots and inland pilots, pursuant to Sections 1190 and 1191 unless the board establishes, with the approval of the Department of Finance, a lesser percentage, not to exceed any percentage consistent with subdivision (d).

(b) The surcharge shall be billed and collected by the pilots and inland pilots. The pilots and inland pilots shall pay all surcharges collected by them to the board monthly or at such later time as the board may direct.

(c) The board shall quarterly review its ongoing and anticipated expenses and adjust the surcharge to reflect any changes which have occurred since the last adjustment.

(d) The board operations surcharge shall not represent a percentage significantly more than that required to support the board and any costs of the Business, Transportation and Housing Agency related to the administration of the board pursuant to subdivision (a) in addition to the maintenance of a reasonable reserve.

SEC. 21. Section 1159.4 is added to the Harbors and Navigation Code, to read:

1159.4. (a) The Bureau of State Audits by January 1, 2010, shall complete a comprehensive performance audit of the Board of Pilot Commissioners, and by December 1, 2009, shall complete a comprehensive financial audit of the Board of Pilot Commissioners

pursuant to Chapter 6.5 (commencing with Section 8543) of Division 1 of Title 2 of the Government Code.

(b) (1) The actual costs incurred by the Bureau of State Audits in conducting the audits required pursuant to this section shall be paid out of the operations surcharge collected pursuant to Section 1159.1.

(2) The Bureau of State Audits shall apprise the board of the estimated costs of each of the two audits prior to initiating each audit.

(3) Notwithstanding subdivision (d) of Section 1159.1, the board shall make surcharge adjustments pursuant to subdivision (c) of Section 1159.1, as necessary, to comply with this section. The actual costs incurred in conducting audits required by this section shall be considered official services and shall include the staff services and incidental expenses of both the board and the bureau.

(4) The board shall reimburse the Bureau of State Audits for the actual costs incurred in conducting the audits required by this section. Reimbursement shall be made upon a demonstration by the bureau that any costs incurred in conducting the audits were not otherwise covered by an appropriation made by the Legislature for this purpose. If needed, these costs may be reimbursed through an interagency agreement between the board and the Bureau of State Audits.

(c) 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. 22. Section 1159.5 is added to the Harbors and Navigation Code, to read:

1159.5. The Business, Transportation and Housing Agency shall provide comments and recommendations, if any, to the board and the Legislature based on the final audits of the Bureau of State Audits completed pursuant to Section 1159.4 no later than six months from the date that the agency receives the final audit.

SEC. 23. Section 1171.5 of the Harbors and Navigation Code is amended to read:

1171.5. (a) The board shall adopt, by regulation, licensing standards that equal or exceed standards for obtaining federal endorsements and that conform with and support the state policy specified in Sections 1100 and 1101.

(b) The board shall adopt reasonable rules and regulations that require pilots to be qualified to perform all pilot duties.

(c) The board shall adopt, by regulation, training standards and a training program for pilots, inland pilots, and pilot trainees. In the case of pilot trainees, the training program shall be for a minimum of one year and a maximum of three years. In the case of pilots and inland pilots, the board shall specify the type, nature, duration, and frequency

of the training required and the identity of the pilots or inland pilots who are required to undergo training in the next 12-month period. Pursuant to Section 1182, the license of a pilot or inland pilot may be revoked or suspended if he or she fails to complete the training required by this subdivision during the period specified. The board shall also require that an evaluation of the pilot's or inland pilot's performance be prepared by the institution selected by the board to provide pilot training, and the institution shall provide copies of the evaluation to the pilot or inland pilot and to the pilot evaluation committee.

(d) The board shall adopt, by regulation, the qualifications, standards, and rating criteria for admission of pilot trainees to the training program. Notwithstanding subdivision (f), the board shall administer and conduct the pilot trainee admission selection in accordance with the regulations for admission.

(e) The board shall establish a pilot evaluation committee consisting of five active pilots who each have at least 10 years' experience as a pilot on the Bays of San Francisco, San Pablo, and Suisun. The board shall select the members of the pilot evaluation committee. A member may not serve for more than two four-year terms, except that two of the initial members appointed to the pilot evaluation committee shall serve terms of two years.

(f) The pilot evaluation committee shall conduct and supervise the pilot training programs pursuant to the direction and regulation of the board and consistent with the intent of this division.

(g) The board shall issue a certificate of completion to each pilot trainee who satisfactorily completes the training program. The board shall not issue a pilot's license to any person who does not receive a certificate of completion of the training program from the board, although the board may refuse to issue a pilot license to a pilot trainee who has received this certificate.

(h) The training and continuing education programs for pilots, inland pilots, and pilot trainees shall be funded from revenues collected for these purposes as determined by the board pursuant to Sections 1195 and 1196 and deposited into the Board of Pilot Commissioners' Special Fund pursuant to Section 1159.

SEC. 24. Section 1180.6 of the Harbors and Navigation Code is amended to read:

1180.6. (a) The board, after full consideration of the evidence, report, and recommendations presented by the incident review committee relating to an incident, misconduct, or other matter pursuant to Section 1180.3, shall take one or more of the following actions:

(1) Serve an accusation for suspension or revocation of the pilot's or inland pilot's license on the pilot or inland pilot, as provided in Chapter

5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, pursuant to Sections 1181 and 1182.

(2) Enter into a written stipulation for corrective action to be performed by the pilot or inland pilot, which may include, but is not limited to, further training or supervised practice trips.

(3) Provide counseling for the pilot or inland pilot relating to the duties and obligations of a pilot.

(4) Issue a warning letter of reprimand to the pilot or inland pilot.

(5) Take any other action, as provided in the guidelines adopted pursuant to subdivision (e).

(6) Close the investigation without further action.

(7) Remand the matter to the incident review committee for further investigation.

(b) Action required pursuant to subdivision (a) shall be taken by a majority vote of the board.

(c) A member of the board shall not sit on the board as a trier of fact for those cases in which he or she has served on the incident review committee recommending action to the board.

(d) The executive director shall note any action taken by the board pursuant to this section in a pilot's or inland pilot's record and shall establish a suspense file to ensure that all training, practice trips, or other corrective action required to be performed pursuant to subdivision (a) by the pilot or inland pilot are completed as required. The executive director shall report to the board each month on the progress of any training, supervised practice trips, or other corrective action or the completion of any other action required pursuant to subdivision (a).

(e) The executive director shall notify the board of a pilot or inland pilot who fails, or refuses, to complete training, practice trips, or other corrective action imposed by the board pursuant to subdivision (a). If the board determines that the pilot or inland pilot has intentionally failed to complete training, practice trips, or other corrective action, the board may take additional action as specified in subdivision (a).

(f) The board shall adopt guidelines for the determination by the incident review committee of the action to be taken pursuant to subdivision (a) at the completion of an investigation conducted pursuant to Section 1180.3.

SEC. 25. Section 1181 of the Harbors and Navigation Code is amended to read:

1181. The license of a pilot or inland pilot may be revoked or suspended before its expiration only for reasons of misconduct, which shall include, but not be limited to, the following:

(a) Neglect, for 30 days after it becomes due, to render an account to the board of all money received for pilotage.

(b) Neglect, for 30 days after it becomes due, to pay over to the board the percentage of all pilotage money received, as set by the board.

(c) Rendering to the board a false account of pilotage received.

(d) Absence from duty for more than one month at any one time without leave granted by the board, unless sickness or personal injury causes the absence. This subdivision does not apply to inland pilots.

(e) Refusing to exhibit the pilot or inland pilot license when requested to do so by the master of any vessel boarded.

(f) Intoxication or being under the influence of any substance or combination of substances that so affects the nervous system, brain, or muscles as to impair, to an appreciable degree, the ability to conduct the duties of a pilot or inland pilot while on duty.

(g) Negligently, ignorantly, or willfully running a vessel on shore, or otherwise rendering it liable to damage, or otherwise causing injury to persons or damage to property. However, this subdivision does not apply to a vessel of less than 300 gross tons unless a pilot or inland pilot is required by law.

(h) Willful violation of the rules and regulations adopted by the board for the government of pilots or inland pilots.

(i) Inability to comply with the standards of health or physical condition requisite to the duties of a pilot or inland pilot, but in that case the burden of proving compliance with these standards is upon the licensee, unless prior to the hearing the licensee takes and passes those tests or examinations required by the board.

(j) Failure or refusal, to complete training, practice trips, or other corrective action imposed on that pilot or inland pilot by the board pursuant to Section 1180.6.

SEC. 26. Section 1182 of the Harbors and Navigation Code is amended to read:

1182. If, after a hearing, the board finds that the pilot or inland pilot is guilty of misconduct sufficient for deprivation of the license, the board shall revoke or suspend the license of the pilot or inland pilot. The order shall be entered in the minutes and placed in the record of the pilot maintained pursuant to Section 1157. The proceedings shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the board shall have all the powers granted pursuant to that chapter.

SEC. 27. Section 1195.1 is added to the Harbors and Navigation Code, to read:

1195.1. (a) The moneys charged and collected each month from the pilot trainee surcharge pursuant to Section 1195 shall be paid to the Board of Pilot Commissioners' Special Fund pursuant to Section 1159.

The moneys shall be used only to fund the pilot trainee training program referred to in subdivision (h) of Section 1171.5 and Section 1195.3.

(b) Information regarding moneys remitted to the Board of Pilot Commissioners' Special Fund pursuant to Section 1159 collected from the surcharge authorized pursuant to Section 1195, or otherwise collected by the board for that purpose, and information regarding moneys spent as pilot trainee training program expenses authorized by Section 1195.3 shall be made available to the public upon request and to the board or its finance committee.

SEC. 28. Section 1195.3 is added to the Harbors and Navigation Code, to read:

1195.3. Expenses of the pilot trainee program shall include all costs incurred by the board in the operation and administration of the pilot trainee training program and all costs resulting from any contracts entered into for the purchase or lease of goods and services required by the board, including, but not limited to, the costs of testing, test preparation, advertising and soliciting for trainee applicants, trainee stipends, worker's compensation insurance premiums, reimbursement of costs of services provided to the board by other governmental entities, and for the costs for any other goods and services necessary for effectuating the purposes of training as determined by the board.

SEC. 29. Section 1196.1 is added to the Harbors and Navigation Code, to read:

1196.1. (a) The moneys charged and collected each month from the pilot and inland pilot continuing education surcharge pursuant to Section 1196 shall be paid to the Board of Pilot Commissioners' Special Fund pursuant to Section 1159. The moneys shall be used only to fund the pilot and inland pilot continuing education program referred to in subdivision (h) of Section 1171.5 and Section 1196.3.

(b) Information regarding moneys remitted to the Board of Pilot Commissioners' Special Fund pursuant to Section 1159 collected from the surcharge authorized pursuant to Section 1196, or otherwise collected by the board for that purpose, and information regarding moneys spent as pilot and inland pilot continuing education expenses authorized by Section 1196.3 shall be made available to the public upon request and to the board or its finance committee.

SEC. 30. Section 1196.3 is added to the Harbors and Navigation Code, to read:

1196.3. Pilot and inland pilot continuing education expenses shall include all costs incurred by the board in the operation and administration of the pilot and inland pilot continuing education program and all costs resulting from any contracts entered into for the purchase or lease of goods and services required by the board, including, but not limited to,

the reimbursement of costs of services provided to the board by other governmental entities, and for the costs for any other goods and services necessary for effectuating the purposes of continuing education as determined by the board.

SEC. 31. The sum of three hundred fifty thousand dollars ($350,000) is hereby appropriated from the operations surcharge collected pursuant to Section 1159.1 of the Harbors and Navigation Code to the Bureau of State Audits for the purpose of reimbursing the bureau for conducting the audits required pursuant to subdivision (a) of Section 1159.4 of the Harbors and Navigation Code.

CHAPTER 568

An act to add Section 1157.5 to, and to repeal and add Section 1176 of, the Harbors and Navigation Code, relating to vessels, and making an appropriation therefor.

[Approved by Governor September 29, 2008. Filed with Secretary of State September 29, 2008.]

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

SECTION 1. Section 1157.5 is added to the Harbors and Navigation Code, to read:

1157.5. On or before April 15, 2010, and annually thereafter, the board shall submit to the Secretary of the Senate and the Chief Clerk of the Assembly a report describing the board's activities for the preceding calendar year. The report shall include, but not be limited to, all of the following:

(a) The number of vessel movements across the bar, on the bays, and on the rivers within the board's jurisdiction.

(b) The name of each licensed pilot, inland pilot, and pilot trainee, and the status of each person. If a person has had more than one status during the reporting year, each status and the length of time in that status shall be indicated. For the purposes of this section, "status" includes all of the following designations:

(1) Licensed and fit for duty.
(2) Licensed and not fit for duty.
(3) Licensed and on authorized training.
(4) Licensed and on active military duty.
(5) Licensed and on leave of absence.
(6) Licensed but license suspended.

(c) A summary of each report of misconduct or a navigational incident involving a pilot, inland pilot, or pilot trainee, or other matters for which a license issued by the board may be revoked or suspended. For those cases that have been closed, the summary shall include a description of findings made by the incident review committee and of the resulting action taken by the board. For those cases that are still under investigation, the summary shall include a description of the reported incident and an estimated completion date for the investigation. For those closed cases involving a pilot who has been involved in a prior incident where a finding of pilot error had been made, the report shall also include a summary of that incident.

SEC. 2. Section 1157.5 is added to the Harbors and Navigation Code, to read:

1157.5. On or before April 15, 2010, and annually thereafter, the board shall submit to the Secretary of the Senate, the Chief Clerk of the Assembly, and the Secretary of Business, Transportation and Housing a report describing the board's activities for the preceding calendar year. The report shall include, but not be limited to, all of the following:

(a) The number of vessel movements across the bar, on the bays, and on the rivers within the board's jurisdiction.

(b) The name of each licensed pilot, inland pilot, and pilot trainee, and the status of each person. If a person has had more than one status during the reporting year, each status and the length of time in that status shall be indicated. For the purposes of this section, "status" includes all of the following designations:

(1) Licensed and fit for duty.

(2) Licensed and not fit for duty.

(3) Licensed and on authorized training.

(4) Licensed and on active military duty.

(5) Licensed and on leave of absence.

(6) Licensed but license suspended.

(c) A summary of each report of misconduct or a navigational incident involving a pilot, inland pilot, or pilot trainee, or other matters for which a license issued by the board may be revoked or suspended. For those cases that have been closed, the summary shall include a description of findings made by the incident review committee and of the resulting action taken by the board. For those cases that are still under investigation, the summary shall include a description of the reported incident and an estimated completion date for the investigation. For those closed cases involving a pilot who has been involved in a prior incident where a finding of pilot error had been made, the report shall also include a summary of that incident.

SEC. 3. Section 1176 of the Harbors and Navigation Code is repealed.

SEC. 4. Section 1176 is added to the Harbors and Navigation Code, to read:

1176. (a) The board shall appoint a physician or physicians who are qualified to determine the suitability of a person to perform his or her duties as a pilot, an inland pilot, or a pilot trainee in accordance with subdivision (c).

(b) An applicant for a pilot trainee position or for a pilot or inland pilot license as well as a pilot or inland pilot seeking renewal of his or her license shall undergo a physical examination by a board appointed physician in accordance with standards prescribed by the board. Within 30 days prior to the examination, the applicant or licensee shall submit to the physician conducting the physical examination a complete list of all prescribed medications being taken by or administered to the applicant or licensee.

(c) On the basis of both the examination and an evaluation of the effects of the prescription medications named on the submitted list, the physician shall designate to the board whether or not the pilot, inland pilot, or pilot trainee is fit to perform his or her duties as a pilot, inland pilot, or pilot trainee.

(d) The license of a pilot or inland pilot shall not be renewed unless he or she is found fit for duty pursuant to subdivision (c).

(e) Whenever a pilot, inland pilot, or pilot trainee is prescribed either a new dosage of a medication or a new medication, or suspends the use of a prescribed medication, he or she shall, within 10 days, submit that information to the board appointed physician having possession of the prescribed medication list submitted pursuant to subdivision (b). Whenever the physician receives the updated information, the physician shall determine whether or not the medication change affects the licensee's or trainee's fitness for duty. If the physician determines that the medication change results in the pilot, inland pilot, or pilot trainee being unfit for duty, the physician shall inform the board.

(f) The board may terminate a pilot trainee or suspend or revoke the license of a pilot or an inland pilot who fails to submit the prescribed medication information required by this section.

SEC. 5. (a) Section 1 of this bill shall only become operative if this bill is enacted and becomes effective on or before January 1, 2009, and Senate Bill 1627 is not enacted, in which case Section 2 of this bill shall not become operative.

(b) Section 2 of this bill shall only become operative if both this bill and Senate Bill 1627 are enacted and become effective on or before

January 1, 2009, in which case Section 1 of this bill shall not become operative.

CHAPTER 569

An act to add Chapter 2 (commencing with Section 108040) to Part 3 of Division 104 of, and to repeal the heading of Chapter 2 of Part 3 of Division 104 of, the Health and Safety Code, relating to product safety.

[Approved by Governor September 29, 2008. Filed with Secretary of State September 29, 2008.]

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

SECTION 1. The heading of Chapter 2 of Part 3 of Division 104 of the Health and Safety Code is repealed.

SEC. 2. Chapter 2 (commencing with Section 108040) is added to Part 3 of Division 104 of the Health and Safety Code, to read:

CHAPTER 2. PRODUCT RECALL SAFETY AND PROTECTION ACT

108040. This chapter shall be known, and may be cited, as the Product Recall Safety and Protection Act.

108042. As used in this chapter, the following terms have the following meanings:

(a) "Commercial dealer" means any person who deals in products or who otherwise by his or her occupation holds himself or herself out as having knowledge or skill peculiar to products, or any person who is in the business of remanufacturing, retrofitting, selling, leasing, subletting, or otherwise placing into the stream of commerce, a product.

(b) "Distributor" and "wholesaler" means any person, other than a manufacturer or retailer, who sells or resells, or otherwise places into the stream of commerce, a product.

(c) "End consumer" means a person who purchases a product for any purpose other than resale.

(d) "First seller" means any retailer selling a product that has not been used or has not previously been owned. A first seller does not include an entity such as a secondhand retail dealer, thrift shop, resale store, or any other establishment or individual, agent, or employee thereof that sells, distributes, rents, or leases products of any kind.

(e) "Importer" means any person who brings into this country, and places into the stream of commerce, a product.

(f) "Manufacturer" means any person who makes, and places into the stream of commerce, a product.

(g) "Person" means a natural person, firm, corporation, limited liability company, or association, or an employee or agent thereof.

(h) "Product" means any article, or component part thereof, produced or distributed (1) for sale to a consumer for use in or around a permanent or temporary household or residence, a school, in recreation, or otherwise, or (2) for personal use, consumption, or enjoyment of a consumer in or around a permanent or temporary household or residence, a school, in recreation, or otherwise. "Product" does not include food, drugs, cosmetics, pesticides (as defined by the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. Sec. 136 et seq.)), medical devices, firearms and ammunition, boats, motor vehicles, motor vehicle equipment, aircraft, or tobacco and tobacco products.

(i) "Recall" means any repair, replacement, or refund program implemented in accordance with the federal Consumer Product Safety Act (15 U.S.C. Sec. 2051 et seq.) upon the determination of commission staff that a consumer product violates a commission statute or regulation, and notification to the product manufacturer, importer, distributor, or retailer that corrective action to address the violation is warranted. "Recall" includes a voluntary recall where a product is returned to the manufacturer for repair or replacement, usually due to defects or safety concerns, or public notice that a product is defective and must be returned to the manufacturer or retailer.

(j) "Retailer" means any person other than a manufacturer, distributor, or wholesaler who sells, distributes, sublets, or leases consumer goods of any kind.

(k) "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.

108044. (a) No commercial dealer, manufacturer, importer, distributor, wholesaler, or retailer shall manufacture, remanufacture, distribute, sell at wholesale or retail, contract to sell or resell, lease, or sublet, or otherwise place into the stream of commerce, a product that is unsafe, as defined in subdivision (b), knowing that the product is unsafe.

(b) A product shall be deemed unsafe for purposes of this chapter only if it meets one or both of the following criteria:

(1) The product has been recalled because it does not conform to state or federal laws and regulations setting forth standards for the product.

(2) The product has been recalled for any safety hazard reason in cooperation with the federal Consumer Product Safety Commission or

its staff, or voluntarily recalled for any safety hazard reason by the product's commercial dealer, manufacturer, importer, distributor, or wholesaler, and the recall has not been rescinded.

(c) (1) An unsafe product, as determined pursuant to subdivision (b), may be retrofitted if the retrofit has been approved by the agency issuing the recall or warning, or the agency responsible for approving the retrofit if it is different from the agency issuing the recall or warning.

(2) A retrofitted product may be sold if it is accompanied at the time of sale by a notice declaring that it is safe to use. The notice shall include all of the following:

(A) A description of the original problem that made the recalled product unsafe.

(B) A description of the retrofit that explains how the original problem was eliminated and declaring that it is now safe to use.

(C) The name and address of the commercial dealer, manufacturer, importer, distributor, or wholesaler who accomplished the retrofit, certifying that the work was done, along with the name and model number of the product retrofitted.

(3) The commercial dealer, manufacturer, importer, distributor, or wholesaler is responsible for ensuring that the notice described in paragraph (2) is present with the retrofitted product at the time of sale. This paragraph and paragraph (2) shall not apply, and the product may be sold, if either subparagraph (A) or (B) applies:

(A) The retrofit meets all of the following:

(i) The product requires assembly by the consumer.

(ii) The retrofit kit is provided with the product by the commercial dealer, manufacturer, importer, distributor, or wholesaler.

(iii) The retrofit kit is accompanied at the time of sale by instructions explaining how to apply the retrofit.

(B) The seller of a previously unsold product or the entity to whom unsold products had been returned under the terms of the recall accomplishes the approved or recommended repair prior to sale.

108046. (a) A commercial dealer, manufacturer, importer, distributor, or wholesaler that has placed into the stream of commerce any unsafe product for which a recall or warning has subsequently been issued, shall initiate the following steps within 24 hours after issuing or receiving the recall notice or warning:

(1) Contact all of its customers, other than end consumers, to whom it sold, leased, sublet, or transferred that particular product. The contact shall be made to a person designated for that product by the customer and shall include a copy of the recall notice or warning.

(2) If the commercial dealer, manufacturer, importer, distributor, or wholesaler maintains an Internet Web site, the entity shall place

prominently on the homepage or first point of entry of its Web site, a link to recall or warning information that contains the specific recall notice or warning that was issued for the product in question. The recall or warning information shall include a description of the product, the reason for the recall or warning, a picture of the product, and instructions on how to participate in the recall or warning. The information shall include only the product recall or warning information and shall not include sales or marketing information on that product or any other product, excluding return and exchange policies. The recall or warning information shall permit participation in the recall or warning through the Web site of the commercial dealer, manufacturer, importer, distributor, or wholesaler.

(b) (1) The manufacturer of the product shall provide for the safe return of the product to the manufacturer or the appropriate disposal of the product in the manner required pursuant to paragraph (2) at no cost to the end consumer or retailer.

(2) The manufacturer shall properly dispose of the product in a manner that is in compliance with all applicable federal, state, and local laws, regulations, and ordinances, and shall not export the product, or permit it to be exported, for disposal in a manner that poses a significant risk to the public health or the environment.

(3) The manufacturer or retailer may provide a corrective action or retrofit onsite at the consumer's home or premises for any product for which a recall or warning has been issued.

(c) If a retailer receives notice of a recall or warning regarding a product from a commercial dealer, manufacturer, importer, distributor, wholesaler, or state or federal agency, and if the retailer during the previous 18 months offered the product for sale, then the retailer shall do the following:

(1) Within three days after receiving the notice or warning by the person designated by the retailer, the retailer shall remove the product from the shelves of its stores or program its registers to ensure that the item cannot be sold.

(2) If the product was sold through the retailer's Internet Web site, then within three days after receiving the notice or warning by the person designated by the retailer, the retailer shall remove the product from the Web site or remove the ability to purchase the product through the Web site.

(3) Within three days after receiving the recall notice or warning by the person designated by the retailer, the retailer shall post in paper form or electronically in a prominent location in each retail store the recall notice or warning. The notice or warning shall remain posted for at least 60 days.

(4) If the product for which a recall or warning was issued was sold on the retailer's Internet Web site, the retailer shall, within three days after receiving the recall notice or warning by the person designated by the retailer, post on the homepage or first point of entry of its Web site a link to recall or warning information that contains the specific recall notice or warning that was issued for the product in question. The recall or warning information shall include a description of the product, the reason for the recall or warning, a picture of the product, if one was provided, and instructions on how to participate in the recall or warning. The information shall include only the product recall or warning information and shall not include sales or marketing information on that product or any other product, excluding return and exchange policies.

(5) A retailer who is not a first seller shall comply with this subdivision, except that the retailer has five days to comply with paragraphs (1) and (2).

(6) A retailer who is a first seller shall accept any recalled product for the purpose of returning it to the manufacturer or distributor.

(d) A commercial dealer, manufacturer, importer, wholesaler, or distributor who is also a retailer shall comply with subdivisions (a), (b), and (c), as applicable.

108048. Nothing in this chapter relieves a commercial dealer, manufacturer, importer, distributor, wholesaler, or retailer from compliance with stricter requirements that may be imposed by an agency of the federal government.

108050. (a) Any violation of this chapter shall be subject to a civil penalty of up to one thousand dollars ($1,000) for each occurrence, up to a maximum of twenty thousand dollars ($20,000).

(b) The remedies under this section are in addition to, and do not supersede or limit, any and all other remedies, civil or criminal.

CHAPTER 570

An act to add Sections 42358 and 42359.8 to the Public Resources Code, relating to solid waste.

[Approved by Governor September 29, 2008. Filed with Secretary of State September 29, 2008.]

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

SECTION 1. Section 42358 is added to the Public Resources Code, to read:

42358. (a) A city, a county, or the state may impose civil liability in the amount of five hundred dollars ($500) for the first violation of this chapter, one thousand dollars ($1,000) for the second violation, and two thousand dollars ($2,000) for the third and any subsequent violation.

(b) Any civil penalties collected pursuant to subdivision (a) shall be paid to the office of the city attorney, city prosecutor, district attorney, or Attorney General, whichever office brought the action. The penalties collected pursuant to this section by the Attorney General may be expended by the Attorney General, upon appropriation by the Legislature, to enforce this chapter.

(c) The remedies provided by this section are not exclusive and are in addition to the remedies that may be available pursuant to Sections 17200 to 17210, inclusive, of the Business and Professions Code.

(d) Any costs incurred by a state agency in carrying out this chapter shall be recoverable by the Attorney General, upon the request of the agency, from the liable person or persons.

SEC. 2. Section 42359.8 is added to the Public Resources Code, to read:

42359.8. (a) A city, a county, or the state may impose civil liability in the amount of five hundred dollars ($500) for the first violation of this chapter, one thousand dollars ($1,000) for the second violation, and two thousand dollars ($2,000) for the third and any subsequent violation.

(b) Any civil penalties collected pursuant to subdivision (a) shall be paid to the office of the city attorney, city prosecutor, district attorney, or Attorney General, whichever office brought the action. The penalties collected pursuant to this section by the Attorney General may be expended by the Attorney General, upon appropriation by the Legislature, to enforce this chapter.

(c) The remedies provided by this section are not exclusive and are in addition to the remedies that may be available pursuant to Sections 17200 to 17210, inclusive, of the Business and Professions Code.

(d) Any costs incurred by a state agency in carrying out this chapter shall be recoverable by the Attorney General, upon the request of the state agency, from the liable person or persons.

CHAPTER 571

An act to amend Section 25404 of the Health and Safety Code, relating to aboveground storage tanks.

[Approved by Governor September 29, 2008. Filed with Secretary of State September 29, 2008.]

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

SECTION 1. Section 25404 of the Health and Safety Code is amended to read:

25404. (a) For purposes of this chapter, the following terms shall have the following meanings:

(1) (A) "Certified Unified Program Agency" or "CUPA" means the agency certified by the secretary to implement the unified program specified in this chapter within a jurisdiction.

(B) "Participating Agency" or "PA" means a state or local agency that has a written agreement with the CUPA pursuant to subdivision (d) of Section 25404.3, and is approved by the secretary, to implement or enforce one or more of the unified program elements specified in subdivision (c), in accordance with Sections 25404.1 and 25404.2.

(C) "Unified Program Agency" or "UPA" means the CUPA, or its participating agencies to the extent each PA has been designated by the CUPA, pursuant to a written agreement, to implement or enforce a particular unified program element specified in subdivision (c). The UPAs have the responsibility and authority to implement and enforce the requirements listed in subdivision (c), and the regulations adopted to implement the requirements listed in subdivision (c), to the extent provided by Chapter 6.5 (commencing with Section 25100), Chapter 6.67 (commencing with Section 25270), Chapter 6.7 (commencing with Section 25280), Chapter 6.95 (commencing with Section 25500), and Sections 25404.1 and 25404.2. After a CUPA has been certified by the secretary, the unified program agencies and the state agencies carrying out responsibilities under this chapter shall be the only agencies authorized to enforce the requirements listed in subdivision (c) within the jurisdiction of the CUPA.

(2) "Department" means the Department of Toxic Substances Control.

(3) "Minor violation" means the failure of a person to comply with any requirement or condition of any applicable law, regulation, permit, information request, order, variance, or other requirement, whether procedural or substantive, of the unified program that the UPA is authorized to implement or enforce pursuant to this chapter, and that does not otherwise include any of the following:

(A) A violation that results in injury to persons or property, or that presents a significant threat to human health or the environment.

(B) A knowing, willful, or intentional violation.

(C) A violation that is a chronic violation, or that is committed by a recalcitrant violator. In determining whether a violation is chronic or a violator is recalcitrant, the UPA shall consider whether there is evidence

indicating that the violator has engaged in a pattern of neglect or disregard with respect to applicable regulatory requirements.

(D) A violation that results in an emergency response from a public safety agency.

(E) A violation that enables the violator to benefit economically from the noncompliance, either by reduced costs or competitive advantage.

(F) A class I violation as provided in Section 25117.6.

(G) A class II violation committed by a chronic or a recalcitrant violator, as provided in Section 25117.6.

(H) A violation that hinders the ability of the UPA to determine compliance with any other applicable local, state, or federal rule, regulation, information request, order, variance, permit, or other requirement.

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

(5) "Unified program facility" means all contiguous land and structures, other appurtenances, and improvements on the land that are subject to the requirements listed in subdivision (c).

(6) "Unified program facility permit" means a permit issued pursuant to this chapter. For the purposes of this chapter, a unified program facility permit encompasses the permitting requirements of Section 25284, and any permit or authorization requirements under any local ordinance or regulation relating to the generation or handling of hazardous waste or hazardous materials, but does not encompass the permitting requirements of a local ordinance that incorporates provisions of the Uniform Fire Code or the Uniform Building Code.

(b) The secretary shall adopt implementing regulations and implement a unified hazardous waste and hazardous materials management regulatory program, which shall be known as the unified program, after holding an appropriate number of public hearings throughout the state. The unified program shall be developed in close consultation with the director, the Director of the Office of Emergency Services, the State Fire Marshal, the executive officers and chairpersons of the State Water Resources Control Board and the California regional water quality control boards, the local health officers, local fire services, and other appropriate officers of interested local agencies, and affected businesses and interested members of the public, including environmental organizations.

(c) The unified program shall consolidate the administration of the following requirements, and shall, to the maximum extent feasible within statutory constraints, ensure the coordination and consistency of any regulations adopted pursuant to those requirements:

(1) (A) Except as provided in subparagraphs (B) and (C), the requirements of Chapter 6.5 (commencing with Section 25100), and the

regulations adopted by the department pursuant thereto, are applicable to all of the following:

(i) Hazardous waste generators, persons operating pursuant to a permit-by-rule, conditional authorization, or conditional exemption, pursuant to Chapter 6.5 (commencing with Section 25100) or the regulations adopted by the department.

(ii) Persons managing perchlorate materials.

(iii) Persons subject to Article 10.1 (commencing with Section 25211) of Chapter 6.5.

(B) The unified program shall not include the requirements of paragraph (3) of subdivision (c) of Section 25200.3, the requirements of Sections 25200.10 and 25200.14, and the authority to issue an order under Sections 25187 and 25187.1, with regard to those portions of a unified program facility that are subject to one of the following:

(i) A corrective action order issued by the department pursuant to Section 25187.

(ii) An order issued by the department pursuant to Chapter 6.8 (commencing with Section 25300) or Chapter 6.85 (commencing with Section 25396).

(iii) A remedial action plan approved pursuant to Chapter 6.8 (commencing with Section 25300) or Chapter 6.85 (commencing with Section 25396).

(iv) A cleanup and abatement order issued by a California regional water quality control board pursuant to Section 13304 of the Water Code, to the extent that the cleanup and abatement order addresses the requirements of the applicable section or sections listed in this subparagraph.

(v) Corrective action required under subsection (u) of Section 6924 of Title 42 of the United States Code or subsection (h) of Section 6928 of Title 42 of the United States Code.

(vi) An environmental assessment pursuant to Section 25200.14 or a corrective action pursuant to Section 25200.10 or paragraph (3) of subdivision (c) of Section 25200.3, that is being overseen by the department.

(C) The unified program shall not include the requirements of Chapter 6.5 (commencing with Section 25100), and the regulations adopted by the department pursuant thereto, applicable to persons operating transportable treatment units, except that any required notice regarding transportable treatment units shall also be provided to the CUPAs.

(2) The requirements of Chapter 6.67 (commencing with Section 25270) concerning aboveground storage tanks.

(3) (A) Except as provided in subparagraphs (B) and (C), the requirements of Chapter 6.7 (commencing with Section 25280)

concerning underground storage tanks and the requirements of any underground storage tank ordinance adopted by a city or county.

(B) The unified program may not include the responsibilities assigned to the State Water Resources Control Board pursuant to Section 25297.1.

(C) The unified program may not include the corrective action requirements of Sections 25296.10 to 25296.40, inclusive.

(4) The requirements of Article 1 (commencing with Section 25500) of Chapter 6.95 concerning hazardous material release response plans and inventories.

(5) The requirements of Article 2 (commencing with Section 25531) of Chapter 6.95, concerning the accidental release prevention program.

(6) The requirements of subdivisions (b) and (c) of Section 80.103 of the Uniform Fire Code, as adopted by the State Fire Marshal pursuant to Section 13143.9 concerning hazardous material management plans and inventories.

(d) To the maximum extent feasible within statutory constraints, the secretary shall consolidate, coordinate, and make consistent these requirements of the unified program with other requirements imposed by other federal, state, regional, or local agencies upon facilities regulated by the unified program.

(e) (1) The secretary shall establish standards applicable to CUPAs, participating agencies, state agencies, and businesses specifying the data to be collected and submitted by unified program agencies in administering the programs listed in subdivision (c). Those standards shall incorporate any standard developed under Section 25503.3.

(2) (A) No later than January 1, 2010, the secretary shall establish a statewide information management system capable of receiving all data collected by the unified program agencies and reported by regulated businesses pursuant to this subdivision and Section 25504.1, in a manner that is most cost efficient and effective for both the regulated businesses and state and local agencies. The secretary shall prescribe an XML or other compatible Web-based format for the transfer of data from CUPAs and regulated businesses and make all nonconfidential data available on the Internet.

(B) The secretary shall establish milestones to measure the implementation of the statewide information management system and shall provide periodic status updates to interested parties.

(3) (A) (i) Except as provided in subparagraph (B), in addition to any other funding that becomes available, the secretary shall increase the oversight surcharge provided for in subdivision (b) of Section 25404.5 by an amount necessary to meet the requirements of this subdivision for a period of three years, to establish the statewide information management system, consistent with paragraph (2). The increase in the

oversight surcharge shall not exceed twenty-five dollars ($25) in any one year of the three-year period. The secretary shall thereafter maintain the statewide information management system, funded by the assessment the secretary is authorized to impose pursuant to Section 25404.5.

(ii) No less than 75 percent of the additional funding raised pursuant to clause (i) shall be provided to CUPAs and PAs through grant funds in the amounts determined by the secretary to assist these local agencies in meeting these information management system requirements.

(B) A facility that is owned or operated by the federal government and that is subject to the unified program shall pay the surcharge required by this paragraph to the extent authorized by federal law.

(C) The secretary, or one or more of the boards, departments, or offices within the California Environmental Protection Agency, shall seek available federal funding for purposes of implementing this subdivision.

(4) No later than three years after the statewide information management system is established, each CUPA, PA, and regulated business shall report program data electronically. The secretary shall work with the CUPAs to develop a phased in schedule for the electronic collection and submittal of information to be included in the statewide information management system, giving first priority to information relating to those chemicals determined by the secretary to be of greatest concern. The secretary, in making this determination shall consult with the CUPAs, the Office of Emergency Services, the State Fire Marshal, and the boards, departments, and offices within the California Environmental Protection Agency. The information initially included in the statewide information management system shall include, but is not limited to, the hazardous materials inventory information required to be submitted pursuant to Section 25504.1 for perchlorate materials.

(5) The secretary, in collaboration with the CUPAs, shall provide technical assistance to regulated businesses to comply with the electronic reporting requirements and may expend funds identified in clause (i) of subparagraph (A) of paragraph (3) for that purpose.

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 572

An act to add Article 10.2.2 (commencing with Section 25214.8.10) to Chapter 6.5 of Division 20 of the Health and Safety Code, relating to hazardous waste.

[Approved by Governor September 29, 2008. Filed with Secretary of State September 29, 2008.]

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

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

(a) Mercury that is released into the atmosphere can be transported long distances and deposited in aquatic ecosystems, where it is methylated to methylmercury, the organic and most toxic form of mercury.

(b) Methylmercury bioaccumulates and biomagnifies in animals, including fish and humans.

(c) The March 2007 report of the Office of Environmental Health Hazard Assessment stated that fish consumption advisories exist in about 40 states, including, within California, for the San Francisco Bay and Delta, Tomales Bay, and eight other county water bodies, and more locations may be included as more fish and water bodies are tested.

(d) Methylmercury is a known neurotoxin to which the human fetus is very sensitive.

(e) The federal Centers for Disease Control and Prevention estimate that between 300,000 and 630,000 infants are born in the United States each year with mercury levels that are associated, at later ages, with the loss of IQ.

(f) New evidence indicates that methylmercury exposure may increase the risk of cardiovascular disease in humans, especially adult men.

(g) According to a 2004 study by the federal Environmental Protection Agency, more than 10 percent of the estimated mercury reservoir still currently in use in the United States resides in mercury-added thermostats.

(h) Decreases in local and regional sources of mercury emissions have been shown to lead to decreases in mercury levels in fish and wildlife.

(i) As of January 1, 2006, state law banned the sale of new mercury-added thermostats for most uses, but the long lifetime of thermostats means that many of them are still in use.

(j) State law bans the disposal of mercury-added thermostats in solid waste landfills, but according to an estimate by the Department of Toxic

Substances Control, less than 5 percent of the mercury-added thermostats removed from buildings in the state are turned in to the Thermostat Recycling Corporation (TRC) collection program.

(k) In 1998, thermostat makers General Electric, Honeywell, and White Rodgers, established the TRC to implement a program for collecting used mercury-added thermostats. Under the TRC program, thermostat wholesalers and contractors volunteer to collect thermostats from heating, ventilating, and air-conditioning contractors, and the general public. In 2007, the manufacturer Nordyne joined the program and the TRC expanded its voluntary program to household hazardous waste facilities.

(*l*) The California Integrated Waste Management Board adopted an Overall Framework for an Extended Producer Responsibility (EPR) guidance document as a policy priority in September 2007 and approved refinements in January 2008.

(m) The EPR framework recognizes that the responsibility for the end-of-life management of discarded products and materials rests primarily with the producers, thereby incorporating costs of product collection, recycling, and disposal into the total product costs so as to have a reduced impact on human health and the environment.

(n) Producers that historically manufactured, branded, and sold mercury-added thermostats in California before 2006 have a responsibility to collect out-of-service mercury-added thermostats and ensure that they are properly handled and recycled.

SEC. 2. Article 10.2.2 (commencing with Section 25214.8.10) is added to Chapter 6.5 of Division 20 of the Health and Safety Code, to read:

Article 10.2.2. Mercury Thermostat Collection Act of 2008

25214.8.10. This article shall be known, and may be cited, as the Mercury Thermostat Collection Act of 2008.

25214.8.11. For purposes of this article, the following definitions shall apply:

(a) "Manufacturer" means a business concern that owns or owned a name brand of mercury-added thermostats sold in this state before January 1, 2006.

(b) "Mercury-added thermostat" has the same meaning as defined in paragraph (2) of subdivision (b) of Section 25214.8.1.

(c) "Out-of-service mercury-added thermostat" means a mercury-added thermostat that is removed from a building or facility in this state and is intended to be discarded.

(d) "Program" means a system for the collection, transportation, recycling, and disposal of out-of-service mercury-added thermostats that is financed, as well as managed or provided, by a manufacturer or collectively with other manufacturers.

(e) "Retailer" means a person who sells thermostats of any kind directly to a consumer through a selling or distribution mechanism, including, but not limited to, a sale using catalogs or the Internet. A retailer may be a wholesaler if the person meets the definition of a wholesaler set forth in subdivision (g).

(f) "Thermostat" means a product or device that uses a switch to sense and control room temperature through communication with heating, ventilating, or air-conditioning equipment. "Thermostat" includes a thermostat 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.

(g) "Wholesaler" means a person engaged in the distribution and wholesale selling of heating, ventilation, and air-conditioning components to contractors who install heating, ventilation, and air-conditioning components, and whose total wholesale sales account for 80 percent or more of total sales. A manufacturer, as defined by this section, is not a wholesaler.

25214.8.12. (a) (1) A manufacturer shall establish and maintain a program for out-of-service mercury-added thermostats in compliance with this article.

(2) A manufacturer may establish a collection and recycling program for out-of-service mercury-added thermostats individually or collectively with other manufacturers.

(3) A manufacturer, or a group of manufacturers operating a program collectively, may contract with a retailer for in-store or out-of-store collection of out-of-service mercury-added thermostats.

(b) (1) A person shall not sell or offer for sale in this state a thermostat that is produced by a manufacturer that is not in compliance with this article.

(2) The sales prohibition in paragraph (1) shall be effective on the 120th day after the notice described in subdivision (c) listing a manufacturer is posted on the department's Internet Web site and shall remain in effect until the manufacturer is no longer listed on the department's Internet Web site.

(c) On July 1, 2009, and on January 1 and July 1 annually thereafter, the department shall post a notice on its Internet Web site listing manufacturers that are not in compliance with this article.

(d) A wholesaler or a retailer that distributes or sells mercury-added thermostats shall monitor the department's Internet Web site to determine if the sale of a manufacturer's thermostats is in compliance with this section.

25214.8.13. Each manufacturer shall individually, or collectively with other manufacturers, do all of the following:

(a) Collect, handle, and arrange for the appropriate management of out-of-service mercury-added thermostats in compliance with this chapter and the regulations adopted pursuant to this chapter.

(b) On and after July 1, 2009, provide collection bins for out-of-service mercury-added thermostat collection to wholesalers at a cost not to exceed twenty-five dollars ($25).

(c) On and after July 1, 2009, make collection bins available at no cost for out-of-service mercury-added thermostats to any local governmental agency that requests a collection bin for use at household hazardous waste collection facilities or household hazardous waste events.

(d) Either arrange for pick up of the collection bins, or pay for the costs of shipping the collection bins provided pursuant to subdivisions (b) and (c) for proper handling and recycling.

(e) From July 1, 2009, to December 31, 2011, inclusive, undertake education and outreach efforts, including, but not limited to, all of the following:

(1) A public service announcement promoting the proper management of out-of-service mercury-added thermostats. Copies of the public service announcement shall be provided to the department and the California Integrated Waste Management Board for their use and promotion.

(2) The establishment of a public Internet Web site. Templates of educational materials shall be posted on the Internet Web site that are in a form and format that can be easily downloaded. A link to the Internet Web site shall be provided to the department and the California Integrated Waste Management Board.

(3) Methods used to engage other stakeholders such as waste, demolition, heating, ventilation, and air-conditioning organizations, as well as appropriate state agencies and local governments to secure support and participation to encourage the proper management of out-of-service mercury-added thermostats throughout California.

(4) Strategies to work with California utilities participating in demand response programs involving the replacement of thermostats to encourage their participation in the collection and proper management of out-of-service mercury-added thermostats. These strategies may include the inclusion of an educational insert in their customers' utility bills.

(5) Contacting wholesalers in California and encouraging their support and participation in educating their customers on the proper management of out-of-service mercury-added thermostats.

(6) Strategies used to encourage support and participation by retailers and other outlets to educate consumers on the proper management of out-of-service mercury-added thermostats.

(f) On or before July 1, 2009, develop, and update as necessary, educational and other outreach materials aimed at heating, ventilation, and air-conditioning contractors, demolition contractors, and their associations, municipal utility districts, and homeowners. Those materials shall be made available to participating retailers, all wholesalers, and household hazardous waste programs. These materials shall include, but are not limited to, one or more of the following:

(1) Signage that is prominently displayed and easily visible to the consumer and contractors.

(2) Written materials and templates of materials for reproduction by retailers and wholesalers to be provided to the consumer at the time of purchase, delivery, or both purchase and delivery of a thermostat. The materials shall include information on the prohibition of improper disposal of mercury-added thermostats, the proper management of out-of-service mercury-added thermostats, and the locations of collection opportunities.

(3) Advertising or other promotional materials, or both, that include references to the collection opportunities.

(4) Materials to be used in direct communications with the consumer and contractor at the time of purchase.

(g) Provide incentives and education to contractors, service technicians, and homeowners to encourage the return of out-of-service mercury-added thermostats to established collection locations.

(h) Encourage the purchase of programmable thermostats that comply with Part 6 (commencing with Section 100) of Title 24 of the California Building Standards Code and that qualify for the Energy Star program of the federal Environmental Protection Agency, as replacements for mercury-added thermostats.

(i) On or before April 1, 2010, and on or before April 1 annually thereafter, submit an annual report to the department covering the one-year period ending December 31st of the previous calendar year. Each report shall be posted on the manufacturer's or program's Internet Web site. The annual report shall include all of the following:

(1) The number of out-of-service mercury-added thermostats collected in California during the previous calendar year.

(2) The estimated total amount of mercury contained in the collected out-of-service mercury-added thermostats.

(3) An evaluation of the effectiveness of the program.

(4) Commencing with the report due April 1, 2013, a comparison to the performance requirements for collection established pursuant to subdivision (b) of Section 25214.8.17.

(5) An accounting of the program administrative costs, including a copy of Internal Revenue Service Form 990 for a nonprofit organization's program. For a for-profit organization's program, the manufacturer, or group of manufacturers operating a program, shall submit independently audited financial statements detailing revenues and a full accounting of administrative costs incurred.

(6) A description of the outreach strategies employed to increase participation and collection rates.

(7) Examples of outreach and educational materials used.

(8) Names and locations of all participating collection locations.

(9) The number of out-of-service mercury-added thermostats collected at each collection location.

(10) The Internet Web site address where the annual report may be viewed online.

(11) A description of how the collected out-of-service mercury-added thermostats were managed.

(12) Modifications that the manufacturer is proposing to make in its collection and recycling program.

25214.8.14. (a) A wholesaler that has a physical location in the state shall act as a collection location for out-of-service mercury-added thermostats.

(b) A retailer or wholesaler that distributes new thermostats by mail to buyers in the state shall include with the sale of the new thermostat, an Internet Web site address and toll-free telephone number with instructions on obtaining a prepaid mail-in label that a consumer may use to send an out-of-service mercury-added thermostat to a collection location.

(c) A wholesaler shall distribute the educational and outreach materials developed pursuant to Section 25214.8.13 to its customers.

25214.8.15. A contractor who installs heating, ventilation, and air-conditioning components and who removes a mercury-added thermostat shall handle the thermostat in accordance with the regulations adopted pursuant to this chapter, and take the out-of-service mercury-added thermostat to a location with a collection bin operating in accordance with those regulations.

25214.8.16. A person who demolishes a building shall remove any mercury-added thermostats from the building prior to demolition in accordance with all applicable regulations adopted pursuant to this chapter, and take the out-of-service mercury-added thermostat to a

location that is authorized to collect out-of-service mercury-added thermostats.

25214.8.17. (a) The department may order a manufacturer, or a group of manufacturers operating a program, to revise its program and to undertake actions to comply with this article.

(b) On or before January 1, 2012, the department shall adopt regulations for all of the following:

(1) To develop performance requirements that specify collection rates expressed as a percentage of out-of-service mercury-added thermostats becoming waste annually.

(2) To establish a methodology for the calculation of the number of out-of-service mercury-added thermostats becoming waste annually.

25214.8.18. On or before March 1, 2009, a manufacturer, or a group of manufacturers operating a program, shall present to the department a survey plan and methodology for a survey to provide statistically valid data on the number of mercury-added thermostats that become waste annually in California. The manufacturer or group of manufacturers shall complete the survey by December 1, 2009, and shall present all survey data to the department by December 31, 2009.

25214.8.20. It is the intent of this article to provide for the collection and recycling of the maximum feasible number of out-of-service mercury-added thermostats.

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 573

An act to add Chapter 4.5 (commencing with Section 5260) to Part 1 of Division 4 of the Food and Agricultural Code, relating to pests.

[Approved by Governor September 29, 2008. Filed with Secretary of State September 29, 2008.]

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

SECTION 1. Chapter 4.5 (commencing with Section 5260) is added to Part 1 of Division 4 of the Food and Agricultural Code, to read:

Chapter 4.5. Invasive Pest Planning

5260. The Legislature hereby finds and declares all of the following:

(a) Global travel, global trade, and climate change are introducing invasive animals, plants, insects, and plant and animal diseases to California.

(b) The State of California should undertake advance planning on whether and how to address those invasive animals, plants, insects, and plant and animal diseases that are a threat to the state's agriculture, environment, or economy.

(c) The Legislature fully recognizes that any prediction of which invasive pests will enter California cannot be precise because of the many entry mechanisms.

5260.5. For purposes of this chapter, "invasive pests" means animals, plants, insects, and plant and animal diseases or groups of those animals, plants, insects, and plant and animal diseases, including seeds, eggs, spores, or other matter capable of propagation, where introduction into California would or would likely cause economic or environmental harm. "Invasive pests" does not include agricultural crops, livestock, or poultry generally recognized by the department or the United States Department of Agriculture as suitable to be grown or raised in the state.

5261. The department shall develop and maintain a list of invasive pests that have a reasonable likelihood of entering California for which a detection, exclusion, eradication, control, or management action by the state might be appropriate. In developing the list, the department shall consider any invasive pests identified by the federal or state government for which a detection, exclusion, eradication, control, or management action might be undertaken.

5262. (a) Based on available funding, the department shall develop and maintain a written plan on the most appropriate options for detection, exclusion, eradication, control, or management of the higher priority invasive pests on the list prepared pursuant to Section 5261. In determining which invasive pests are the higher priority and in developing the most appropriate options for detection, exclusion, eradication, control, or management, the department shall consult with the United States Department of Agriculture, the University of California, other state agencies and departments, and others in the scientific and research community. In implementing this chapter, the department may undertake

or contract for scientific research with the University of California or other institutions of higher learning. The plan shall include both of the following:

(1) A discussion of the state not acting to detect, exclude, eradicate, control, or manage the invasive pest.

(2) The identification and description of the most appropriate options for detection, exclusion, eradication, control, or management of the invasive pest.

(b) If the department determines that aerial application of pesticides would be among the more appropriate responses, the plan shall contain a discussion of all of the following:

(1) The pesticides that would likely be the most appropriate.

(2) The concentrations of those pesticides.

(3) How often pesticide use would be necessary.

(4) A list of each active ingredient and inert material, to the extent that the disclosure of the inert material is permitted by state and federal law.

(5) A summary of up-to-date scientific information on the impacts of the pesticide and its inert materials on all of the following:

(A) Healthy children and adults.

(B) Children and adults with compromised health.

(C) Domestic animals.

(D) Fish and wildlife.

(E) Public health and the environment, including drinking water.

(c) The State Department of Public Health, the Department of Fish and Game, the Office of Environmental Health Hazard Assessment, the Department of Boating and Waterways, the Department of Forestry and Fire Protection, the State Water Resources Control Board, and the Department of Pesticide Regulation shall participate in the preparation of the plan in their areas of expertise. The Office of Environmental Health Hazard Assessment shall include an analysis of the risks of using the pesticide and its inert material.

(d) In developing the plan, the department shall hold public hearings that shall include a presentation by the department and the opportunity for public comment and establish a process for submittal of public comment. Following the public hearing, the department shall reassess the appropriateness of the response and may revise the response and may hold additional public hearings.

(e) The plan shall include a characterization of the number of and the nature of the public comments received pursuant to subdivision (d).

(f) The department shall make the plan available to the public, including making it available on the department's Internet Web site.

5263. If the department determines that an invasive pest identified on the list developed pursuant to Section 5261 has entered the state, the department shall notify the Governor, the governing boards of affected cities and counties, and county agricultural commissioners.

5264. If the department determines that an invasive pest has entered the state and the urban aerial application of a pesticide, or a communitywide ground application of a pesticide, is the preferred eradication, control, or management response, the department shall advise the Governor and provide the Governor with a copy of the plan for that invasive pest. If a plan has not been prepared for that invasive pest, the department shall consult with the appropriate agencies and shall advise the Governor of the lack of a plan and advise the Governor of the best available options.

5265. If the department determines that an invasive pest has entered the state, and an urban aerial application of a pesticide, or a communitywide ground application of a pesticide, is the selected response, the department shall do all of the following:

(a) Notify the governing boards of affected cities and counties and their agricultural commissioners and health officers.

(b) Notify the public of all of the following:

(1) The existence of the invasive pest.

(2) The consequences of not eradicating, controlling, or managing the invasive pest.

(3) The active ingredient and inert material of the pesticide, to the extent that the disclosure of the inert material is permitted by state and federal law.

(4) The method or methods of applying the pesticide.

(5) The implications of the use of the pesticide and the inert materials on human health, domestic animals, fish and wildlife, and the environment.

(c) Hold public hearings in areas subject to aerial application of the pesticide or communitywide ground application of the pesticide.

(d) Establish a telephone hotline for the public to report adverse health consequences and a process to evaluate and respond to adverse health consequences.

5266. This program established by this chapter may only be funded with federal funds.

5267. This chapter does not apply to the following:

(a) The State Department of Public Health and local vector control agencies providing services in accordance with Section 116180 of the Health and Safety Code.

(b) Mosquito abatement and vector control districts authorized under Chapter 1 (commencing with Section 2000) of Division 3 of the Health and Safety Code.

CHAPTER 574

An act to amend Sections 5771 and 5776 of, and to add Section 2276.5 to, the Food and Agricultural Code, relating to pests.

[Approved by Governor September 29, 2008. Filed with Secretary of State September 29, 2008.]

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

SECTION 1. Section 2276.5 is added to the Food and Agricultural Code, to read:

2276.5. (a) The Legislature finds and declares that, acting under policy direction of the Secretary of Food and Agriculture, California's unique system of county agricultural commissioners forms the front line of defense in protecting the state from the many exotic and invasive species threatening our people, commerce, and environment.

(b) It is the intent of the Legislature that agricultural commissioners take an increasingly assertive and proactive role in the exclusion and detection of exotic and invasive species in the urban environment, particularly those potentially spread by human activities, such as landscaping and yard maintenance.

SEC. 2. Section 5771 of the Food and Agricultural Code is amended to read:

5771. When the secretary proclaims an eradication project in an urban area pursuant to Article 4 (commencing with Section 5761), where the eradication plan includes potential aerial application of a pesticide, the secretary or the commissioner, pursuant to this article, shall do all of the following before aerially applying a pesticide to effect the eradication:

(a) Conduct at least one public hearing, to include a presentation by the department and the opportunity for public comment, in the area to consider all alternatives to aerial application of a pesticide.

(b) Seek an evaluation of human health risks and environmental risks jointly prepared by the Department of Pesticide Regulation and the Office of Environmental Health Hazard Assessment, including findings and recommendations regarding environmental and human risks of the proposed use of a pesticide by aerial application.

(c) Notify residents and physicians practicing in the area, and the local broadcast and print media.

SEC. 3. Section 5776 of the Food and Agricultural Code is amended to read:

5776. The notice distributed pursuant to this article shall contain all of the following:

(a) The likely date or dates and approximate time or times of all proposed pesticide applications in the eradication area.

(b) The pesticides to be applied.

(c) Any health and safety precautions that should be taken.

(d) A telephone number and address of public health personnel who are familiar with the eradication program.

(e) The active ingredients and inert materials of the pesticide, to the extent that the department is permitted by state and federal law to disclose them.

CHAPTER 575

An act to amend Sections 25214.1, 25214.2, 25214.3, 25214.4, 25214.4.2, 25214.12, 25214.13, 25214.14, 25214.15, 25214.17, and 25214.18 of, and to add Sections 25214.1.5, 25214.3.1, 25214.3.2, 25214.3.3, 25214.3.4, 25214.22, 25214.22.1, 25214.23, 25214.24, and 25214.26 to, the Health and Safety Code, relating to toxics.

[Approved by Governor September 29, 2008. Filed with Secretary of State September 29, 2008.]

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

SECTION 1. Section 25214.1 of the Health and Safety Code is amended to read:

25214.1. For purposes of this article, the following definitions shall apply:

(a) "Amended consent judgment" means the amended consent judgment in the consolidated action entitled People vs. Burlington Coat Factory Warehouse Corporation, et al. (Alameda Superior Court Lead Case No. RG 04-162075) that was entered by the court on June 15, 2006.

(b) "Body piercing jewelry" means any part of jewelry that is manufactured or sold for placement in a new piercing or a mucous membrane, but does not include any part of that jewelry that is not placed within a new piercing or a mucous membrane.

(c) "Children" means children aged six and younger.

(d) "Children's jewelry" means jewelry that is made for, marketed for use by, or marketed to, children. For purposes of this article, children's jewelry includes, but is not limited to, jewelry that meets any of the following conditions:

(1) Represented in its packaging, display, or advertising, as appropriate for use by children.

(2) Sold in conjunction with, attached to, or packaged together with other products that are packaged, displayed, or advertised as appropriate for use by children.

(3) Sized for children and not intended for use by adults.

(4) Sold in any of the following:

(A) A vending machine.

(B) Retail store, catalogue, or online Web site, in which a person exclusively offers for sale products that are packaged, displayed, or advertised as appropriate for use by children.

(C) A discrete portion of a retail store, catalogue, or online Internet Web site, in which a person offers for sale products that are packaged, displayed, or advertised as appropriate for use by children.

(e) (1) "Class 1 material" means any of the following materials:

(A) Stainless or surgical steel.

(B) Karat gold.

(C) Sterling silver.

(D) Platinum, palladium, iridium, ruthenium, rhodium, or osmium.

(E) Natural or cultured pearls.

(F) Glass, ceramic, or crystal decorative components, including cat's eye, cubic zirconia, including cubic zirconium or CZ, rhinestones, and cloisonne.

(G) A gemstone that is cut and polished for ornamental purposes, except as provided in paragraph (2).

(H) Elastic, fabric, ribbon, rope, or string, unless it contains intentionally added lead and is listed as a class 2 material.

(I) All natural decorative material, including amber, bone, coral, feathers, fur, horn, leather, shell, wood, that is in its natural state and is not treated in a way that adds lead.

(J) Adhesive.

(2) The following gemstones are not class 1 materials: aragonite, bayldonite, boleite, cerussite, crocoite, ekanite, linarite, mimetite, phosgenite, samarskite, vanadinite, and wulfenite.

(f) "Class 2 material" means any of the following materials:

(1) Electroplated metal that meets the following standards:

(A) On and before August 30, 2009, a metal alloy with less than 10 percent lead by weight that is electroplated with suitable under and finish coats.

(B) On and after August 31, 2009, a metal alloy with less than 6 percent lead by weight that is electroplated with suitable under and finish coats.

(2) Unplated metal with less than 1.5 percent lead that is not otherwise listed as a class 1 material.

(3) Plastic or rubber, including acrylic, polystyrene, plastic beads and stones, and polyvinyl chloride (PVC) that meets the following standards:

(A) On and before August 30, 2009, less than 0.06 percent (600 parts per million) lead by weight.

(B) On and after August 31, 2009, less than 0.02 percent (200 parts per million) lead by weight.

(4) A dye or surface coating containing less than 0.06 percent (600 parts per million) lead by weight.

(g) "Class 3 material" means any portion of jewelry that meets both of the following criteria:

(1) Is not a class 1 or class 2 material.

(2) Contains less than 0.06 percent (600 parts per million) lead by weight.

(h) "Component" means any part of jewelry.

(i) "Jewelry" means any of the following:

(1) Any of the following ornaments worn by a person:

(A) An anklet.

(B) Arm cuff.

(C) Bracelet.

(D) Brooch.

(E) Chain.

(F) Crown.

(G) Cuff link.

(H) Hair accessory.

(I) Earring.

(J) Necklace.

(K) Pin.

(L) Ring.

(M) Body piercing jewelry.

(N) Jewelry placed in the mouth for display or ornament.

(2) Any bead, chain, link, pendant, or other component of an ornament specified in paragraph (1).

(3) A charm, bead, chain, link, pendant, or other attachment to shoes or clothing that can be removed and may be used as a component of an ornament specified in paragraph (1).

(4) A watch in which a timepiece is a component of an ornament specified in paragraph (1), excluding the timepiece itself if the timepiece can be removed from the ornament.

(j) (1) "Surface coating" means a fluid, semifluid, or other material, with or without a suspension of finely divided coloring matter, that changes to a solid film when a thin layer is applied to a metal, wood, stone, paper, leather, cloth, plastic, or other surface.

(2) "Surface coating" does not include a printing ink or a material that actually becomes a part of the substrate, including, but not limited to, pigment in a plastic article, or a material that is actually bonded to the substrate, such as by electroplating or ceramic glazing.

SEC. 1.5. Section 25214.1.5 is added to the Health and Safety Code, to read:

25214.1.5. (a) This article does not do any of the following:

(1) Affect a duty or other requirement otherwise imposed under federal or state law.

(2) Alter or diminish a legal obligation otherwise required in common law, by statute, or by regulation.

(3) Create or enlarge a defense to an action to enforce a legal obligation otherwise required in common law, by statute, or by regulation.

(b) The Legislature finds and declares that the addition of this section during the 2007–08 Regular Session of the Legislature is declaratory of existing law.

SEC. 2. Section 25214.2 of the Health and Safety Code is amended to read:

25214.2. (a) On and after March 1, 2008, a person shall not manufacture, ship, sell, offer for sale, or offer for promotional purposes jewelry for retail sale or promotional purposes in the state unless the jewelry is made entirely from a class 1, class 2, or class 3 material, or any combination thereof.

(b) Notwithstanding subdivision (a), on and after September 1, 2007, a person shall not manufacture, ship, sell, offer for sale, or offer for promotional purposes children's jewelry for retail sale or promotional purposes in the state unless the children's jewelry is made entirely from one or more of the following materials:

(1) A nonmetallic material that is a class 1 material and that does not otherwise violate the requirements of paragraph (4).

(2) A nonmetallic material that is a class 2 material.

(3) A metallic material that is either a class 1 material or contains less than 0.06 percent (600 parts per million) lead by weight.

(4) Glass or crystal decorative components that weigh in total no more than one gram, excluding any glass or crystal decorative component that contains less than 0.02 percent (200 parts per million) lead by weight and has no intentionally added lead.

(5) Printing ink or ceramic glaze that contains less than 0.06 percent (600 parts per million) lead by weight.

(6) Class 3 material that contains less than 0.02 percent (200 parts per million) lead by weight.

(c) Notwithstanding subdivision (a), on and after March 1, 2008, a person shall not manufacture, ship, sell, offer for sale, or offer for promotional purposes body piercing jewelry for retail sale or promotional purposes in the state unless the body piercing jewelry is made of one or more of the following materials:

(1) Surgical implant stainless steel.

(2) Surgical implant grade of titanium.

(3) Niobium (Nb).

(4) Solid 14 karat or higher white or yellow nickel-free gold.

(5) Solid platinum.

(6) A dense low-porosity plastic, including, but not limited to, Tygon or Polytetrafluoroethylene (PTFE), if the plastic contains no intentionally added lead.

SEC. 3. Section 25214.3 of the Health and Safety Code is amended to read:

25214.3. (a) Except as provided in Sections 25214.3.3 and 25214.3.4, a person who violates this article shall not be subject to criminal penalties imposed pursuant to this chapter and shall only be subject to the administrative or civil penalty specified in subdivision (b).

(b) (1) A person who violates this article shall be liable for an administrative or a civil penalty not to exceed two thousand five hundred dollars ($2,500) per day for each violation. That administrative or civil penalty may be assessed and recovered in an administrative action filed with the Office of Administrative Hearings or in a civil action brought in any court of competent jurisdiction.

(2) In assessing the amount of an administrative or a civil penalty for a violation of this article, the presiding officer or the court, as applicable, shall consider all of the following:

(A) The nature and extent of the violation.

(B) The number of, and severity of, the violations.

(C) The economic effect of the penalty on the violator.

(D) Whether the violator took good faith measures to comply with this article and the time these measures were taken.

(E) The willfulness of the violator's misconduct.

(F) The deterrent effect that the imposition of the penalty would have on both the violator and the regulated community as a whole.

(G) Any other factor that justice may require.

(c) Administrative and civil penalties collected pursuant to this article shall be deposited in the Hazardous Waste Control Account, for expenditure by the department, upon appropriation by the Legislature, to implement and enforce this article.

(d) (1) Notwithstanding subdivision (b), a party that is a signatory to the amended consent judgment, or a party that is a signatory to a consent judgment entered in the consolidated action entitled People vs. Burlington Coat Factory Warehouse Corporation, et al. (Alameda Superior Court Lead Case No. RG 04-162075) that contains identical or substantially identical terms as provided in Sections 2, 3, and 4 of the amended consent judgment, shall not be subject to enforcement pursuant to this article, and an action brought to enforce this article against the party shall be subject to Section 4 of the amended consent judgment.

(2) The Legislature finds and declares that the amendment of this subdivision by the act amending this section during the 2007–08 Regular Session of the Legislature is declaratory of existing law.

(e) (1) For the purpose of administering and enforcing this article, an authorized representative of the department, upon obtaining consent or after obtaining an inspection warrant pursuant to Title 13 (commencing with Section 1822.50) of Part 3 of the Code of Civil Procedure, may, upon presenting appropriate credentials and at a reasonable time, do any of the following:

(A) Enter a factory, warehouse, or establishment where jewelry is manufactured, packed, held, or sold; enter a vehicle that is being used to transport, hold, or sell jewelry; or enter a place where jewelry is being held or sold.

(B) Inspect a factory, warehouse, establishment, vehicle, or place described in subparagraph (A), and all pertinent equipment, raw material, finished and unfinished materials, containers, and labeling in the factory, warehouse, establishment, vehicle, or place. In the case of a factory, warehouse, or establishment where jewelry is manufactured, packed, held, or sold, this inspection shall include any record, file, paper, process, control, and facility that has a bearing on whether the jewelry is being manufactured, packed, held, transported, sold, or offered for sale or for promotional purposes in violation of this article.

(2) (A) An authorized representative of the department may secure a sample of jewelry when taking an action authorized pursuant to this subdivision. If the representative obtains a sample prior to leaving the premises, he or she shall leave a receipt describing the sample obtained.

(B) The department shall return, upon request, a sample that is not destroyed during testing when the department no longer has any purpose for retaining the sample.

(C) A sample that is secured in compliance with this section and found to be in compliance with this article that is destroyed during testing shall be subject to a claim for reimbursement.

(3) An authorized representative of the department shall have access to all records of a carrier in commerce relating to the movement in

commerce of jewelry, or the holding of that jewelry during or after the movement, and the quantity, shipper, and consignee of the jewelry. A carrier shall not be subject to the other provisions of this article by reason of its receipt, carriage, holding, or delivery of jewelry in the usual course of business as a carrier.

(4) An authorized representative of the department shall be deemed to have received implied consent to enter a retail establishment, for purposes of this section, if the authorized representative enters the location of that retail establishment where the public is generally granted access.

SEC. 4. Section 25214.3.1 is added to the Health and Safety Code, to read:

25214.3.1. (a) A manufacturer or supplier of jewelry that is sold, offered for sale, or offered for promotional purposes shall prepare and, at the request of the department, submit to the department no more than 28 days after the date of the request, technical documentation or other information showing that the jewelry is in compliance with the requirements of this article.

(b) A manufacturer or supplier of jewelry sold or offered for sale in this state shall do either of the following:

(1) Provide a certification to a person who sells or offers for sale that manufacturer's or supplier's jewelry, upon the request of that person.

(2) Display the certification prominently on the shipping container or on the packaging of jewelry.

(c) The certification required by subdivision (b) shall attest that the jewelry does not contain a level of lead that would prohibit the jewelry from being sold or offered for sale pursuant to this article.

SEC. 5. Section 25214.3.2 is added to the Health and Safety Code, to read:

25214.3.2. (a) Except as provided in subdivision (b), a person who sells jewelry at retail or offers jewelry for retail sale shall not be subject to an administrative or civil penalty for a violation of this article if the person proves, by a preponderance of evidence, all of the following:

(1) The person received a certificate of compliance for the jewelry from the manufacturer or supplier.

(2) The certificate of compliance received pursuant to paragraph (1) stated that the jewelry is in compliance with the requirements of this article.

(3) The person relied on the certificate of compliance and did not know, and had no reason to know, that the jewelry was in violation of this article.

(4) Upon receiving a notice of violation from the department, the person took corrective action by immediately removing the jewelry from commerce.

(b) The affirmative defense specified in subdivision (a) does not apply to, and may not be raised by, a person who has been found in violation of this article on at least two prior occasions in the preceding three years from the filing date of the current action.

SEC. 6. Section 25214.3.3 is added to the Health and Safety Code, to read:

25214.3.3. A manufacturer or supplier of jewelry who knowingly and intentionally manufactures, ships, sells, offers for sale, or offers for promotional purposes jewelry containing lead in violation of this article is guilty of a misdemeanor punishable by a fine of not less than five thousand dollars ($5,000) nor more than one hundred thousand dollars ($100,000), by imprisonment in a county jail for not more than one year, or by both that fine and imprisonment.

SEC. 7. Section 25214.3.4 is added to the Health and Safety Code, to read:

25214.3.4. A manufacturer or supplier of jewelry who knowingly and with intent to deceive, falsifies any document or certificate required to be kept or produced pursuant to this article is subject to a fine of not more than fifty thousand dollars ($50,000), by imprisonment in a county jail for not more than one year, or by both that fine and imprisonment.

SEC. 8. Section 25214.4 of the Health and Safety Code is amended to read:

25214.4. The test methods for determining compliance with this article shall be conducted using the EPA reference methods 3050B, 3051A, and 3052, as specified in EPA Test Methods for Evaluating Solid Waste, Physical/Chemical Methods, SW-846 (Third Edition, as currently updated) for the material being tested, except as otherwise provided in Sections 24214.4.1 and 25214.4.2, and in accordance with all of the following procedures:

(a) When preparing a sample, the laboratory shall make every effort to assure that the sample removed from a jewelry piece is representative of the component to be tested, and is free of contamination from extraneous dirt and material not related to the jewelry component to be tested.

(b) All jewelry component samples shall be washed prior to testing using standard laboratory detergent, rinsed with laboratory reagent grade deionized water, and dried in a clean ambient environment.

(c) If a component is required to be cut or scraped to obtain a sample, the metal snips, scissors, or other cutting tools used for the cutting or

scraping shall be made of stainless steel and washed and rinsed before each use and between samples.

(d) A sample shall be digested in a container that is known to be free of lead and with the use of an acid that is not contaminated by lead, including analytical reagent grade digestion acids and reagent grade deionized water.

(e) Method blanks, consisting of all reagents used in sample preparation handled, digested, and made to volume in the same exact manner and in the same container type as samples, shall be tested with each group of 20 or fewer samples tested.

(f) The results for the method blanks shall be reported with each group of sample results, and shall be below the stated reporting limit for sample results to be considered valid.

(g) Test methods selected shall be those that best demonstrate they can achieve total digestion of the sample material being analyzed. Test methods shall not be used if they are inconsistent with the specified application of the test method or do not demonstrate the best performance or proficiency for achieving total digestion of the sample material.

SEC. 9. Section 25214.4.2 of the Health and Safety Code is amended to read:

25214.4.2. The department may adopt regulations to implement this article, including, but not limited to, adopting regulations that modify the testing protocols specified in Sections 25214.4 and 25214.4.1, as it deems necessary to further the purposes of this article.

SEC. 10. Section 25214.12 of the Health and Safety Code is amended to read:

25214.12. For purposes of this article, the following terms have the following meanings:

(a) "Authorized official" means a representative of a manufacturer or supplier who is authorized pursuant to the laws of this state to bind the manufacturer or supplier regarding the accuracy of the content of a certificate of compliance.

(b) "ASTM" means the American Society for Testing and Materials.

(c) "Distribution" means the practice of taking title to a package or a packaging component for promotional purposes or resale. A person involved solely in delivering a package or a packaging component on behalf of a third party is not engaging in distribution.

(d) (1) "Intentional introduction" means the act of deliberately utilizing a regulated metal in the formation of a package or packaging component where its continued presence is desired in the final package or packaging component to provide a specific characteristic, appearance, or quality.

(2) "Intentional introduction" does not include either of the following:

(A) The use of a regulated metal as a processing agent or intermediate to impart certain chemical or physical changes during manufacturing, where the incidental retention of a residue of that metal in the final package or packaging component is not desired or deliberate, if the final package or packaging component is in compliance with subdivision (c) of Section 25214.13.

(B) The use of recycled materials as feedstock for the manufacture of new packaging materials, where some portion of the recycled materials may contain amounts of a regulated metal, if the new package or packaging component is in compliance with subdivision (c) of Section 25214.13.

(e) "Incidental presence" means the presence of a regulated metal as an unintended or undesired ingredient of a package or packaging component.

(f) "Manufacturer" means any person, firm, association, partnership, or corporation producing a package or packaging component.

(g) "Manufacturing" means the physical or chemical modification of a material to produce packaging or a packaging component.

(h) (1) Except as provided in paragraph (2) "package" means any container, produced either domestically or in a foreign country, providing a means of marketing, protecting, or handling a product from its point of manufacture to its sale or transfer to a consumer, including a unity package, an intermediate package or a shipping container, as defined in the ASTM specification D 996. "Package" also includes, but is not limited to, unsealed receptacles, including carrying cases, crates, cups, pails, rigid foil and other trays, wrappers and wrapping films, bags, and tubs.

(2) "Package" does not include a reusable bag, as defined in subdivision (d) of Section 42250 of the Public Resources Code.

(i) "Packaging component" means any individual assembled part of a package that is produced either domestically or in a foreign country, including, but not necessarily limited to, any interior or exterior blocking, bracing, cushioning, weatherproofing, exterior strapping, coatings, closures, inks, labels, dyes, pigments, adhesives, stabilizers, or any other additives. Tin-plated steel that meets the ASTM specification A 623 shall be considered as a single package component. Electrogalvanized coated steel and hot dipped coated galvanized steel that meet the ASTM qualifications A 591, A 653, A 879, and A 924 shall be treated in the same manner as tin-plated steel.

(j) "Purchaser" means a person who purchases and takes title to a package or a packaging component, from a manufacturer or supplier, for the purpose of packaging a product manufactured, distributed, or sold by the purchaser.

(k) "Recycled material" means a material that has been separated from solid waste for the purpose of recycling the material as a secondary material feedstock. Recycled materials include paper, plastic, wood, glass, ceramics, metals, and other materials, except that recycled material does not include a regulated metal that has been separated from other materials into its elemental or other chemical state for recycling as a secondary material feedstock.

(*l*) "Regulated metal" means lead, mercury, cadmium, or hexavalent chromium.

(m) (1) "Supplier" means a person who does or is one or more of the following:

(A) Sells, offers for sale, or offers for promotional purposes, a package or packaging component that is used by any other person to package a product.

(B) Takes title to a package or packaging component, produced either domestically or in a foreign country, that is purchased for resale or promotional purposes.

(C) Acts as an intermediary for the purchase of a package or packaging component for resale from a manufacturer located in another country to a purchaser located in this state, and who may receive a commission or a fee on that sale.

(D) Listed as the importer of record on a United States Customs Service form for an imported package or packaging component.

(2) "Supplier" does not include a person involved solely in delivering a package or packaging component on behalf of a third party.

(n) "Toxics in Packaging Clearinghouse" means the Toxics in Packaging Clearinghouse (TPCH) of the Council of State Governments.

SEC. 11. Section 25214.13 of the Health and Safety Code is amended to read:

25214.13. (a) Except as provided in Section 25214.14, on and after January 1, 2006, a manufacturer or supplier may not offer for sale or for promotional purposes in this state a package or packaging component that includes a regulated metal, in the package itself, or in a packaging component, if the regulated metal has been intentionally introduced into the package or packaging component during manufacturing or distribution.

(b) Except as provided in Section 25214.14, on and after January 1, 2006, a person may not offer for sale or for promotional purposes in this state a product in a package that includes a regulated metal, in the package itself, or in a packaging component, if the regulated metal has been intentionally introduced into the package or packaging component during manufacturing or distribution.

(c) Except as provided in Section 25214.14, on and after January 1, 2006, a person may not offer for sale or for promotional purposes in this state a package, packaging component, or product in a package if the sum of the incidental total concentration levels of all regulated metals present in a single-component package or in an individual packaging component exceeds 100 parts per million by weight.

SEC. 12. Section 25214.14 of the Health and Safety Code is amended to read:

25214.14. A package or a packaging component is exempt from the requirements of Section 25214.13, and shall be deemed in compliance with this article, if the manufacturer or supplier complies with the applicable documentation requirements specified in Section 25214.15 and the package or packaging component meets any of the following conditions:

(a) The package or packaging component is marked with a code indicating a date of manufacture prior to January 1, 2006.

(b) A regulated metal has been added to the package or packaging component in the manufacturing, forming, printing, or distribution process, to comply with the health or safety requirements of a federal or state law.

(c) (1) The package or packaging component contains no intentionally introduced regulated metals, but exceeds the applicable maximum concentration level set forth in subdivision (c) of Section 25214.13 only because of the addition of a recycled material.

(2) This subdivision, and all exemptions provided pursuant to it, expire on January 1, 2010.

(d) (1) A regulated metal has been added to the package or packaging component in the manufacturing, forming, printing, or distribution process for a use for which there is no feasible alternative.

(2) For purposes of this subdivision, "a use for which there is no feasible alternative" means a use, other than for purposes of marketing, for which a regulated metal is essential to the protection, safe handling, or function, of the package's contents, and technical constraints preclude the substitution of other materials.

(e) (1) The package or packaging component is reused and contains no intentionally introduced regulated metals, but exceeds the applicable maximum concentration level set forth in subdivision (c) of Section 25214.13, and all of the following apply:

(A) The product being conveyed by the package, the package, or packaging component is otherwise regulated under a federal or state health or safety requirement.

(B) The transportation of the packaged product is regulated under federal or state transportation requirements.

(C) The disposal of the package is otherwise performed according to the requirements of this chapter or Chapter 8 (commencing with Section 114960) of Part 9 of Division 104.

(2) This subdivision, and all exemptions provided pursuant to it, expire on January 1, 2010.

(f) (1) The package or packaging component has a controlled distribution and reuse and contains no intentionally introduced regulated metals, but exceeds the applicable maximum concentration level set forth in subdivision (c) of Section 25214.13.

(2) This subdivision, and all exemptions provided pursuant to it, expire on January 1, 2010.

(g) (1) The packaging or packaging component is a glass or ceramic package or packaging component that has a vitrified label, and that, when tested in accordance with the Waste Extraction Test, described in Appendix II of Chapter 11 (commencing with Section 66261.1) of Division 4.5 of Title 22 of the California Code of Regulations does not exceed 1.0 ppm for cadmium, 5.0 ppm for hexavalent chromium, or 5.0 ppm for lead. A glass or ceramic package or packaging component containing mercury is not exempted pursuant to this subdivision.

(2) A glass bottle package with paint or applied ceramic decoration on the bottle does not qualify for an exemption pursuant to this section, if the paint or applied ceramic decoration contains lead or lead compounds in excess of 0.06 percent by weight.

(3) This subdivision, and all exemptions provided pursuant to it, expire on January 1, 2010.

SEC. 13. Section 25214.15 of the Health and Safety Code is amended to read:

25214.15. (a) A package or packaging component qualifies for an exemption pursuant to Section 25214.14 only if the manufacturer or supplier prepares, retains, and biennially updates documentation containing all of the following information for that package or packaging component:

(1) A statement that the documentation applies to an exemption from the requirements of Section 25214.13.

(2) The name, position, and contact information for the person who is the manufacturer's or supplier's contact person on all matters concerning the exemption.

(3) An identification of the exemption and a reference to the applicable subdivision in Section 25214.14 setting forth the conditions for the exemption.

(4) A description of the type of package or packaging component to which the exemption applies.

(5) Identification of the type and concentration of the regulated metal or metals present in the package or packaging component, and a description of the testing methods used to determine the concentration.

(6) An explanation of the reason for the exemption.

(7) Supporting documentation that fully and clearly demonstrates that the package or packaging component is eligible for the exemption.

(8) The documentation listed in subdivisions (b), (c), (d), (e), (f), (g), or (h), whichever is applicable for the exemption.

(b) In addition to the requirements specified in subdivision (a), if an exemption is being claimed under subdivision (a) of Section 25214.14, the manufacturer or supplier shall prepare, retain, and biennially update documentation containing all of the following information for the package or packaging component to which the exemption applies:

(1) Date of manufacture.

(2) Estimated time needed to exhaust current inventory.

(3) Alternative package or packaging component that meets the requirements of Section 25214.13.

(c) In addition to the requirements specified in subdivision (a), if an exemption is being claimed under subdivision (b) of Section 25214.14, the manufacturer or supplier shall prepare, retain, and biennially update documentation that contains all of the following information for each regulated metal intentionally introduced in the package or packaging component to which the exemption applies:

(1) Identification of the specific federal or state law requiring the addition of the regulated metal to the package or packaging component.

(2) Detailed information that fully and clearly demonstrates that the addition of the regulated metal to the package or packaging component is necessary to comply with the law identified pursuant to paragraph (1).

(3) A description of past, current, and planned future efforts to seek or develop alternatives to eliminate the use of the regulated metal in the package or packaging component.

(4) A description of all alternative measures that have been considered, and, for each alternative, an explanation as to why the alternative is not satisfactory for purposes of achieving compliance with the law identified pursuant to paragraph (1).

(d) In addition to the requirements specified in subdivision (a), if an exemption is being claimed under subdivision (c) of Section 25214.14, the manufacturer or supplier shall prepare, retain, and biennially update documentation containing all of the following information for the package or packaging component to which the exemption applies:

(1) The type and percentage of recycled material or materials added to the package or packaging component.

(2) The type and concentration of each regulated metal contained in each recycled material added to the package or packaging component.

(3) Efforts to minimize or eliminate the regulated metals in the package or packaging component.

(4) A description of past, current, and planned future efforts to seek or develop alternatives to minimize or eliminate the use of the regulated metal in the package or packaging component.

(e) In addition to the requirements specified in subdivision (a), if an exemption is being claimed under subdivision (d) of Section 25214.14, the manufacturer or supplier shall prepare, retain, and biennially update documentation containing all of the following information for each regulated metal intentionally introduced into the package or packaging component to which the exemption applies:

(1) Detailed information and evidence that fully and clearly demonstrates how the regulated metal contributes to, and is essential to, the protection, safe handling, or functioning of the package's contents.

(2) A description of past, current, and planned future efforts to seek or develop alternatives to minimize or eliminate the use of the regulated metal in the package or packaging component.

(3) A description of all alternative measures that have been considered, and, for each alternative, an explanation as to the technical constraints that preclude substitution of the alternative for the use of the regulated metal.

(4) Documentation that the regulated metal is not being used for the purposes of marketing.

(f) In addition to the requirements specified in subdivision (a), if an exemption is being claimed under subdivision (e) of Section 25214.14, the manufacturer or supplier shall prepare, retain, and biennially update documentation containing all of the following information for the package or packaging component to which the exemption applies:

(1) The percentage of reused materials.

(2) Identification of the federal or state health or safety law regulating the product being conveyed by the package, the package, or the packaging component.

(3) Identification of the federal or state transportation law regulating the transportation of the packaged product.

(4) Information demonstrating that the package is disposed of in accordance with the requirements of this chapter or Chapter 8 (commencing with Section 114960) of Part 9 of Division 104.

(5) A description of past, current, and planned future efforts to seek or develop alternatives to minimize or eliminate the use of the regulated metal in the package or packaging component.

(g) In addition to the requirements specified in subdivision (a), if an exemption is being claimed under subdivision (f) of Section 25214.14, the manufacturer or supplier shall prepare, retain, and biennially update documentation containing all of the following information for the package or packaging component to which the exemption applies:

(1) The percentage of reused materials.

(2) Information and evidence that demonstrates that the environmental benefit of the controlled distribution and reuse of the package or packaging component is significantly greater, as compared to the same package or packaging component manufactured in compliance with the applicable maximum concentration level set forth in subdivision (c) of Section 25214.13.

(3) A means of identifying, in a permanent and visible manner, any reusable package or packaging component containing a regulated metal for which the exemption is sought.

(4) A method of regulatory and financial accountability, so that a specified percentage of the reusable packages or packaging components that are manufactured and distributed to other persons are not discarded by those persons after use, but are returned to the manufacturer or identified designees.

(5) A system of inventory and record maintenance to account for reusable packages or packaging components placed in, and removed from, service.

(6) A means of transforming returned packages or packaging components that are no longer reusable into recycled materials for manufacturing, or a means of collecting and managing returned packages or packaging components as waste in accordance with applicable federal and state law.

(7) A description of past, current, and planned future efforts to seek or develop alternatives to minimize or eliminate the use of the regulated metal in the package or packaging component.

(h) In addition to the requirements specified in subdivision (a), if an exemption is being claimed under subdivision (g) of Section 25214.14, the manufacturer or supplier shall prepare, retain, and biennially update the following documentation for the package or packaging component to which the exemption applies:

(1) Applicable test data.

(2) A description of past, current, and planned future efforts to seek or develop alternatives to minimize or eliminate the use of the regulated metal in the package or packaging component.

(i) A manufacturer or supplier shall submit the documentation required pursuant to subdivisions (a) to (h), inclusive, to the department, as follows:

(1) Upon receipt of a written request from the department, the manufacturer or supplier shall, on or before 30 calendar days after the date of receipt, do one of the following:

(A) Submit the required documentation to the department.

(B) Submit a letter to the department indicating the date by which the documentation shall be submitted, which may be no more than 90 calendar days after the date of receipt of the department's request.

(2) If the department finds that the documentation supplied pursuant to paragraph (1) is incomplete or incorrect, the department shall notify the manufacturer or supplier that the documentation is incomplete or incorrect, and the manufacturer or supplier shall submit complete and correct documentation to the department within 60 calendar days after the date of receipt of the notification.

(j) If a manufacturer or supplier fails to comply with subdivision (i) by any of the specified dates in that subdivision, the manufacturer or supplier shall, with respect to the package or packaging component to which the documentation request applies, comply with one of the following:

(1) Immediately cease to offer the package or packaging component for sale or for promotional purposes in this state.

(2) Replace the package or packaging component with a package or packaging component that conforms with the regulated metals limitations specified in Section 25214.13, in accordance with a schedule approved in writing by the department.

(3) Submit complete and correct documentation for the package or packaging component, in accordance with a schedule approved in writing by the department.

SEC. 14. Section 25214.17 of the Health and Safety Code is amended to read:

25214.17. (a) Except as provided in subdivision (b), the department, pursuant to the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code), shall provide the public with access to all information relating to a package or packaging component that has been submitted to the department by a manufacturer or supplier of a package or packaging component pursuant to this article.

(b) (1) The department shall keep confidential any information identified by the manufacturer or supplier, pursuant to paragraph (2), as a trade secret, as defined in Section 25173, in accordance with departmental procedures that have been adopted pursuant to Section 25173, if the department determines that this information meets that definition of a trade secret.

(2) A manufacturer or supplier providing information to the department pursuant to this article shall, at the time of submission, identify all information that the manufacturer or supplier believes is a trade secret. The department shall make available to the public any information that is not a trade secret.

SEC. 15. Section 25214.18 of the Health and Safety Code is amended to read:

25214.18. If the department determines that other substances contained in packaging should be added as regulated metals to the list set forth in subdivision (*l*) of Section 25214.12 in order to further reduce the toxicity of packaging waste, the department may submit recommendations to the Governor and the Legislature for additions to the list, along with a description of the nature of the substitutes used in lieu of the recommended additions to the list.

SEC. 16. Section 25214.22 is added to the Health and Safety Code, to read:

25214.22. (a) Except as provided in subdivision (b), a person who offers for retail sale or for promotional purposes a product in a package or in a packaging component that includes a regulated metal shall not be subject to any administrative or civil penalty for a violation of this article, if the person proves, by a preponderance of evidence, all of the following:

(1) The person received a certificate of compliance for the package or packaging component from the manufacturer or supplier.

(2) The certificate of compliance received pursuant to paragraph (1) stated that the package or packaging component is in compliance with the requirements of this article.

(3) The person relied on the certificate of compliance and did not know or had no reason to know that the package or packaging component was in violation of this article.

(4) Upon receiving a notice of violation from the department, the person took corrective action by immediately removing the package or packaging component from commerce.

(b) The affirmative defense specified in subdivision (a) does not apply to, and may not be raised by, a person who has been found to be in violation of this article on at least two prior occasions in the preceding three years from the filing date of the current action.

SEC. 17. Section 25214.22.1 is added to the Health and Safety Code, to read:

25214.22.1. A manufacturer or supplier of a package or packaging component who knowingly and intentionally offers for sale or for promotional purposes a package or packaging component in violation of this article is guilty of a misdemeanor punishable by a fine of not less

than five thousand dollars ($5,000) nor more than one hundred thousand dollars ($100,000), by imprisonment in a county jail for not more than one year, or by both the fine and imprisonment.

SEC. 18. Section 25214.23 is added to the Health and Safety Code, to read:

25214.23. (a) For the purpose of administering and enforcing this article, an authorized representative of the department, upon obtaining consent or after obtaining an inspection warrant pursuant to Title 13 (commencing with Section 1822.50) of Part 3 of the Code of Civil Procedure, may, upon presenting appropriate credentials and at a reasonable time, do any of the following:

(1) Enter a factory, warehouse, or establishment in which a package or packaging component is manufactured, packed, held, or sold; enter a vehicle that is being used to transport, hold, or sell the package or packaging component; or enter a place where a package or packaging component is suspected of being held or sold in violation of this article.

(2) Inspect a factory, warehouse, establishment, vehicle, or place described in paragraph (1), and all pertinent equipment, raw material, finished and unfinished materials, containers, and labeling in the factory, warehouse, establishment, vehicle, or place. In the case of a factory, warehouse, or establishment in which a package or packaging component is manufactured, packed, held, or sold, inspection shall include any record, file, paper, process, control, and facility that has a bearing on whether the package, packaging component, or product in a package is being manufactured, packed, held, transported, sold, offered for sale, or offered for promotional purposes in violation of this article.

(3) Have access to all records of a carrier in commerce relating to the movement in commerce of a package or packaging component, or the holding of that package or packaging component during or after the movement, and the quantity, shipper, and consignee of the package or packaging component. A carrier shall not be subject to the other provisions of this article by reason of its receipt, carriage, holding, or delivery of a product in a package or packaging component in the usual course of business as a carrier.

(b) An authorized representative of the department shall be deemed to have received implied consent to enter a retail establishment, for purposes of this section if the authorized representative enters the location of that retail establishment where the public is generally granted access.

SEC. 19. Section 25214.24 is added to the Health and Safety Code, to read:

25214.24. (a) When taking an action authorized pursuant to Section 25214.23, an authorized representative of the department may secure a sample of a package, packaging component, or product in a package. If

the representative obtains a sample prior to leaving the premises, he or she shall leave a receipt describing the sample obtained.

(b) The department shall return, upon request, a sample that is not destroyed during testing when the department no longer has any purpose for retaining the sample.

(c) A sample that is secured in compliance with this section and found to be in compliance with this article that is destroyed during testing shall be subject to a claim for reimbursement.

SEC. 20. Section 25214.26 is added to the Health and Safety Code, to read:

25214.26. The department may adopt regulations to implement this article, as deemed necessary to further the purposes of this article.

SEC. 21. 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 576

An act to amend Sections 44260, 44260.1, and 44260.8 of, and to repeal Section 44253 of, the Education Code, relating to teacher credentials.

[Approved by Governor September 29, 2008. Filed with Secretary of State September 29, 2008.]

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

SECTION 1. Section 44253 of the Education Code is repealed.

SEC. 2. Section 44260 of the Education Code is amended to read:

44260. The minimum requirements for the three-year preliminary designated subjects career technical education teaching credential shall be all of the following:

(a) Three years or the equivalent of adequate, successful, and recent experience in, or experience and education in, the subject named on the credential.

(b) Possession of a high school diploma or the passage of an equivalency examination as designated by the commission.

(c) Satisfaction of the requirements for teacher fitness pursuant to Sections 44339, 44340, and 44341.

(d) Notwithstanding subdivision (a), the holder of a credential described in this section shall satisfy the minimum experience requirements established by the local educational agency for each course he or she is assigned to teach.

SEC. 3. Section 44260.1 of the Education Code is amended to read:

44260.1. The minimum requirements for the five-year clear designated subjects career technical education teaching credential shall be all of the following:

(a) A valid three-year preliminary designated subjects career technical education teaching credential.

(b) Two years of successful teaching, or the equivalent, as authorized by the designated subjects preliminary career technical education teaching credential.

(c) Completion of a program of personalized preparation as approved by the commission. It is the intent of the Legislature that the program of personalized preparation be consistent with whether the credential holder performs full-time or part-time service.

(d) The study of health education as specified in subparagraph (A) of paragraph (4) of subdivision (c) of Section 44259.

(e) Completion of two semester units or passage of an examination on the principles and provisions of the United States Constitution, as specified in Section 44335.

(f) The study of computer-based technology, including the uses of technology in educational settings.

(g) Notwithstanding subdivision (b), the holder of a credential described in this section shall satisfy the minimum experience requirements established by the local educational agency for each course he or she is assigned to teach.

SEC. 4. Section 44260.8 of the Education Code is amended to read:

44260.8. (a) The minimum requirements for the clear designated subjects adult education teaching credential shall include the study of health education as specified in subparagraph (A) of paragraph (4) of subdivision (c) of Section 44259.

(b) The minimum requirements for the clear designated subjects adult education teaching credential shall include study of computer-based technology, including the uses of technology in educational settings.

CHAPTER 577

An act to amend Sections 44009, 44242.5, and 44425 of the Education Code, relating to teacher credentialing.

[Approved by Governor September 29, 2008. Filed with Secretary of State September 29, 2008.]

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

SECTION 1. Section 44009 of the Education Code is amended to read:

44009. (a) A plea or verdict of guilty or finding of guilt by a court in a trial without a jury, or a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning of Sections 44242.5, 44345, 44346, 44346.1, 44424, and 44425, irrespective of a subsequent order for probation suspending the imposition of a sentence or an order under Section 1203.4 of the Penal Code allowing the withdrawal of the plea of guilty and entering a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusations or information.

(b) The record of a narcotics offense, as defined in Section 44011, shall be sufficient proof of conviction of a crime involving moral turpitude for the purposes of Sections 44907 and 44923, and Sections 44932 to 44947, inclusive, relating to the dismissal of permanent employees.

(c) A plea or verdict of guilty, or finding of guilt by a court in a trial without a jury, or a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning of Sections 44836 and 45123, irrespective of a subsequent order for probation suspending the imposition of a sentence or an order under Section 1203.4 of the Penal Code allowing the withdrawal of the plea of guilty and entering a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusations or information. The record of conviction shall be sufficient proof of conviction of a crime involving moral turpitude for the purposes of Section 44907 and Sections 44932 to 44947, inclusive, relating to the dismissal of permanent employees.

SEC. 2. Section 44242.5 of the Education Code is amended to read:

44242.5. (a) Each allegation of an act or omission by an applicant for, or holder of, a credential for which he or she may be subject to an adverse action shall be presented to the Committee of Credentials.

(b) The committee has jurisdiction to commence an initial review upon receipt of any of the following:

(1) (A) Official records of the Department of Justice, of a law enforcement agency, of a state or federal court, and of any other agency of this state or another state.

(B) For purposes of subparagraph (A), "agency of this state" has the same meaning as that of "state agency" as set forth in Section 11000 of the Government Code.

(2) An affidavit or declaration signed by person or persons with personal knowledge of the acts alleged to constitute misconduct.

(3) (A) A statement from an employer notifying the commission that, as a result of, or while an allegation of misconduct is pending, a credential holder has been dismissed, nonreelected, suspended for more than 10 days, or placed pursuant to a final adverse employment action on unpaid administrative leave for more than 10 days, or has resigned or otherwise left employment.

(B) The employer shall provide the notice described in subparagraph (A) to the commission not later than 30 days after the dismissal, nonreelection, suspension, placement on unpaid administrative leave, resignation, or departure from employment of the employee.

(4) A notice from an employer that a complaint was filed with the school district alleging sexual misconduct by a credential holder. Results of an investigation by the committee based on this paragraph shall not be considered for action by the committee unless there is evidence presented to the committee in the form of a written or oral declaration under penalty of perjury that confirms the personal knowledge of the declarant regarding the acts alleged to constitute misconduct.

(5) A notice from a school district, employer, public agency, or testing administrator of a violation of Section 44420, 44421.1, 44421.5, or 44439.

(6) (A) An affirmative response on an application submitted to the commission as to any conviction, adverse action on, or denial of, a license, or pending investigation into a criminal allegation or pending investigation of a noncriminal allegation of misconduct by a governmental licensing entity.

(B) Failure to disclose any matter set forth in subparagraph (A).

(c) An initial review commences on the date that the written notice is mailed to the applicant or credential holder that his or her fitness to hold a credential is under review. Upon commencement of a formal review pursuant to Section 44244, the committee shall investigate all alleged misconduct and the circumstances in mitigation and aggravation. The investigation shall include, but not be limited to, all of the following:

(1) Investigation of the fitness and competence of the applicant or credential holder to perform the duties authorized by the credential for which he or she has applied or that he or she presently holds.

(2) Preparation of a summary of the applicable law, a summary of the facts, contested and uncontested, and a summary of any circumstances in aggravation or mitigation of the allegation.

(3) Determination of probable cause for an adverse action on the credential. If the allegation is for unprofessional or immoral conduct, the committee, in any formal review conducted pursuant to Section 44244 to determine probable cause, shall permit the employer of the credential holder to be present while testimony is taken. If the allegation of unprofessional or immoral conduct involves sexual abuse, the employer shall be examined in the meeting for any relevant evidence relating to the sexual abuse.

(A) If the committee determines that probable cause for an adverse action does not exist, the committee shall terminate the investigation.

(B) If the committee determines that probable cause for an adverse action on the credential exists, upon receipt of a request from an applicant or a credential holder pursuant to Section 44244.1, the commission shall initiate an adjudicatory hearing, as prescribed by Chapter 5 (commencing with Section 11500) of Division 3 of Title 2 of the Government Code, by filing an accusation or statement of issues.

(d) The committee has jurisdiction to commence a formal review pursuant to Section 44244 upon receipt of any of the following:

(1) (A) Official records of a state or federal court that reflect a conviction or plea, including a plea of nolo contendere, to a criminal offense or official records of a state court that adjudge a juvenile to be a dependent of the court pursuant to Section 300 of the Welfare and Institutions Code due to allegations of sexual misconduct or physical abuse by a credential holder or applicant.

(B) Nothing in subparagraph (A) shall be construed to relieve the commission from the confidentiality provisions, notice, and due process requirements set forth in Section 827 of the Welfare and Institutions Code.

(2) An affidavit or declaration signed by a person or persons with personal knowledge of the acts alleged to constitute misconduct.

(3) A statement described in paragraph (3) of subdivision (b).

(4) Official records of a governmental licensing entity that reflect an administrative proceeding or investigation, otherwise authorized by law or regulation, which has become final.

(5) A notice described in paragraph (5) of subdivision (b).

(6) A response or failure to disclose, as described in paragraph (6) of subdivision (b).

(e) (1) Upon completion of its investigation, the committee shall report its actions and recommendations to the commission, including its

findings as to probable cause, and if probable cause exists, its recommendations as to the appropriate adverse action.

(2) The findings shall be available, upon its request, to the employing or last known employing school district, or, if adverse action is recommended by the committee and the credential holder has not filed a timely appeal of the recommendation of the committee pursuant to Section 44244.1, upon a request made within five years of the date of the committee's recommendations to a school district providing verification that the credential holder has applied for employment in the district. The findings, for all purposes, shall remain confidential and limited to school district personnel in a direct supervisory capacity in relation to the person investigated. Any person who otherwise releases findings received from the committee or the commission, absent a verified release signed by the person who is the subject of the investigation, shall be guilty of a misdemeanor.

(3) The findings shall not contain any information that reveals the identity of persons other than the person who is the subject of the investigation.

(f) (1) Except as provided in paragraph (2) and, notwithstanding subdivision (b), for purposes of determining whether jurisdiction exists under subdivision (b), the commission, in accordance with Section 44341, may make inquiries and requests for production of information and records only from the Department of Justice, a law enforcement agency, a state or federal court, and a licensing agency of this state or a licensing agency of another state.

(2) For purposes of determining whether jurisdiction exists, paragraph (1) does not apply to release of personnel records.

SEC. 3. Section 44425 of the Education Code is amended to read:

44425. (a) Whenever the holder of a credential issued by the state board or the Commission on Teacher Credentialing has been convicted of a sex offense, as defined in Section 44010, or controlled substance offense, as defined in Section 44011, the commission immediately shall suspend the credential. If the conviction is reversed and the holder is acquitted of the offense in a new trial or the charges against him or her are dismissed, the commission immediately shall terminate the suspension of the credential. When the conviction becomes final or when imposition of sentence is suspended, the commission immediately shall revoke the credential.

(b) (1) Notwithstanding subdivision (a) and Section 44009, if the holder of a credential enters a plea of nolo contendere for a violation of subdivision (d) of Section 647 of the Penal Code, the commission of a sex offense as defined in Section 44010, all credentials held by the individual shall be suspended until a final disposition regarding those

credentials is made by the commission. Any action that the commission is permitted to take following a conviction may be taken after the time for appeal has elapsed, the judgment of conviction has been confirmed on appeal, or when an order granting probation is made suspending the imposition of sentence and the time of appeal has elapsed or the judgment of conviction has been affirmed on appeal, irrespective of a subsequent order pursuant to Section 1203.4 of the Penal Code.

(2) The Legislature shall convene a working group of interested parties including, but not limited to, the commission, civil rights organizations, and organizations that represent teachers, administrators, county offices of education, school districts, school boards, and parents to study Sections 44010, 44011, and 44424, and to provide a report on its findings on or before December 1, 2009.

(c) Notwithstanding any other law, revocation shall be final without possibility of reinstatement of the credential if the conviction is for a felony sex offense, as defined in Section 44010, or a felony controlled substance offense, as defined in Section 44011, in which an element of the controlled substance offense is either the distribution to, or use of a controlled substance by, a minor.

(d) (1) Notwithstanding any other provision of law, the commission immediately shall suspend the credential of any holder who is required to register as a sex offender pursuant to either of the following:

(A) Section 290 of the Penal Code.

(B) A law of any other state or of the United States when the underlying offense, if committed in this state, would require registration as a sex offender pursuant to Section 290 of the Penal Code.

(2) If the conviction requiring registration as a sex offender is reversed on appeal and the holder is acquitted at a new trial or if the charges against the holder are dismissed as a result of the reversal, upon notice, the commission shall immediately reinstate the credential.

(3) The commission immediately shall revoke a credential based on a conviction requiring registration as a sex offender when the time for appeal has elapsed, the judgment of conviction has been affirmed on appeal, or an order granting probation is made suspending the imposition of sentence and the time for appeal has elapsed.

(e) A credential holder whose credential has not been revoked pursuant to subdivision (a) as a result of a misdemeanor sex offense, as defined in Section 44010, that does not require registration as a sex offender as set forth in subdivision (c), may apply for reinstatement of his or her credential pursuant to Section 11522 of the Government Code if the accusation or information against the holder has been dismissed and he or she has been released from all disabilities and penalties resulting from

the offense pursuant to Section 1203.4 of the Penal Code or the equivalent statute in another federal or state jurisdiction.

CHAPTER 578

An act to add Sections 44423.5 and 44423.6 to the Education Code, relating to teacher credentialing.

[Approved by Governor September 29, 2008. Filed with Secretary of State September 29, 2008.]

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

SECTION 1. Section 44423.5 is added to the Education Code, to read:

44423.5. (a) The commission shall suspend the credential of a holder when it receives notice that another state has taken final action to revoke a credential or license authorizing the holder of the credential to perform any duty in the public schools of another state. The suspension shall not take effect until the commission verifies by reviewing documents as set forth in paragraph (4) of subdivision (d) of Section 44242.5 that the underlying acts of misconduct in the other state could result in a revocation of a credential in this state. The suspension shall remain in effect until the commission takes final action on a recommendation of the Committee of Credentials following a review in accordance with Sections 44242.5, 44242.7, 44244, 44244.1, and 44245.

(b) Nothing in this section is intended to require the commission to revoke the credential of an individual whose credential has been suspended pursuant to subdivision (a). The commission shall exercise its independent judgment in making a decision in each case.

SEC. 2. Section 44423.6 is added to the Education Code, to read:

44423.6. (a) (1) The commission shall revoke the credential of a holder when it receives notice that the ability of the holder of the credential to associate with minors has been limited as a term or condition of probation or sentencing resulting from a criminal conviction in this state, another state, or the United States. The limitation shall include, but is not limited to, a prohibition of associating or contact with minors, or a prohibition of associating with minors unless under supervision or in the presence of another adult.

(2) Paragraph (1) shall not apply to a conviction based solely on violating an order as set forth in subdivision (a) of Section 273.6 of the Penal Code.

(b) The commission shall revoke the credential of a holder upon receipt of notice that the holder of the credential has been ordered to surrender a credential or certification document as a term or condition of probation or sentencing resulting from a criminal conviction in this state, another state, or the United States. The limitation shall include, but not be limited to, an order to surrender or self revoke a credential authorizing service in a public school.

(c) A person whose credential is revoked pursuant to this section shall not apply to the commission for reinstatement of the credential pursuant to Section 11522 of the Government Code until the terms or conditions imposed by the conviction, as described in subdivision (a) or (b) of this section, are lifted.

CHAPTER 579

An act to amend Section 44940.5 of the Education Code, relating to school employees.

[Approved by Governor September 29, 2008. Filed with Secretary of State September 29, 2008.]

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

SECTION 1. Section 44940.5 of the Education Code is amended to read:

44940.5. A certificated employee placed on compulsory leave of absence pursuant to Section 44940, and a classified employee placed on compulsory leave of absence pursuant to Section 45304 shall be subject to the following procedures:

(a) The governing board of the school district may extend the compulsory leave of absence of the employee beyond the initial period specified in Section 44940 or 45304, whichever is applicable, by giving notice to the employee within 10 days after the entry of judgment in the proceedings that the employee will be dismissed at the expiration of 30 days from the date of service of the notice, unless the employee demands a hearing as provided in this article.

(b) An employee placed upon compulsory leave of absence pursuant to this section shall continue to be paid his or her regular salary during the period of his or her compulsory leave of absence if and during that time he or she furnishes to the school district a suitable bond, or other security acceptable to the governing board, as a guarantee that the employee will repay to the school district the amount of salary so paid

to him or her during the period of the compulsory leave of absence in case the employee is convicted of the charges, or fails or refuses to return to service following an acquittal of the offense or dismissal of the charges. If the employee is acquitted of the offense, or the charges against the employee are dismissed, the school district shall reimburse the employee for the cost of the bond upon his or her return to service in the school district.

(c) If the employee does not elect to furnish bond, or other security acceptable to the governing board of the district, and if the employee is acquitted of the offense, or the charges against him or her are dismissed without his or her guilt being established, the school district shall pay to the employee his or her full compensation for the period of the compulsory leave of absence upon his or her return to service in the school district. If the charges against the employee are dismissed as a result of the employee's successful completion of a drug diversion program, upon the employee's return to service in the school district, the school district, at the employee's election, shall pay to the employee any accrued leave, and differential pay pursuant to Sections 44977, 45195, and 45196, for up to the length of the employee's compulsory leave of absence.

(d) An action taken pursuant to this section by a governing board shall be reported immediately to the Commission on Teacher Credentialing. The commission shall give priority to the investigation and resolution of these cases.

CHAPTER 580

An act to amend Section 116875 of the Health and Safety Code, relating to drinking water.

[Approved by Governor September 29, 2008. Filed with Secretary of State September 29, 2008.]

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

SECTION 1. Section 116875 of the Health and Safety Code, as amended by Section 1 of Chapter 853 of the Statutes of 2006, is amended to read:

116875. (a) No person shall use any pipe, pipe or plumbing fitting or fixture, solder, or flux that is not lead free in the installation or repair of any public water system or any plumbing in a facility providing water

for human consumption, except when necessary for the repair of leaded joints of cast iron pipes.

(b) No person shall introduce into commerce any pipe, pipe or plumbing fitting, or fixture, that is not lead free, except for a pipe that is used in manufacturing or industrial processing.

(c) No person engaged in the business of selling plumbing supplies, except manufacturers, shall sell solder or flux that is not lead free.

(d) No person shall introduce into commerce any solder or flux that is not lead free unless the solder or flux bears a prominent label stating that it is illegal to use the solder or flux in the installation or repair of any plumbing providing water for human consumption.

(e) For the purposes of this section, "lead free" means not more than 0.2 percent lead when used with respect to solder and flux and not more than 8 percent when used with respect to pipes and pipe fittings. With respect to plumbing fittings and fixtures, "lead free" means not more than 4 percent by dry weight after August 6, 2002, unless the department has adopted a standard, based on health effects, for the leaching of lead.

(f) (1) All pipe, pipe or plumbing fittings or fixtures, solder, or flux shall be certified by an independent American National Standards Institute (ANSI) accredited third party, including, but not limited to, NSF International, as being in compliance with this section.

(2) (A) The certification described in paragraph (1) shall, at a minimum, include testing of materials in accordance with the protocols used by the Department of Toxic Substances Control in implementing Article 10.1.2 (commencing with Section 25214.4.3) of Chapter 6.5 of Division 20.

(B) The certification required pursuant to this subdivision shall not interfere with either the department's exercise of its independent authority to protect public health pursuant to this section, or the Department of Toxic Substances Control's exercise of its independent authority to implement Article 10.1.2 (commencing with Section 25214.4.3) of Chapter 6.5 of Division 20.

(3) It is the intent of the Legislature that this subdivision only provide guidance and assistance to the entities that use an independent ANSI accredited third party to demonstrate compliance with this section. Any tests developed by an independent ANSI accredited third party in accordance with this subdivision shall have no weight of authority under California statute.

(4) Notwithstanding paragraph (1), the department shall retain its independent authority in administering this article.

(g) This section shall remain in effect only until January 1, 2010, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2010, deletes or extends that date.

SEC. 2. Section 116875 of the Health and Safety Code, as added by Section 2 of Chapter 853 of the Statutes of 2006, is amended to read:

116875. (a) No person shall use any pipe, pipe or plumbing fitting or fixture, solder, or flux that is not lead free in the installation or repair of any public water system or any plumbing in a facility providing water for human consumption, except when necessary for the repair of leaded joints of cast iron pipes.

(b) (1) No person shall introduce into commerce any pipe, pipe or plumbing fitting, or fixture intended to convey or dispense water for human consumption through drinking or cooking that is not lead free, as defined in subdivision (e). This includes kitchen faucets, bathroom faucets, and any other end-use devices intended to convey or dispense water for human consumption through drinking or cooking, but excludes service saddles, backflow preventers for nonpotable services such as irrigation and industrial, and water distribution main gate valves that are two inches in diameter and above.

(2) Pipes, pipe or plumbing fittings, or fixtures that are used in manufacturing, industrial processing, for irrigation purposes, and any other uses where the water is not intended for human consumption through drinking or cooking are not subject to the requirements of paragraph (1).

(3) For all purposes other than manufacturing, industrial processing, or to convey or dispense water for human consumption, "lead free" is defined in subdivision (f).

(c) No person engaged in the business of selling plumbing supplies, except manufacturers, shall sell solder or flux that is not lead free.

(d) No person shall introduce into commerce any solder or flux that is not lead free unless the solder or flux bears a prominent label stating that it is illegal to use the solder or flux in the installation or repair of any plumbing providing water for human consumption.

(e) For the purposes of this section, "lead free" means not more than 0.2 percent lead when used with respect to solder and flux and not more than a weighted average of 0.25 percent when used with respect to the wetted surfaces of pipes and pipe fittings, plumbing fittings, and fixtures. The weighted average lead content of a pipe and pipe fitting, plumbing fitting, and fixture shall be calculated by using the following formula: The percentage of lead content within each component that comes into contact with water shall be multiplied by the percent of the total wetted surface of the entire pipe and pipe fitting, plumbing fitting, or fixture represented in each component containing lead. These percentages shall be added and the sum shall constitute the weighted average lead content of the pipe and pipe fitting, plumbing fitting, or fixture.

(f) For the purposes of paragraph (3) of subdivision (b), "lead free," consistent with the requirements of federal law, means not more than 0.2 percent lead when used with respect to solder and flux and not more than 8 percent when used with respect to pipes and pipe fittings. With respect to plumbing fittings and fixtures, "lead free" means not more than 4 percent by dry weight after August 6, 2002, unless the department has adopted a standard, based on health effects, for the leaching of lead.

(g) (1) All pipe, pipe or plumbing fittings or fixtures, solder, or flux shall be certified by an independent American National Standards Institute (ANSI) accredited third party, including, but not limited to, NSF International, as being in compliance with this section.

(2) (A) The certification described in paragraph (1) shall, at a minimum, include testing of materials in accordance with the protocols used by the Department of Toxic Substances Control in implementing Article 10.1.2 (commencing with Section 25214.4.3) of Chapter 6.5 of Division 20.

(B) The certification required pursuant to this subdivision shall not interfere with either the department's exercise of its independent authority to protect public health pursuant to this section, or the Department of Toxic Substances Control's exercise of its independent authority to implement Article 10.1.2 (commencing with Section 25214.4.3) of Chapter 6.5 of Division 20.

(3) It is the intent of the Legislature that this subdivision only provide guidance and assistance to the entities that use an independent ANSI accredited third party to demonstrate compliance with this section. Any tests developed by an independent ANSI accredited third party in accordance with this subdivision shall have no weight of authority under California statute.

(4) Notwithstanding paragraph (1), the department shall retain its independent authority in administering this article.

(h) This section shall become operative on January 1, 2010. The requirement described in subdivision (g) shall not be construed in any manner as to justify a delay in compliance with the lead-free standard set forth in subdivision (e).

SEC. 3. This act shall only become operative if Senate Bill 1395, of the 2007–08 Regular Session, is enacted and becomes operative on or before January 1, 2009.

CHAPTER 581

An act to add Article 10.1.2 (commencing with Section 25214.4.3) to Chapter 6.5 of Division 20 of the Health and Safety Code, relating to lead plumbing.

[Approved by Governor September 29, 2008. Filed with Secretary of State September 29, 2008.]

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

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

(a) Californians expect that the public health standards applicable to drinking water plumbing adopted by state government to protect against lead leaching into drinking water are being complied with.

(b) There is not currently an existing quality control program in state or federal law to ensure that drinking water plumbing, including faucets, conforms to existing state and federal standards.

(c) Without monitoring and compliance testing, consumers have no way of knowing whether the drinking water plumbing and faucets they purchase meet California's safe lead content standard.

(d) Recent medical research studies conclusively show that lead in the bloodstream is dangerous at any level.

(e) The United States Environmental Protection Agency has concluded that drinking water plumbing remains a significant source of lead exposure and has specifically identified, as the most common problem, brass or chrome-plated brass faucets and fixtures, which can leak considerable amounts of lead into the water, particularly hot water.

(f) Chapter 853 of the Statutes of 2006 will, commencing January 1, 2010, phase out the use of lead in faucets, pipes and pipe fittings, and plumbing fittings that are used to convey water for human consumption.

(g) The collection and testing of faucets would help ensure compliance with California's lead content standard for plumbing and increase consumer confidence that the faucets purchased for their homes are not a source of dangerous lead levels in their blood.

SEC. 2. Article 10.1.2 (commencing with Section 25214.4.3) is added to Chapter 6.5 of Division 20 of the Health and Safety Code, to read:

Article 10.1.2. Lead Plumbing Monitoring and Compliance Testing

25214.4.3. (a) Lead plumbing monitoring and compliance testing shall be undertaken by the department, as a part of the department's ongoing program for reducing toxic substances from the environment.

(b) For purposes of implementing this article, the department shall, based on its available resources and staffing, annually select not more than 75 drinking water faucets or other drinking water plumbing fittings and fixtures for testing and evaluation, including the locations from which to select the faucets, fittings, and fixtures, to determine compliance with Section 116875.

(c) In implementing this article, the department shall use test methods, protocols, and sample preparation procedures that are adequate to determine total lead concentration in a drinking water plumbing fitting or fixture to determine compliance with the standards for the maximum allowable total lead content set forth in Section 116875.

(d) (1) In selecting drinking water faucets and other drinking water plumbing fittings and fixtures to test and evaluate pursuant to this article, the department shall exercise its judgment regarding the specific drinking water plumbing fittings or fixtures to test.

(2) This article does not require the department's selection to be either random or representative of all available plumbing fittings or fixtures.

(3) The department shall acquire its samples of fittings and fixtures from locations that are readily accessible to the public at either retail or wholesale sources.

(e) The department shall annually post the results of the testing and evaluation conducted pursuant to this article on its Internet Web site and shall transmit these results in an annual report to the State Department of Public Health.

SEC. 3. This act shall become operative only if Senate Bill 1334, of the 2007–08 Regular Session, is enacted and takes effect on or before January 1, 2009.

CHAPTER 582

An act to amend Sections 13953 and 13957 of the Government Code, and to amend Section 216 of the Probate Code, relating to compensation of victims.

[Approved by Governor September 29, 2008. Filed with Secretary of State September 29, 2008.]

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

SECTION 1. Section 13953 of the Government Code is amended to read:

13953. (a) An application for compensation shall be filed within one year of the date of the crime, one year after the victim attains 18 years of age, or one year of the time the victim or derivative victim knew or in the exercise of ordinary diligence could have discovered that an injury or death had been sustained as a direct result of crime, whichever is later. An application based on any crime eligible for prosecution under Section 801.1 of the Penal Code may be filed any time prior to the victim's 28th birthday.

(b) The board may for good cause grant an extension of the time period in subdivision (a). In making this determination, the board may consider any relevant factors, including, but not limited to, all of the following:

(1) A recommendation from the prosecuting attorney regarding the victim's or derivative victim's cooperation with law enforcement and the prosecuting attorney in the apprehension and prosecution of the person charged with the crime.

(2) Whether particular events occurring during the prosecution or in the punishment of the person convicted of the crime have resulted in the victim or derivative victim incurring pecuniary loss.

(3) Whether the nature of the crime is such that a delayed reporting of the crime is reasonably excusable.

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

SEC. 2. Section 13957 of the Government Code is amended to read:

13957. (a) The board may grant for pecuniary loss, when the board determines it will best aid the person seeking compensation, as follows:

(1) Subject to the limitations set forth in Section 13957.2, reimburse the amount of medical or medical-related expenses incurred by the victim, including, but not limited to, eyeglasses, hearing aids, dentures, or any prosthetic device taken, lost, or destroyed during the commission of the crime, or the use of which became necessary as a direct result of the crime.

(2) Subject to the limitations set forth in Section 13957.2, reimburse the amount of outpatient psychiatric, psychological, or other mental health counseling-related expenses incurred by the victim or derivative victim, including peer counseling services provided by a rape crisis center as defined by Section 13837 of the Penal Code, and including family psychiatric, psychological, or mental health counseling for the successful treatment of the victim provided to family members of the victim in the presence of the victim, whether or not the family member relationship existed at the time of the crime, that became necessary as a direct result of the crime, subject to the following conditions:

(A) The following persons may be reimbursed for the expense of their outpatient mental health counseling in an amount not to exceed ten thousand dollars ($10,000):

(i) A victim.

(ii) A derivative victim who is the surviving parent, sibling, child, spouse, fiancé, or fiancée of a victim of a crime that directly resulted in the death of the victim.

(iii) A derivative victim, as described in paragraphs (1) to (4), inclusive, of subdivision (c) of Section 13955, who is the primary caretaker of a minor victim whose claim is not denied or reduced pursuant to Section 13956 in a total amount not to exceed ten thousand dollars ($10,000) for not more than two derivative victims.

(B) The following persons may be reimbursed for the expense of their outpatient mental health counseling in an amount not to exceed five thousand dollars ($5,000):

(i) A derivative victim not eligible for reimbursement pursuant to subparagraph (A), provided that mental health counseling of a derivative victim described in paragraph (5) of subdivision (c) of Section 13955, shall be reimbursed only if that counseling is necessary for the treatment of the victim.

(ii) A victim of a crime of unlawful sexual intercourse with a minor committed in violation of subdivision (d) of Section 261.5 of the Penal Code. A derivative victim of a crime committed in violation of subdivision (d) of Section 261.5 of the Penal Code shall not be eligible for reimbursement of mental health counseling expenses.

(C) The board may reimburse a victim or derivative victim for outpatient mental health counseling in excess of that authorized by subparagraphs (A) or (B) or for inpatient psychiatric, psychological, or other mental health counseling if the claim is based on dire or exceptional circumstances that require more extensive treatment, as approved by the board.

(D) Expenses for psychiatric, psychological, or other mental health counseling-related services may be reimbursed only if the services were provided by either of the following individuals:

(i) A person who would have been authorized to provide those services pursuant to former Article 1 (commencing with Section 13959) as it read on January 1, 2002.

(ii) A person who is licensed by the state to provide those services, or who is properly supervised by a person who is so licensed, subject to the board's approval and subject to the limitations and restrictions the board may impose.

(3) Reimburse the expenses of nonmedical remedial care and treatment rendered in accordance with a religious method of healing recognized by state law.

(4) Subject to the limitations set forth in Section 13957.5, authorize compensation equal to the loss of income or loss of support, or both, that a victim or derivative victim incurs as a direct result of the victim's or derivative victim's injury or the victim's death. If the victim or derivative victim requests that the board give priority to reimbursement of loss of income or support, the board may not pay medical expenses, or mental health counseling expenses, except upon the request of the victim or derivative victim or after determining that payment of these expenses will not decrease the funds available for payment of loss of income or support.

(5) Authorize a cash payment to or on behalf of the victim for job retraining or similar employment-oriented services.

(6) Reimburse the claimant for the expense of installing or increasing residential security, not to exceed one thousand dollars ($1,000). Reimbursement shall be made either upon verification by law enforcement that the security measures are necessary for the personal safety of the claimant or verification by a mental health treatment provider that the security measures are necessary for the emotional well-being of the claimant. For purposes of this paragraph, a claimant is the crime victim, or, if the victim is deceased, a person who resided with the deceased at the time of the crime. Installing or increasing residential security may include, but need not be limited to, both of the following:

(A) Home security device or system.

(B) Replacing or increasing the number of locks.

(7) Reimburse the expense of renovating or retrofitting a victim's residence or a vehicle, or both, to make the residence, the vehicle, or both, accessible or the vehicle operational by a victim upon verification that the expense is medically necessary for a victim who is permanently disabled as a direct result of the crime, whether the disability is partial or total.

(8) (A) Authorize a cash payment or reimbursement not to exceed two thousand dollars ($2,000) to a victim for expenses incurred in relocating, if the expenses are determined by law enforcement to be necessary for the personal safety of the victim or by a mental health treatment provider to be necessary for the emotional well-being of the victim.

(B) The cash payment or reimbursement made under this paragraph shall only be awarded to one claimant per crime giving rise to the relocation. The board may authorize more than one relocation per crime

if necessary for the personal safety or emotional well-being of the claimant. However, the total cash payment or reimbursement for all relocations due to the same crime shall not exceed two thousand dollars ($2,000). For purposes of this paragraph a claimant is the crime victim, or, if the victim is deceased, a person who resided with the deceased at the time of the crime.

(C) The board may, under compelling circumstances, award a second cash payment or reimbursement to a victim for another crime if both of the following conditions are met:

(i) The crime occurs more than three years from the date of the crime giving rise to the initial relocation cash payment or reimbursement.

(ii) The crime does not involve the same offender.

(D) When a relocation payment or reimbursement is provided to a victim of sexual assault or domestic violence and the identity of the offender is known to the victim, the victim shall agree not to inform the offender of the location of the victim's new residence and not to allow the offender on the premises at any time, or shall agree to seek a restraining order against the offender.

(9) When a victim dies as a result of a crime, the board may reimburse any individual who voluntarily, and without anticipation of personal gain, pays or assumes the obligation to pay any of the following expenses:

(A) The medical expenses incurred as a direct result of the crime in an amount not to exceed the rates or limitations established by the board.

(B) The funeral and burial expenses incurred as a direct result of the crime, not to exceed seven thousand five hundred dollars ($7,500).

(10) When the crime occurs in a residence, the board may reimburse any individual who voluntarily, and without anticipation of personal gain, pays or assumes the obligation to pay the reasonable costs to clean the scene of the crime in an amount not to exceed one thousand dollars ($1,000). Services reimbursed pursuant to this subdivision shall be performed by persons registered with the State Department of Public Health as trauma scene waste practitioners in accordance with Chapter 9.5 (commencing with Section 118321) of Part 14 of Division 104 of the Health and Safety Code.

(11) Reimburse the licensed child care expenses necessarily incurred by a victim or derivative victim as a direct result of a crime that resulted in physical injury or death, if the following conditions are met:

(A) The injured or deceased victim was a primary caregiver for the victim's dependent children.

(B) The total reimbursement for all child care expenses does not exceed five thousand dollars ($5,000). The board shall have the ability to set a lower reimbursement amount if necessary to protect the solvency of the Restitution Fund.

(C) The periods of time for which child care expenses may be reimbursed do not exceed a total of 180 days. The time periods need not be continuous.

(D) The child care expenses are consistent with the usual and customary rates charged by the child care provider for other children in the provider's care. If the provider only cares for the victim's children, the reimbursement rate shall not exceed two hundred dollars ($200) per week for one child or four hundred dollars ($400) per week for two or more children subject to the limit in subparagraph (E).

(E) No victim or derivative victim may receive reimbursement for child care expenses in addition to reimbursement subject to paragraph (4).

(F) This paragraph is a pilot program and shall be operative only until January 1, 2010.

(b) The total award to or on behalf of each victim or derivative victim may not exceed thirty-five thousand dollars ($35,000), except that this amount may be increased to seventy thousand dollars ($70,000) if federal funds for that increase are available.

SEC. 2.5. Section 13957 of the Government Code is amended to read:

13957. (a) The board may grant for pecuniary loss, when the board determines it will best aid the person seeking compensation, as follows:

(1) Subject to the limitations set forth in Section 13957.2, reimburse the amount of medical or medical-related expenses incurred by the victim, including, but not limited to, eyeglasses, hearing aids, dentures, or any prosthetic device taken, lost, or destroyed during the commission of the crime, or the use of which became necessary as a direct result of the crime.

(2) Subject to the limitations set forth in Section 13957.2, reimburse the amount of outpatient psychiatric, psychological, or other mental health counseling-related expenses incurred by the victim or derivative victim, including peer counseling services provided by a rape crisis center as defined by Section 13837 of the Penal Code, and including family psychiatric, psychological, or mental health counseling for the successful treatment of the victim provided to family members of the victim in the presence of the victim, whether or not the family member relationship existed at the time of the crime, that became necessary as a direct result of the crime, subject to the following conditions:

(A) The following persons may be reimbursed for the expense of their outpatient mental health counseling in an amount not to exceed ten thousand dollars ($10,000):

(i) A victim.

(ii) A derivative victim who is the surviving parent, sibling, child, spouse, fiancé, or fiancée of a victim of a crime that directly resulted in the death of the victim.

(iii) A derivative victim, as described in paragraphs (1) to (4), inclusive, of subdivision (c) of Section 13955, who is the primary caretaker of a minor victim whose claim is not denied or reduced pursuant to Section 13956 in a total amount not to exceed ten thousand dollars ($10,000) for not more than two derivative victims.

(B) The following persons may be reimbursed for the expense of their outpatient mental health counseling in an amount not to exceed five thousand dollars ($5,000):

(i) A derivative victim not eligible for reimbursement pursuant to subparagraph (A), provided that mental health counseling of a derivative victim described in paragraph (5) of subdivision (c) of Section 13955, shall be reimbursed only if that counseling is necessary for the treatment of the victim.

(ii) A victim of a crime of unlawful sexual intercourse with a minor committed in violation of subdivision (d) of Section 261.5 of the Penal Code. A derivative victim of a crime committed in violation of subdivision (d) of Section 261.5 of the Penal Code shall not be eligible for reimbursement of mental health counseling expenses.

(iii) A minor who suffers emotional injury as a direct result of witnessing a violent crime and who is not eligible for reimbursement of the costs of outpatient mental health counseling under any other provision of this chapter. To be eligible for reimbursement under this clause, the minor must have been in close proximity to the victim when he or she witnessed the crime.

(C) The board may reimburse a victim or derivative victim for outpatient mental health counseling in excess of that authorized by subparagraphs (A) or (B) or for inpatient psychiatric, psychological, or other mental health counseling if the claim is based on dire or exceptional circumstances that require more extensive treatment, as approved by the board.

(D) Expenses for psychiatric, psychological, or other mental health counseling-related services may be reimbursed only if the services were provided by either of the following individuals:

(i) A person who would have been authorized to provide those services pursuant to former Article 1 (commencing with Section 13959) as it read on January 1, 2002.

(ii) A person who is licensed by the state to provide those services, or who is properly supervised by a person who is so licensed, subject to the board's approval and subject to the limitations and restrictions the board may impose.

(3) Reimburse the expenses of nonmedical remedial care and treatment rendered in accordance with a religious method of healing recognized by state law.

(4) Subject to the limitations set forth in Section 13957.5, authorize compensation equal to the loss of income or loss of support, or both, that a victim or derivative victim incurs as a direct result of the victim's or derivative victim's injury or the victim's death. If the victim or derivative victim requests that the board give priority to reimbursement of loss of income or support, the board may not pay medical expenses, or mental health counseling expenses, except upon the request of the victim or derivative victim or after determining that payment of these expenses will not decrease the funds available for payment of loss of income or support.

(5) Authorize a cash payment to or on behalf of the victim for job retraining or similar employment-oriented services.

(6) Reimburse the claimant for the expense of installing or increasing residential security, not to exceed one thousand dollars ($1,000). Reimbursement shall be made either upon verification by law enforcement that the security measures are necessary for the personal safety of the claimant or verification by a mental health treatment provider that the security measures are necessary for the emotional well-being of the claimant. For purposes of this paragraph, a claimant is the crime victim, or, if the victim is deceased, a person who resided with the deceased at the time of the crime. Installing or increasing residential security may include, but need not be limited to, both of the following:

(A) Home security device or system.

(B) Replacing or increasing the number of locks.

(7) Reimburse the expense of renovating or retrofitting a victim's residence or a vehicle, or both, to make the residence, the vehicle, or both, accessible or the vehicle operational by a victim upon verification that the expense is medically necessary for a victim who is permanently disabled as a direct result of the crime, whether the disability is partial or total.

(8) (A) Authorize a cash payment or reimbursement not to exceed two thousand dollars ($2,000) to a victim for expenses incurred in relocating, if the expenses are determined by law enforcement to be necessary for the personal safety of the victim or by a mental health treatment provider to be necessary for the emotional well-being of the victim.

(B) The cash payment or reimbursement made under this paragraph shall only be awarded to one claimant per crime giving rise to the relocation. The board may authorize more than one relocation per crime

if necessary for the personal safety or emotional well-being of the claimant. However, the total cash payment or reimbursement for all relocations due to the same crime shall not exceed two thousand dollars ($2,000). For purposes of this paragraph a claimant is the crime victim, or, if the victim is deceased, a person who resided with the deceased at the time of the crime.

(C) The board may, under compelling circumstances, award a second cash payment or reimbursement to a victim for another crime if both of the following conditions are met:

(i) The crime occurs more than three years from the date of the crime giving rise to the initial relocation cash payment or reimbursement.

(ii) The crime does not involve the same offender.

(D) When a relocation payment or reimbursement is provided to a victim of sexual assault or domestic violence and the identity of the offender is known to the victim, the victim shall agree not to inform the offender of the location of the victim's new residence and not to allow the offender on the premises at any time, or shall agree to seek a restraining order against the offender.

(9) When a victim dies as a result of a crime, the board may reimburse any individual who voluntarily, and without anticipation of personal gain, pays or assumes the obligation to pay any of the following expenses:

(A) The medical expenses incurred as a direct result of the crime in an amount not to exceed the rates or limitations established by the board.

(B) The funeral and burial expenses incurred as a direct result of the crime, not to exceed seven thousand five hundred dollars ($7,500).

(10) When the crime occurs in a residence, the board may reimburse any individual who voluntarily, and without anticipation of personal gain, pays or assumes the obligation to pay the reasonable costs to clean the scene of the crime in an amount not to exceed one thousand dollars ($1,000). Services reimbursed pursuant to this subdivision shall be performed by persons registered with the State Department of Public Health as trauma scene waste practitioners in accordance with Chapter 9.5 (commencing with Section 118321) of Part 14 of Division 104 of the Health and Safety Code.

(11) Reimburse the licensed child care expenses necessarily incurred by a victim or derivative victim as a direct result of a crime that resulted in physical injury or death, if the following conditions are met:

(A) The injured or deceased victim was a primary caregiver for the victim's dependent children.

(B) The total reimbursement for all child care expenses does not exceed five thousand dollars ($5,000). The board shall have the ability to set a lower reimbursement amount if necessary to protect the solvency of the Restitution Fund.

(C) The periods of time for which child care expenses may be reimbursed do not exceed a total of 180 days. The time periods need not be continuous.

(D) The child care expenses are consistent with the usual and customary rates charged by the child care provider for other children in the provider's care. If the provider only cares for the victim's children, the reimbursement rate shall not exceed two hundred dollars ($200) per week for one child or four hundred dollars ($400) per week for two or more children subject to the limit in subparagraph (E).

(E) No victim or derivative victim may receive reimbursement for child care expenses in addition to reimbursement subject to paragraph (4).

(F) This paragraph is a pilot program and shall be operative only until January 1, 2010.

(b) The total award to or on behalf of each victim or derivative victim may not exceed thirty-five thousand dollars ($35,000), except that this amount may be increased to seventy thousand dollars ($70,000) if federal funds for that increase are available.

SEC. 3. Section 216 of the Probate Code is amended to read:

216. When a deceased person has an heir who is confined in a prison or facility under the jurisdiction of the Department of Corrections and Rehabilitation, or its Division of Juvenile Facilities, or confined in any county or city jail, road camp, industrial farm, or other local correctional facility, the estate attorney, or if there is no estate attorney, the beneficiary, the personal representative, or the person in possession of property of the decedent shall give the Director of the California Victim Compensation and Government Claims Board notice of the decedent's death not later than 90 days after the date of death. The notice shall be given as provided in Section 1215 and shall include all of the following:

(a) The name, date of birth, and location of incarceration of the decedent's heir.

(b) The heir's CDCR number if incarcerated in a Department of Corrections and Rehabilitation facility or booking number if incarcerated in a county facility.

(c) A copy of the decedent's death certificate.

(d) The probate case number, and the name of the superior court hearing the case.

SEC. 4. Section 2.5 of this bill incorporates amendments to Section 13957 of the Government Code proposed by both this bill and AB 2809. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2009, (2) each bill amends Section

13957 of the Government Code, and (3) this bill is enacted after AB 2809, in which case Section 2 of this bill shall not become operative.

CHAPTER 583

An act to add Section 653.2 to the Penal Code, relating to crimes.

[Approved by Governor September 29, 2008. Filed with Secretary of State September 29, 2008.]

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

SECTION 1. Section 653.2 is added to the Penal Code, to read:

653.2. (a) Every person who, with intent to place another person in reasonable fear for his or her safety, or the safety of the other person's immediate family, by means of an electronic communication device, and without consent of the other person, and for the purpose of imminently causing that other person unwanted physical contact, injury, or harassment, by a third party, electronically distributes, publishes, e-mails, hyperlinks, or makes available for downloading, personal identifying information, including, but not limited to, a digital image of another person, or an electronic message of a harassing nature about another person, which would be likely to incite or produce that unlawful action, is guilty of a misdemeanor punishable by up to one year in the county jail, by a fine of not more than one thousand dollars ($1,000), or by both that fine and imprisonment.

(b) For purposes of this section, the term "electronic communication device" includes, but is not limited to, telephones, cell phones, computers, Internet Web pages or sites, Internet phones, hybrid cellular/Internet/wireless devices, personal digital assistants (PDAs), video recorders, fax machines, or pagers. "Electronic communication" has the same meaning as the term is defined in Section 2510(12) of Title 18 of the United States Code.

(c) For purposes of this section, the following terms apply:

(1) "Harassment" means a knowing and willful course of conduct directed at a specific person that a reasonable person would consider as seriously alarming, seriously annoying, seriously tormenting, or seriously terrorizing the person and that serves no legitimate purpose.

(2) "Of a harassing nature" means information that a reasonable person would consider as seriously alarming, seriously annoying, seriously tormenting, or seriously terrorizing the person and that serves no legitimate purpose.

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 584

An act to add Section 14630 to the Government Code, relating to the State Capitol.

[Approved by Governor September 29, 2008. Filed with Secretary of State September 29, 2008.]

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

SECTION 1. Section 14630 is added to the Government Code, to read:

14630. (a) Upon its establishment, the California Crime Victims' Memorial Foundation, or any successor entity, may plan and construct a memorial in the Capitol Historic Region, in consultation with the department, to honor California residents who are victims of crime.

(b) The California Crime Victims' Memorial Review Committee is hereby established and shall include as members all of the following:

(1) The Director of General Services, or his or her designee.

(2) The State Historic Preservation Officer, or his or her designee.

(3) A Member of the Assembly appointed by the Speaker of the Assembly.

(4) A Member of the Senate appointed by the Senate Committee on Rules.

(c) The committee shall consult with the California Crime Victims' Memorial Foundation to identify an appropriate location for the memorial in the Capitol Historic Region and review a memorial design.

(d) The department, in consultation with the California Crime Victims' Memorial Foundation, shall accomplish the following goals:

(1) Review of the preliminary design plans to identify potential maintenance concerns.

(2) Ensure Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12101 et seq.) compliance, and other safety concerns.

(3) Review and approval of proper California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code) documents prepared for work at the designated historic property.

(4) Review of final construction documents to ensure that all requirements are met.

(5) Prepare the right-of-entry permit outlining the final area of work, final construction documents, construction plans, the contractor hired to perform the work, insurance, bonding, provisions for damage to state property, and inspection requirements.

(6) Prepare a maintenance agreement outlining the California Crime Victims' Memorial Foundation's responsibility for the long-term maintenance of the memorial due to aging, vandalism, or relocation.

(7) Inspect the construction performed by the contractor selected by the California Crime Victims' Memorial Foundation.

(e) If the California Crime Victims' Memorial Foundation undertakes responsibility to construct a memorial under this section, it shall, in consultation with the department, establish a schedule for the design, construction, and dedication of the memorial, implement procedures to solicit designs for the memorial and devise a selection process for the choice of the design, and establish a program for the dedication of the memorial.

(f) The department and the California Crime Victims' Memorial Review Committee shall approve the design of the memorial.

(g) If the California Crime Victims' Memorial Foundation undertakes responsibility to construct a memorial under this section, it shall not begin construction of the memorial until (1) the master plan of the State Capitol Park is approved and adopted by the Joint Committee on Rules and (2) the Department of Finance and the Joint Committee on Rules have determined that sufficient private funding is available to construct and maintain the memorial.

(h) The planning, construction, and maintenance of the memorial shall be funded exclusively through private donations to a nonprofit foundation, the California Crime Victims' Memorial Foundation, to be established for that purpose.

(i) If the California Crime Victims' Memorial Foundation undertakes responsibility to construct a memorial under this section, it shall sign a maintenance agreement with the state, as created under paragraph (6) of subdivision (d), to maintain the memorial with private contributions.